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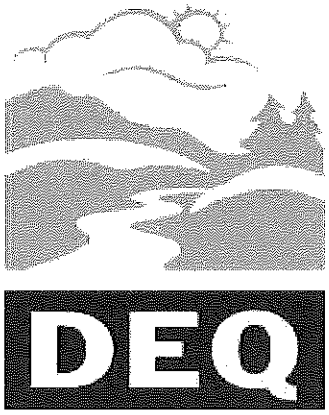
Part 2 of 2

OREGON

ENVIRONMENTAL QUALITY

COMMISSION MEETING

MATERIALS 03/03/1989



State of Oregon
Department of Environmental Quality

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NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: 3/3/89
Agenda Item: N
Division: HSW
Section: UST

SUBJECT:

A. License persons working on underground storage tanks.
B. Modify rules regulating placement of regulated substances into underground storage tanks (UST).

PURPOSE:

A. Improve the quality of work on UST installations, thereby reducing releases from USTs.
B. Prohibit placement of regulated substances into an unpermitted UST, thereby encouraging compliance.

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, B
Rulemaking Statements	Attachment C
Fiscal and Economic Impact Statement	Attachment D
Public Notice	Attachment E

___ Issue Contested Case Decision/Order

Proposed Order Attachment ___

___ Other: (specify)

DESCRIPTION OF REQUESTED ACTION:

The proposed registration and licensing rules contain the following elements:

- definition of terms,
- registration and licensing requirements for firms,
- examination and licensing requirements for Supervisors,
- registration and licensing fees.

The proposed modifications to the rules regulating the conditions under which regulated substances may be placed into underground storage tanks contain the following elements:

- definition of the terms "Seller" and "Distributor",
- requirements for owners of underground storage tanks,
- requirement for sellers and distributors of regulated substances.

AUTHORITY/NEED FOR ACTION:

___ Required by Statute: ORS 466.705 - 466.995 Attachment H
Enactment Date: _____
___ Statutory Authority: _____ Attachment ___
___ Amendment of Existing Rule: _____ Attachment ___
___ Implement Delegated Federal Program:
_____ Attachment ___

___ Other: Attachment ___

X Time Constraints:

The UST advisory committee recommended the implementation dates for registration and licensing. Early licensing will improve the knowledge and skills of those who work on UST systems and improve the quality of UST systems.

DEVELOPMENTAL BACKGROUND:

___ Advisory Committee Report/Recommendation Attachment ___
___ Hearing Officer's Report/Recommendations Attachment ___
X Response to Testimony/Comments Attachment G
X Prior EQC Agenda Items:
Item G, EQC Meeting 11/4/88 Attachment F

Item G, EQC Meeting 11/4/88 Attachment F

___ Other Related Reports/Rules/Statutes: Attachment ___

___ Supplemental Background Information Attachment ___

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The Underground Storage Tank Advisory Committee provided guidance and review during development of these rules. The Committee recommended adoption of both rules.

A. Licensing: Both the tank owners and UST service providers are affected by the rules. While they preferred site inspections by the DEQ they encouraged licensing as a cost effective method to improve workmanship on USTs. The regulated community was involved early during development of the rules through state wide information meetings held in 1988.

B. Product Prohibition: The rule is encouraged by the tank owners and product sellers because it adds an improved administrative structure to the existing rule.

PROGRAM CONSIDERATIONS:

A. Licensing: The program is funded by fees for registration, licenses, tests and study guides. Expected program revenue is $25,000 per biennium as shown in Attachment D. The exam preparation and the semi-annual exam will be performed by a contractor. No additional staff is required to manage the remaining licensing activities.

B. Product Prohibition: This change requires no additional funds or FTE.

Neither rule has a comparable program at the federal level.

There are no similar program elements in state UST programs in adjacent states. Maine and Florida have well established programs for licensing UST service providers.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Adopt both rules as proposed in Attachments A and B. This alternative adopts a licensing program as intended by the legislature and improves the existing rules regulating the

2. Refer the proposed rules back to the Department and the UST Advisory Committee for further consideration. This alternative will delay the startup of a licensing program and improvements to the existing product prohibition rules.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission adopt Alternative 1.

Alternative 1 appears to best implement the legislative intent. The licensing rules meet the needs of the UST owner, persons working on USTs and the community. The Product Prohibition rules meet the needs of the UST owner, product seller and distributors and the community.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The proposed rules implement the statutory provisions and the legislative intent by improving the quality of workmanship on USTs and preventing delivery of product to USTs without an operating permit. Reduces the risk of groundwater contamination by leaking USTs.

ISSUES FOR COMMISSION TO RESOLVE:

There are no policy issues for the commission to resolve.

INTENDED FOLLOWUP ACTIONS:

File rules with the Secretary of State.

Licensing: Notify contractors and potential UST Supervisors of rule adoption.

Product Prohibition: Notify tank owners and sellers and distributors of product of rule adoption.

Approved:

Section: Richard P. Rutter

Division: Stephanie Hallock

Director: Fred Hansen

Report Prepared By: Larry D. Frost

Phone: (503) 229-5769

Date Prepared: 2/15/89

LDF:lf
030389.RL2
2/15/89

Attachment A
Agenda Item O
3-3-89 EQC Meeting

PROPOSED OREGON ADMINISTRATIVE RULES

REGISTRATION AND LICENSING REQUIREMENTS FOR UNDERGROUND STORAGE TANK SERVICE PROVIDERS
ORS 466.705 through ORS 466.995

AUTHORITY, PURPOSE, AND SCOPE

340-160-005 (1) These rules are promulgated in accordance with and under the authority of ORS 466.750.

(2) The purpose of these rules is to provide for the regulation of companies and persons performing services for underground storage tank systems in order to assure that underground storage tank systems are being serviced in a manner which will protect the public health and welfare and the land and waters within the State of Oregon. These rules establish standards for:

(a) Registration and licensing of firms performing services on underground storage tanks,

(b) Examination, qualification and licensing of individuals who supervise the performance of tank services,

(c) Administration and enforcement of these rules by the Department.

(3) Scope.

(a) OAR 340-160-005 through -150 applies to the installation, retrofitting, decommissioning and testing, by any person, of underground storage tanks regulated by ORS 466.705 through ORS 466.835 and OAR 340-150-010 through OAR 340-150-150 except as noted in Subsection (3)(b).

(b) OAR 340-160-005 through OAR 340-160-150 do not apply to services performed on the tanks identified in OAR 340-160-015 or to services performed by the tank owner, property owner or permittee.

DEFINITIONS

340-160-010, As used in these rules,

(1) "Cathodic Protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. A tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

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

(3) "Decommissioning or Removal" means to remove an underground storage tank from operation, either temporarily or permanently, by abandonment in place or by removal from the ground.

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

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

(6) "Facility" means the location at which underground storage tanks are in place or will be placed. A facility encompasses the entire property

contiguous to the underground storage tanks that is associated with the use of the tanks.

(7) "Fee" means a fixed charge or service charge.

(8) "Firm" means any business, including but not limited to corporations, limited partnerships, and sole proprietorships, engaged in the performance of tank services.

(9) "Installation" means the work involved in placing an underground storage tank system or any part thereof in the ground and preparing it to be placed in service.

(10) "Licensed" means that a firm or an individual with supervisory responsibility for the performance of tank services has met the Department's experience and qualification requirements to offer or perform services related to underground storage tanks and has been issued a license by the Department to perform those services.

(11) "Retrofitting" means the modification of an existing underground storage tank including but not limited to the replacement of monitoring systems, the addition of cathodic protective systems, tank repair, replacement of piping, valves, fill pipes or vents and the installation of tank liners.

(12) "Supervisor" means a licensed individual operating alone or employed by a contractor and charged with the responsibility to direct and oversee the performance of tank services at a facility.

(13) "Tank Services" include but are not limited to tank installation, decommissioning, retrofitting, testing, and inspection.

(14) "Tank Services Provider" is an individual or firm registered and, if required, licensed to offer or perform tank services on regulated underground storage tanks in Oregon.

(15) "Testing" means the application of a method to determine the integrity of an underground storage tank.

(16) "Tightness testing" means a procedure for testing the ability of a tank system to prevent an inadvertent release of any stored substance into the environment (or, in the case of an underground storage tank system, intrusion of groundwater into a tank system).

(17) "Underground Storage Tank" or "UST" means an underground storage tank as defined in OAR 340-150-010 (11).

(18) "Field-Constructed Tank" means an underground storage tank that is constructed in the field rather than factory built because of it's large size; usually greater than 50,000 gallons capacity.

EXEMPTED TANKS

340-150-015 (1) The following regulated underground storage tanks are exempt from the requirements of this part:

(a) Hazardous waste tanks

(b) Hydraulic systems and tanks

(c) Wastewater treatment tanks

(d) Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 USC 2011 and following)

(e) UST systems containing electrical equipment

(f) Any UST system whose capacity is 110 gallons and less

(g) Any UST system that contains a de minimus concentration of regulated substances

(h) Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

(i) Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR 50 Appendix A

(j) Airport hydrant fuel distribution systems

(k) UST systems with field-constructed tanks

Note: The exempt underground storage tanks defined by OAR 340-150-015 (1) are the same underground storage tanks defined by 40CFR 280.10, Subparagraphs (b) and (c).

GENERAL PROVISIONS

340-060-020 (1) After May 1, 1989, no firm shall offer or perform tank services in the State of Oregon without having first registered with the Department.

(2) After September 1, 1989, no tank services provider may install, retrofit or decommission an underground storage tank in the State of Oregon without first obtaining a license from the Department.

(3) After May 1, 1990, no tank services provider shall offer to test or perform a test on an underground storage tank without first having obtained a license from the Department.

(4) After the required date, any tank services provider offering to perform tank services must have registered with or been licensed by the Department. Proof of registration and or licensing must be available at all times a tank services provider is performing tank services.

(5) After the required date, a tank services provider registered and/or licensed to perform tank services is prohibited from offering or performing tank services on regulated tanks unless a regulated tank has been issued a permit by the Department.

(6) Any tank services provider licensed or certified by the Department under the provisions of these rules shall:

(a) comply with the appropriate provisions of OAR 340-160-005 through OAR 340-160-050;

(b) maintain a current address on file with the Department; and

(c) perform tank services in a manner which conforms with all federal and state regulations applicable at the time the services are being performed.

(7) A firm registered or, if required, licensed to perform tank services must submit a checklist to the Department following the completion of a tank installation or retrofit.

(a) The checklist will be made available on a form provided by the Department.

(b) The installation and retrofit checklist must be signed by an executive officer of the firm and, following September 1, 1989, by the licensed tank services supervisor.

(c) An as-built drawing of the completed tank installation or retrofit shall be provided with the submission of the installation and retrofit checklist.

(8) After September 1, 1989, a licensed tank services supervisor shall be present at a tank installation, retrofit or decommissioning project when the following project tasks are being performed:

(a) Preparation of the excavation immediately prior to receiving backfill and the placement of the tank into the excavation;

(b) Any movement of the tank vessel, including but not limited to transferring the tank vessel from the vehicle used to transport it to the project site;

(c) Setting of the tank and its associated piping into the excavation, including placement of any anchoring devices, backfill to the level of the tank, and strapping, if any;

(d) Placement and connection of the piping system to the tank vessel;

(e) Installation of cathodic protection;

(f) All pressure testing of the underground storage tank system, including associated piping, performed during the installation or retrofitting;

(g) Completion of the backfill and filling of the installation.

(h) Preparation for and installation of tank lining systems.

(h) Tank excavation.

(i) Tank purging or inerting.

(j) Removal and disposal of tank contents from cleaning.

(9) A licensed tank services provider shall report the existence of any condition relating to an underground tank system that has or may result in a release of the tank's contents to the environment. This report shall be provided to the Department within 72 hours of the discovery of the condition.

(10) The requirements of this part are in addition to and not in lieu of any other licensing and registration requirement imposed by law.

TYPES OF LICENSES

340-160-025 (1) The Department may issue the following types of licenses:

(a) Tank Services Provider

(b) Supervision of Tank Installation and Retrofitting

(c) Supervision of Tank Decommissioning

(d) Supervision of Tank System Tightness Testing

(e) Supervision of Cathodic Protection System Testing

(2) A license will be issued to firms and individuals who meet the qualification requirements, submit an application and pay the required fee.

REGISTRATION AND LICENSING OF TANK SERVICES PROVIDERS

340-160-030 (1) On or before May 1, 1989, all firms offering or performing tank services in the State of Oregon shall register with the Department.

(2) Registration shall be accomplished by:

(a) Completing a registration application provided by the Department; or

(b) Submitting the following information to the Department:

(i) The name, address and telephone number of the firm.

(ii) The nature of the tank services to be offered

(iii)A summary of the recent project history of the firm (the two year period immediately preceding the application) including the number of projects completed by the firm in each tank services category and

identification of any other industry or government licenses held by the firm related to specific tank services.

(iv) Identifying the names of employees or principals responsible for on-site project supervision, and

(c) Including a signed statement that certifies that:

"I ___(name)___, am the chief executive officer of __(company)___, and do hereby certify that I have obtained a copy of the applicable laws and rules pertaining to the regulation of underground storage tanks in the State of Oregon and that I have read them and will direct the employees and principals of this company to perform the tank services rendered by this company in a manner that is consistent with their requirements."

(d) Remitting the required registration fee.

(3) After July 1, 1989, firms installing, retrofitting and/or decommissioning underground storage tanks may apply for a tank services provider license from the Department.

(4) After March 1, 1990, firms testing underground storage tanks may apply for a tank services provider license from the Department.

(5) An application for a tank services providers license shall contain:

(a) The information required by 340-160-025 (2) (b), (c) and (d).

(b) A list of employees licensed by the Department to perform and supervise tank services, an identification of the specific tank services for which they are licensed, the date the employee received a license from the Department, and the number of the employee's license.

(c) Remitting the required licensing fee.

(6) The Department will review the application for completeness. If the application is incomplete, the Department shall notify the applicant in writing of the deficiencies.

(7) The Department shall deny, in writing, a license to a tank services provider who has not satisfied the license application requirements.

(8) The Department shall issue a license to the applicant after the application is approved.

(9) The Department shall grant a license for a period of twenty-four (24) months.

(10) Renewals:

(a) License renewals must be applied for in the same manner as is required for an initial license.

(b) The complete renewal application shall be submitted no later than 30 days prior to the expiration date.

(11) The Department may suspend or revoke a license if the tank services provider:

(a) Fraudulently obtains or attempts to obtain a license.

(b) Fails at any time to satisfy the requirements for a license or comply with the rules adopted by the Commission.

(c) Fails to meet any applicable state or federal standard relating to the service performed under the license.

(d) Fails to employ and designate a licensed supervisor for each project.

(12) A tank services provider who has a license suspended or revoked may reapply for a license after demonstrating to the Department that the cause of the revocation has been resolved.

(13) In the event a tank services provider no longer employs a licensed supervisor the tank services provider must stop work on any regulated underground storage tank system. Work shall not start until a licensed supervisor is again employed by the provider and written notice of the hiring of a licensed supervisor is received by the Department.

SUPERVISOR EXAMINATION AND LICENSING

340-160-035 (1) To obtain a license from the Department to supervise the installation, retrofitting, decommissioning or testing of an underground storage tank, an individual must take and pass a qualifying examination approved by the Department.

(2) Applications for Supervisor Licenses - General Requirements

(a) Applications must be submitted to the Department within thirty (30) days of passing the qualifying examination.

(b) Applications shall be submitted on forms prescribed by the Department and shall be accompanied by the appropriate fee.

(3) The application to be a Licensed Supervisor shall include:

(a) Documentation that the applicant has successfully passed the Supervisor examination.

(b) Any additional information that the Department may require.

(4) A license is valid for a period of twenty-four (24) months after the date of issue.

(5) Renewals

(a) License renewals must be applied for in the same manner as the application for the original license, including re-examination.

(6) The Department may suspend or revoke a Supervisor's license for failure to comply with any state or federal rule or regulation pertaining to the management of underground storage tanks.

(7) If a Supervisor's license is revoked, an individual may not apply for another supervisor license prior to ninety (90) days after the revocation date.

(8) Upon issuance of a Supervisor's license, the Department shall issue an identification card to all successful applicants which shows the license number and license expiration date.

(9) The supervisor's license identification card shall be available for inspection at each project site.

SUPERVISOR EXAMINATIONS

340-160-040 (1) At least once prior to September 1, 1989, and twice every year thereafter, the Department shall offer a qualifying examination for any person who wishes to become licensed to install, remove, or retrofit underground storage tanks.

(2) At least once prior to March 1, 1990, and twice every year thereafter, the Department shall offer a qualifying examination for any person who wishes to become licensed to test underground storage tanks.

(3) Not less than thirty (30) days prior to offering an examination, the Department shall prepare and make available to interested persons, a study guide which may include sample examination questions.

(4) The Department shall develop and administer the qualifying examinations in a manner consistent with the objectives of this section.

FEES

340-160-150 (1) Fees shall be assessed to provide revenues to operate the underground storage tank services licensing program. Fees are assessed for the following:

(a) Tank Services Provider
(b) Supervisor Examination
(c) Supervisor License
(d) Examination Study Guides

(2) Tank services providers shall pay a non-refundable registration fee of $25.

(3) Tank services providers shall pay a non-refundable license application fee of $100 for a twenty-four (24) month license.

(4) Individuals taking the supervisor licensing qualifying examination shall pay a non-refundable examination fee of $25.

(5) Individuals seeking to obtain a supervisor's license shall pay a non-refundable license application fee of $25 for a two year license.

(6) Examination study guides shall be made available to the public for $10.

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Attachment B
Agenda Item O
3-3-89 EQC Meeting

PROPOSED MODIFICATIONS TO OREGON ADMINISTRATIVE RULES

DEPOSITING REGULATED SUBSTANCES IN UNDERGROUND STORAGE TANKS
ORS 466.705 through ORS 466.995

Definitions

340-150-010 (1) "Corrective Action" means remedial action taken to protect the present or future public health, safety, welfare or the environment from a release of a regulated substance. "Corrective Action" includes but is not limited to:

(a) The prevention, elimination, removal, abatement, control, minimization, investigation, assessment, evaluation or monitoring of a hazard or potential hazard or threat, including migration of a regulated substance; or

(b) Transportation, storage, treatment or disposal of a regulated substance or contaminated material from a site.

(2) "Decommission" means to remove from operation an underground storage tank, including temporary or permanent removal from operation, abandonment in place or removal from the ground.

(3) "Fee" means a fixed charge or service charge.

(4) "Investigation" means monitoring, surveying, testing or other information gathering.

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

(6) "Owner" means the owner of an underground storage tank.

(7) "Permittee" means the owner or a person designated by the owner who is in control of or has responsibility for the daily operation or daily maintenance of an underground storage tank under a permit issued pursuant to these rules.

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

(9) "Regulated substance" means:

(a) Any substance listed by the United States Environmental Protection Agency in 40 CFR Table 302.4 as amended as of the date October 1, 1987, but not including any substance regulated as a hazardous waste under 40 CFR Part 261 and OAR 340 Division 101, or

(b) Oil.

(10) "Release" means the discharge, deposit, injection, dumping, spilling, emitting, leaking or placing of a regulated substance from an underground storage tank into the air or into or on land or the waters of

the state, other than as authorized by a permit issued under state or federal law.

(11) "Underground storage tank" means any one or combination of tanks and underground pipes connected to the tank, used to contain an accumulation of a regulated substance, and the volume of which, including the volume of the underground pipes connected to the tank, is 10 percent or more beneath the surface of the ground. Such term does not include any:

(a) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(b) Tank used for storing heating oil for consumptive use on the premises where stored.

(c) Septic tank.

(d) Pipeline facility including gathering lines regulated:

(A) Under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671);

(B) Under the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001); or

(C) As an intrastate pipeline facility under state laws comparable to the provisions of law referred to in paragraph (A) or (B) of this subsection.

(e) Surface impoundment, pit, pond or lagoon.

(f) Storm water or waste water collection system.

(g) Flow-through process tank.

(h) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(i) Storage tank situated in an underground area if the storage tank is situated upon or above the surface of a floor. As used in this subsection. "underground area" includes but is not limited to a basement, cellar, mine, drift, shaft or tunnel.

(j) Pipe connected to any tank described in subsections (a) to (i) of this section.

(12) "Seller" or "Distributor" means person who is engaged in the business of selling regulated substances to the owner or permittee of an underground storage tank.

Depositing Regulated Substances in Underground Storage Tanks

340-150-150 (1) After February 1, 1989 no person owning an underground storage tank shall deposit or cause to be deposited a regulated substance into that tank without first having applied for and received an operating permit issued by the department.

(2)(a) After June 1, 1989, the tank owner or permittee shall, prior to accepting delivery of a regulated substance, provide the underground storage tank permit number to any person depositing a regulated substance into the tank.

(b) If, for any reason, a permit becomes invalid, the tank owner or permittee shall provide written notice of the change in permit status to any person previously notified under Subsection (2)(a) of this Section.

[(2)](3) After August 1, 1989 no person [selling or distributing a regulated substance] shall deposit or cause to have deposited [that] a regulated substance into an underground storage tank unless the tank is operating under a [valid] permit issued by the department.

(4)(a) After August 1, 1989, sellers and distributors shall maintain a written record of the permit number for each underground storage tank into which they deposit a regulated substance.

(b) If requested by the Department, a seller or distributor shall provide a written record, by permit number, for tanks into which they have deposited a regulated substances during the last three years of record.

1/31/89

Attachment C
Agenda Item O
3-3-89 EQC Meeting

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF ADOPTING)
OAR Chapter 340)
Division 160) STATEMENT OF NEED FOR RULES
and Portions of Division 150)

Statutory Authority

ORS 466.705 through ORS 466.995 authorizes rule adoption for the purpose of regulating underground storage tanks. Section 466.750 authorizes the Commission to adopt rules governing licensing procedures for persons servicing underground storage tanks. Section 466.760 limits the distribution of regulated substances to tanks operating under a valid permit.

Need for the Rules

The proposed rules are needed to carry out the authority given to the Commission to adopt rules for regulation of underground storage tanks.

Principal Documents Relied Upon

SB 115 passed by the 1987 Oregon Legislature (ORS 466.705 through ORS 466.995)

Subtitle I of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act.

The Comprehensive Environmental Response, Compensation and Liability Act of 1980.

Superfund Amendments and Reauthorization Act of 1986.

40CFR Part 280, November 1985.

40CFR Part 280, September 23, 1988

40CFR Part 280, October 21, 1988

40CFR Part 281, September 23, 1988

Attachment D
Agenda Item O
3-3-89 EQC Meeting

FISCAL AND ECONOMIC IMPACT

Fiscal Impact

Licensing of Service Providers and Supervisors: Program expenses will be incurred to develop information and tests, manage the testing, registration and licensing activities. The program expenses are expected to be $25,000 per biennium. This expense will be offset by program fees for licenses, tests and study guides.

Depositors of Regulated Substances: Program expenses will be incurred in developing educational material to inform sellers, distributors, tank owners and permittees of their responsibilities. The existing tank permit fees will provide the funding.

Small Business Impact

Licensing of Service Providers and Supervisors: The department estimates that approximately 80 businesses will register and become licensed as underground storage tank service providers, 240 individuals will take the Supervisor licensing exam, and 160 will become licensed as underground storage tank Supervisors during the first year of the program. The fees and estimated program income is as follows:

FEES:

Service Provider Registration Fee	$ 25
Service Provider License Fee (Two Years)	$100
Supervisor Examination Fee	$ 25
Supervisor License Fee (Two Years)	$ 25
Study Guide	$ 10

INCOME: (Estimated)

	First Year		Second Year	
	#	Income	#	Income
Registration	80	$ 2,000	0	$ 0
Service Provider License	80	$ 8,000	20	$ 2,000
Supervisor Exam	240	$ 6,000	40	$ 1,000
Supervisor License	160	$ 4,000	32	$ 800
Study Guide	120	$ 1,200	35	$ 350
Subtotal		$21,200		$ 4,150
Two Year Total		$25,350		

The Oregon Legislature required that the licensing program be self supporting. Thus, the fees from registration, licensing, examinations and study guides will be used to support only these activities.

Small businesses engaged in providing services will be required to pay both registration and licensing fees. In turn, these businesses will be the only businesses allowed to provide services for regulated underground storage tanks. Thus, the economic impact on these small businesses should be minimal.

The individual underground storage tank supervisor will be required to pay a $25 nonrefundable fee to take the exam. Upon successful completion of the exam, an additional $25 is required for a two year supervisor's license. The person must pass an exam and pay a $25 exam fee and $25 license fee every two years to remain as a licensed supervisor. In turn, only licensed supervisors have the opportunity to work as a supervisor for a business licensed to provide services on regulated underground storage tanks. The department does not believe that these fee will be an economic burden to the individual.

Federal regulations require that each underground storage tank be upgraded to new tank standards or permanently decommissioned by removal from the ground or filling the tank with an inert material within ten years. The education and licensing of service providers and supervisors will benefit each owner of an underground storage tank by improving the quality of underground storage tank systems. The general public will benefit through reduced contamination of the environment resulting from quality underground storage tank systems.

Depositors of Regulated Substances: Distributors and sellers of regulated substances will be required to maintain records of permit numbers for tanks to which they have delivered product. The tank owner or permittee is required to provide the permit number to the person delivering the product. The distributors and sellers presently obtain many items of information to allow delivery and billing for the delivery of product. Adding the permit number to this information is not an unreasonable economic burden.

Attachment E
Agenda Item O
3-3-89 EQC Meeting

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Proposed Underground Storage Tank Service Provider Rules
and Changes to Interim UST Rules

WHO IS AFFECTED: Persons and firms that install, retrofit, decommission, or test underground storage tank systems regulated by the Department's Underground Storage Tank Program. Owners and operators of regulated underground storage tanks. Persons that sell and distribute product to regulated underground storage tanks.

WHAT IS BEING PROPOSED: The Department has developed a program to register firms that supply underground tank services and license underground tank supervisors. Also, the Department proposes changes to existing rules that regulate the conditions under which persons may deposit regulated substances into underground storage tanks.

WHAT ARE THE HIGHLIGHTS:

A. Registration and licensing requirements for underground storage tank service providers.

1. Registration of firms that provide underground storage tank services by April 1989.
2. Licensing of supervisors for underground storage tank projects by August 1989.
3. Supervisors must pass an examination over technical requirements and state and federal regulations prior to being licensed.
4. Registered firms are not to perform services on regulated but unpermitted underground storage tanks.
5. Supervisors and firms shall notify the Department of conditions on a site that have or may result in a release of regulated substances into the environment.

B. Depositing regulated substances into underground storage tanks.

1. Establish a process by which product distributors must keep records of the permit numbers of regulated tanks to which they deliver product.
2. Prohibits any person from depositing product into unpermitted, regulated tanks.
3. Defines seller and distributor of regulated substances.

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

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

11/1/86

HOW TO COMMENT: Public Hearings Schedule

Bend
December 19, 1988
3:00 to 5:00 P.M.
Cascade Natural Gas
334 N.E. Hawthorne
Bend, Oregon

Pendleton
December 20, 1988
3:00 to 5:00 P.M.
Blue Mountain Community College
Room P12, Pioneer Hall
2411 N.W. Garden
Pendleton, Oregon

Portland
December 22, 1988
3:00 to 5:00 P.M.
DEQ Headquarters
Fourth Floor
811 S.W. Sixth Ave.
Portland, Oregon

Medford
December 28, 1988
3:00 to 5:00 P.M.
City Council Chambers
Medford City Hall
Medford, Oregon

Eugene
December 29, 1988
3:00 to 5:00 P.M.
Lane Community College
Room 308, The Forum
4000 E. 30th Avenue
Eugene, Oregon

A Department staff member will be appointed to preside over and conduct the hearings. Written comments should be sent to:

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

The comment period will end January 6, 1989. All comments should be received at the Department by 5:00 P.M..

For more information or copies of the proposed rules, contact Larry Frost at (502) 229-5769 or toll-free at 1-800-452-4011

WHAT IS THE NEXT STEP: After public testimony has been received and evaluated, the proposed rules will be revised as appropriate and presented to the Environmental Quality Commission in March 1989. The Commission may adopt the Department's recommendation, amend the Department's recommendation, or tank no action.

Attachment F
Agenda Item 0
3-3-89 EQC Meeting

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR COMMISSION ACTION

Agenda Item G, November 4, 1988 EQC Meeting

Request for Authorization to Conduct a Public Hearing on Proposed Rules, OAR 340-160-005 through OAR 340-160-150, for "Registration and Licensing Requirements for Underground Storage Tank Service Providers" Rules and Modification to Existing Rules, OAR 340-150-010 and OAR 340-150-150 for "Requirements Under Which Regulated Substances May be Placed into Underground Storage Tanks."

ISSUE

Federal regulations require that underground storage tanks containing petroleum and hazardous materials meet certain installation and operating standards to prevent contamination of ground water by leaks and spills from USTs. Leaks are more likely in improperly constructed and managed USTs.

SUMMATION

Approximately 22,000 regulated USTs have been identified in Oregon. Up to 25 percent may be leaking, threatening public safety and the environment.

The 1987 Oregon Legislature authorized the Commission to adopt rules for a comprehensive underground storage tank program. The Commission adopted interim rules in January 1988. New rules are required to reduce leaks caused by persons who service USTs and to insure that petroleum products and hazardous materials are not placed into USTs that do not have a permit.

Licensing of Service Providers: A minimal program involving only education and inspection, and a comprehensive program requiring education, testing, licensing and inspection were considered. Proposed rules establish educational and licensing requirements for firms providing UST services and supervisors of UST services.

Depositors of Regulated Substances: Methods of identifying permitted tanks were considered, such as tags on fill pipes and displaying the permit at the UST site. Proposed rules require the tank owner or permittee to provide the permit number to those who deposit products into a tank. The product provider must keep records of the permit numbers for three years.

DIRECTORS RECOMMENDATION

Based upon the Summation, it is recommended that the Commission authorize public hearings to take testimony on the proposed underground storage tank rules as presented in Attachments A and B, OAR 340-160-005 through OAR 340-160-150, OAR 340-150-010(12), and OAR 340-150-150.

NEIL GOLDSCHMIOT
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

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

Request for Authorization to Conduct a Public Hearing on Proposed Rules, OAR 340-160-005 through OAR 340-160-150 for "Registration and Licensing Requirements for Underground Storage Tank Service Providers" Rules and Modification to Existing Rules, OAR 340-150-010 and OAR 340-150-150 for "Requirements Under Which Regulated Substances May be Placed into Underground Storage Tanks."

BACKGROUND

The Problem: Several million underground storage tank systems in the United States contain petroleum and hazardous chemicals. Tens of thousands of these USTs, including their piping, are currently leaking. Many more are expected to leak in the near future. Leaking tanks can cause fires or explosions that threaten human safety. In addition, leaking USTs can contaminate nearby ground water. In 1984 congress responded to the problem of leaking USTs by adding Subtitle I to the Resource Conservation and Recovery Act (RCRA). Subtitle I requires the EPA to develop regulations to protect human health and the environment from leaking USTs by preventing leaks and spills, finding leaks and spills, correcting problems created by leaks and spills, making the owners and operators of USTs financially responsible for leaks and spills, and encouraging each state to have an equivalent UST regulatory program.

Subtitle I required owners of USTS containing regulated substances to notify the appropriate state agency of the existence of such tanks. By October 1987 the Department had received information on 22,409 tanks at 8,303 locations. Ninety-five percent of these tanks contain petroleum products. Seventy-nine percent are unprotected steel tanks with an average age of 15 years. Up to 25 percent of the unprotected tanks may be currently leaking, according to government and industry sources.

In 1987 the Oregon Legislature expanded the authority of the Department over underground storage tanks. The Commission adopted Interim Underground Storage Tank rules on January 22, 1988. These rules initiated an UST permit and fee program, placed requirements on distributors of regulated

substances and sellers of USTs, established interim tank installation and decommissioning standards, and identified civil penalties.

Subtitle I, the state interim UST rules and increasing pressure from the financial and real estate communities are encouraging owners to test, replace, upgrade and possibly permanently decommission existing USTs. Frequently, the testing, installation, retofitting and decommissioning of USTs is being attempted by persons that do not understand UST regulations, technical standards or proper practices.

Filling a tank with a regulated substance can by itself threaten the environment. The state's interim UST rules addressed this threat by prohibiting placement of regulated substances into an UST unless the tank owner had applied for and received a permit from the Department. The rules, however, did not describe the method one would use to identify a permitted tank nor did they cover all persons that may place product into the tank.

Proposed Rules: The Department is proposing rules to regulate persons who provide services on underground storage tanks. The Department is also proposing to modify the interim rules that regulate persons depositing regulated substances into underground storage tanks. Both sets of rules were developed with the assistance of the Underground Storage Tank Advisory Committee. Additionally, the rules on service providers were discussed at public information meetings held in Portland, Medford, Eugene, Bend and Baker during August of 1988.

Proposed Registration and Licensing Requirements for Underground Storage Tank Service Providers shown in Attachment A, includes the following:

1. Regulates two categories of persons who install, retrofit, decommission or test underground storage tanks.
   a. "Service Providers" are persons or firms who are in the business of providing services to underground storage tanks.
   b. "Supervisors" are persons employed by Service Providers to supervise services to underground storage tanks.
2. Service Providers must register and obtain a license from the Department. A sample registration form is shown on Attachment F.
3. Supervisors must pass an examination and obtain a license from the Department.
4. Service Providers must employ a licensed Supervisor or be licensed as a Supervisor.
5. A Supervisor must be present during critical phases of a tank project.

Proposed Amendments to the rules on Depositing Regulated Substances in Underground Storage Tanks shown in Attachment B, includes the following:

1. Defines "Seller" and "Distributor" to mean a person who is engaged in the business of selling regulated substances to the owner or permittee of an underground storage tank.

2. Prohibits any person from depositing a regulated substance into an unpermitted underground storage tank after August 1, 1989.
3. Requires the tank owner or permittee to provide the tank permit number to any person depositing a regulated substance into the tank.
4. If a permit becomes invalid, the tank owner or permittee must notify all sellers or distributors of the new permit status.
5. Sellers and distributors are required to maintain a written record of customer permit numbers for three years and make it available to the Department.

DISCUSSION

Proposed Registration and Licensing Rules: Incorrect testing, installation, retrofitting or decommissioning of USTs can threaten the environment. Tanks and piping may leak a short time after installation or may leak only after the metal corrodes or pipe fittings break. Regulated substances such as oil or hazardous chemicals left in the soil after decommissioning may leach into groundwater. Federal and state regulations will address these concerns through the technical standards on USTs. These rules anticipate that UST installations will be inspected to ensure compliance with the rules. An inspection program should include review of construction plans, field inspection during the key points of construction and final approval by the Department. Inspection would require several visits to the UST site. Additionally, the Department will provide ongoing educational materials to the persons who provide services to USTs. It is unlikely, however, that the Department will ever have sufficient staff to operate a comprehensive plan review, inspection and education program, however.

The legislature envisioned a licensing program that would encourage competency among persons providing tank installation, retrofitting, decommissioning and testing services. The Department and the Underground Storage Tank Advisory Committee considered various education, testing and licensing programs, including licensing and testing of all persons working on any part of an underground storage tank. The Committee recommended that the Department license both the firms responsible for the work and the on-the-job supervisors. Working with the UST Advisory Committee, the Department developed the rules shown in Attachment A.

Proposed Rules Prohibit Depositing Regulated Substances in Unpermitted Tanks: The interim state UST rules contained provisions prohibiting sellers and distributors from depositing regulated substances into unpermitted USTs. These interim rules did not identify how the sellers and distributors would know that the tank did not have a permit. Working with the UST Advisory Committee, the Department considered several approaches, including tank fill pipe tags, posting the permit on the premises, dispenser tags, and written notice from the owner to the sellers and distributors.

The resultant rules shown in Attachment B require the owner and permittee of the tank to give the tank permit number to the person depositing the product in the tank, prior to delivery. The person depositing the product is required to maintain records of deliveries to permitted tanks for three years. The Department may, at any time, ask for those records to verify that the distributor is delivering only to permitted tanks. The records will aid compliance activities during spot checks at locations where a tank is operating without a permit. The State's interim rules are also modified to prohibit any person from depositing product into an unpermitted tank.

The civil penalty schedule is not included with these new rules. They are included within proposed revisions to OAR 340, Division 12, Civil Penalties presented in the previous Agenda Item F.

Underground Storage Tank Advisory Committee: As noted, the Department has drafted the proposed rules based on recommendations from its Underground Storage Tank Advisory Committee. This committee is comprised of 31 individuals representing regulated industry, environmental groups, environmental attorneys, educators, engineers and scientists, the insurance industry, and the public. See Attachment G.

ALTERNATIVES AND EVALUATION

The Department considered several approaches to improving the quality of underground storage tank installation, retrofitting, decommissioning and testing activities including:

1. Status Quo: Use existing staff to provide education to the service providers and inspection of the UST activity. It is unlikely that the Department will have sufficient staff to regularly inspect all installations or to review plans for all new installations or repairs and replacements.
2. Develop an extensive education and licensing program similar to the asbestos program. Educate and license all firms and workers that come in contact with installation or repair of USTs (i.e. laborers, installers, plumbers, electricians, etc.) The Advisory Committee argued that a program similar to the asbestos program is not needed. All workers do not need to be licensed and private industry can provide the education if competency standards are defined.
3. Develop a limited registration and licensing program that initially registers firms, then licenses firms plus requires examination and licensing of supervisors. Not all workers would be licensed.

The Department is proposing a limited registration and licensing program as described in Item 3 above. The proposed program should result in significantly higher competency levels. The firms and supervisors will tend to protect their licenses by providing quality service to USTs. The proposed licensing rules fulfill the intent of the legislature and are

designed to be self supporting through a fee schedule that is also proposed in Attachment A.

The proposed rules that prohibit depositing regulated substances into an unlicensed tank are an improvement on the current interim rules. The Department considered various methods of identifying tanks that had valid permits, including fill pipe tags and tags or permits displayed on the premises or the dispensers. These methods were rejected by both the advisory committee and the Department as unworkable because of the large number of tanks, frequent changes in tank ownership or the permittee plus the physical damage that may occur to any identification tag or sticker.

The Department is proposing rules recommended by the UST Advisory Committee. The proposed rules prohibit any person from depositing product into a regulated tank. Additionally, the proposed rules will require the tank owner or permittee to provide the permit number to any person who deposits product into the UST. The seller or distributor will be required to record the permit number for each UST that receives product and then maintain the record for three years.

DIRECTORS RECOMMENDATION

The Director recommends that the Commission authorize public hearings to take testimony on the proposed underground storage tank rules as presented in Attachments A and B, OAR 340-160-005 through OAR 340-160-150, OAR 340-150-010(12), and OAR 340-150-150.

ATTACHMENTS:

Attachment A:	Proposed Rules for "Registration and Licensing Requirements for Underground Storage Tank Service Providers" Rules
Attachment B:	Proposed Revisions to OAR 340-150-010 and OAR 340-150-150.
Attachment C:	Draft Statement of Need and Fiscal and Economic Impact
Attachment D:	Land Use Consistency Statement
Attachment E:	Public Hearing Notice
Attachment F:	Sample Form for Service Provider Registration
Attachment G:	UST Advisory Committee

LDF:lf
Larry D. Frost
Phone: (503) 229-5769
October 21, 1988

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

DATE: January 30, 1989

TO: Environmental Quality Commission

FROM: Larry D. Frost

SUBJECT: Hearing Report Summary and Responsiveness Summary

On November 11, 1988 the Environmental Quality Commission authorized five Public Hearings on the Proposed Underground Storage Tank Rules. Public hearings were held at 5:00 P.M. on:

- o December 19, 1988 in Bend, Oregon
- o December 20, 1988 in Pendleton, Oregon
- o December 22, 1988 in Portland, Oregon
- o December 28, 1988 in Medford, Oregon
- o December 29, 1988 in Eugene, Oregon

There were no formal testimonies at any of the hearings. Those attending the hearings informally expressed support for the proposed rules but were not willing to formally testify.

One written testimony was received on 1/6/89 from Mr. Brian C. Donovan of Veri-tank, Inc., Wheeling, Illinois.

COMMENT:

Mr. Donovan was concerned that the Department may require the UST Supervisor to supervise another worker, thereby requiring two persons to be on the tank site at all times. He agreed that our definition of Supervisor was clear in not requiring an additional person. He supported the language in the definition of the Supervisor.

DEPARTMENT RESPONSE:

The definition of Supervisor is left unchanged.

COMMENT:

The Department staff found an inconsistency in the proposed registration and licensing rules. The rule required the Department to offer the Supervisors examination four times a year while offering the testers examination twice a year. To be consistent, both examinations should be offered twice a year.

DEPARTMENT RESPONSE:

The Department has modified Subsection 340-160-040(1) as follows:

340-160-040 (1) At least once prior to July 1, 1989, and [once] twice every [quarter] year thereafter, the Department shall offer a qualifying examination for any person who wishes to become licensed to install, remove, or retrofit underground storage tanks.

COMMENT:

Legal counsel suggested that OAR 340-160-015 clearly state that the exempted underground storage tanks are the same tanks that exempted or deferred from regulation by the federal underground storage tank regulations.

DEPARTMENT RESPONSE:

The Department agrees with counsel. The following note has been added to OAR 340-160-015.

Note: **The exempt underground storage tanks defined by OAR 340-150-015 (1) are the same underground storage tanks defined by 40CFR 280.10, Subparagraphs (b) and (c).**

COMMENT:

Legal counsel suggested that automatic suspension of a tank services provider license, as defined in OAR 340-160-030 (13), is not possible. Suspension of a license cannot be automatic.

DEPARTMENT RESPONSE:

The Department agrees. OAR 340-160-030 (13) has been modified to require the licensed service provider to stop work on a regulated underground storage tank when he no longer employs a licensed supervisor and take certain steps before starting work. OAR 340-160-030 (13) was modified as follows.

(13) In the event a tank services provider no longer employs a licensed supervisor the tank services provider [**license in automatically suspended**] must stop work on any regulated underground storage tank system. [**The contractor license is automatically reinstated, within its authorized period of issuance, when**] Work shall not start until a licensed supervisor is again employed by the provider and [**when**] written notice of the hiring of a licensed supervisor is received by the Department.

LDF:lf
HEARING.RPT
2/15/89

authorized local government official, permit the official at all reasonable times to have access to and copy, records relating to the type, quantity, storage locations and hazards of the oil or hazardous material.

(2) In order to carry out subsection (1) of this section a local government official may enter to inspect at reasonable times any establishment or other place where oil or hazardous material is present.

(3) As used in this section, "local government official" includes but is not limited to an officer, employe or representative of a county, city, fire department, fire district or police agency. [1985 c.733 §13; 1987 c.158 §91]

466.670 Oil and Hazardous Material Emergency Response and Remedial Action Fund. (1) The Oil and Hazardous Material Emergency Response and Remedial Action Fund is established separate and distinct from the General Fund in the State Treasury. As permitted by federal court decisions, federal statutory requirements and administrative decisions, after payment of associated legal expenses, moneys not to exceed $2.5 million received by the State of Oregon from the Petroleum Violation Escrow Fund of the United States Department of Energy that is not obligated by federal requirements to existing energy programs shall be paid into the State Treasury and credited to the fund.

(2) The State Treasurer shall invest and reinvest moneys in the Oil and Hazardous Material Emergency Response and Remedial Action Fund in the manner provided by law.

(3) The moneys in the Oil and Hazardous Material Emergency Response and Remedial Action Fund are appropriated continuously to the Department of Environmental Quality to be used in the manner described in ORS 466.675. [1985 c.733 §14]

466.675 Use of moneys in Oil and Hazardous Material Emergency Response and Remedial Action Fund. Moneys in the Oil and Hazardous Material Emergency Response and Remedial Action Fund may be used by the Department of Environmental Quality for the following purposes:

(1) Training local government employes involved in response to spills or releases of oil and hazardous material.

(2) Training of state agency employes involved in response to spills or releases of oil and hazardous material.

(3) Funding actions and activities authorized by ORS 466.645, 466.205, 468.800 and 468.805.

(4) Providing for the general administration of ORS 466.605 to 466.680 including the purchase of equipment and payment of personnel costs of the department or any other state agency related to the enforcement of ORS 466.605 to 466.680. [1985 c.733 §15; 1987 c.158 §92]

466.680 Responsibility for expenses of cleanup; record; damages; order; appeal. (1) If a person required to clean up oil or hazardous material under ORS 466.645 fails or refuses to do so, the person shall be responsible for the reasonable expenses incurred by the department in carrying out ORS 466.645.

(2) The department shall keep a record of all expenses incurred in carrying out any cleanup projects or activities authorized under ORS 466.645, including charges for services performed and the state's equipment and materials utilized.

(3) Any person who does not make a good faith effort to clean up oil or hazardous material when obligated to do so under ORS 466.645 shall be liable to the department for damages not to exceed three times the amount of all expenses incurred by the department.

(4) Based on the record compiled by the department under subsection (2) of this section, the commission shall make a finding and enter an order against the person described in subsection (1) or (3) of this section for the amount of damages, not to exceed treble damages, and the expenses incurred by the state in carrying out the action authorized by this section. The order may be appealed in the manner provided for appeal of a contested case order under ORS 183.310 to 183.550.

(5) If the amount of state incurred expenses and damages under this section are not paid by the responsible person to the department within 15 days after receipt of notice that such expenses are due and owing, or, if an appeal is filed within 15 days after the court renders its decision if the decision affirms the order, the Attorney General, at the request of the director, shall bring an action in the name of the State of Oregon in a court of competent jurisdiction to recover the amount specified in the notice of the director. [1985 c.733 §16]

466.685 [1985 c.733 §19; repealed by 1987 c.735 §27]

466.690 [1985 c.733 §20; repealed by 1987 c.735 §27]

UNDERGROUND STORAGE TANKS
(General Provisions)

466.705 Definitions for ORS 466.705 to 466.835 and 466.895. As used in ORS 466.705 to 466.835 and 466.895:

(1) "Corrective action" means remedial action taken to protect the present or future public health, safety, welfare or the environment from a release of a regulated substance. "Corrective action" includes but is not limited to:

(a) The prevention, elimination, removal, abatement, control, minimization, investigation, assessment, evaluation or monitoring of a hazard or potential hazard or threat, including migration of a regulated substance; or

(b) Transportation, storage, treatment or disposal of a regulated substance or contaminated material from a site.

(2) "Decommission" means to remove from operation an underground storage tank, including temporary or permanent removal from operation, abandonment in place or removal from the ground.

(3) "Fee" means a fixed charge or service charge.

(4) "Guarantor" means any person other than the permittee who by guaranty, insurance, letter of credit or other acceptable device, provides financial responsibility for an underground storage tank as required under ORS 466.815.

(5) "Investigation" means monitoring, surveying, testing or other information gathering.

(6) "Local unit of government" means a city, county, special service district, metropolitan service district created under ORS chapter 268 or a political subdivision of the state.

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

(8) "Owner" means the owner of an underground storage tank.

(9) "Permittee" means the owner or a person designated by the owner who is in control of or has responsibility for the daily operation or maintenance of an underground storage tank under a permit issued pursuant to ORS 466.760.

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

(11) "Regulated substance" means:

(a) Any substance listed by the United States Environmental Protection Agency in 40 CFR Table 302.4 pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended (P.L. 96-510 and P.L. 98-80), but not including any substance regulated as a hazardous waste under 40 CFR Part 261 and OAR 340 Division 101;

(b) Oil; or

(c) Any other substance designated by the commission under ORS 466.630.

(12) "Release" means the discharge, deposit, injection, dumping, spilling, emitting, leaking or placing of a regulated substance from an underground storage tank into the air or into or on land or the waters of the state, other than as authorized by a permit issued under state or federal law.

(13) "Underground storage tank" means any one or combination of tanks and underground pipes connected to the tank, used to contain an accumulation of a regulated substance, and the volume of which, including the volume of the underground pipes connected to the tank, is 10 percent or more beneath the surface of the ground.

(14) "Waters of the state" has the meaning given that term in ORS 468.700. [1987 c.539 §2 (enacted in lieu of 468.901)]

466.710 Application of ORS 466.705 to 466.835. ORS 466.705 to 466.835 and 466.895 shall not apply to a:

(1) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(2) Tank used for storing heating oil for consumptive use on the premises where stored.

(3) Septic tank.

(4) Pipeline facility including gathering lines regulated:

(a) Under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671);

(b) Under the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001); or

(c) As an intrastate pipeline facility under state laws comparable to the provisions of law referred to in paragraph (a) or (b) of this subsection.

(5) Surface impoundment, pit, pond or lagoon.

(6) Storm water or waste water collection system.

(7) Flow-through process tank.

(8) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(1) "Corrective action" means remedial action taken to protect the present or future public health, safety, welfare or the environment from a release of a regulated substance. "Corrective action" includes but is not limited to:

(a) The prevention, elimination, removal, abatement, control, minimization, investigation, assessment, evaluation or monitoring of a hazard or potential hazard or threat, including migration of a regulated substance; or

(b) Transportation, storage, treatment or disposal of a regulated substance or contaminated material from a site.

(2) "Decommission" means to remove from operation an underground storage tank, including temporary or permanent removal from operation, abandonment in place or removal from the ground.

(3) "Fee" means a fixed charge or service charge.

(4) "Guarantor" means any person other than the permittee who by guaranty, insurance, letter of credit or other acceptable device, provides financial responsibility for an underground storage tank as required under ORS 466.815.

(5) "Investigation" means monitoring, surveying, testing or other information gathering.

(6) "Local unit of government" means a city, county, special service district, metropolitan service district created under ORS chapter 268 or a political subdivision of the state.

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

(8) "Owner" means the owner of an underground storage tank.

(9) "Permittee" means the owner or a person designated by the owner who is in control of or has responsibility for the daily operation or maintenance of an underground storage tank under a permit issued pursuant to ORS 466.760.

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

(11) "Regulated substance" means:

(a) Any substance listed by the United States Environmental Protection Agency in 40 CFR Table 302.4 pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended (P.L. 96-510 and P.L. 98-80), but not including any substance regulated as a hazardous waste under 40 CFR Part 261 and OAR 340 Division 101;

(b) Oil; or

(c) Any other substance designated by the commission under ORS 466.630.

(12) "Release" means the discharge, deposit, injection, dumping, spilling, emitting, leaking or placing of a regulated substance from an underground storage tank into the air or into or on land or the waters of the state, other than as authorized by a permit issued under state or federal law.

(13) "Underground storage tank" means any one or combination of tanks and underground pipes connected to the tank, used to contain an accumulation of a regulated substance, and the volume of which, including the volume of the underground pipes connected to the tank, is 10 percent or more beneath the surface of the ground.

(14) "Waters of the state" has the meaning given that term in ORS 468.700. [1987 c.539 §2 (enacted in lieu of 468.901)]

466.710 Application of ORS 466.705 to 466.835. ORS 466.705 to 466.835 and 466.895 shall not apply to a:

(1) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(2) Tank used for storing heating oil for consumptive use on the premises where stored.

(3) Septic tank.

(4) Pipeline facility including gathering lines regulated:

(a) Under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671);

(b) Under the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001); or

(c) As an intrastate pipeline facility under state laws comparable to the provisions of law referred to in paragraph (a) or (b) of this subsection.

(5) Surface impoundment, pit, pond or lagoon.

(6) Storm water or waste water collection system.

(7) Flow-through process tank.

(8) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

contracting state agency or local unit of government that will have responsibility for administering the program, including:

(A) The number of employes, occupation and general duties of each employe who will carry out the activities of the contract.

(B) An itemized estimate of the cost of establishing and administering the program, including the cost of personnel listed in subparagraph (A) of this paragraph and administrative and technical support.

(C) An itemization of the source and amount of funding available to the contracting state agency or local unit of government to meet the costs listed in subparagraph (B) of this paragraph, including any restrictions or limitations upon this funding.

(D) A description of applicable procedures, including permit procedures.

(E) Copies of the permit form, application form and reporting form the state agency or local unit of government intends to use in the program.

(F) A complete description of the methods to be used to assure compliance and for enforcement of the program.

(G) A description of the procedures to be used to coordinate information with the department, including the frequency of reporting and report content.

(H) A description of the procedures the state agency or local unit of government will use to comply with trade secret laws under ORS 192.500 and 468.910.

(3) Any program approved by the department under this section shall at all times be conducted in accordance with the requirements of ORS 466.705 to 466.835 and 466.895.

(4) An agency or local unit of government shall exercise the functions relating to underground storage tanks authorized under a contract or agreement entered into under this section according to the authority vested in the commission and the department under ORS 466.705 to 466.835 and 466.895 insofar as such authority is applicable to the performance under the contract or agreement. The agency or local unit of government shall carry out these functions in the manner provided for the commission and the department to carry out the same functions. [1987 c.539 §9]

466.735 Cooperation with Building Codes Agency and State Fire Marshal. Nothing in ORS 466.705 to 466.835 and 466.895 is intended to interfere with, limit or abridge the authority of the Building Codes Agency or the State Fire Marshal, or any other state agency or local unit of government relating to combustion and explosion hazards, hazard communications or land use. The complementary relationship between the protection of the public safety from combustion and explosion hazards, and protection of the public health, safety, welfare and the environment from releases of regulated substances from underground storage tanks is recognized. Therefore, the department shall work cooperatively with the Building Codes Agency, the State Fire Marshal and local units of government in developing the rules and procedures necessary to carry out the provisions of ORS 466.705 to 466.835 and 466.895. [1987 c.539 §10]

466.740 Noncomplying installation prohibited. No person shall install an underground storage tank for the purpose of storing regulated substances unless the tank complies with the standards adopted under ORS 466.745 and any other rule adopted under ORS 466.705 to 466.835 and 466.895. [1987 c.539 §11]

Note: Section 47, chapter 539, Oregon Laws 1987, provides:

Sec. 47. Section 11 of this Act [ORS 466.740] does not become operative until the Environmental Quality Commission has adopted rules under section 13 of this Act [ORS 766.745] and has filed a copy of such rules with the Secretary of State, as prescribed in ORS 183.310 to 183.550. [1987 c.539 §47]

466.745 Commission rules; considerations. (1) The commission may establish by rule:

(a) Performance standards for leak detection systems, inventory control, tank testing or comparable systems or programs designed to detect or identify releases in a manner consistent with the protection of public health, safety, welfare or the environment;

(b) Requirements for maintaining records and submitting information to the department in conjunction with a leak detection or identification system or program used for each underground storage tank;

(c) Performance standards for underground storage tanks including but not limited to design, retrofitting, construction, installation, release detection and material compatibility;

(d) Requirements for the temporary or permanent decommissioning of an underground storage tank;

(e) Requirements for reporting a release from an underground storage tank;

(f) Requirements for a permit issued under ORS 466.760;

(9) Storage tank situated in an underground area if the storage tank is situated upon or above the surface of a floor. As used in this subsection, "underground area" includes but is not limited to a basement, cellar, mine, drift, shaft or tunnel.

(10) Pipe connected to any tank described in subsections (1) to (8) of this section. [Formerly 468.911; 1987 c.539 §18]

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

(a) Regulated substances hazardous to the public health, safety, welfare and the environment are stored in underground tanks in this state; and

(b) Underground tanks used for the storage of regulated substances are potential sources of contamination of the environment and may pose dangers to the public health, safety, welfare and the environment.

(2) Therefore, the Legislative Assembly declares:

(a) It is the public policy of this state to protect the public health, safety, welfare and the environment from the potential harmful effects of underground tanks used to store regulated substances.

(b) It is the purpose of ORS 466.705 to 466.835 and 466.895 to enable the Environmental Quality Commission to adopt a state-wide program for the prevention and reporting of releases and for taking corrective action to protect the public and the environment from releases from underground storage tanks. [1987 c.539 §4 (enacted in lieu of 468.902)]

(Administration)

466.720 State-wide underground storage tank program; federal authorization. (1) The Environmental Quality Commission shall adopt a state-wide underground storage tank program. Except as otherwise provided in ORS 466.705 to 466.835 and 466.895, the state-wide program shall establish uniform procedures and standards to protect the public health, safety, welfare and the environment from the consequences of a release from an underground storage tank.

(2) The commission and the department are authorized to perform or cause to be performed any act necessary to gain interim and final authorization of a state program for the regulation of underground storage tanks under the provisions of Section 9004 of the Federal Resource Conservation and Recovery Act, P.L. 94-580 as amended and P.L. 98-616, Section 205 of the federal Solid Waste Disposal Act, P.L. 96-482 as amended and federal regulations and interpretive and guidance documents issued pursuant to P.L. 94-580 as amended, P.L. 98-616 and P.L. 96-482. The commission may adopt, amend or repeal any rule necessary to implement ORS 466.705 to 466.835 and 466 895. [Subsection (1) enacted as 1987 c.539 §6; subsection (2) formerly 468.913]

466.725 Limitation on local government regulation. (1) Except as provided in ORS 466.730, a local unit of government may not enact or enforce any ordinance, rule or regulation relating to the matters encompassed by the state program established under ORS 466.720.

(2) Any ordinance, rule or regulation enacted by a local unit of government of this state that encompasses the same matters as the state program shall be unenforceable, except for an ordinance, rule or regulation:

(a) That requires an owner or permittee to report a release to the local unit of government; or

(b) Adopted by a local unit of government operating an underground storage tank program pursuant to a contract entered into according to the provisions of ORS 466.730. [1987 c.539 §8 (enacted in lieu of 468.904)]

Note: Section 46, chapter 539, Oregon Laws 1987, provides:

Sec. 46. Section 8 of this Act [ORS 466.725] does not become operative until nine months after the Environmental Quality Commission adopts a state-wide underground storage tank program under section 6 of this Act [ORS 466.720] and has filed a copy of such rules with the Secretary of State as prescribed in ORS 183.310 to 183.550. [1987 c.539 §46]

466.730 Delegation of program administration to state agency or local government by agreement. (1) The commission may authorize the department to enter into a contract or agreement with an agency of this state or a local unit of government to administer all or part of the underground storage tank program.

(2) Any agency of this state or any local unit of government that seeks to administer an underground storage tank program under this section shall submit to the department a description of the program the agency or local unit of government proposes to administer in lieu of all or part of the state program. The program description shall include at least the following:

(a) A description in narrative form of the scope, structure, coverage and procedures of the proposed program.

(b) A description, including organization charts, of the organization and structure of the

(9) Storage tank situated in an underground area if the storage tank is situated upon or above the surface of a floor. As used in this subsection, "underground area" includes but is not limited to a basement, cellar, mine, drift, shaft or tunnel.

(10) Pipe connected to any tank described in subsections (1) to (8) of this section. [Formerly 468.911; 1987 c.539 §18]

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

(a) Regulated substances hazardous to the public health, safety, welfare and the environment are stored in underground tanks in this state; and

(b) Underground tanks used for the storage of regulated substances are potential sources of contamination of the environment and may pose dangers to the public health, safety, welfare and the environment.

(2) Therefore, the Legislative Assembly declares:

(a) It is the public policy of this state to protect the public health, safety, welfare and the environment from the potential harmful effects of underground tanks used to store regulated substances.

(b) It is the purpose of ORS 466.705 to 466.835 and 466.895 to enable the Environmental Quality Commission to adopt a state-wide program for the prevention and reporting of releases and for taking corrective action to protect the public and the environment from releases from underground storage tanks. [1987 c.539 §4 (enacted in lieu of 468.902)]

(Administration)

466.720 State-wide underground storage tank program; federal authorization. (1) The Environmental Quality Commission shall adopt a state-wide underground storage tank program. Except as otherwise provided in ORS 466.705 to 466.835 and 466.895, the state-wide program shall establish uniform procedures and standards to protect the public health, safety, welfare and the environment from the consequences of a release from an underground storage tank.

(2) The commission and the department are authorized to perform or cause to be performed any act necessary to gain interim and final authorization of a state program for the regulation of underground storage tanks under the provisions of Section 9004 of the Federal Resource Conservation and Recovery Act, P.L. 94-580 as amended and P.L. 98-616, Section 205 of the federal Solid Waste Disposal Act, P.L. 96-482 as amended and federal regulations and interpretive and guidance documents issued pursuant to P.L. 94-580 as amended, P.L. 98-616 and P.L. 96-482. The commission may adopt, amend or repeal any rule necessary to implement ORS 466.705 to 466.835 and 466 895. [Subsection (1) enacted as 1987 c.539 §6; subsection (2) formerly 468.913]

466.725 Limitation on local government regulation. (1) Except as provided in ORS 466.730, a local unit of government may not enact or enforce any ordinance, rule or regulation relating to the matters encompassed by the state program established under ORS 466.720.

(2) Any ordinance, rule or regulation enacted by a local unit of government of this state that encompasses the same matters as the state program shall be unenforceable, except for an ordinance, rule or regulation:

(a) That requires an owner or permittee to report a release to the local unit of government; or

(b) Adopted by a local unit of government operating an underground storage tank program pursuant to a contract entered into according to the provisions of ORS 466.730. [1987 c.539 §8 (enacted in lieu of 468.904)]

Note: Section 46, chapter 539, Oregon Laws 1987, provides:

Sec. 46. Section 8 of this Act [ORS 466.725] does not become operative until nine months after the Environmental Quality Commission adopts a state-wide underground storage tank program under section 6 of this Act [ORS 466.720] and has filed a copy of such rules with the Secretary of State as prescribed in ORS 183.310 to 183.550. [1987 c.539 §46]

466.730 Delegation of program administration to state agency or local government by agreement. (1) The commission may authorize the department to enter into a contract or agreement with an agency of this state or a local unit of government to administer all or part of the underground storage tank program.

(2) Any agency of this state or any local unit of government that seeks to administer an underground storage tank program under this section shall submit to the department a description of the program the agency or local unit of government proposes to administer in lieu of all or part of the state program. The program description shall include at least the following:

(a) A description in narrative form of the scope, structure, coverage and procedures of the proposed program.

(b) A description, including organization charts, of the organization and structure of the

(g) Procedures that distributors of regulated substances and sellers of underground storage tanks must follow to satisfy the requirements of ORS 466.760;

(h) Acceptable methods by which an owner or permittee may demonstrate financial responsibility for responding to the liability imposed under ORS 466.815;

(i) Procedures for the disbursement of moneys collected under ORS 466.795;

(j) Requirements for reporting corrective action taken in response to a release;

(k) Requirements for taking corrective action in response to a release; and

(L) Any other rule necessary to carry out the provisions of ORS 466.705 to 466.835 and 466.895.

(2) The commission may adopt different requirements for different areas or regions of the state if the commission finds either of the following:

(a) More stringent rules or standards are necessary:

(A) To protect specific waters of the state, a sole source or sensitive aquifer or any other sensitive environmental amenity; or

(B) Because conditions peculiar to that area or region require different standards to protect public health, safety, welfare or the environment.

(b) Less stringent rules or standards are:

(A) Warranted by physical conditions or economic hardship;

(B) Consistent with the protection of the public health, safety, welfare or the environment; and

(C) Not less stringent than minimum federal requirements.

(3) The rules adopted by the commission under subsection (1) of this section may distinguish between types, classes and ages of underground storage tanks. In making such distinctions, the commission may consider the following factors:

(a) Location of the tanks;

(b) Soil and climate conditions;

(c) Uses of the tanks;

(d) History of maintenance;

(e) Age of the tanks;

(f) Current industry recommended practices;

(g) National consensus codes;

(h) Hydrogeology;

(i) Water table;

(j) Size of the tanks;

(k) Quantity of regulated substances periodically deposited in or dispensed from the tank;

(L) The technical ability of the owner or permittee; and

(m) The compatibility of the regulated substance and the materials of which the tank is fabricated.

(4) In adopting rules under subsection (1) of this section, the commission shall consider all relevant federal standards and regulations on underground storage tanks. If the commission adopts any standard or rule that is different than a federal standard or regulation on the same subject, the report submitted to the commission by the department at the time the commission adopts the standard or rule shall indicate clearly the deviation from the federal standard or regulation and the reasons for the deviation. [1987 c.539 §13 (enacted in lieu of 468.908)]

(Licenses; Permits)

466.750 License procedure for persons servicing underground tanks. (1) In order to safeguard the public health, safety and welfare, to protect the state's natural and biological systems, to protect the public from unlawful underground tank installation and retrofit procedures and to assure the highest degree of leak prevention from underground storage tanks, the commission may adopt a program to regulate persons providing underground storage tank installation and removal, retrofit, testing and inspection services.

(2) The program established under subsection (1) of this section may include a procedure to license persons who demonstrate, to the satisfaction of the department, the ability to service underground storage tanks. This demonstration of ability may consist of written or field examinations. The commission may establish different types of licenses for different types of demonstrations, including but not limited to:

(a) Installation, removal, retrofit and inspection of underground storage tanks;

(b) Tank integrity testing; and

(c) Installation of leak detection systems.

(3) The program adopted under subsection (1) of this section may allow the department after opportunity for hearing under the provisions of ORS 183.310 to 183.550, to revoke a license of any person offering underground tank services who commits fraud or deceit in obtaining a license or who demonstrates negligence or incompetence in performing underground tank services.

(4) The program adopted under subsection (1) of this section shall:

(a) Provide that no person may offer to perform or perform services for which a license is required under the program without such license.

(b) Establish a schedule of fees for licensing under the program. The fees shall be in an amount sufficient to cover the costs of the department in administering the program.

(5) The following persons shall apply for an underground storage tank permit from the department:

(a) An owner of an underground storage tank currently in operation;

(b) An owner of an underground storage tank taken out of operation between January 1, 1974, and the operative date of this section; and

(c) An owner of an underground storage tank that was taken out of operation before January 1, 1974, but that still contains a regulated substance. [1987 c.539 §§14, 15]

Note: Section 48, chapter 539, Oregon Laws 1987, provides:

Sec. 48. Section 15 of this Act [ORS 466.750 (5)] does not become operative until 90 days after the Environmental Quality Commission has adopted rules under section 13 of this Act [ORS 466.745] and has filed a copy of such rules with the Secretary of State, as prescribed in ORS 183.310 to 183.550. [1987 c.539 §48]

466.760 When permit required; who required to sign application. (1) No person shall install, bring into operation, operate or decommission an underground storage tank without first obtaining a permit from the department.

(2) No person shall deposit a regulated substance into an underground storage tank unless the tank is operating under a permit issued by the department.

(3) Any person who assumes ownership of an underground storage tank from a previous permittee must complete and return to the department an application for a new permit before the person begins operation of the underground storage tank under the new ownership.

(4) Any person who deposits a regulated substance into an underground storage tank or sells an underground storage tank shall notify the owner or operator of the tank of the permit requirements of this section.

(5) The following persons must sign an application for a permit submitted to the department under this section or ORS 466.750 (5):

(a) The owner of an underground storage tank storing a regulated substance;

(b) The owner of the real property in which an underground storage tank is located; and

(c) The proposed permittee, if a person other than the owner of the underground storage tank or the owner of the real property. [1987 c.539 §16]

Note: Section 49, chapter 539, Oregon Laws 1987, provides:

Sec. 49. Section 16 of this Act [ORS 466.760] does not become operative until one year after the Environmental Quality Commission has adopted rules under section 13 of this Act [ORS 466.745] and has filed a copy of such rules with the Secretary of State, as prescribed in ORS 183.310 to 183.550. [1987 c.539 §49]

Note: Section 17, chapter 539, Oregon Laws 1987, provides:

Sec. 17. If the department is unable to issue a final permit before the operative date of section 16 of this 1987 Act [ORS 466.760], the department may issue a temporary or conditional permit. A temporary or conditional permit shall expire when the department grants or denies the final permit. A temporary or conditional permit does not authorize any activity, operation or discharge that violates any law or rule of the State of Oregon or the Department of Environmental Quality. [1987 c.539 §17]

466.765 Duty of owner or permittee of underground storage tank. In addition to any other duty imposed by law and pursuant to rules adopted under ORS 466.705 to 466.835 and 466.895, the owner or the permittee of an underground storage tank shall:

(1) Prevent releases;

(2) Install, operate and maintain underground storage tanks and leak detection devices and develop and maintain records in connection therewith in accordance with standards adopted and permits issued under ORS 466.705 to 466.835 and 466.895;

(3) Furnish information to the department relating to underground storage tanks, including information about tank equipment and regulated substances stored in the tanks;

(4) Promptly report releases;

(5) Conduct monitoring and testing as required by rules adopted under ORS 466.745 and permits issued under ORS 466.760;

(6) Permit department employes or a duly authorized and identified representative of the department at all reasonable times to have access to and to copy all records relating to underground storage tanks;

(7) Pay all costs of investigating, preventing, reporting and stopping a release;

(8) Decommission tanks, as required by rules adopted under ORS 466.745 and permits issued under ORS 466.760;

(4) The program adopted under subsection (1) of this section shall:

(a) Provide that no person may offer to perform or perform services for which a license is required under the program without such license.

(b) Establish a schedule of fees for licensing under the program. The fees shall be in an amount sufficient to cover the costs of the department in administering the program.

(5) The following persons shall apply for an underground storage tank permit from the department:

(a) An owner of an underground storage tank currently in operation;

(b) An owner of an underground storage tank taken out of operation between January 1, 1974, and the operative date of this section; and

(c) An owner of an underground storage tank that was taken out of operation before January 1, 1974, but that still contains a regulated substance. [1987 c.539 §§14, 15]

Note: Section 48, chapter 539, Oregon Laws 1987, provides:

Sec. 48. Section 15 of this Act [ORS 466.750 (5)] does not become operative until 90 days after the Environmental Quality Commission has adopted rules under section 13 of this Act [ORS 466.745] and has filed a copy of such rules with the Secretary of State, as prescribed in ORS 183.310 to 183.550. [1987 c.539 §48]

466.760 When permit required; who required to sign application. (1) No person shall install, bring into operation, operate or decommission an underground storage tank without first obtaining a permit from the department.

(2) No person shall deposit a regulated substance into an underground storage tank unless the tank is operating under a permit issued by the department.

(3) Any person who assumes ownership of an underground storage tank from a previous permittee must complete and return to the department an application for a new permit before the person begins operation of the underground storage tank under the new ownership.

(4) Any person who deposits a regulated substance into an underground storage tank or sells an underground storage tank shall notify the owner or operator of the tank of the permit requirements of this section.

(5) The following persons must sign an application for a permit submitted to the department under this section or ORS 466.750 (5):

(a) The owner of an underground storage tank storing a regulated substance;

(b) The owner of the real property in which an underground storage tank is located; and

(c) The proposed permittee, if a person other than the owner of the underground storage tank or the owner of the real property. [1987 c.539 §16]

Note: Section 49, chapter 539, Oregon Laws 1987, provides:

Sec. 49. Section 16 of this Act [ORS 466.760] does not become operative until one year after the Environmental Quality Commission has adopted rules under section 13 of this Act [ORS 466.745] and has filed a copy of such rules with the Secretary of State, as prescribed in ORS 183.310 to 183.550. [1987 c.539 §49]

Note: Section 17, chapter 539, Oregon Laws 1987, provides:

Sec. 17. If the department is unable to issue a final permit before the operative date of section 16 of this 1987 Act [ORS 466.760], the department may issue a temporary or conditional permit. A temporary or conditional permit shall expire when the department grants or denies the final permit. A temporary or conditional permit does not authorize any activity, operation or discharge that violates any law or rule of the State of Oregon or the Department of Environmental Quality. [1987 c.539 §17]

466.765 Duty of owner or permittee of underground storage tank. In addition to any other duty imposed by law and pursuant to rules adopted under ORS 466.705 to 466.835 and 466.895, the owner or the permittee of an underground storage tank shall:

(1) Prevent releases;

(2) Install, operate and maintain underground storage tanks and leak detection devices and develop and maintain records in connection therewith in accordance with standards adopted and permits issued under ORS 466.705 to 466.835 and 466.895;

(3) Furnish information to the department relating to underground storage tanks, including information about tank equipment and regulated substances stored in the tanks;

(4) Promptly report releases;

(5) Conduct monitoring and testing as required by rules adopted under ORS 466.745 and permits issued under ORS 466.760;

(6) Permit department employes or a duly authorized and identified representative of the department at all reasonable times to have access to and to copy all records relating to underground storage tanks;

(7) Pay all costs of investigating, preventing, reporting and stopping a release;

(8) Decommission tanks, as required by rules adopted under ORS 466.745 and permits issued under ORS 466.760;

(9) Pay all fees;

(10) Conduct any corrective action required under ORS 466.810; and

(11) Perform any other requirement adopted under ORS 466.540, 466.705 to 466.835, 466.895 and 478.308. [1987 c.539 §20 (enacted in lieu of 468.905)]

466.770 Corrective action required on contaminated site. (1) If any owner or permittee of a contaminated site fails without sufficient cause to conduct corrective action under ORS 466.765, the department may undertake any investigation or corrective action with respect to the contamination on the site.

(2) The department shall keep a record of all expenses incurred in carrying out any corrective action authorized under subsection (1) of this section, including charges for services performed and the state's equipment and materials utilized.

(3) Any owner or permittee of a contaminated site who fails without sufficient cause to conduct corrective action as required by an order of the department under ORS 466.810 shall be liable to the department for damages not to exceed three times the amount of all expenses incurred by the department in carrying out the necessary corrective action.

(4) Based on the record compiled by the department under subsection (2) of this section, the commission shall make a finding and enter an order against the person described in subsection (1) or (3) of this section for the amount of damages, not to exceed treble damages, and the expenses incurred by the state in carrying out the actions authorized by this section. The order may be appealed in the manner provided for appeal of a contested case order under ORS 183.310 to 183.550.

(5) If the amount of corrective action costs incurred by the department and damages under this section are not paid by the responsible person to the department within 15 days after receipt of notice that such expenses are due and owing, or, if an appeal is filed within 15 days after the court renders its decision if the decision affirms the order, the Attorney General, at the request of the director, shall bring an action in the name of the State of Oregon in a court of competent jurisdiction to recover the amount specified in the notice of the director.

(6) Subsection (5) of this section shall not apply if the department and the responsible person are negotiating or have entered into a settlement agreement, except that if the responsible person fails to pay the corrective action costs as provided in the negotiated settlement the director may request the Attorney General to take action as set forth in subsection (5) of this section.

(7) All moneys received by the department under this section shall be paid into the fund established in ORS 466.790.

(8) As used in this section:

(a) "Contamination" means any abandoning, spilling, releasing, leaking, disposing, discharging, depositing, emitting, pumping, pouring, emptying, injecting, escaping, leaching, placing or dumping of a regulated substance from an underground storage tank into the air or on any lands or waters of the state, so that such regulated substance may enter the environment, be emitted into the air or discharged into any waters. Such contamination authorized by and in compliance with a permit issued under ORS chapter 454, 459, 468, 469, ORS 466.005 to 466.385 or federal law shall not be considered as contamination under ORS 466.540, 466.705 to 466.835, 466.895 and 478.308.

(b) "Site" means any area or land. [1987 c.539 §24]

466.775 Grounds for refusal, modification, suspension or revocation of permit. (1) The department may refuse to issue, modify, suspend, revoke or refuse to renew a permit if the department finds:

(a) A material misrepresentation or false statement in the application for the permit;

(b) Failure to comply with the conditions of the permit; or

(c) Violation of any applicable provision of ORS 466.705 to 466.835 and 466.895, any applicable rule or standard adopted under ORS 466.705 to 466.835 and 466.895 or an order issued under ORS 466.705 to 466.835 and 466.895.

(2) The department may modify a permit issued under ORS 466.760 if the department finds, after notice and opportunity for hearing, that modification is necessary to protect the public health, safety, welfare or the environment.

(3) The department shall modify, suspend, revoke or refuse to issue or renew a permit according to the provisions of ORS 183.310 to 183.550 for a contested case proceeding. [1987 c.539 §21]

466.780 Variance upon petition. (1) Upon petition by the owner and the permittee of an underground storage tank, the commission may grant a variance from the requirements of any rule or standard adopted under ORS 466.745 if the commission finds:

(a) The alternative proposed by the petitioner provides protection to the public health, safety, welfare and the environment, equal to or greater than the rule or standard; and

(b) The alternative proposal is at least as stringent as any applicable federal requirements.

(2) The commission may grant a variance under subsection (1) of this section only if the commission finds that strict compliance with the rule or standard is inappropriate because:

(a) Conditions exist that are beyond the control of the petitioner; or

(b) Special physical conditions or other circumstances render strict compliance unreasonable, burdensome or impracticable.

(3) The commission may delegate the authority to grant a variance to the department.

(4) Within 15 days after the department denies a petition for a variance, the petitioner may file with the commission a request for review by the commission. The commission shall review the petition for variance and the reasons for the department's denial of the petition within 150 days after the commission receives a request for review. The commission may approve or deny the variance or allow a variance on terms different than the terms proposed by the petitioner. If the commission fails to act on a denied petition within the 150-day period the variance shall be considered approved by the commission. [1987 c.539 §22]

(Finance)

466.785 Fees. (1) Fees may be required of every permittee of an underground storage tank. Fees shall be in an amount determined by the commission to be adequate to carry on the duties of the department or the duties of a state agency or local unit of government that has contracted with the department under ORS 466.730. Such fees shall not exceed $25 per tank per year.

(2) Fees collected by the department under this section shall be deposited in the State Treasury to the credit of an account of the department. All fees paid to the department shall be continuously appropriated to the department to carry out the provisions of ORS 466.705 to 466.835 and 466.895. [1987 c.539 §23]

Note: The amendments to section 23, chapter 539, Oregon Laws 1987 [compiled as ORS 466.785], by section 50, chapter 539, Oregon Laws 1987, become effective July 1, 1989. See section 51, chapter 539, Oregon Laws 1987.

466.785. (1) Fees may be required of every permittee of an underground storage tank. Fees shall be in an amount determined by the commission to be adequate to carry on the duties of the department or the duties of a state agency or local unit of government that has contracted with the department under ORS 466.730. Such fees shall not exceed $20 per tank per year.

(2) Fees collected by the department under this section shall be deposited in the State Treasury to the credit of an account of the department. All fees paid to the department shall be continuously appropriated to the department to carry out the provisions of ORS 466.705 to 466.835 and 466.895.

466.790 Leaking Underground Storage Tank Cleanup Fund; sources; uses. (1) The Leaking Underground Storage Tank Cleanup Fund is established separate and distinct from the General Fund in the State Treasury.

(2) The following moneys, as they pertain to an underground storage tank, shall be deposited into the State Treasury and credited to the Leaking Underground Storage Tank Cleanup Fund:

(a) Moneys recovered or otherwise received from responsible parties for corrective action; and

(b) Any penalty, fine or damages recovered under ORS 466.770.

(3) The State Treasurer may invest and reinvest moneys in the Leaking Underground Storage Tank Cleanup Fund in the manner provided by law.

(4) The moneys in the Leaking Underground Storage Tank Cleanup Fund are appropriated continuously to the department to be used as provided in subsection (5) of this section.

(5) Moneys in the Leaking Underground Storage Tank Cleanup Fund may be used by the department for the following purposes:

(a) Payment of corrective action costs incurred by the department in responding to a release from underground storage tanks;

(b) Funding of all actions and activities authorized by ORS 466.770; and

(c) Payment of the state cost share for corrective action, as required by section 9003(h)(7)(B) of the federal Solid Waste Disposal Act, P.L. 96-482. [1987 c.539 §26]

466.795 Underground Storage Tank Insurance Fund. (1) The Underground Storage Tank Insurance Fund is established separate and distinct from the General Fund in the State Treasury to be used solely for the purpose of satisfying the financial responsibility requirements of ORS 466.815.

(2) Fees received by the department pursuant to subsection (6) of this section, shall be deposited into the State Treasury and credited to the Underground Storage Tank Insurance Fund.

(a) The alternative proposed by the petitioner provides protection to the public health, safety, welfare and the environment, equal to or greater than the rule or standard; and

(b) The alternative proposal is at least as stringent as any applicable federal requirements.

(2) The commission may grant a variance under subsection (1) of this section only if the commission finds that strict compliance with the rule or standard is inappropriate because:

(a) Conditions exist that are beyond the control of the petitioner; or

(b) Special physical conditions or other circumstances render strict compliance unreasonable, burdensome or impracticable.

(3) The commission may delegate the authority to grant a variance to the department.

(4) Within 15 days after the department denies a petition for a variance, the petitioner may file with the commission a request for review by the commission. The commission shall review the petition for variance and the reasons for the department's denial of the petition within 150 days after the commission receives a request for review. The commission may approve or deny the variance or allow a variance on terms different than the terms proposed by the petitioner. If the commission fails to act on a denied petition within the 150-day period the variance shall be considered approved by the commission. [1987 c.539 §22]

(Finance)

466.785 Fees. (1) Fees may be required of every permittee of an underground storage tank. Fees shall be in an amount determined by the commission to be adequate to carry on the duties of the department or the duties of a state agency or local unit of government that has contracted with the department under ORS 466.730. Such fees shall not exceed $25 per tank per year.

(2) Fees collected by the department under this section shall be deposited in the State Treasury to the credit of an account of the department. All fees paid to the department shall be continuously appropriated to the department to carry out the provisions of ORS 466.705 to 466.835 and 466.895. [1987 c.539 §23]

Note: The amendments to section 23, chapter 539, Oregon Laws 1987 [compiled as ORS 466.785], by section 50, chapter 539, Oregon Laws 1987, become effective July 1, 1989. See section 51, chapter 539, Oregon Laws 1987.

466.785. (1) Fees may be required of every permittee of an underground storage tank. Fees shall be in an amount determined by the commission to be adequate to carry on the duties of the department or the duties of a state agency or local unit of government that has contracted with the department under ORS 466.730. Such fees shall not exceed $20 per tank per year.

(2) Fees collected by the department under this section shall be deposited in the State Treasury to the credit of an account of the department. All fees paid to the department shall be continuously appropriated to the department to carry out the provisions of ORS 466.705 to 466.835 and 466.895.

466.790 Leaking Underground Storage Tank Cleanup Fund; sources; uses. (1) The Leaking Underground Storage Tank Cleanup Fund is established separate and distinct from the General Fund in the State Treasury.

(2) The following moneys, as they pertain to an underground storage tank, shall be deposited into the State Treasury and credited to the Leaking Underground Storage Tank Cleanup Fund:

(a) Moneys recovered or otherwise received from responsible parties for corrective action; and

(b) Any penalty, fine or damages recovered under ORS 466.770.

(3) The State Treasurer may invest and reinvest moneys in the Leaking Underground Storage Tank Cleanup Fund in the manner provided by law.

(4) The moneys in the Leaking Underground Storage Tank Cleanup Fund are appropriated continuously to the department to be used as provided in subsection (5) of this section.

(5) Moneys in the Leaking Underground Storage Tank Cleanup Fund may be used by the department for the following purposes:

(a) Payment of corrective action costs incurred by the department in responding to a release from underground storage tanks;

(b) Funding of all actions and activities authorized by ORS 466.770; and

(c) Payment of the state cost share for corrective action, as required by section 9003(h)(7)(B) of the federal Solid Waste Disposal Act, P.L. 96-482. [1987 c.539 §26]

466.795 Underground Storage Tank Insurance Fund. (1) The Underground Storage Tank Insurance Fund is established separate and distinct from the General Fund in the State Treasury to be used solely for the purpose of satisfying the financial responsibility requirements of ORS 466.815.

(2) Fees received by the department pursuant to subsection (6) of this section, shall be deposited into the State Treasury and credited to the Underground Storage Tank Insurance Fund.

(3) The State Treasurer may invest and reinvest moneys in the Underground Storage Tank Insurance Fund in the manner provided by law.

(4) The moneys in the Underground Storage Tank Insurance Fund are appropriated continuously to the department to be used as provided for in subsection (5) of this section.

(5) Moneys in the Underground Storage Tank Insurance Fund may be used by the department for the following purposes, as they pertain to underground storage tanks:

(a) Compensation to the department or any other person, for taking corrective actions; and

(b) Compensation to a third party for bodily injury and property damage caused by a release.

(6) The commission may establish an annual financial responsibility fee to be collected from an owner or permittee of an underground storage tank. The fee shall be in an amount determined by the commission to be adequate to meet the financial responsibility requirements established under ORS 466.815 and any applicable federal law.

(7) Before the effective date of any regulations relating to financial responsibility adopted by the United States Environmental Protection Act pursuant to P.L. 98-616 and P.L. 99-499, the department shall formulate a plan of action to be followed if it becomes necessary for the Underground Storage Tank Insurance Fund to become operative in order to satisfy the financial responsibility requirements of ORS 466.815. In formulating the plan of action, the department shall consult with the Director of the Department of Insurance and Finance, owners and permittees of underground storage tanks and any other interested party. The plan of action must be reviewed by the Legislative Assembly or the Emergency Board before implementation. [1987 c.539 §28]

466.800 Records as public records; exceptions. (1) Except as provided in subsection (2) of this section, any records, reports or information obtained from any persons under ORS 466.765 and 466.805 shall be made available for public inspection and copying during the regular office hours of the department at the expense of any person requesting copies.

(2) Unless classified by the director as confidential, any records, reports or information obtained under ORS 466.705 to 466.835 and 466.895 shall be available to the public. Upon a showing satisfactory to the director by any person that records, reports or information, or particular parts thereof, if made public, would divulge methods, processes or information entitled to protection as trade secrets under ORS 192.501 to 192.505, the director shall classify as confidential such record, report or information, or particular part thereof. However, such record, report or information may be disclosed to any other officer, medical or public safety employe or authorized representative of the state concerned with carrying out ORS 466.705 to 466.835 and 466.895 or when relevant in any proceeding under ORS 466.705 to 466.835 and 466.895.

(3) Any record, report or information obtained or used by the department or the commission in administering the state-wide underground storage tank program under ORS 466.705 to 466.835 and 466.895 shall be available to the United States Environmental Protection Agency upon request. If the record, report or information has been submitted to the state under a claim of confidentiality, the state shall make that claim of confidentiality to the Environmental Protection Agency for the requested record, report or information. The federal agency shall treat the record, report or information subject to the confidentiality claim as confidential in accordance with applicable federal law. [Formerly 468.910]

(Enforcement)

466.805 Site inspection; subpena or warrant. (1) In order to determine compliance with the provisions of ORS 466.705 to 466.835 and 466.895 and rules adopted under ORS 466.705 to 466.835 and 466.895 and to enforce the provisions of ORS 466.705 to 466.835 and 466.895, any employes of or an authorized and identified representative of the department may:

(a) Enter at reasonable times any establishment or site where an underground storage tank is located;

(b) Inspect and obtain samples of a regulated substance contained in an underground storage tank; and

(c) Conduct an investigation of an underground storage tank, associated equipment, contents or the soil, air or waters of the state surrounding an underground storage tank.

(2) If any person refuses to comply with subsection (1) of this section, the department or a duly authorized and identified representative of the department may obtain a warrant or subpena to allow such entry, inspection, sampling or copying. [1987 c.539 §30 (enacted in lieu of 468.907)]

466.810 Investigation on noncompliance; findings and orders; decommissioning tank; hearings; other remedies. (1) Whenever the department has reasonable

cause to believe that an underground storage tank or the operation of an underground storage tank violates ORS 466.705 to 466.835 and 466.895 or fails to comply with a rule, order or permit issued under ORS 466.705 to 466.835 and 466.895, the department may investigate the underground storage tank.

(2) After the department investigates an underground storage tank under subsection (1) of this section, the department may, without notice or hearing, make such findings and issue such orders as it considers necessary to protect the public health, safety, welfare or the environment.

(3) The findings and orders made by the department under subsection (2) of this section may:

(a) Require changes in the operation, practices or operating procedures found to be in violation of ORS 466.705 to 466.835 and 466.895 or the rules adopted under ORS 466.705 to 466.835 and 466.895;

(b) Require the owner or operator to comply with the provisions of a permit;

(c) Require compliance with a schedule established in the order; and

(d) Require any other actions considered necessary by the department.

(4) After the department issues an order under subsection (2) of this section, the department may decommission the underground storage tank or contract with another person to decommission the underground storage tank.

(5) The department shall serve a certified copy of any order issued by it under subsection (2) of this section to the permittee or the permittee's duly authorized representative at the address furnished to the department in the permit application or other address as the department knows to be used by the permittee. The order shall take effect 20 days after the date of its issuance, unless the permittee requests a hearing on the order before the commission. The request for a hearing shall be submitted in writing within 20 days after the department issues the order.

(6) All hearings before the commission or its hearing officer shall be conducted according to applicable provisions of ORS 183.310 to 183.550 for contested cases.

(7) Whenever it appears to the department that any person is engaged or about to engage in any act or practice that constitutes a violation of ORS 466.705 to 466.835 and 466.895 or the rules and orders adopted under ORS 466.705 to 466.835 and 466.895 or of the terms of any permit issued under ORS 466.705 to 466.835 and 466.895, the department, without prior administrative hearing, may institute actions or proceedings for legal or equitable remedies to enforce compliance therewith or to restrain further violations thereof. [1987 c.539 §32]

466.815 Financial responsibility of owner or permittee. (1) The commission may by rule require an owner or permittee to demonstrate and maintain financial responsibility for:

(a) Taking corrective action;

(b) Compensating a third party for bodily injury and property damage caused by a release; and

(c) Compensating the department, or any other person, for expenses incurred by the department or any other person in taking corrective action.

(2) The financial responsibility requirements established by subsection (1) of this section may be satisfied by insurance, guarantee by third party, surety bond, letter of credit or qualification as a self-insurer or any combination of these methods. In adopting rules under subsection (1) of this section, the commission may specify policy or other contractual terms, conditions or defenses necessary or unacceptable to establish evidence of financial responsibility.

(3) If an owner or permittee is in bankruptcy, reorganization or arrangement pursuant to the federal bankruptcy law, or if jurisdiction in any state or federal court cannot be obtained over either an owner or a permittee likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this section may be asserted directly against the guarantor. In the case of action under paragraph (b) of subsection (1) of this section, the guarantor is entitled to invoke all rights and defenses that would have been available to the owner or permittee if the action had been brought against the owner or permittee by the claimant and all rights and defenses that would have been available to the guarantor if the action had been brought against the guarantor by the owner or permittee.

(4) The total liability of a guarantor shall be limited to the aggregate amount the guarantor provided as evidence of financial responsibility to the owner or permittee under subsection (2) of this section. This subsection does not limit any other state or federal statutory, contractual or common law liability of the guarantor for bad faith in negotiating or in failing to negotiate the settlement of any claim. This subsection does not diminish the liability of any person under section

cause to believe that an underground storage tank or the operation of an underground storage tank violates ORS 466.705 to 466.835 and 466.895 or fails to comply with a rule, order or permit issued under ORS 466.705 to 466.835 and 466.895, the department may investigate the underground storage tank.

(2) After the department investigates an underground storage tank under subsection (1) of this section, the department may, without notice or hearing, make such findings and issue such orders as it considers necessary to protect the public health, safety, welfare or the environment.

(3) The findings and orders made by the department under subsection (2) of this section may:

(a) Require changes in the operation, practices or operating procedures found to be in violation of ORS 466.705 to 466.835 and 466.895 or the rules adopted under ORS 466.705 to 466.835 and 466.895;

(b) Require the owner or operator to comply with the provisions of a permit;

(c) Require compliance with a schedule established in the order; and

(d) Require any other actions considered necessary by the department.

(4) After the department issues an order under subsection (2) of this section, the department may decommission the underground storage tank or contract with another person to decommission the underground storage tank.

(5) The department shall serve a certified copy of any order issued by it under subsection (2) of this section to the permittee or the permittee's duly authorized representative at the address furnished to the department in the permit application or other address as the department knows to be used by the permittee. The order shall take effect 20 days after the date of its issuance, unless the permittee requests a hearing on the order before the commission. The request for a hearing shall be submitted in writing within 20 days after the department issues the order.

(6) All hearings before the commission or its hearing officer shall be conducted according to applicable provisions of ORS 183.310 to 183.550 for contested cases.

(7) Whenever it appears to the department that any person is engaged or about to engage in any act or practice that constitutes a violation of ORS 466.705 to 466.835 and 466.895 or the rules and orders adopted under ORS 466.705 to 466.835 and 466.895 or of the terms of any permit issued under ORS 466.705 to 466.835 and 466.895, the department, without prior administrative hearing, may institute actions or proceedings for legal or equitable remedies to enforce compliance therewith or to restrain further violations thereof. [1987 c.539 §32]

466.815 Financial responsibility of owner or permittee. (1) The commission may by rule require an owner or permittee to demonstrate and maintain financial responsibility for:

(a) Taking corrective action;

(b) Compensating a third party for bodily injury and property damage caused by a release; and

(c) Compensating the department, or any other person, for expenses incurred by the department or any other person in taking corrective action.

(2) The financial responsibility requirements established by subsection (1) of this section may be satisfied by insurance, guarantee by third party, surety bond, letter of credit or qualification as a self-insurer or any combination of these methods. In adopting rules under subsection (1) of this section, the commission may specify policy or other contractual terms, conditions or defenses necessary or unacceptable to establish evidence of financial responsibility.

(3) If an owner or permittee is in bankruptcy, reorganization or arrangement pursuant to the federal bankruptcy law, or if jurisdiction in any state or federal court cannot be obtained over either an owner or a permittee likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this section may be asserted directly against the guarantor. In the case of action under paragraph (b) of subsection (1) of this section, the guarantor is entitled to invoke all rights and defenses that would have been available to the owner or permittee if the action had been brought against the owner or permittee by the claimant and all rights and defenses that would have been available to the guarantor if the action had been brought against the guarantor by the owner or permittee.

(4) The total liability of a guarantor shall be limited to the aggregate amount the guarantor provided as evidence of financial responsibility to the owner or permittee under subsection (2) of this section. This subsection does not limit any other state or federal statutory, contractual or common law liability of the guarantor for bad faith in negotiating or in failing to negotiate the settlement of any claim. This subsection does not diminish the liability of any person under section

107 or 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or other applicable law.

(5) Corrective action and compensation programs financed by a fee paid by owners and permittees and administered by the department may be used to satisfy all or part of the financial responsibility requirements of this section.

(6) No rule requiring an owner or permittee to demonstrate and maintain financial responsibility shall be adopted by the commission before review by the appropriate legislative committee as determined by the President of the Senate and the Speaker of the House of Representatives. [1987 c.539 §27]

466.820 Reimbursement to department; procedure for collection; treble damages. (1) The owner and the permittee of an underground storage tank found to be in violation of any provision of ORS 466.705 to 466.835 and 466.895, shall reimburse the department for all costs reasonably incurred by the department, excluding administrative costs, in the investigation of a leak from an underground storage tank. Department costs may include investigation, design engineering, inspection and legal costs necessary to correct the leak.

(2) Payment of costs to the department under subsection (1) of this section shall be made to the department within 15 days after the end of the appeal period or, if an appeal is filed, within 15 days after the court or the commission renders its decision, if the decision affirms the order.

(3) If such costs are not paid by the owner or the permittee of the underground storage tank to the department within the time provided in subsection (2) of this section, the Attorney General, upon the request of the director, shall bring action in the name of the State of Oregon in the Circuit Court of Marion County or the circuit court of any other county in which the violation may have taken place to recover the amount specified in the order of the department.

(4) In addition to any other penalty provided by law, if any person is found in violation of any provision of ORS 466.540, 466.705 to 466.835, 466.895 and 478.308, the commission or the court may award damages in the amount equal to three times the amount of all expenses incurred by the department in investigating the violation.

(5) Moneys reimbursed shall be deposited to the State Treasury to the credit of an account of the department and are continuously appropriated to the department for the purposes of administering ORS 466.540, 466.705 to 466.835, 466.895 and 478.308. [1987 c.539 §34 (enacted in lieu of 468.914)]

466.825 Strict liability of owner or permittee. The owner and permittee of an underground storage tank found to be the source of a release shall be strictly liable to any owner or permittee of a nonleaking underground storage tank in the vicinity, for all costs reasonably incurred by such nonleaking underground storage tank owner or permittee in determining which tank was the source of the release. [1987 c.539 §35]

466.830 Halting tank operation upon clear and immediate danger. (1) Whenever, in the judgment of the department from the results of monitoring or observation of an identified release, there is reasonable cause to believe that a clear and immediate danger to the public health, welfare, safety or the environment exists from the continued operation of an underground storage tank, the department may, without hearing or prior notice, order the operation of the underground storage tank or site halted by service of an order on the owner or permittee of the underground storage tank or site.

(2) Within 24 hours after the order is served under subsection (1) of this section, the department shall appear in the appropriate circuit court to petition for the equitable relief required to protect the public health, safety, welfare or the environment. [1987 c.539 §36]

466.835 Compliance and correction costs as lien; enforcement. (1) All compliance and corrective action costs, penalties and damages for which a person is liable to the state under ORS 466.705 to 466.835 and 466.895 shall constitute a lien upon any real and personal property owned by the person.

(2) The department shall file a claim of lien on real property to be charged with a lien under subsection (1) of this section with the recording officer of each county in which the real property is located and shall file a claim of lien on personal property to be charged with a lien under subsection (1) of this section with the Secretary of State. The lien shall attach and become enforceable on the date of the filing. The lien claim shall contain:

(a) A statement of the demand;

(b) The name of the person against whose property the lien attaches;

(c) A description of the property charged with the lien sufficient for identification; and

(d) A statement of the failure of the person to conduct compliance and corrective actions as required.

(3) A lien created by this section may be foreclosed by a suit on real and personal property in the circuit court in the manner provided by law for the foreclosure of liens.

(4) Nothing in this section shall affect the right of the state to bring an action against any person to recover all costs and damages for which a person is liable under the provisions of ORS 466.705 to 466.835 and 466.895. [1987 c.539 §37]

OREGON HANFORD WASTE BOARD

Note: Sections 1 to 16, chapter 514 Oregon Laws 1987, provide:

Sec. 1. (1) The Legislative Assembly finds and declares that Oregon is not assured that the United States Department of Energy will:

(a) Consider the unique features of Oregon and the needs of the people of Oregon when assessing Hanford, Washington, as a potentially suitable location for the long-term disposal of high-level radioactive waste: or

(b) Insure adequate opportunity for public participation in the assessment process.

(2) Therefore, the Legislative Assembly declares that it is in the best interests of the State of Oregon to establish an Oregon Hanford Waste Board to serve as a focus for the State of Oregon in the development of a state policy to be presented to the Federal Government, to insure a maximum of public participation in the assessment process. [1987 c.514 §1]

Sec. 2. Nothing in sections 1 to 16 of this Act shall be interpreted by the Federal Government or the United States Department of Energy as an expression by the people of Oregon to accept Hanford, Washington, as the site for the long-term disposal of high-level radioactive waste. [1987 c.514 §2]

Sec. 3. As used in sections 1 to 16 of this Act:

(1) "Board" means the Oregon Hanford Waste Board.

(2) "High-level radioactive waste" means fuel or fission products from a commercial nuclear reactor after irradiation that is packaged and prepared for disposal.

(3) "United States Department of Energy" means the federal Department of Energy established under 42 U.S.C.A. 7131 or any successor agency assigned responsibility for the long-term disposal of high-level radioactive waste. [1987 c.514 §3]

Sec. 4. There is created an Oregon Hanford Waste Board which shall consist of the following members:

(1) The Director of the Oregon Department of Energy or designee;

(2) The Water Resources Director or designee;

(3) The Director of the Department of Environmental Quality or designee;

(4) The Assistant Director for Health or designee;

(5) The State Geologist or designee;

(6) A representative of the Public Utility Commission who has expertise in motor carriers;

(7) A representative of the Governor;

(8) One member representing the Confederated Tribes of the Umatilla Indian Reservation;

(9) One member of the public, appointed by the Governor subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565, who shall serve as chairperson;

(10) Two members of the public advisory committee created under section 9 of this Act, selected by the public advisory committee; and

(11) Three members of the Senate, appointed by the President of the Senate, and three members of the House of Representatives, appointed by the Speaker of the House of Representatives who shall serve as advisory members without vote. [1987 c.514 §4]

Sec. 5. (1) Each member of the Oregon Hanford Waste Board shall serve at the pleasure of the appointing authority. For purposes of this subsection, for those members of the board selected by the public advisory committee, the appointing authority shall be the public advisory committee.

(2) Each public member of the board shall receive compensation and expenses as provided in ORS 292.495. Each legislative member shall receive compensation and expenses as provided in ORS 171.072.

(3) The board shall be under the supervision of the chairperson. [1987 c.514 §5]

Sec. 6. The Oregon Hanford Waste Board:

(1) Shall serve as the focal point for all policy discussions within the state government concerning the disposal of high-level radioactive waste in the northwest region.

(2) Shall recommend a state policy to the Governor and to the Legislative Assembly.

(3) After consultation with the Governor, may make policy recommendations on other issues related to the United States Hanford Reservation at Richland, Washington, including but not limited to defense wastes, disposal and treatment of chemical waste and plutonium production. [1987 c.514 §6]

Sec. 7. In carrying out its purpose as set forth in section 6 of this Act, the Oregon Hanford Waste Board shall:

(1) Serve as the initial agency in this state to be contacted by the United States Department of Energy or any other federal agency on any matter related to the long-term disposal of high-level radioactive waste.

(2) Serve as the initial agency in this state to receive any report, study, document, information or notification of proposed plans from the Federal Government on any matter related to the long-term disposal of high-level radioactive waste. Notification of proposed plans includes notification of proposals to conduct field work, onsite evaluation or onsite testing.

(3) Disseminate or arrange with the United States Department of Energy or other federal agency to disseminate the information received under subsection (2) of this section to appropriate state agencies, local governments, regional planning commissions, American Indian tribal governing bodies, the general public and interested citizen groups who have requested in writing to receive this information.

(4) Recommend to the Governor and Legislative Assembly appropriate responses to contacts under subsection (1) of

(3) A lien created by this section may be foreclosed by a suit on real and personal property in the circuit court in the manner provided by law for the foreclosure of liens.

(4) Nothing in this section shall affect the right of the state to bring an action against any person to recover all costs and damages for which a person is liable under the provisions of ORS 466.705 to 466.835 and 466.895. [1987 c.539 §37]

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Note: Sections 1 to 16, chapter 514 Oregon Laws 1987, provide:

Sec. 1. (1) The Legislative Assembly finds and declares that Oregon is not assured that the United States Department of Energy will:

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(b) Insure adequate opportunity for public participation in the assessment process.

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(3) The Director of the Department of Environmental Quality or designee;

(4) The Assistant Director for Health or designee;

(5) The State Geologist or designee;

(6) A representative of the Public Utility Commission who has expertise in motor carriers;

(7) A representative of the Governor;

(8) One member representing the Confederated Tribes of the Umatilla Indian Reservation;

(9) One member of the public, appointed by the Governor subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565, who shall serve as chairperson;

(10) Two members of the public advisory committee created under section 9 of this Act, selected by the public advisory committee; and

(11) Three members of the Senate, appointed by the President of the Senate, and three members of the House of Representatives, appointed by the Speaker of the House of Representatives who shall serve as advisory members without vote. [1987 c.514 §4]

Sec. 5. (1) Each member of the Oregon Hanford Waste Board shall serve at the pleasure of the appointing authority. For purposes of this subsection, for those members of the board selected by the public advisory committee, the appointing authority shall be the public advisory committee.

(2) Each public member of the board shall receive compensation and expenses as provided in ORS 292.495. Each legislative member shall receive compensation and expenses as provided in ORS 171.072.

(3) The board shall be under the supervision of the chairperson. [1987 c.514 §5]

Sec. 6. The Oregon Hanford Waste Board:

(1) Shall serve as the focal point for all policy discussions within the state government concerning the disposal of high-level radioactive waste in the northwest region.

(2) Shall recommend a state policy to the Governor and to the Legislative Assembly.

(3) After consultation with the Governor, may make policy recommendations on other issues related to the United States Hanford Reservation at Richland, Washington, including but not limited to defense wastes, disposal and treatment of chemical waste and plutonium production. [1987 c.514 §6]

Sec. 7. In carrying out its purpose as set forth in section 6 of this Act, the Oregon Hanford Waste Board shall:

(1) Serve as the initial agency in this state to be contacted by the United States Department of Energy or any other federal agency on any matter related to the long-term disposal of high-level radioactive waste.

(2) Serve as the initial agency in this state to receive any report, study, document, information or notification of proposed plans from the Federal Government on any matter related to the long-term disposal of high-level radioactive waste. Notification of proposed plans includes notification of proposals to conduct field work, onsite evaluation or onsite testing.

(3) Disseminate or arrange with the United States Department of Energy or other federal agency to disseminate the information received under subsection (2) of this section to appropriate state agencies, local governments, regional planning commissions, American Indian tribal governing bodies, the general public and interested citizen groups who have requested in writing to receive this information.

(4) Recommend to the Governor and Legislative Assembly appropriate responses to contacts under subsection (1) of

this section and information received under subsection (2) of this section if a response is appropriate. The board shall consult with the appropriate state agency, local government, regional planning commission, American Indian tribal governing body, the general public and interested citizen groups in preparing this response.

(5) Promote and coordinate educational programs which provide information on the nature of high-level radioactive waste, the long-term disposal of this waste, the activities of the board, the activities of the United States Department of Energy and any other federal agency related to the long-term disposal of high-level radioactive waste and the opportunities of the public to participate in procedures and decisions related to this waste.

(6) Review any application to the United States Department of Energy or other federal agency by a state agency, local government or regional planning commission for funds for any program related to the long-term disposal of high-level radioactive waste. If the board finds that the application is not consistent with the state's policy related to such waste or that the application is not in the best interest of the state, the board shall forward its findings to the Governor and the appropriate legislative committee. If the board finds that the application of a state agency is not consistent with the state's policy related to long-term disposal of high-level radioactive waste or that the application of a state agency is not in the best interest of the state, the findings forwarded to the Governor and legislative committee shall include a recommendation that the Governor act to stipulate conditions for the acceptance of the funds which are necessary to safeguard the interests of the state.

(7) Monitor activity in Congress and the Federal Government related to the long-term disposal of high-level radioactive waste.

(8) If appropriate, advise the Governor and the Legislative Assembly to request the Attorney General to intervene in federal proceedings to protect the state's interests and present the state's point of view on matters related to the long-term disposal of high-level radioactive waste. [1987 c.514 §7]

Sec. 8. The chairperson of the Oregon Hanford Waste Board shall:

(1) Supervise the day-to-day functions of the board;

(2) Hire, assign, reassign and coordinate the administrative personnel of the board, prescribe their duties and fix their compensation, subject to the State Personnel Relations Law; and

(3) Request technical assistance from any other state agency. [1987 c.514 §8]

Sec. 9. (1) There is created a public advisory committee which shall consist of not less than 15 members to advise the Oregon Hanford Waste Board on the development and administration of the policies and practices of the board. Members shall be appointed by the Governor and shall serve a term of two years.

(2) Advisory committee members shall be selected from all areas of the state and shall include a broad range of citizens, representatives of local governments and representatives of other interests as the Governor determines will best further the purposes of this Act.

(3) Members of the advisory committee shall receive no compensation for their services. Members of the advisory committee other than members employed in full-time public service shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties. Such reimbursements shall be subject to the provisions of ORS 292.210 to 292.288. Members of the advisory committee who are employed in full-time public service may be reimbursed for their actual and necessary expenses incurred in the performance of their duties by their employing agency.

(4) The advisory committee shall meet at least once every three months. [1987 c.514 §9]

Sec. 10. (1) If the United States Department of Energy selects Hanford, Washington, as the site for the construction of a repository for the long-term disposal of high-level radioactive waste, the Oregon Hanford Waste Board shall review the selected site and the site plan prepared by the United States Department of Energy. In conducting its review the board shall:

(a) Include a full scientific review of the adequacy of the selected site and of the site plan;

(b) Use recognized experts;

(c) Conduct one or more public hearings on the site plan;

(d) Make available to the public arguments and evidence for and against the site plan; and

(e) Solicit comments from appropriate state agencies, local governments, regional planning commissions, American Indian tribal governing bodies, the general public and interested citizen groups on the adequacy of the Hanford site and the site plan.

(2) After completing the review under subsection (1) of this section, the board shall submit a recommendation to the Speaker of the House of Representatives, the President of the Senate and the Governor on whether the state should accept the Hanford site. [1987 c.514 §10]

Sec. 11. (1) In addition to any other duty prescribed by law and subject to the policy direction of the board, a lead agency designated by the Governor shall negotiate written agreements and modifications to those agreements, with the United States Department of Energy or any other federal agency or state on any matter related to the long-term disposal of high-level radioactive waste.

(2) Any agreement or modification to an agreement negotiated by the agency designated by the Governor under subsection (1) of this section shall be consistent with the policy expressed by the Governor and the Legislative Assembly as developed by the Oregon Hanford Waste Board.

(3) The Oregon Hanford Waste Board shall make recommendations to the agency designated by the Governor under subsection (1) of this section concerning the terms of agreements or modifications to agreements negotiated under subsection (1) of this section. [1987 c.514 §11]

Sec. 12. The Oregon Hanford Waste Board shall implement agreements, modifications and technical revisions approved by the agency designated by the Governor under section 11 of this Act. In implementing these agreements, modifications and revisions, the board may solicit the views of any appropriate state agency, local government, regional planning commission, American Indian tribal governing body, the general public and interested citizen groups. [1987 c.514 §12]

Sec. 13. The Oregon Hanford Waste Board may accept moneys from the United States Department of Energy, other federal agencies, the State of Washington and from gifts and grants received from any other person. Such moneys are continuously appropriated to the board for the purpose of carrying out the provisions of this Act. The board shall establish by rule a method for disbursing such funds as necessary to carry out the provisions of sections 1 to 16 of this Act, including but not limited to awarding contracts for studies pertaining to the long-term disposal of radioactive waste. Any disbursement of funds by the board or the lead agency shall be consistent with the policy established by the board under section 6 of this Act. [1987 c.514 §13]

Sec. 14. In addition to the public advisory committee established under section 9 of this Act, the Oregon Hanford Waste Board may establish any advisory and technical committee it considers necessary. Members of any advisory or technical committee established under this section may receive reimbursement for travel expenses incurred in the performance of their duties in accordance with ORS 292.495. [1987 c.514 §14]

Sec. 15. All departments, agencies and officers of this state and its political subdivisions shall cooperate with the Oregon Hanford Waste Board in carrying out any of its activities under sections 1 to 16 of this Act and, at the request of the chairperson, provide technical assistance to the board. [1987 c.514 §15]

Sec. 16. In accordance with the applicable provisions of ORS 183.310 to 183.550, the Oregon Hanford Waste Board shall adopt rules and standards to carry out the requirements of sections 1 to 16 of this Act. [1987 c.514 §16]

FEDERAL SITE SELECTION

Note: Sections 1 and 2, chapter 13, Oregon Laws 1987, provide:

Sec. 1. The Legislative Assembly and the people of the State of Oregon find that:

(1) In order to solve the problem of high-level radioactive waste disposal, Congress established a process for selecting two sites for the safe, permanent and regionally equitable disposal of such waste.

(2) The process of selecting three sites as final candidates, including the Hanford reservation in the State of Washington, for a first high-level nuclear waste repository by the United States Department of Energy violated the intent and the mandate of Congress.

(3) The United States Department of Energy has prematurely deferred consideration of numerous potential sites and disposal media that its own research indicates are more appropriate, safer and less expensive.

(4) Placement of a repository at Hanford without methodical and independently verified scientific evaluation threatens the health and safety of the people and the environment of this state.

(5) The selection process is flawed and not credible because it did not include independent experts in the selection of the sites and in the review of the selected sites, as recommended by the National Academy of Sciences.

(6) By postponing indefinitely all site specific work for an eastern repository, the United States Department of Energy has not complied with the intent of Congress expressed in the Nuclear Waste Policy Act, Public Law 97-425, and the fundamental compromise which enabled its enactment. [1987 c.13 §1]

Sec. 2. In order to achieve complete compliance with federal law and protect the health, safety and welfare of the people of the State of Oregon, the Legislative Assembly, other state-wide officials and state agencies shall use all legal means necessary to:

(1) Suspend the preliminary site selection process for a high-level nuclear waste repository, including the process of site characterization, until there is compliance with the intent of the Nuclear Waste Policy Act;

(2) Reverse the Secretary of Energy's decision to postpone indefinitely all site specific work on locating and developing an eastern repository for high-level nuclear waste;

(3) Insist that the United States Department of Energy's site selection process, when resumed, considers all acceptable geologic media and results in safe, scientifically justified and regionally and geographically equitable high-level nuclear waste disposal;

(4) Demand that federal budget actions fully and completely follow the intent of the Nuclear Waste Policy Act;

(5) Continue to pursue alliances with other states and interested parties, particularly with Pacific Northwest Governors, legislatures and other parties, affected by the site selection process and transportation of high-level nuclear waste; and

(6) Assure that Oregon, because of its close geographic and geologic proximity to the proposed Hanford site, be accorded the same status under federal law as a state in which a high-level nuclear repository is proposed to be located. [1987 c.13 §2]

CIVIL PENALTIES

466.880 Civil penalties generally. (1) In addition to any other penalty provided by law, any person who violates ORS 466.005 to 466.385 and 466.890, a license condition or any commission rule or order pertaining to the generation, treatment, storage, disposal or transportation by air or water of hazardous waste, as defined by ORS 466.005, shall incur a civil penalty not to exceed $10,000 for each day of the violation.

(2) The civil penalty authorized by subsection (1) of this section shall be established, imposed, collected and appealed in the same manner as civil penalties are established, imposed and collected under ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and ORS chapter 468.

(3) In addition to any other penalty provided by law, any person who violates a provision of ORS 466.605 to 466.680, or any rule or order

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(6) Assure that Oregon, because of its close geographic and geologic proximity to the proposed Hanford site, be accorded the same status under federal law as a state in which a high-level nuclear repository is proposed to be located. [1987 c.13 §2]

CIVIL PENALTIES

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(2) The civil penalty authorized by subsection (1) of this section shall be established, imposed, collected and appealed in the same manner as civil penalties are established, imposed and collected under ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and ORS chapter 468.

(3) In addition to any other penalty provided by law, any person who violates a provision of ORS 466.605 to 466.680, or any rule or order

entered or adopted under ORS 466.605 to 466.680, may incur a civil penalty not to exceed $10,000. Each day of violation shall be considered a separate offense.

(4) The civil penalty authorized by subsection (3) of this section shall be established, imposed, collected and appealed in the same manner as civil penalties are established, imposed, collected and appealed under ORS 468.090 to 468.130, except that a penalty collected under this section shall be deposited to the fund established in ORS 466.670. [Formerly 459.995; (3) and (4) enacted by 1985 c.733 §17; 1987 c.266 §1]

466.890 Civil penalties for damage to wildlife resulting from contamination of food or water supply. (1) Any person who has care, custody or control of a hazardous waste or a substance which would be a hazardous waste except for the fact that it is not discarded, useless or unwanted shall incur a civil penalty according to the schedule set forth in subsection (2) of this section for the destruction, due to contamination of food or water supply by such waste or substance, of any of the wildlife referred to in subsection (2) of this section that are the property of the state.

(2) The penalties referred to in subsection (1) of this section shall be as follows:

(a) Each game mammal other than mountain sheep, mountain goat, elk or silver gray squirrel, $400.

(b) Each mountain sheep or mountain goat, $3,500.

(c) Each elk, $750.

(d) Each silver gray squirrel, $10.

(e) Each game bird other than wild turkey, $10.

(f) Each wild turkey, $50.

(g) Each game fish other than salmon or steelhead trout, $5.

(h) Each salmon or steelhead trout, $125.

(i) Each fur-bearing mammal other than bobcat or fisher, $50.

(j) Each bobcat or fisher, $350.

(k) Each specimen of any wildlife species whose survival is specified by the wildlife laws or the laws of the United States as threatened or endangered, $500.

(L) Each specimen of any wildlife species otherwise protected by the wildlife laws or the laws of the United States, but not otherwise referred to in this subsection, $25.

(3) The civil penalty imposed under this section shall be in addition to other penalties prescribed by law. [1985 c.685 §2]

466.895 Civil penalties for violations of underground storage tank regulations. (1) Any person who violates any provision of ORS 466.705 to 466.835 and 466.895, a rule adopted under ORS 466.705 to 466.835 and 466.895 or the terms or conditions of any order or permit issued by the department under ORS 466.705 to 466.835 and 466.895 shall be subject to a civil penalty not to exceed $10,000 per violation per day of violation.

(2) Each violation may be a separate and distinct offense and in the case of a continuing violation, each day's continuance thereof may be deemed a separate and distinct offense.

(3) The department may levy a civil penalty up to $100 for each day a fee due and owing under ORS 466.785 and 466.795 is unpaid. A penalty collected under this subsection shall be placed in the State Treasury to the credit of an account of the department.

(4) The civil penalties authorized under this section shall be established, imposed, collected and appealed in the same manner as civil penalties are established, imposed, collected and appealed under ORS 468.090 to 468.125 and 468.135 except that a penalty collected under this section shall be deposited to the fund established in ORS 466.790. [1987 c.539 §39]

466.900 Civil penalties for violation of removal or remedial actions. (1) In addition to any other penalty provided by law, any person who violates a provision of ORS 466.540 to 466.590, or any rule or order entered or adopted under ORS 466.540 to 466.590, shall incur a civil penalty not to exceed $10,000 a day for each day that such violation occurs or that failure to comply continues.

(2) The civil penalty authorized by subsection (1) of this section shall be established, imposed, collected and appealed in the same manner as civil penalties are established, imposed, collected and appealed under ORS 468.090 to 468.125, except that a penalty collected under this section shall be deposited in the Hazardous Substance Remedial Action Fund established under ORS 466.590, if the penalty pertains to a release at any facility. [1987 c.735 §23]

CRIMINAL PENALTIES

466.995 Criminal penalties. (1) Penalties provided in this section are in addition to and not in lieu of any other remedy specified in ORS

459.005 to 459.105, 459.205 to 459.245, 459.255 to 459.285, 466.005 to 466.385 or 466.890.

(2) Violation of ORS 466.005 to 466.385 or 466.890 or of any rule or order entered or adopted under those sections is punishable, upon conviction, by a fine of not more than $10,000 or by imprisonment in the county jail for not more than one year, or by both. Each day of violation shall be deemed a separate offense.

(3) Violation of a provision of ORS 466.605 to 466.680 or of any rule or order entered or adopted under ORS 466.605 to 466.680 is punishable, upon conviction, by a fine of not more than $10,000 or by imprisonment in the county jail for not more than one year or both. Each day of violation shall be considered a separate offense.

(4) Any person who knowingly or intentionally violates any provision of ORS 466.705 to 466.835 and 466.895 or the rules adopted under ORS 466.705 to 466.835 and 466.895 shall be subject to a criminal penalty not to exceed $10,000 or imprisonment for not more than one year or both. Each day of violation shall be deemed a separate offense.

(5)(a) Any person who knowingly or wilfully violates any provision of ORS 466.540 to 466.590 or any rule or order adopted or issued under ORS 466.540 to 466.590 shall, upon conviction, be subject to a criminal penalty not to exceed $10,000 or imprisonment for not more than one year, or both.

(b) Each day of violation shall be deemed a separate offense. [Formerly 459.992; (3) enacted by 1985 c.733 §18; 1987 c.158 §93; subsection (4) enacted as 1987 c.539 §38; subsection (5) enacted as 1987 c.735 §24]

459.005 to 459.105, 459.205 to 459.245, 459.255 to 459.285, 466.005 to 466.385 or 466.890.

(2) Violation of ORS 466.005 to 466.385 or 466.890 or of any rule or order entered or adopted under those sections is punishable, upon conviction, by a fine of not more than $10,000 or by imprisonment in the county jail for not more than one year, or by both. Each day of violation shall be deemed a separate offense.

(3) Violation of a provision of ORS 466.605 to 466.680 or of any rule or order entered or adopted under ORS 466.605 to 466.680 is punishable, upon conviction, by a fine of not more than $10,000 or by imprisonment in the county jail for not more than one year or both. Each day of violation shall be considered a separate offense.

(4) Any person who knowingly or intentionally violates any provision of ORS 466.705 to 466.835 and 466.895 or the rules adopted under ORS 466.705 to 466.835 and 466.895 shall be subject to a criminal penalty not to exceed $10,000 or imprisonment for not more than one year or both. Each day of violation shall be deemed a separate offense.

(5)(a) Any person who knowingly or wilfully violates any provision of ORS 466.540 to 466.590 or any rule or order adopted or issued under ORS 466.540 to 466.590 shall, upon conviction, be subject to a criminal penalty not to exceed $10,000 or imprisonment for not more than one year, or both.

(b) Each day of violation shall be deemed a separate offense. [Formerly 459.992; (3) enacted by 1985 c.733 §18; 1987 c.158 §93; subsection (4) enacted as 1987 c.539 §38; subsection (5) enacted as 1987 c.735 §24]

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: March 3, 1989
Agenda Item: O
Division: Regional Operations
Section: Enforcement

SUBJECT:

Department Enforcement Policy and Civil Penalty Procedure: Adoption of Proposed Chapter 340, Division 12.

PURPOSE:

Establish the Department's enforcement policy in rule form, to assure consistent and fair enforcement of the Commission's statutes, rules, permits and orders statewide and to enhance predictability in penalty assessments.

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)

DESCRIPTION OF REQUESTED ACTION:

The proposed rules articulate the Department's enforcement policy and clarifies when civil penalties may be issued and in what amounts. Specifically, the proposed rules:

Establish the Department's enforcement policy in rule form.

Describe the enforcement actions available to the Department and how and when they will be used.

Establish classes of violations for each programs. Classes are related to the seriousness of the violation.

Establish a box matrix system for determining base penalties. The box matrix relates the base penalty to class of the violations and its magnitude or extent of deviation from the regulatory mark.

Establish a formula related to mitigating and aggravating factors mandated by ORS 468.130(2). The formula is based on values assigned to the factors and requires the Director to make specific findings in order to assign a given value to a factor. The base penalty and factor calculation determine the amount of a penalty.

AUTHORITY/NEED FOR ACTION:

x	Required by Statute: ORS 468.090-468.140 Enactment Date: 1979, 1987	Attachment D
___	Statutory Authority: _____	Attachment ___
x	Amendment of Existing Rule: CH 340, Div 12	Attachment A
___	Implement Delegated Federal Program: _____	Attachment ___
___	Other:	Attachment ___

___ Time Constraints: (explain)

DEVELOPMENTAL BACKGROUND:

___	Advisory Committee Report/Recommendation	Attachment ___
_x_	Hearing Officer's Report/Recommendations	Attachment E
_x_	Response to Testimony/Comments	Attachment F
_x_	Prior EQC Agenda Items: Agenda Item F, November 4, 1988	Attachment G
___	Other Related Reports/Rules/Statutes:	Attachment ___
___	Supplemental Background Information	Attachment ___

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

In general, there is some disagreement that the proposed rules do not go far enough toward achieving the Department's goals of statewide enforcement consistency and penalty predictability. A summary of key points of controversy as raised by the comments follows. The comments and the Department's responses are contained in Attachment F.

Definition of magnitude of the violation is too vague (page F-2).

Broaden definition of prior violation (page F-3).

Penalties are too low (page F-6).

Too many variables in determining the amount of the penalty (page F-7).

Weight formula factors of prior violations and cause of violation more heavily (page F-8).

Do not use cross facility or cross media violations as prior violations (page F-8).

Limit the number of years the Department will go back in counting prior violations (page F-8).

Do not use prior violations occurring before promulgation of rules for purposes of aggravating the penalty (page F-8).

Eliminate consideration of economic condition (page F-9).

Determine economic condition independent of the penalty determination formula (page F-9).

Do not subtract from a violator's penalty on the basis of cooperativeness or unavoidable accident (page F-10).

PROGRAM CONSIDERATIONS:

The classification system in the proposed rules prioritize violations and allow the Department to focus on more serious violations first. The proposed rules also take into account the Environmental Protection Agency's enforcement response and civil penalty policies within the constraints placed upon the Department by Oregon law.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

The Department outlined alternatives to the Commission in its November 4, 1988, Request for Authorization to Conduct a Public Hearing (Attachment G). The Commission chose to proceed with the Department's recommended alternative to hold a public hearing on the proposed rules. Commission alternatives now include:

Adopt rules as originally proposed;

Adopt rules with proposed changes;

Do not adopt proposed rules and continue using current system;

Incorporate proposed rules into the Clean Air Act State Implementation Plan (SIP);

Do not incorporate the proposed rules into the SIP.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recognizes that the issues raised through the hearings process represent valid concerns and has attempted to make the appropriate changes where possible. It is believed that the proposed rules represent a reasonable approach toward a consistent and predictable enforcement policy. By implementation, areas needing refinement can be identified and then appropriately revised by the Commission. Therefore, the Department recommends the Commission adopt the rules as revised.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The proposed rules were developed in response to a Commission directive to incorporate the Department's enforcement policy into its rules and are consistent with legislative requirements set forth in ORS 468.090 through 468.140.

ISSUES FOR COMMISSION TO RESOLVE:

The major issues to be resolved are identified under "Regulated/Affected Community Constraints/Considerations".

Other issues to be considered for the future are whether there is a need to develop settlement standards and how to address multiple violations under the proposed rules. These issues will be reviewed with the Attorney General's office.

INTENDED FOLLOWUP ACTIONS:

File approved rules with the Secretary of State's office.
Implement rules.
Study affects of rules.

Approved:

Section: Dan A. Kollias

Division: Lydia Bigham

Director: Fred Hansen

Report Prepared By: Yone C. McNally

Phone: 229-5152

Date Prepared: February 16, 1989

YCM
EQCSTF3.3
February 16, 1989

CHAPTER 340, DIVISION 12

ENFORCEMENT PROCEDURE AND CIVIL PENALTIES

POLICY

340-12-026

(1) The goal of enforcement is to:

(a) Obtain and maintain compliance with the Department's statutes, rules, permits and orders;

(b) {To} Protect the public health and the environment;

(c) {To} Deter future violators and violations; and

(d) {To} Ensure an appropriate and consistent statewide enforcement program.

(2) Except as provided by 340-12-040(3), the Department will endeavor by conference, conciliation and persuasion to solicit compliance prior to initiating and following issuance of any enforcement action.

(3) Subject to subsection (2) of this section, the Department shall address all documented violations in order of seriousness at the most appropriate level of enforcement necessary to achieve {compliance} the goals set forth in subsection (1) of this section under the particular circumstances of each violation.

(4) Violators who do not comply with initial enforcement action shall be subject to increasing levels of enforcement until compliance is achieved.

(Statutory Authority: ORS CH 468)

ATTACHMENT A

DEFINITIONS

340-12-030

Unless otherwise required by context, as used in this Division:

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

(2) "Compliance" means meeting the requirements of the Commission's and Department's statutes, rules, permits or orders.

[(2)](3) "Director" means the Director of the Department or the Director's authorized deputies or officers.

[(3)](4) "Department" means the Department of Environmental Quality.

(5) "Documented Violation" means any violation which the Department or other government agency verifies through observation, investigation or data collection.

(6) "Enforcement" means any documented action taken to address a violation.

(7) "Flagrant" means any documented violation where the respondent had actual knowledge of the law and had consciously set out to commit the violation.

(8) "Formal Enforcement" means an administrative action signed by the Director or Regional Operations Administrator or authorized representatives or deputies which is issued to a Respondent on the basis that a violation has been documented, requires the Respondent to take specific action within a specified time frame and states consequences for continued noncompliance {may impose additional requirements.}

(9) "Intentional", when used with respect to a result or to conduct described by a statute, rule, permit, standard or order defining a violation, means that a person acts with a conscious objective to cause the result or to engage in the conduct so described.

Note:
Underlined Material is New
[Bracketed Material is Deleted].

(10) "Magnitude of the Violation" means the extent of a violator's deviation from {a standard established in} the Commission's and Department's statutes, rules, standards, permits or orders, taking into account such factors as, but not limited to, concentration, volume, duration, toxicity, or proximity to human or environmental receptors. Deviations shall be categorized as major, moderate or minor. {follows:

(a) "Major" means a substantial deviation from the standard;

(b) "Moderate" means an significant deviation from the standard;

(c) "Minor" means a slight deviation from the standard.}

[(4)](11) "Order" means:

(a) Any action satisfying the definition given in ORS Chapter 183; or

(b) Any other action so designated in ORS Chapter 454, 459, 466, 467, or 468.

[(5)](12) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the Federal Government and any agencies thereof.

(13) "Prior Violation" means any violation established by payment of a civil penalty, by an order of default, or a stipulated or final order of the Commission {for which a person was afforded the opportunity to contest pursuant to ORS 183.310 through 183.550}.

[(6)](14) "Respondent" means the person to [against] whom a formal enforcement action is issued [civil penalty is assessed] {, or a Notice of Violation or an Order is issued}.

(15) "Risk of Harm" means the level of risk created by the likelihood of exposure, either individual or cumulative, or the actual damage, either

individual or cumulative, caused by a violation to public health or the environment. Risk of harm shall be categorized as major, moderate or minor {separated into three levels:

(a) "Major" means a violation which poses a major risk of adverse affect on or likelihood of exposure to public health or the environment;

(b) "Moderate" means a violation which poses a moderate risk of adverse affect on or likelihood of exposure to public health or the environment;

(c) "Minor" means a violation which poses a minor risk of adverse affect on or likelihood of exposure to public health or the environment}.

(16) "Systematic" means any documented violation which occurs on a regular basis.

[(7)](17) "Violation" means a transgression of any statute, rule, [standard,] order, license, permit, [compliance schedule,] or any part thereof and includes both acts and omissions. Violations shall be categorized as follows:

(a) "Class One or I" means any violation which poses a major risk of harm to public health or the environment, or violation of any compliance schedule contained in a Department permit or a Department or Commission order;

(b) "Class Two or II" means any violation which poses a moderate risk of harm to public health or the environment;

(c) "Class Three or III" means any violation which poses a minor risk of harm to public health or the environment.

(Statutory Authority: ORS CH 468)

CONSOLIDATION OF PROCEEDINGS

340-12-035

Notwithstanding that each and every violation is a separate and distinct offense, and in cases of continuing violation, each day's continuance is a separate and distinct violation, proceedings for the assessment of multiple civil penalties for multiple violations may be consolidated into a single proceeding.

(Statutory Authority: ORS CH 468)

NOTICE OF VIOLATION

340-12-040

(1) Except as provided in subsection (3) of this section, prior to the assessment of any civil penalty the Department shall serve a Notice of Violation upon the respondent. Service shall be in accordance with rule 340-11-097.

(2) A Notice of Violation shall be in writing, specify the violation and state that the Department will assess a civil penalty if the violation continues or occurs after five days following receipt of the notice.

(3) (a) A Notice of Violation shall not be required where the respondent has otherwise received actual notice of the violation not less than five days prior to the violation for which a penalty is assessed.

(b) No advanced notice, written or actual, shall be required under subsections (1) and (2) of this section if:

(A) The act or omission constituting the violation is intentional;

(B) The violation consists of disposing of solid waste or sewage at an unauthorized disposal site;

(C) The violation consists of constructing a sewage disposal system without the Department's permit;

(D) The water pollution, air pollution, or air contamination source would normally not be in existence for five days;

(E) The water pollution, air pollution, or air contamination source might leave or be removed from the jurisdiction of the Department;

(F) The penalty to be imposed is for a violation of ORS 466.005 to 466.385 relating to the management and disposal of hazardous waste or polychlorinated biphenyls, or rules adopted or orders or permits issued pursuant thereto.; or

(G) The penalty to be imposed is for a violation of ORS 468.893(8) relating to the control of asbestos fiber releases into the environment, or rules adopted thereunder.

(Statutory Authority: ORS CH 459, 466 & 468)

ENFORCEMENT ACTIONS

340-12-041

(1) Notice of Noncompliance. An enforcement action which:

(a) Informs a person of the existence of a violation, the actions required to resolve the violations and the consequences of continued noncompliance. The notice may specify a time by which compliance is to be achieved and that the need for formal enforcement action will be evaluated;

(b) Shall be issued under the direction of the appropriate Regional Manager, or Section Manager or authorized representative;

(c) Shall be issued for, but is not limited to, all classes of documented violations.

{(d) Satisfies the requirements of OAR 340-12-026(2)}

(2) Notice of Violation and Intent to Assess a Civil Penalty. A formal enforcement action which:

(a) Is issued pursuant to OAR 340-12-040;

(b) May include a time schedule by which compliance is to be achieved;

(c) Shall be issued by the Regional Operations Administrator;

(d) Shall be issued for, but is not limited to, the first occurrence of a documented Class One violation which is not excepted under OAR 340-12-040(3)(b), or the repeated or continuing occurrence of documented Class Two or Three violations where a Notice of Noncompliance has failed.

{(e) Satisfies the requirements of OAR 340-12-026(2)}

(3) Notice of Violation and Compliance Order. A formal enforcement action which:

(a) Is issued pursuant to ORS 466.190 for violations related to the management and disposal of hazardous waste;

(b) Includes a time schedule by which compliance is to be achieved;

(c) Shall be issued by the Director;

(d) May be issued for, but is not limited to, all classes of documented violations related to hazardous waste which require more than sixty (60) days after the notice to correct.

(4) Notice of Civil Penalty Assessment. A formal enforcement action which:

(a) Is issued pursuant to ORS 468.135, and OAR 340-12-042 and 340-12-045;

(b) Shall be issued by the Director;

(c) May be issued for, but is not limited to, the occurrence of any Class of documented violation excepted by OAR 340-12-040(3), for any class of repeated or continuing {Class One, Two or Three} documented violations or where a person has failed to comply with a Notice of Violation and Intent to Assess a Civil Penalty or Order.

(5) Enforcement Order. A formal enforcement action which:

(a) Is issued pursuant to ORS Chapters 183, 454, 459, 466, 467 or 468;

(b) May be in the form of a Commission or Department Order, or a Stipulated Final Order;

(A) Commission Orders shall be issued by the Commission, or the Director on behalf of the Commission;

(B) Department Orders shall be issued by the Director;

(C) Stipulated Final Orders:

(i) May be negotiated between the Department and the subject party;

(ii) Shall be signed by the Director on behalf of the Department and the authorized representative of the subject party; and

(iii) Shall be approved by the Commission or by the Director on behalf of the Commission.

(c) May be issued for, but is not limited to, Class One or Two violations.

(6) The formal enforcement actions described in subsection (1) through (5) of this section in no way limit the Department or Commission from seeking legal or equitable remedies in the proper court as provided by ORS Chapters 454, 459, 466, 467 and 468.

(Statutory Authority: ORS CHS 454, 459, 466, 467 and 468)

CIVIL PENALTY SCHEDULE MATRICES

340-12-042

In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to the Commission's or Department's statutes, regulations, permits or orders by service of a written notice of assessment of civil penalty upon the respondent. The amount of any civil penalty shall be determined through the use of the following matrices in conjunction with the formula contained in OAR 340-12-045:

(1)

$10,000 Matrix
← Magnitude of Violation

Class of Violation	Major	Moderate	Minor
Class I	$5,000	$2,500	$1,000
Class II	$2,000	$1,000	$500
Class III	$500	$250	$100

No civil penalty issued by the Director pursuant to this matrix shall be less than fifty dollars ($50) or more than ten thousand dollars ($10,000) for each day of each violation. This matrix shall apply to the following types of violations:

(a) Any violation related to air quality statutes, rules, permits or orders, except for residential open burning and field burning;

(b) Any violation related to of ORS 468.875 to 468.899 relating to asbestos abatement projects;

(c) water quality statutes, rules, permits or orders, except for violations of ORS 164.785(1) relating to the placement of offensive substances into waters of the state;

(d) Any violation related to underground storage tanks statutes, rules, permits or orders, except for failure to pay a fee due and owing under ORS 466.785 and 466.795;

(e) Any violation related to hazardous waste management statutes, rules, permits or orders, except for violations of ORS 466.890 related to damage to wildlife;

(f) Any violation related to oil and hazardous material spill and release statutes, rules and orders, except for negligent or intentional oil spills;

(g) Any violation related to polychlorinated biphenyls management and disposal statutes; and

(h) Any violation ORS 466.540 to 466.590 related to remedial action statutes, rules, agreements or orders.

(2) Persons causing oil spills through an intentional or negligent act shall incur a civil penalty of not less then one hundred dollars ($100) or more than twenty thousand dollars ($20,000). The amount of the penalty shall be determined by doubling the values contained in the matrix in subsection (a) of this rule in conjunction with the formula contained in 340-12-045.

(3)

$500 Matrix

← Magnitude of Violation

Class of Violation	Major	Moderate	Minor
Class I	$400	$300	$200
Class II	$300	$200	$100
Class III	$200	$100	$50

No civil penalty issued by the Director pursuant to this matrix shall be less than fifty dollars ($50) or more than five hundred dollars ($500) for each day of each violation. This matrix shall apply to the following types of violations:

(a) Any violation related to residential open burning;

(b) Any violation related to noise control statutes, rules, permits and orders;

(c) Any violation related to on-site sewage disposal statutes, rules, permits, licenses and orders;

(d) Any violation related to solid waste statutes, rules, permits and orders; and

(e) Any violation related to waste tire statutes, rules, permits and orders;

(f) Any violation of ORS 164.785 relating to the placement of offensive substances into the waters of the state or on to land.

(Statutory Authority: ORS Ch. 454, 459, 466, 467 & 468)

CIVIL PENALTY DETERMINATION PROCEDURE [Aggravating and Mitigating Factors]

340-12-045

(1) When determining the amount of civil penalty to be assessed for any violation, the Director shall apply the following procedures:

(a) Determine the class of violation and the magnitude of each violation;

(b) Choose the appropriate base penalty established by the matrices of 340-12-042 based upon the above finding;

(c) Starting with the base penalty (BP), determine the amount of penalty through application of the formula BP + [(.1 x BP)(P + H + E + O + R + C)] where:

(A) "P" is whether the respondent has any prior violations of statutes, rules, orders and permits pertaining to environmental quality or pollution control. The values for "P" and the finding which supports each are as follows:

(i) 0 if no prior violations or insufficient information on which to base a finding;

(ii) 1 if the prior violation is an unrelated Class Three;

(iii) 2 if the prior violation(s) is an unrelated Class Two, two unrelated Class Threes or an identical Class Three;

(iv) 3 if the prior violation(s) is an unrelated Class One, three unrelated Class Threes or two identical Class Threes;

(v) 4 if the prior violations are two unrelated Class Twos, four unrelated Class Threes, an identical Class Two or three identical Class Threes;

(vi) 5 if the prior violations are five unrelated Class Threes or four identical Class Threes;

(vii) 6 if the prior violations are two or more unrelated Class Ones, three or more unrelated Class Twos, six or more unrelated Class Threes, an identical Class One, two identical Class Twos or five identical Class Threes;

(viii) 8 if the prior violations are two or more identical Class Ones, three or more identical Class Twos, or six or more identical Class Threes.

(B) "H" is past history of the respondent taking all feasible steps or procedures necessary or appropriate to correct any prior violations. The values for "H" and the finding which supports each are as follows:

(i) -2 if violator took all feasible steps to correct any violation;

(ii) 0 if there is no prior history or insufficient information on which to base a finding;

(iii) 1 if violator took some, but not all, feasible steps to correct a Class Two or Three violation;

(iv) 2 if violator took some, but not all, feasible steps to correct a Class One violation;

(v) 3 no action to correct prior violations.

(C) "E" is the economic condition of the respondent. The values for "E" and the finding with supports each are as follows:

(i) -4 {-2} if economic condition is poor {or the respondent gained no economic benefit through noncompliance};

(ii) 0 if there is insufficient information on which to base a finding or the respondent gained no economic condition through noncompliance;

(iii) 2 if {economic condition is good or} the respondent gained a minor to moderate economic benefit through noncompliance;

(iv) 4 if the respondent gained a significant economic benefit through noncompliance.

(D) "O" is whether the violation was a single occurrence or was repeated or continuous during the period resulting in the civil penalty assessment. The values for "O" and the finding which supports each are as follows:

(i) 0 if single occurrence;

(ii) 2 if repeated or continuous.

(E) "R" is whether the violation resulted from an unavoidable accident, or a negligent or intentional act of the respondent. The values for "R" and the finding which supports each are as follows:

(i) -2 if unavoidable accident;

(ii) 0 if insufficient information to make any other finding;

(iii) 2 {1} if negligent;

(iv) 4 {3} if grossly negligent;

(v) 6 {4} if intentional;

(vi) 10 {6} if flagrant.

(F) "C" is the violator's cooperativeness in correcting the violation. The values for "C" and the finding which supports each are as follows:

(i) -2 if violator is cooperative;

(ii) 0 if violator is neither cooperative nor uncooperative or there is insufficient information on which to base a finding;

(iii) 2 if violator is uncooperative.

[(1) In establishing the amount of a civil penalty to be assessed, the Director may consider the following factor:

(a) Whether the respondent has committed any prior violation, of statutes, rules, orders or permits pertaining to environmental quality or pollution control regardless of whether or not any administrative, civil, or criminal proceeding was commenced therefore;

(b) The past history of the respondent in taking all feasible steps or procedures necessary or appropriate to correct any violation;

(c) The economic and financial conditions of the respondent;

(d) The gravity and magnitude of the violation;

(e) Whether the violation was repeated or continuous;

(f) Whether a cause of the violation was an unavoidable accident, or negligence, or an intentional act of the respondent;

(g) The respondent's cooperativeness and efforts to correct the violation for which the penalty is to be assessed; or

(h) Any relevant rule of the commission.]

(2) In addition to the factors listed in subsection (1) of this rule, the Director may consider any other relevant rule of the Commission and shall state the affect the consideration had on the penalty. [imposing a penalty subsequent to a hearing,] On review, the Commission shall consider the factors contained in subsection (1) of this rule and any other relevant rule of the Commission [(a) through (h)].

[(3) Unless the issue is raised in respondent's answer to the written notice of assessment of civil penalty, the Commission may presume that the economic and financial conditions of respondent would allow imposition of the penalty assessed by the Director. At the hearing, the burden of proof and the burden of coming forward with evidence regarding the respondent's economic and financial condition shall be upon the respondent.]

(Statutory Authority: ORS CH 468)

WRITTEN NOTICE OF ASSESSMENT OF CIVIL PENALTY; WHEN PENALTY PAYABLE

340-12-046

(1) A civil penalty shall be due and payable when the respondent is served a written notice of assessment of civil penalty signed by the Director. Service shall be in accordance with rule 340-11-097.

(2) The written notice of assessment of civil penalty shall substantially follow the form prescribed by rule 340-11-098 for a notice of

opportunity for a hearing in a contested case, and shall state the amount of the penalty or penalties assessed.

(3) The rules prescribing procedure in contested case proceedings contained in Division 11 shall apply thereafter.

(Statutory Authority: ORS CH 468)

COMPROMISE OR SETTLEMENT OF CIVIL PENALTY BY DIRECTOR

340-12-047

Any time subsequent to service of the written notice of assessment of civil penalty, the Director is authorized to seek to compromise or settle any unpaid civil penalty which the Director deems appropriate. Any compromise or settlement executed by the Director shall not be final until approved by the Commission.

(Statutory Authority: ORS CH 468)

STIPULATED PENALTIES

340-12-048

Nothing in OAR Chapter 340 Division 12 shall affect the ability of the Commission or Director to include stipulated penalties in a Stipulated Final Order or any agreement issued under ORS 466.570 or 466.577, of up to $10,000 per day for each violation of such orders or agreements issued pursuant to ORS Chapters 466 or 468, or of up to $500 per day for each violation of such orders or agreements issued pursuant to ORS Chapters 454, 459 or 467.

(Statutory Authority: ORS CH 454, 459, 466, 467 & 468)

AIR QUALITY CLASSIFICATION OF VIOLATIONS [Air Quality Schedule of Civil Penalties]

340-12-050

Violations pertaining to air quality shall be classified as follows:

(1) Class One:

(a) Exceeding an allowable emission level such that an ambient air quality standard is {potentially} exceeded.

(b) Exceeding an allowable emission level such that emissions of potentially dangerous amounts of a toxic or otherwise hazardous substance are emitted.

(c) Causing emissions that are potentially a hazard to public safety;

(d) Failure to comply with Emergency Action Plans or allowing excessive emissions during emergency episodes;

(e) Constructing or operating a source without an Air Contaminant Discharge Permit;

(f) Modifying a source with an Air Contaminant Discharge Permit without first notifying and receiving approval from the Department;

(g) Violation of a compliance schedule in a permit;

(h) Violation of a work practice requirement which results in or creates the likelihood for public exposure to asbestos or release of asbestos into the environment;

(i) Storage of friable asbestos material or asbestos-containing waste material from an asbestos abatement project which results in or creates the likelihood for public exposure to asbestos or release of asbestos into the environment;

Note:
Underlined Material is New
[Bracketed Material is Deleted].

(j) Visible emissions of asbestos during an asbestos abatement project or during collection, processing, packaging, transportation, or disposal of asbestos-containing waste material;

(k) Violation of a disposal requirement for asbestos-containing waste material which results in or creates the likelihood of exposure to asbestos or release of asbestos into the environment;

(l) Advertising to sell, offering to sell or selling an uncertified wood stove;

(m) Illegal open burning of materials prohibited by OAR 340-23-042(2);

(n) Violation of a Commission or Department Order;

(o) Any other violation related to air quality which poses a major risk to public health or the environment.

(2) Class Two:

(a) Allowing discharges of a magnitude that, though not actually likely to cause an ambient air violation, may have endangered citizens;

(b) Exceeding emission limitations in permits or air quality rules;

(c) Exceeding opacity limitations in permits or air quality rules;

(d) Violating standards for fugitive dust, particulate deposition, or odors in permits or air quality rules;

(e) Illegal open burning, other than field burning, not otherwise classified;

(f) Illegal residential open burning;

(g) Failure to report upset or breakdown of air pollution control equipment;

(h) Violation of a work practice requirement for asbestos abatement projects which are not likely to result in public exposure to asbestos or release of asbestos into the environment;

(i) Improper storage of friable asbestos material or asbestos-containing waste material from an asbestos abatement project which is not likely to result in public exposure to asbestos or release of asbestos into the environment;

(j) Violation of a disposal requirement for asbestos-containing waste material which is not likely to result in public exposure to asbestos or release of asbestos to the environment;

(k) Conduct of an asbestos abatement project by a contractor not licensed as an asbestos abatement contractor;

(l) Failure to provide notification of an asbestos abatement project;

(m) Failure to display permanent labels on a certified woodstove;

(n) Any alteration of a certified woodstove permanent label;

(o) Any other violation related to air quality which poses a moderate risk of harm to public health or the environment.

(3) Class Three:

(a) Failure to file a Notice of Construction or permit application;

(b) Failure to report as a condition of a compliance order or permit;

(c) Any violation of a hardship permit for open burning of yard debris;

(d) Improper notification of an asbestos abatement project;

(e) Failure to comply with asbestos abatement certification, licensing, certification, or accreditation requirements not elsewhere classified;

(f) Failure to display a temporary label on a certified wood stove;

(g) Failure to notify Department of an emission limit violation on a timely basis;

(h) Failure to submit annual or monthly reports required by rule or permit;

(i) Any other violation related to air quality which poses a minor risk of harm to public health or the environment.

[In addition to any liability, duty, or other penalty provided by law, the Director, or the director of a regional air quality control authority, may assess a civil penalty for any violation pertaining to air quality by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(1) Not less than one hundred dollars ($100) nor more than ten thousand dollars ($10,000) for violation of an order of the Commission, Department, or regional air quality control authority.

(2) Not less than fifty dollars ($50) nor more than ten thousand dollars ($10,000) for:

(a) Violating any condition of any Air Contaminant Discharge Permit, Hardship Permit, Letter Permit, Indirect Source Permit, or variance;

(b) Any violation which causes, contributes to, or threatens the emission of any air contaminant into the outdoor atmosphere;

(c) Operating any air contaminant source without first obtaining an Air Contaminant Discharge Permit; or

(d) Any unauthorized open burning; or

(e) Any violation of the asbestos abatement project statutes ORS 468.875 to 468.899 or rules adopted or orders issued pursuant thereto pertaining to asbestos abatement.

(3) Not less than twenty-five dollars ($25) nor more than ten thousand dollars ($10,000) for any other violation.]

(Statutory Authority: ORS CH 468)

NOISE CONTROL CLASSIFICATION OF VIOLATIONS [Noise Control Schedule of Civil Penalties]

340-12-052

Violations pertaining to noise control shall be classified as follows:

(1) Class One:

{(a) Ongoing, daily violations that exceed daytime or night time ambient standards by ten (10) decibels or more;

(b) Frequent, but not ongoing, violations of nighttime or daytime ambient standards by ten (10) decibels or more;}

(a) Violations that exceed daytime or night time ambient standards by ten (10) decibels or more;

(b) Exceeding the ambient degradation rule by five (5) decibels or more;

(c) Significant noise emission standards violations of either duration or magnitude due to sources or activities not likely to remain at the site of the violation;

(d) Any violation of a Commission or Department order or variances; or

(f) {Any other violation which poses a substantial risk of creating a serious violation of the Department's noise standards} Any other violation related to noise control which poses a major risk of harm to public health or the environment.

(2) Class Two:

(a) Violations of ambient standards that are not subject to the Class One category and generally exceeding the standards by three (3) decibels or more;

(b) Violations of emission standards and other regulatory requirements;

(c) {Any other violation which poses a risk of creating a moderate violation of the Department's noise standards} Any other violation related to noise control which poses a moderate risk of harm to public health or the environment.

(3) Class Three:

(a) Activities that threaten or potentially threaten to violate rules and standards;

(b) Failure to meet administrative requirements that have no direct impact on the public health, welfare, or environment;

(c) Single violations of noise standards that are not likely to be repeated;

(d) {Any other violation of the ambient noise standards not within the Class One or Two categories} Any other violation of related to noise control which poses a minor risk of harm to public health or the environment.

[In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to noise control by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(1) Not less than one hundred dollars ($100) nor more than five hundred dollar ($500) for violation of an order of the Commission or Department.

(2) Not less than fifty dollar ($50) nor more than five hundred dollars ($500) for any violation which causes, substantially contributes to, or will probably cause:

(a) The emission of noise in excess of levels established by the Commission for any category of noise emission source; or

(b) Ambient noise at any type of noise sensitive real property to exceed the levels established therefor by the Commission.

(3) Not less than twenty-five dollars ($25) nor more than five hundred dollars ($500) for any other violation.]

(Statutory Authority: ORS CH 467 & 468)

WATER QUALITY CLASSIFICATION OF VIOLATIONS [Water Pollution Schedule of Civil Penalties]

340-12-055

Violations pertaining to water quality shall be classified as follows:

(1) Class One:

(a) Any violation of a Commission or Department Order;

(b) Any intentional unauthorized discharge{or negligent oil spill};

(c) Any negligent spill which poses a major risk or harm to public health or the environment;

(d) Any waste discharge permit limitation violation which poses a major risk of harm to public health or the environment;

(e) Any {unpermitted} discharge of waste to surface waters without first obtaining a National Pollutant Discharge Elimination System Permit;

(f) Any failure to immediately notify of spill or upset condition which results in an unpermitted discharge to public waters;

(g) Any violation of a compliance schedule in a permit;

(h) Any other violation related to water quality which poses a major risk of harm to public health or the environment.

(2) Class Two:

(a) Any waste discharge permit limitation violation which poses a moderate risk of harm to public health or the environment;

(b) Any operation of a disposal system without first obtaining a Water Pollution Control Facility Permit;

(c) Any failure to submit a report or plan as required by permit or license;

(d) Any other violation related to water quality which poses a moderate risk of harm to public health or the environment.

(3) Class Three:

(a) Any failure to submit a discharge monitoring report (DMR) on time;

(b) Any failure to submit a completed DMR;

(c) Any violation of a waste discharge permit limitation which poses a minor risk of harm to public health or the environment;

(d) Any other violation related to water quality which poses a minor risk of harm to public health or the environment.

[In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation relating to water pollution by service of written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(1) Not less than one hundred dollars ($100) nor more than ten thousand dollars ($10,000) for any violation of an order of the Commission or Department.

(2) Not less than fifty dollars ($50) nor more than ten thousand dollars ($10,000) for:

(a) Violating any condition of any National Pollutant Discharge Elimination System (NPDES) Permit or Water Pollution Control Facilities (WPCF) Permit;

(b) Any violation which causes, contributes to, or threatens the discharge of a waste into any waters of the state or causes pollution of any waters of the state; or

(c) Any discharge of waste water or operation of a disposal system without first obtaining a National Pollutant Discharge Elimination System (NPDES) Permit or Water Pollution Control Facilities (WPCF) Permit.

(3) Not less than five hundred dollars ($500) nor more than ten thousand dollars ($10,000) for failing to immediately clean up an oil spill.

(4) Not less than twenty-five dollars ($25) nor more than ten thousand dollars ($10,000) for any other violation.

(5) (a) In addition to any penalty which may be assessed pursuant to sections (1) through (4) of this rule, any person who intentionally causes or permits the discharge of oil into the waters of the state shall incur a civil penalty of not less than one thousand dollars ($1,000) nor more than twenty thousand dollars ($20,000) for each violation.

(b) In addition to any penalty which may be assessed pursuant to sections (1) through (4) of this rule, any person who negligently causes or permits the discharge of oil into the waters of the state shall incur a civil penalty of not less than five hundred dollars ($500) nor more than twenty thousand dollars ($20,000) for each violation.]

(Statutory Authority: ORS CH 468)

Note:
Underlined Material is New
[Bracketed Material is Deleted].

ATTACHMENT A

ON-SITE SEWAGE DISPOSAL CLASSIFICATION OF VIOLATIONS [On-Site Sewage Disposal Systems Schedule of Civil Penalties]

340-12-060

Violations pertaining to On-Site Sewage Disposal shall be classified as follows:

(1) Class One:

(a) Performing, advertising or representing one's self as being in the business of performing sewage disposal services without first obtaining and maintaining a current sewage disposal service license from the Department, except as provided by statute or rule;

(b) Installing or causing to be installed an on-site sewage disposal system or any part thereof, without first obtaining a permit from the Agent;

(c) Disposing of septic tank, holding tank, chemical toilet, privy or other treatment facility contents in a manner or location not authorized by the Department;

(d) Installing or causing to be installed a nonwater-carried waste disposal facility without first obtaining written approval from the Agent therefor;

(e) Operating or using an on-site sewage disposal system which is failing by discharging sewage or effluent onto the ground surface or into surface public waters;

(f) Failing to connect all plumbing fixtures from which sewage is or may be discharged to a Department approved system;

(g) Any violation of a Commission or Department order;

Note:
Underlined Material is New
[Bracketed Material is Deleted].

(h) Any other violation related to on-site sewage disposal which poses a major risk of harm to public health, welfare, safety or the environment.

(2) Class Two:

(a) Installing or causing to be installed an on-site sewage disposal system, or any part thereof, which fails to meet the requirements for satisfactory completion within thirty (30) days after written notification or posting of a Correction Notice at the site;

(b) Operating or using a nonwater-carried waste disposal facility without first obtaining a letter of authorization from the Agent therefore;

(c) Operating or using a newly constructed, altered or repaired on-site sewage disposal system, or part thereof, without first obtaining a Certificate of Satisfactory Completion from the Agent, except as provided by statute or rule;

(d) As a licensed sewage disposal service worker, provides any sewage disposal service in violation of the rules of the Commission;

(e) Failing to obtain an authorization notice from the agent prior to affecting change to a dwelling or commercial facility that results in the potential increase in the projected peak sewage flow from the dwelling or commercial facility in excess of the sewage disposal systems peak design flow.

(f) Any other violation related to on-site sewage disposal which poses a moderate risk of harm to public health, welfare, safety or the environment.

(3) Class Three:

(a) In situations where the sewage disposal system design flow is not exceeded, placing an existing system into service, or changing the dwelling or type of commercial facility, without first obtaining an authorization notice from the agent, except as otherwise provided by rule or statute;

(b) Any other violation related to on-site sewage disposal which poses a minor risk of harm to public health, welfare, safety or the environment.

[In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to on-site sewage disposal activities by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(1) Not less than one hundred dollars ($100) nor more than five hundred dollars ($500) upon any person who:

(a) Violates an order of the Commission;

(b) Performs, or advertises or represents one's self as being in the business of performing, sewage disposal services, without obtaining and maintaining a current license form the Department, except as provided by statute or rule;

(c) Installs or causes to be installed an on-site sewage disposal system or any part thereof, without first obtaining a permit from the Agent;

(d) Fails to obtain a permit from the Agent within three days after beginning emergency repairs on an on-site sewage disposal system.

(e) Disposes of septic tank, holding tank, chemical toilet, privy or other treatment facility sludges in a manner or location not authorized by the Department;

(f) Connects or reconnects the sewage plumbing form any dwelling or commercial facility to an existing system without first obtaining an Authorization Notice from the Agent;

(g) Installs or causes to be installed a nonwater-carried waste disposal facility without first obtaining written approval from the Agent therefor;

(h) Operates or uses an on-site sewage disposal system which is failing by discharging sewage or septic tank effluent onto the ground surface or into surface public waters; or

(i) As a licensed sewage disposal service worker, performs any sewage disposal service work in violation of the rules of the Department.

(2) Not less than twenty-five dollars ($25) nor more than five hundred dollars ($500) upon any person who:

(a) Installs or causes to be installed an on-site sewage disposal system, or any part thereof, which fails to meet the requirements for satisfactory completion within thirty (30) days after written notification or posting of a Correction Notice at the site;

(b) Operates or uses a nonwater-carried waste disposal facility without first obtaining a letter of authorization from the Agent therefore;

(c) Operates or uses a newly constructed, altered or repaired on-site sewage disposal system, or part thereof, without first obtaining a Certificate of Satisfactory Completion from the Agent, except as provided by statute or rule;

(d) Fails to connect all plumbing fixtures from which sewage is or may be discharged to a Department approved system; or

(e) Commits any other violation pertaining to on-site sewage disposal systems.]

(Statutory Authority: ORS CH 468)

SOLID WASTE MANAGEMENT CLASSIFICATION OF VIOLATIONS [Solid Waste Management Schedule of Civil Penalties]

340-12-065

Violations pertaining to the management and disposal of solid waste shall be classified as follows:

(1) Class One:

(a) Establishing, expanding, maintaining or operating a disposal site without first obtaining a permit;

(b) Any violation of the freeboard limit or actual overflow of a sewage sludge or leachate lagoon;

(c) Any violation of the landfill methane gas concentration standards;

(d) Any impairment of the beneficial use(s) of an aquifer beyond the solid waste boundary or an alternative boundary specified by the Department;

(e) Any deviation from the approved facility plans which results in a potential or actual safety hazard, public health hazard or damage to the environment;

(f) Any failure to properly maintain gas or leachate control facilities;

(g) Any failure to comply with the requirements for immediate and final cover;

(h) Violation of a Commission or Department Order;

(i) Any other violation related to the management and disposal of solid waste which poses a major risk to public health or the environment.

(2) Class Two:

(a) Any failure to comply with the required cover schedule;

(b) Any failure to comply with working face size limits;

(c) Any failure to adequately control access;

(d) Any failure to adequately control surface water drainage;

(e) Any failure to adequately protect and maintain monitoring wells;

(f) Any failure to properly collect and analyze required water or gas samples;

(g) Any failure to comply with a compliance schedule contained in a solid waste disposal closure permit;

(h) Any other violation related to the management and disposal of solid waste which poses a moderate risk of harm to public health or the environment.

(3) Class Three:

(a) Any failure to submit self-monitoring reports in a timely manner;

(b) Any failure to submit a permit renewal application in a timely manner;

(c) Any failure to submit required permit fees in a timely manner;

(d) Any failure to post required signs or failure to post adequate signs;

(e) Any failure to adequately control litter;

(f) Any failure to comply with recycling requirements;

(g) Any other violation related to the management and disposal of solid waste which poses a minor risk of harm to public health or the environment.

[In addition to any liability, duty or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to solid waste management by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(1) Not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for violation of an order of the Commission or Department.

(2) Not less than fifty dollars ($50) nor more than five hundred dollars ($500) for:

(a) Disposing of solid waste at an unauthorized site;

(b) Establishing, operating or maintaining a solid waste disposal site without first obtaining a Solid Waste Disposal Permit;

(c) Violating any condition of any Solid Waste Disposal Permit or variance;

(d) Disposing of waste tires at an unauthorized site; or

(e) Establishing, operating or maintaining a waste tire storage site without first obtaining a Waste Tire Storage Permit.

(3) Not less than twenty-five ($25) nor more than five hundred dollars ($500) for any other violation.]

(Statutory Authority: ORS CH 459)

WASTE TIRE MANAGEMENT CLASSIFICATION OF VIOLATIONS

340-12-066

Violations pertaining to the storage, transportation and management of waste tires shall be classified as follows:

(1) Class One:

(a) Establishing, expanding or operating a waste tire storage site without first obtaining a permit;

(b) Disposing of waste tires at an unauthorized site;

(c) Any violation of the compliance schedule or fire safety requirements of a waste tire storage site permit;

(d) Performing, or advertising or representing one's self as being in the business of performing services as a waste tire carrier without obtaining and maintaining a current permit form the Department, except as provided by statute or rule;

(e) Hiring or otherwise using an unpermitted waste tire carrier to transport waste tires, except as provided by statute or rule;

(f) Any violation of a Commission or Department order;

(g) Any other violation related to the storage, transportation or management of waste tires which poses a major risk of harm to public health or the environment.

(2) Class Two:

(a) Any violation of a waste tire storage site or waste tire carrier permit other than a specified Class One or Class Three violation;

(b) Any other violation related to the storage, transportation or management of waste tires which poses a moderate risk of harm to public health or the environment.

(3) Class Three:

(a) Any failure to submit required annual reports in a timely manner;

(b) Any failure to keep required records on use of vehicles;

(c) Any failure to post required signs;

(d) Any failure to submit a permit renewal application in a timely manner;

(e) Any failure to submit permit fees in a timely manner;

(f) Any other violation related to the storage, transportation or management of waste tires which poses a minor risk of harm to public health or the environment.

(Statutory Authority: ORS CH 459)

UNDERGROUND STORAGE TANK CLASSIFICATION OF VIOLATIONS [Underground Storage Tank Schedule of Civil Penalties]

340-12-067

Violations pertaining to Underground Storage Tanks shall be classified as follows:

(1) Class One:

(a) Any failure to promptly report a release from an underground storage tank;

(b) Any failure to initiate the cleanup of a release from an underground storage tank;

(c) Placement of a regulated material into an unpermitted underground storage tank;

(d) Installation of an underground storage tank in violation of the standards or procedures adopted by the Department;

(e) Violation of a Commission or Department Order;

(f) Providing installation, retrofitting, decommissioning or testing services on an underground storage tank without first registering or obtaining an underground storage tank service providers license;

(g) Providing supervision of the installation, retrofitting, decommissioning or testing of an underground storage tank without first obtaining an underground storage tank supervisors license;

(h) Any other violation related to underground storage tanks which poses a major risk of harm to public health and the environment.

(2) Class Two:

(a) Failure to prevent a release;

(b) Failure to conduct required underground storage tank monitoring and testing activities;

(c) Failure to conform to operational standards for underground storage tanks and leak detection systems;

(d) Any failure to obtain a permit prior to the installation or operation of an underground storage tank;

(e) Failure to properly decommission an underground storage tank;

(f) Providing installation, retrofitting, decommissioning or testing services on an regulated underground storage tank that does not have a permit;

(g) Failure by a seller or distributor to obtain the tank permit number prior to depositing product into the underground storage tank or failure to maintain a record of the permit numbers;

(h) Allowing the installation, retrofitting, decommissioning or testing by any person not licensed by the department;

(i) Any other violation related to underground storage tanks with poses a moderate risk of harm to public health or the environment.

(3) Class Three:

(a) Failure to submit an application for a new permit when an underground storage tank is acquired by a new owner;

(b) Failure of a tank seller or product distributor to notify a tank owner or operator of the Department's permit requirements;

(c) Decommissioning an underground storage tank without first providing written notification to the Department;

(d) Failure to provide information to the Department regarding the contents of an underground storage tank;

(e) Failure to maintain adequate decommissioning records;

(f) Failure by the tank owner to provide the permit number to persons depositing product into the underground storage tank;

(g) Any other violation related to underground storage tanks which poses a minor risk of harm to public health and the environment.

(4) Whenever an underground storage tank fee is due and owing under ORS 466.785 or 466.795, the Director may issue a civil penalty not less twenty-five dollars ($25) nor more than one hundred dollars ($100) for each day the fee is due and owing.

[In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to management of or releases from underground storage tanks by service of a written Notice of Assessment of Civil Penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(1) Not less than two thousand five hundred dollars ($2,500) nor more than ten thousand dollars ($10,000) for each day of the violation upon any person owning or having control over a regulated substance who fails to immediately cleanup releases as required by ORS 466.705 through ORS 466.995 and OAR 340 - Division 150.

(2) Not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000) for each day of the violation upon any person owning or having control over a regulated substance who fails to immediately report all releases of a regulated substance as required by ORS 466.705 through ORS 466.995 and OAR 340 - Division 150.

(3) Not less than one hundred dollars ($100) nor more than ten thousand dollars (10,000) per day of the violation upon any person who:

(a) Violates an order of the Commission or the Department; or ,

(b) Violates any underground storage tank rule or ORS 466.705 through ORS 466.995.]

(Statutory Authority: ORS Chapter 466)

Note:
Underlined Material is New
[Bracketed Material is Deleted].

HAZARDOUS WASTE MANAGEMENT AND DISPOSAL CLASSIFICATION OF VIOLATIONS

[Hazardous Waste Management Schedule of Civil Penalties]

340-12-068

Violations pertaining to the management and disposal of hazardous waste shall be classified as follows:

(1) Class One:

(a) Failure to carry out waste analysis for a waste stream or to properly apply "knowledge of process";

(b) Operating a storage, treatment or disposal facility (TSD) without a permit or without meeting the requirements of OAR 340-105-010(2)(a);

(c) Failure to comply with the ninety (90) day storage limit by a fully regulated generator where there is a gross deviation from the requirement;

(d) Shipment of hazardous waste without a manifest;

(e) Systematic failure of a generator to comply with the manifest system {or substantial deviation from the manifest} requirements;

(f) Failure to satisfy manifest discrepancy reporting requirements;

(g) Failure to prevent the unknown entry or prevent the possibility of the unauthorized entry of persons or livestock into the waste management area of a TSD facility;

(h) Failure to properly handle ignitable, reactive, or incompatible wastes as required under 40 CFR Part 264 and 265.17(b)(1), (2), (3), (4) and (5);

Note:
Underlined Material is New
[Bracketed Material is Deleted].

(i) {Disposal of hazardous waste in a regulated quantity at a non-regulated treatment, storage or disposal facility} Illegal disposal of hazardous waste;

(j) {Improper} Disposal of waste in violation of the land disposal restrictions;

(k) Mixing, solidifying, or otherwise diluting waste to circumvent land disposal restrictions;

(l) Incorrectly certifying a waste for disposal/treatment in violation of the land disposal restrictions;

(m) Failure to submit notifications/certifications as required by land disposal restrictions;

(n) Failure to comply with the tank certification requirements;

(o) Failure of an owner/operator of a TSD facility to have closure and/or post closure plan and/or cost estimates;

(p) Failure of an owner/operator of a TSD facility to retain an independent registered professional engineer to oversee closure activities and certify conformance with an approved closure plan;

(q) Failure to establish or maintain financial assurance for closure and/or post closure care;

(r) Systematic failure to conduct {inspections as required by 40 CFR 265.15} unit specific and general inspections as required or to correct hazardous conditions discovered during those inspections;

(s) Failure to follow emergency procedures contained in response plan when failure could result in serious harm;

(t) Storage of hazardous waste in containers which are leaking or present a threat of release;

(u) Systematic failure to follow container labeling requirements or lack of knowledge of container contents;

(v) Failure to label hazardous waste containers where such failure could cause an inappropriate response to a spill or leak and substantial harm to public health or the environment;

(w) Failure to date containers with accumulation date;

(x) {Systematic} Failure to comply with the export requirements;

(y) Violation of a Department or Commission order;

(z) Violation of a Final Status Hazardous Waste Management Permit;

(aa) Systematic failure to comply with OAR 340-102-041, generator quarterly reporting requirements;

(bb) Systematic failure to comply with OAR 340-104-075, Treatment, Storage, Disposal and Recycling facility periodic reporting requirements;

(cc) Construct or operate a new treatment, storage or disposal facility without first obtaining a permit;

(dd) Installation of inadequate groundwater monitoring wells such that {you cannot immediately detect} detection of hazardous waste or hazardous constituents that migrate from the waste management area cannot be immediately be detected;

(ee) Failure to install any groundwater monitoring wells;

(ff) Failure to develop and follow a groundwater sampling and analysis plan using proper techniques and procedures;

(gg) Any other violation related to the generation, management and disposal of hazardous waste which poses a major risk of harm to public health or the environment.

Note:
Underlined Material is New
[Bracketed Material is Deleted].

(2) Any other violation pertaining to the generation, management and disposal of hazardous waste which is either not specifically listed as, or otherwise meets the criteria for, a Class One violation is considered a Class Two violation.

[In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to hazardous waste management by service of a written Notice of Assessment of Civil Penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(1) Not less than two thousand five hundred dollars ($2,500) nor more than ten thousand dollars ($10,000) for each day of the violation upon any person who:

(a) Establishes, constructs or operates a geographical site in which or upon which hazardous wastes are disposed without first obtaining a license from the Commission;

(b) Disposes of a hazardous waste at any location other than at a licensed hazardous waste disposal site;

(c) Fails to immediately collect, remove or treat a hazardous waste or substance as required by ORS 466.205 and OAR Chapter 340 division 108;

(d) Is an owner or operator of a hazardous waste surface impoundment, landfill, land treatment or waste pile facility and fails to comply with the following:

(A) The groundwater monitoring and protection requirements of **Subpart F of 40 CFR Part 264 or Part 265;**

(B) The closure plan requirements of **Subpart G of 40 CFR Part 264 or Part 265;**

(C) The post-closure plan requirements of **Subpart G of 40 CFR Part 264 or Part 265;**

(D) The closure cost estimate requirements of **Subpart H of 40 CFR Part 264 or Part 265;**

(E) The post-closure cost estimate requirements of **Subpart H of 40 CFR Part 264 or Part 265;**

(F) The financial assurance for closure requirements of **Subpart H of 40 CFR Part 264 or Part 265;**

(G) The financial assurance for post-closure care requirements of **Subpart H or 40 CFR Part 264 or Part 265;** or

(H) The financial liability requirements or **Subpart H or 40 CFR Part 264 or Part 265.**

(2) Not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000) for each day of the violation upon any person who:

(a) Establishes, constructs or operates a geographical site or facility upon which, or in which, hazardous wastes are stored or treated without first obtaining a license from the Department;

(b) Violates a Special Condition or Environmental Monitoring Condition of a hazardous waste management facility license;

(c) Dilutes a hazardous waste for the purpose of declassifying it;

(d) Ships hazardous waste with a transporter that is not in compliance with OAR Chapter 860, Division 36 and Division 46 or OAR Chapter

340, Division 103 or to a hazardous waste management facility that is not in compliance with OAR Chapter 340, Divisions 100 thru 106;

(e) Ships hazardous waste without a manifest;

(f) Ships hazardous waste without containerizing and marking or labeling such waste in compliance with OAR Chapter 340, Division 102;

(g) Is an owner or operator of a hazardous waste storage or treatment facility and fails to comply with any of the following:

(A) The closure plan requirements of **Subpart G of 40 CFR Part 264 or Part 265;**

(B) The closure cost estimate requirements of **Subpart H of 40 CFR Part 264 or Part 265;**

(C) The financial assurance for closure requirements of **Subpart H of 40 CFR Part 264 or Part 265;** or

(D) The financial liability requirements of **Subpart H of 40 CFR Part 264 or Part 265;**

(3) Not less than one hundred dollars ($100) nor more than ten thousand dollars ($10,000) for each day of the violation upon any person who:

(a) Violates an order of the Commission or Department; or

(b) Violates any other condition of a license or written authorization or violates any other rule or statute.]

(3) [(4)] Any person who has care, custody or control of a hazardous waste or a substance which would be a hazardous waste except for the fact that it is not discarded, useless or unwanted shall incur a civil penalty according to the schedule set forth in this section for the destruction, due

to contamination of food or water supply by such waste or substance, of any of the wildlife referred to in this section that are property of the state.

(a) Each game mammal other than mountain sheep, mountain goat, elk or silver gray squirrel, $400.

(b) Each mountain sheep or mountain goat, $3,500.

(c) Each elk, $750.

(d) Each silver gray squirrel, $10.

(e) Each game bird other than wild turkey, $10.

(f) Each wild turkey, $50.

(g) Each game fish other than salmon or steelhead trout, $5.

(h) Each salmon or steelhead trout, $125.

(i) Each fur-bearing mammal other than bobcat or fisher, $50.

(j) Each bobcat or fisher, $350.

(k) Each specimen of any wildlife species whose survival is specified by the wildlife laws or the laws of the United States as threatened or endangered, $500.

(l) Each specimen of any wildlife species otherwise protected by the wildlife laws or the laws of the United, but not otherwise referred to in this section, $25.

(Statutory Authority: ORS CH 466)

OIL AND HAZARDOUS MATERIAL SPILL AND RELEASE CLASSIFICATION OF VIOLATIONS

[Oil and Hazardous Material Spill and Release Schedule of Civil Penalties]

340-12-069

Violations pertaining to spills or releases of oil or hazardous materials shall be classified as follows:

(1) Class One:

(a) Failure by any person having ownership or control over oil or hazardous materials to immediately cleanup spills or releases or threatened spills or releases as required by ORS 466.205, 466.645, 468.795 and OAR Chapter 340, Divisions 47 and 108;

(b) Any violation of a Commission or Department Order;

(c) Any other violation related to the spill or release of oil or hazardous materials which poses a major risk of harm to public health or the environment.

(2) Class Two:

(a) Failure by any person having ownership or control over oil or hazardous materials to immediately report all spills or releases or threatened spills or releases in amounts greater than the reportable quantity listed in OAR 340-108-010 to the Oregon Emergency Management Division;

(b) Any other violation related to the spill or release of oil or hazardous materials which poses a moderate risk of harm to public health or the environment.

(3) Class Three:

(a) Any other violation pertaining to the spill or release of oil or hazardous materials which poses a minor risk of harm to public health or the environment.

[In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to oil or hazardous materials spills or releases or threatened spills or releases by service of a written Notice of Assessment of Civil Penalty upon the

respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(1) Not less than two thousand five hundred dollars ($2,500) nor more than ten thousand dollars ($10,000) for each day of the violation upon any person owning or having control over oil or hazardous material who fails to immediately cleanup spills or releases or threatened spills or releases as required by ORS 466.205, 466.645, 468.795 and OAR 340- Divisions 47 and 108.

(2) Not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000) for each day of the violation upon any person owning or having control over oil or hazardous material who fails to immediately report all spills or releases or threatened spills or releases in amounts greater than the reportable quantity listed in rule 340-108-010 to the Oregon Emergency Management Division.

(3) Not less than one hundred dollars ($100) nor more than ten thousand dollars ($10,000) for each day of the violation upon any person who:

(a) Violates an order of the Commission or Department; or

(b) Violates any other rule or statute.]

(Statutory Authority: ORS CH 466)

PCB CLASSIFICATION OF VIOLATIONS

[PCB Schedule of Civil Penalty]

340-12-071

Violations pertaining to the management and disposal of polychlorinated biphenyls (PCB) shall be classified as follows:

Note:
Underlined Material is New
[Bracketed Material is Deleted].

(1) Class One:

(a) Treating or disposing of PCBs anywhere other than at a permitted PCB disposal facility:

(b) Establishing, constructing or operating a PCB disposal facility without first obtaining a permit;

(c) Any violation of an order issued by the Commission or the Department;

(d) Any other violation related to the management and disposal of PCBs which poses a major risk of harm to public health or the environment.

(2) Class Two:

(a) Violating any condition of a PCB disposal facility permit;

(b) Any other violation related to the management and disposal of PCBs which poses a moderate risk of harm to public health or the environment.

(3) Class Three:

(a) Any other violation related to the management and disposal of PCBs which poses a minor risk of harm to public health or the environment.

[In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to management of or disposal of PCBs by service of a written Notice of Assessment of Civil Penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(1) Not less than two thousand five hundred dollars ($2,500) nor more than ten thousand dollars ($10,000) for:

(a) Treating or disposing of PCBs anywhere other than at a permitted PCB disposal facility; or

(b) Establishing, constructing or operating a PCB disposal facility without first obtaining a permit;

(2) Not less than one hundred dollars ($100) nor more than ten thousand dollars ($10,000) for:

(a) Any violation of an order issued by the Commission or the Department;

(b) Violating any condition of PCB disposal facility permit; or

(c) Any other violation.]

(Statutory Authority: ORS Chapter 466)

ENVIRONMENTAL CLEANUP CLASSIFICATION OF VIOLATIONS

[Remedial Action Schedule of Civil Penalty]

340-12-073

Violations of ORS 466.540 through 466.590 and related rules or orders pertaining to environmental cleanup shall be classified as follow:

(1) Class One:

(a) Failure to allow entry under ORS 466.565(2);

(b) Violation of an order requiring remedial action;

(c) Violation of an order requiring removal action;

(d) Any other violation related to environmental cleanup which poses a major risk of harm to public health or the environment.

(2) Class Two:

(a) Failure to provide information under ORS 466.565(1);

(b) Violation of an order requiring a Remedial Investigation/ Feasibility Study;

(c) Any other violation related to environmental cleanup which poses a moderate risk of harm to public health or the environment.

(3) Class Three:

(a) Violation of an order requiring a preliminary assessment;

(b) Any other violation related to environmental cleanup which poses a minor risk of harm to public health or the environment.

[In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to remedial action required by the Department by service of a written Notice of Assessment of Civil Penalty upon the respondent. The amount of such civil penalty shall be not less than one hundred dollars ($100) nor more than ten thousand dollars ($10,000) for violation of any order issued by the Commission or the Department requiring remedial action.]

(Statutory Authority: ORS Chapter 466)

SCOPE OF APPLICABILITY

340-12-080

The amendments to OAR 340-12-026 to 12-080 shall only apply to formal enforcement actions issued by the Department on or after the effective date of such amendments and not to any cases pending or formal enforcement actions issued prior to the effective date of such amendments. Any cases

pending or formal enforcement actions issued prior to the effective date of the amendments shall be subject to OAR 340-12-030 to 12-073 as prior to amendment.

Note:
Underlined Material is New
[Bracketed Material is Deleted].

Agenda Item P, March 3, 1989, EQC Meeting

STATEMENT OF NEED FOR RULEMAKING

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

(1) Legal Authority:

ORS 468.090 to 468.140 establishes the process the Department must follow when enforcing its statutes, rules, permits and order against violators.

ORS 468.090 states that the Department is to endeavour to achieve compliance through "conference, conciliation and cooperation" before instituting enforcement procedures subject to contested case hearings.

ORS 468.125 establishes the procedure the Department must follow before assessing civil penalties against violators and lists specific exceptions to this procedure.

ORS 468.130 requires the Commission to adopt civil penalty schedules in order to effectuate its civil penalty authority. It also requires the Commission to consider a specific list of factors when imposing a penalty.

(2) Need for Rule:

The Commission expressed its desire to develop an enforcement procedure that assured consistent and efficient statewide enforcement, that provided an adequate level of notice to the regulated community and offered a higher degree of predictability for all involved.

The Commission has therefore directed the Department to codify its enforcement policy in its rules. The Commission has also directed the Department to classify violations in terms of environmental harm and to develop a more objective scheme for determining civil penalty amounts.

The proposed revisions implement these directives.

Revisions are needed in the Clean Air Act SIP to make these federally enforceable rules consistent with existing and proposed state rules.

(3) Principal Documents Relied Upon:

ORS Chapters 454, 459, 466, and 468; Enforcement Guidelines and Procedures, Hazardous Waste Program, Department of Environmental Quality, November, 1985; and Enforcement briefing paper, Department of Environmental Quality, prepared for the Environmental Quality Commission, August, 1988. These documents are available for review at the Department of Environmental Quality, Regional Operations, 10th floor, 811 SW Sixth Avenue, Portland, OR 97204.

(4) Fiscal and Economic Impact:

The newly proposed schedules would only have a fiscal and economic impact on individuals, public entities, and small and large businesses if a penalty were imposed for a violation of Oregon's environmental statutes, the Commission's rules or orders, or orders or permits issued by the Department.

LAND USE CONSISTENCY STATEMENT

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

Yone C. McNally
229-5152
February 16, 1989

ATTACHMENT C

PROPOSED REVISION OF OREGON ADMINISTRATIVE RULES CHAPTER 340, DIVISION 12, CIVIL PENALTY RULES

NOTICE OF PUBLIC HEARING

Date Prepared: October 12, 1988
Hearing Date: December 16, 1988
Comments Due: January 17, 1989

WHO IS AFFECTED: People to whom Oregon's air quality, noise pollution, water quality, solid waste, on-site sewage disposal and hazardous waste and materials regulations may apply.

WHAT IS PROPOSED: The DEQ is proposing to revise the civil penalty rules, OAR 340-12-030 through 12-071, and to revise the federally-enforceable Oregon State Implementation (SIP) to be consistent with state rules.

WHAT ARE THE HIGHLIGHTS:

1. Proposed State Rule Revisions:

>The codification of the Department's enforcement policy.
>The description of the Department's formal enforcement actions.
>The classification of violations in terms of environmental harm from the most to least serious.
>The adoption of a civil penalty determination process which combines base penalties established in a box matrix with a formula system.

2. Proposed State Implementation Plan (SIP) Revisions:

>The following rules are being added: OAR 340-12-026, 340-12-041, 340-12-042 and 340-12-048.
>The following existing rules with proposed modifications are being retained: OAR 340-12-030, 340-12-040, 340-12-045, and 340-12-050.
>The following existing rules are being retained: OAR 340-12-035, 340-12-046 and 340-12-047.

HOW TO COMMENT: Copies of the complete proposed rule package may be obtained from the Regional Operations Division, Enforcement, in Portland (811 S.W. Sixth Avenue, Tenth Floor) or the regional office nearest you. For further information, contact Yone C. McNally at 229-5152.

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

2:00 p.m.
Friday, December 16, 1988
DEQ Offices, Fourth Floor
811 S.W. Sixth Avenue, Portland, Oregon

Oral and written comments will be accepted at the public hearing. Written comments may be sent to the DEQ Enforcement Section, 811 S.W. Sixth Avenue, Tenth Floor, Portland, OR 97204. Written comments must be received no later than 5:00 p.m., January 17, 1989.

WHAT IS THE NEXT STEP:

After public hearing, the Environmental Quality Commission may adopt rule amendments identical to the proposed amendments, adopt modified rule amendments on the same subject matter, or decline to act. The Commission's deliberation may come on March 3, 1989, as part of the agenda of the regularly scheduled Commission meeting. If adopted, the proposed SIP revisions will be submitted to the U.S. Environmental Protection Agency as a revision of the Clean Air Act SIP.

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

(c) Violation of any applicable provisions of this chapter or ORS 466.605 to 466.680, 466.880 (3) and (4) and 466.995 (3).

(d) Violation of any applicable rule, standard or order of the commission.

(2) The department may modify any permit issued pursuant to ORS 468.065 if it finds that modification is necessary for the proper administration, implementation or enforcement of the provisions of 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, 466.605 to 466.690 and this chapter.

(3) The procedure for modification, suspension, revocation or refusal to issue or renew shall be the procedure for a contested case as provided in ORS 183.310 to 183.550. [1973 c.835 §14; 1979 c.184 §1; 1985 c.733 §22]

468.075 Revolving fund; uses. (1) On written request of the director of the department or the authorized representative of the director, the Executive Department shall draw warrants on amounts appropriated to the department for operating expenses for use by the department as a revolving fund. The revolving fund shall not exceed the aggregate sum of $10,000 including unreimbursed advances. The revolving fund shall be deposited with the State Treasurer to be held in a special account against which the department may draw checks.

(2) The revolving fund may be used by the department to pay for travel expenses, or advances therefor, for employes of the department and for any consultants or advisers for whom payment of travel expenses is authorized by law or for purchases required from time to time or for receipt or disbursement of federal funds available under federal law.

(3) All claims for reimbursement of amounts paid from the revolving fund shall be approved by the department and by the Executive Department. When such claims have been approved, a warrant covering them shall be drawn in favor of the department and charged against the appropriate fund or account, and shall be used to reimburse the revolving fund. [Formerly 449.034; 1977 c.704 §7]

ENFORCEMENT

468.090 Complaint procedure. (1) In case any written substantiated complaint is filed with the department which it has cause to believe, or in case the department itself has cause to believe, that any person is violating any rule or standard adopted by the commission or any permit issued by the department by causing or permitting water pollution or air pollution or air contamination, the department shall cause an investigation thereof to be made. If it finds after such investigation that such a violation of any rule or standard of the commission or of any permit issued by the department exists, it shall by conference, conciliation and persuasion endeavor to eliminate the source or cause of the pollution or contamination which resulted in such violation.

(2) In case of failure to remedy the violation, the department shall commence enforcement proceedings pursuant to the procedures set forth in ORS 183.310 to 183.550 for a contested case. [Formerly 449.815]

468.095 Investigatory authority; entry on premises; status of records. (1) The department shall have the power to enter upon and inspect, at any reasonable time, any public or private property, premises or place for the purpose of investigating either an actual or suspected source of water pollution or air pollution or air contamination or to ascertain compliance or noncompliance with any rule or standard adopted or order or permit issued 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. The commission shall also have access to any pertinent records relating to such property, including but not limited to blueprints, operation and maintenance records and logs, operating rules and procedures.

(2) Unless classified by the director as confidential, any records, reports or information obtained under ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter shall be available to the public. Upon a showing satisfactory to the director by any person that records, reports or information, or particular parts thereof, other than emission data, if made public, would divulge a secret process, device or method of manufacturing or production entitled to protection as trade secrets of such person, the director shall classify such record, report or information, or particular part thereof, other than emission data, confidential and such confidential record, report or information, or particular part thereof, other than emission data, shall not be made a part of any public record or used in any public hearing unless it is determined by a circuit court that evidence thereof is necessary to the determination of an issue or issues being decided at a public hearing. [Formerly 449.169; 1975 c.173 §1]

468.100 Enforcement procedures; powers of regional authorities; status of

procedures. (1) Whenever the commission has good cause to believe that any person is engaged or is about to engage in any acts or practices which constitute a violation of 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, or any rule, standard or order adopted or entered pursuant thereto, or of any permit issued 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, the commission may institute actions or proceedings for legal or equitable remedies to enforce compliance thereto or to restrain further violations.

(2) The proceedings authorized by subsection (1) of this section may be instituted without the necessity of prior agency notice, hearing and order, or during said agency hearing if it has been initially commenced by the commission.

(3) A regional authority formed under ORS 468.505 may exercise the same functions as are vested in the commission by this section in so far as such functions relate to air pollution control and are applicable to the conditions and situations of the territory within the regional authority. The regional authority shall carry out these functions in the manner provided for the commission to carry out the same functions.

(4) The provisions of this section are in addition to and not in substitution of any other civil or criminal enforcement provisions available to the commission or a regional authority. The provisions of this section shall not prevent the maintenance of actions for legal or equitable remedies relating to private or public nuisances brought by any other person, or by the state on relation of any person without prior order of the commission. [1973 c.826 §2; 1979 c.284 §153]

468.105 [Repealed by 1974 s.s. c.36 §28]

468.110 Appeal; power of court to stay enforcement. Any person adversely affected or aggrieved by any order of the commission may appeal from such order in accordance with the provisions of ORS 183.310 to 183.550. However, notwithstanding ORS 183.480 (3), relating to a stay of enforcement of an agency order and the giving of bond or other undertaking related thereto, any reviewing court before it may stay an order of the commission shall give due consideration to the public interest in the continued enforcement of the commission's order, and may take testimony thereon. [Formerly 449.090]

468.115 Enforcement in cases of emergency. (1) Whenever it appears to the department that water pollution or air pollution or air contamination is presenting an imminent and substantial endangerment to the health of persons, at the direction of the Governor the department shall, without the necessity of prior administrative procedures or hearing, enter an order against the person or persons responsible for the pollution or contamination requiring the person or persons to cease and desist from the action causing the pollution or contamination. Such order shall be effective for a period not to exceed 10 days and may be renewed thereafter by order of the Governor.

(2) The state and local police shall cooperate in the enforcement of any order issued pursuant to subsection (1) of this section and shall require no further authority or warrant in executing and enforcing such an order.

(3) If any person fails to comply with an order issued pursuant to subsection (1) of this section, the circuit court in which the source of water pollution or air pollution or air contamination is located shall compel compliance with the order in the same manner as with an order of that court. [Formerly 449.980]

468.120 Public hearings; subpenas, oaths, depositions. (1) The commission, its members or a person designated by and acting for the commission may:

(a) Conduct public hearings.

(b) Issue subpenas for the attendance of witnesses and the production of books, records and documents relating to matters before the commission.

(c) Administer oaths.

(d) Take or cause to be taken depositions and receive such pertinent and relevant proof as may be considered necessary or proper to carry out duties of the commission and department 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.

(2) Subpenas authorized by this section may be served by any person authorized by the person issuing the subpena. Witnesses who are subpenaed shall receive the same fees and mileage as in civil actions in the circuit court. [Formerly 449.048]

468.125 Notice of violation. (1) No civil penalty prescribed under ORS 468.140 shall be imposed until the person incurring the penalty has received five days' advance notice in writing from the department or the regional air quality control authority, specifying the violation and stating that a penalty will be imposed if a violation continues or occurs after the five-day

period, or unless the person incurring the penalty shall otherwise have received actual notice of the violation not less than five days prior to the violation for which a penalty is imposed.

(2) No advance notice shall be required under subsection (1) of this section if:

(a) The violation is intentional or consists of disposing of solid waste or sewage at an unauthorized disposal site or constructing a sewage disposal system without the department's permit.

(b) The water pollution, air pollution or air contamination source would normally not be in existence for five days, including but not limited to open burning.

(c) The water pollution, air pollution or air contamination source might leave or be removed from the jurisdiction of the department or regional air quality control authority, including but not limited to ships.

(d) The penalty to be imposed is for a violation of ORS 466.005 to 466.385.

(e) The penalty to be imposed is for a violation of ORS 468.893 (8) relating to the control of asbestos fiber releases into the environment. [Formerly 449.967; 1977 c.317 §2; 1983 c.703 §17; 1985 c.735 §3; 1987 c.741 §19]

468.130 Schedule of civil penalties; factors to be considered in imposing civil penalties. (1) The commission shall adopt by rule a schedule or schedules establishing the amount of civil penalty that may be imposed for a particular violation. Except as provided in ORS 468.140 (3), no civil penalty shall exceed $500 per day. Where the classification involves air pollution, the commission shall consult with the regional air quality control authorities before adopting any classification or schedule.

(2) In imposing a penalty pursuant to the schedule or schedules authorized by this section, the commission and regional air quality control authorities shall consider the following factors:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(b) Any prior violations of statutes, rules, orders and permits pertaining to water or air pollution or air contamination or solid waste disposal.

(c) The economic and financial conditions of the person incurring a penalty.

(d) The gravity and magnitude of the violation.

(e) Whether the violation was repeated or continuous.

(f) Whether the cause of the violation was an unavoidable accident, negligence or an intentional act.

(g) The violator's cooperativeness and efforts to correct the violation.

(h) Any relevant rule of the commission.

(3) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the commission or regional authority considers proper and consistent with the public health and safety.

(4) The commission may by rule delegate to the department, upon such conditions as deemed necessary, all or part of the authority of the commission provided in subsection (3) of this section to remit or mitigate civil penalties. [Formerly 449.970; 1977 c.317 §3; 1987 c.266 §2]

468.135 Procedures to collect civil penalties. (1) Subject to the advance notice provisions of ORS 468.125, any civil penalty imposed under ORS 468.140 shall become due and payable when the person incurring the penalty receives a notice in writing from the director of the department, or from the director of a regional air quality control authority, if the violation occurs within its territory. The notice referred to in this section shall be sent by registered or certified mail and shall include:

(a) A reference to the particular sections of the statute, rule, standard, order or permit involved;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed; and

(d) A statement of the party's right to request a hearing.

(2) The person to whom the notice is addressed shall have 20 days from the date of mailing of the notice in which to make written application for a hearing before the commission or before the board of directors of a regional air quality control authority.

(3) All hearings shall be conducted pursuant to the applicable provisions of ORS 183.310 to 183.550.

(4) Unless the amount of the penalty is paid within 10 days after the order becomes final, the order shall constitute a judgment and may be filed in accordance with the provisions of ORS 18.320 to 18.370. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(5) All penalties recovered under ORS 468.140 shall be paid into the State Treasury and credited to the General Fund, or in the event the penalty is recovered by a regional air quality control authority, it shall be paid into the county treasury of the county in which the violation occurred. [Formerly 449.973]

468.140 Civil penalties for specified violations. (1) In addition to any other penalty provided by law, any person who violates any of the following shall incur a civil penalty for each day of violation in the amount prescribed by the schedule adopted under ORS 468.130:

(a) The terms or conditions of any permit required or authorized by law and issued by the department or a regional air quality control authority.

(b) Any provision of ORS 164.785, 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, ORS chapter 467 and this chapter.

(c) Any rule or standard or order of the commission adopted or issued 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, ORS chapter 467 and this chapter.

(d) Any term or condition of a variance granted by the commission or department pursuant to ORS 467.060.

(e) Any rule or standard or order of a regional authority adopted or issued under authority of ORS 468.535 (1).

(2) Each day of violation under subsection (1) of this section constitutes a separate offense.

(3)(a) In addition to any other penalty provided by law, any person who intentionally or negligently causes or permits the discharge of oil into the waters of the state shall incur a civil penalty not to exceed the amount of $20,000 for each violation.

(b) In addition to any other penalty provided by law, any person who violates the terms or conditions of a permit authorizing waste discharge into the air or waters of the state or violates any law, rule, order or standard in 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 relating to air or water pollution shall incur a civil penalty not to exceed the amount of $10,000 for each day of violation.

(4) Paragraphs (c) and (e) of subsection (1) of this section do not apply to violations of motor vehicle emission standards which are not violations of standards for control of noise emissions.

(5) Notwithstanding the limits of ORS 468.130 (1) and in addition to any other penalty provided by law, any person who intentionally or negligently causes or permits open field burning contrary to the provisions of ORS 468.450, 468.455 to 468.480, 476.380 and 478.960 shall be assessed by the department a civil penalty of at least $20 but not more than $40 for each acre so burned. Any fines collected by the department pursuant to this subsection shall be deposited with the State Treasurer to the credit of the General Fund and shall be available for general governmental expense. [Formerly 449.993; 1975 c.559 §14; 1977 c.511 §5; 1979 c.353 §1; 1987 c.513 §1]

POLLUTION CONTROL FACILITIES TAX CREDIT

468.150 Field sanitation and straw utilization and disposal methods as "pollution control facilities." After alternative methods for field sanitation and straw utilization and disposal are approved by the committee and the department, "pollution control facility," as defined in ORS 468.155, shall include such approved alternative methods and persons purchasing and utilizing such methods shall be eligible for the benefits allowed by ORS 468.155 to 468.190. [1975 c.559 §15]

Note: 468.150 was enacted into law by the Legislative Assembly but was 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.

468.155 Definitions for ORS 468.155 to 468.190. (1)(a) As used in ORS 468.155 to 468.190, unless the context requires otherwise, "pollution control facility" or "facility" means any land, structure, building, installation, excavation, machinery, equipment or device, or any addition to, reconstruction of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device reasonably used, erected, constructed or installed by any person if:

(A) The principal purpose of such use, erection, construction or installation is to comply with a requirement imposed by the department, the federal Environmental Protection Agency or regional air pollution authority to prevent, control or reduce air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil; or

(B) The sole purpose of such use, erection, construction or installation is to prevent, control or reduce a substantial quantity of air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil.

ATTACHMENT E

MEMORANDUM

To: Environmental Quality Commission

From: Yone C. McNally (for Hearings Officer Linda Zucker)

Subject: Agenda Item P, March 3, 1989, EQC Meeting

Hearings Officer's Report on Proposed Revisions to Oregon Administrative Rule Chapter 340, Division 12, Enforcement Policy and Civil Procedure

A public hearing was held at 2 pm on December 16, 1988, to consider the establishment of the Department's enforcement policy and a civil penalty procedure in rule form through the proposed revisions Oregon Administrative Rules Chapter 340, Division 12.

Jean Meddaugh, Oregon Environmental Council, read prepared testimony in support of the rules' purpose and submitted the testimony in writing. She stated that the definition of "Magnitude of the Violation" was too vague and should be clarified; the Notice of Noncompliance enforcement action should either be eliminated or made mandatory; base fines should be issued immediately upon documenting a violation with further fines related to the factor findings to be assessed after all factors have been analyzed; Notice of Violation enforcement actions be included in the definition of "Prior Violations"; economic condition not be considered in determining the amount of the penalty, only in determining a payment schedule, and; factors within the formula not carry negative values.

No further testimony was offered. The public hearing record was closed at 2:30 pm. The record was left open to receive testimony until 5 pm, January 17, 1989.

Attachments
Written Statement provided by Jean Meddaugh, Oregon Environmental Council

Yone C. McNally:ycm
229-5152
February 16, 1989
hearing.ecp

OREGON ENVIRONMENTAL COUNCIL

2637 S.W. Water Avenue, Portland, Oregon 97201
Phone: 503/222-1963

ORAL COMMENTS PRESENTED FOR THE
OREGON ENVIRONMENTAL COUNCIL
BY JEAN MEDDAUGH, ASSOCIATE DIRECTOR

RE: PROPOSED REVISIONS TO OAR CHAPTER 340, DIVISION 12
CIVIL PENALTIES AND THE CLEAN AIR SIP

The Oregon Environmental Council (OEC) applauds and supports DEQ's efforts to enhance consistency in its enforcement procedures. We would like to offer the following specific comments:

page D-2, (6): Under the definition of "Magnitude of the Violation" the definition should be expanded to include deviation from permits, rules, orders, or standards. We make this suggestion because not all violations will involve quantifiable - or for that matter, any - standards. The definitions of "major" "moderate" and "minor" are too vague and need to be more specific, especially since these definitions determine the starting position on the Penalty Matrices.

page D-5,(1): We suggest that the "Notice of Noncompliance" should be replaced procedurally by the Notice of Violation. Our reading of the rules suggests that the Notice of Noncompliance just adds an unnecessary step which fails to accomplish anymore than a Notice of Violation would, and is not a statutory requirement.

We also propose that the language in section (1)(c) be changed from "may" to "shall" so that this first notice is nondiscretionary. We also propose additional language which would require the Department of Environmental Quality to review the violation in question within a defined time period of 30 or 60 days and make some determination for subsequent enforcement action which could include the actions outlined in sections (2) through (6) as well as a decision that no further action is required to protect public heath and safety. If this latter decision is made, the record should include specific findings to support the decision.

We also propose that when one of the follow-up enforcement actions is taken which involves a fine, the base fine as outlined in the penalty matrices should be assessed immediately. Additional fines to be determined by the various factors outlined in section (1) on page D-11 should be assessed later after all the factors are analyzed.

Page D-11, (1): Since prior violations affect the formula for penalty assessment and since prior violations are defined on page D-2 as any violation for which a person was afforded the opportunity to contest, this definition would not include a Notice of Violation. Yet if a person had been in violation, that should be reflected to be consistent with the intent of this factor. We suggest that the definition of "prior violation" be amended to include Notice of Violations, or that the definition of Notice of Violations be amended to make it a "formal" enforcement action.

We suggest that the economic condition of a violator should not be a consideration in determining the amount of a fine, only the payment schedule. Furthermore, "significant economic benefit through noncompliance" - which is a valid consideration in assessing penalties - should be defined more specifically, perhaps as a percentage of profits.

Under (E) on page D-13, we object to a violator gaining advantage from an unavoidable accident - the rules suggest a factor of -2 - and suggest that an unavoidable accident be rated as "0".

Likewise under (F) we feel a violator should be penalized for noncooperation, but should not gain any advantage in the point system from cooperation, since they would merely be complying with the law.

Thank you for this opportunity to offer oral comment. OEC will submit final written comments along with a broader analysis of DEQ's enforcement policies before January 17, 1989.

Attachment F
Agenda Item P
March 3, 1989
EQC Meeting

SUMMARY AND RESPONSE TO WRITTEN COMMENTS
AND COMMENTS RECEIVED AT THE PUBLIC HEARING

OAR 340-12-026 POLICY

Comment: Delete unnecessary words and add to goals of enforcement policy

Harry Demaray commented that the word "to" be removed from sections (1)(b), (c) and (d). He also suggested that the enforcement goals (section 1) be expanded to include denying a violator any monetary gain through penalty and recovering the full cost of investigating and prosecuting a violation from a violator through the use of penalties.

Response:

The Department proposes to delete the word "to" as suggested. The Department believes that the suggested statements are contrary to the Department's legislative authority. In most cases, the Department is not authorized to pursue penalties for first time violations. Also, penalties are not paid to the Department but are required by statute to be paid into the state general fund. As the Department is not authorized to recover costs directly under most of its civil penalty statutes, it believes it would be inappropriate to have a policy to that effect.

Comment: Endeavor to achieve compliance

R.J. Hess of Portland General Electric (PGE) commented that the language "will endeavor" contained in section (2), be replaced with the phrase, "shall use best efforts". PGE believes that this places a higher duty on the Department.

Marialice Galt of the Northwest Environmental Defense Center (NEDC) commented that the policy of section (2) was contrary to legislative intent.

Response:

The Department believes that the policy to endeavor to achieve compliance through conference, conciliation and persuasion is mandated by ORS 468.090(1) and proposes to continue to use the word "endeavor" as it is used in the statute. However, the Department proposes to change "will" to "shall" so the language will be identical to that contained in the statute.

Comment: Pursue enforcement to achieve all goals.

Ann Wheeler of Oregon Environmental Council (OEC) commented that the Department should pursue the level of enforcement necessary to achieve all its goals, not just the goal of compliance.

Response:

The Department agrees with this comment and purposes that the word "compliance" in section (3) be replaced with "the goals set forth in section (1) of this rule."

OAR 340-12-030 DEFINITIONS

Comment: Define "Formal Enforcement"

The Environmental Protection Agency (EPA) commented that it believed that "formal enforcement" needed to be defined.

Response:

The Department agrees with this comment and has added a definition for "formal enforcement".

Comment: Magnitude of the Violation

The EPA, Jean Meddaugh and Ann Wheeler of OEC and PGE commented that the Department's definition of "magnitude of the violation" was too vague. EPA suggested defining "magnitude" specifically within each program similar to the way violations are classified (e.g. "magnitude" would be measured by a specific percentage exceedance of a permit standard).

Response:

The Department recognizes this problem and has wrestled with it throughout the rule making process. However, it has been unable to come up with a workable alternative. The Department does believe, however, that by listing the factors to be taken into account in determining magnitude, the Department has provided some standard by which a determination may be made.

The Department believes that EPA's suggestion has some merit. However, the Department finds that the suggestion works much better with sources on permits, where a certain level of discharge or emission is authorized, than an activity which is outright banned. The suggestion also only takes into account one of the several factors relevant to the Department's decision concerning magnitude. Also, the approach may be difficult and cumbersome as the Department regulates a much broader range of activities than

does EPA. Therefore, the Department proposes to leave the definition as is and attempt to clarify it through application.

Comment: Broaden definition of "Prior Violation"

OEC and Harry Demaray commented that the Department's definition of "Prior Violations" is too restrictive in that it includes only those violations for which one is afforded an opportunity for a hearing. OEC stated that the Notice of Violation and Intent to Assess a Civil Penalty (NOI) should be included as it is a key element in determining when a civil penalty can be assessed in many cases. Mr. Demaray believed that all documented violations should be included regardless of the enforcement response.

Response:

The Department agrees with these comments. However, since prior violations affect a person's interest in that they cause an increase in the penalty amount, the Department believes that it is constrained as to what violations may be considered. The Department believes that counting violations for which the opportunity of a hearing has not been afforded potentially violates due process.

The Department will continue to consider an NOI a prior violation as it is incorporated into civil penalty actions. Thus, it does fall under the definition of a "prior violation" as it allows a violator the opportunity to contest it at the time a civil penalty is assessed.

Comment: Terms incorrectly or vaguely defined

PGE commented that the use of the term "significant" should not be used in the definition of "moderate" contained in the rules as they are not synonymous terms in a thesaurus. OEC also commented that the terms "major", "moderate" and "minor" were too vaguely defined.

Response:

The Department agrees with PGE's comment and has dropped the terms "substantial," "significant," and slight" from the definitions of "magnitude of the violation" and "risk of harm".

The Department recognizes that there is a vagueness problem and will continue to work on refining these terms.

OAR 340-12-040 NOTICE OF VIOLATION

Comment: Why are certain categories excluded from the Notice of Violation requirement while others are not?

PGE objected to the exclusions of hazardous waste, polychlorinated biphenyls (PCBs) and asbestos laws from the Notice of Violation procedure. Harry Demaray commented that oil spills should also be excluded from the procedure.

Response:

The Oregon Legislature has specifically excluded these areas from the Notice of Violation procedure giving the Department the authority to assess penalties in these cases without prior warning. The statute, ORS 468.125(2) (page D-3), also excludes violations occurring under specific circumstances.

The Department does not specifically have the authority to add oil spills to this list of exclusions, as it has not been granted that authority by the legislature. However, oil spills generally fall under the exclusion "a source of water pollution not normally in existence for five days". Therefore, the Department believes it has adequate authority and a specific exclusion is unnecessary.

OAR 340-12-041 ENFORCEMENT ACTIONS

Comment: Replace phrase "may be issued" with stronger language

EPA commented that the phase "may be issued" for formal enforcement actions was inconsistent with the Department's stated goals of increased predictability and consistency. It suggested that "may" be replaced by "will".

Response:

The Department disagrees that the use of the word "may" is inconsistent with the Department's stated goals. By classifying violations, the rules create a priority system which allows violations to be addressed appropriately. The Notice of Violation and Compliance Order (NOVCO), civil penalties and orders will generally be issued under the appropriate circumstances. However, the Department believes it needs to retain the flexibility to assure that violations subject to these levels of enforcement are addressed appropriately.

Comment: Eliminate the Notice of Noncompliance

OEC and EPA commented on the Department's use of the Notice of Noncompliance. Both thought it an unnecessary step and did not gain the Department added compliance. EPA further believed it was an inefficient use of Department resources and that the Department should be allowed to issue penalties as an initial action. OEC suggested that if the Department chose to continue using this notice, its issuance be made mandatory.

Response:

The Department believes that it is required by ORS 468.090(1) (page D-1) to attempt to achieve compliance through "conference, conciliation and persuasion" prior to initiating formal enforcement. The Department believes that the Notice of Noncompliance fulfills this duty. The Department does not believe that the Notice is ineffective or inefficient. The Notice of Noncompliance allows the Department to respond to a violation quickly and is often the most efficient resource available in enforcement.

The Department agrees that the issuance of the Notice of Noncompliance should be mandatory and proposes to change the "may" to "shall". The Department also proposes that the notice be made the minimum level to be taken for all classes of violation and that in appropriate circumstances the notice inform a violator that the Department is considering higher levels of enforcement.

The Department is authorized to issue penalties for certain first time violations. However, legislative action is required to expand this authority to include other areas.

Comment: Notice of Violation and Intent to Assess a Civil Penalty is an inappropriate action for hazardous waste

EPA commented that issuing an NOI is inappropriate in the enforcement of hazardous waste regulation. EPA also commented that there appeared to be no difference between a Department Order and a NOVCO. It also commented that the enforcement actions appeared to be exclusive and could not be mixed.

Response:

The Department agrees that an NOI is an inappropriate response to a hazardous waste violation and does not intend to issue such an action for these violations. However, it proposes no changes to the rules as the rules are written generally to encompass all the Department's programs. The NOVCO is the action to be issued for hazardous waste actions. It is a type of Department Order in that it is designed specifically for hazardous waste violations, while Department and Commission orders are available to all programs and are issued pursuant to specific statutory authority.

The Department is precluded from mixing civil penalties with other enforcement actions where prior notice is required for pursuing penalties. It is not precluded from mixing actions for violations excluded from the notice requirement or where the Department has satisfied the requirement.
In terms of when penalties may be assessed, the violations which

are excluded from the prior notice requirement are subject to penalties regardless of the class of violation.

OAR 340-12-042 CIVIL PENALTY SCHEDULE MATRICES

Comment: Penalties are too low

Lane Regional Air Pollution Authority (LRAPA) and George and Rhonda Ostertag commented that the base penalties amounts were too low. LRAPA suggested higher alternative amounts.

Response:

The Department designed the base penalties to take into account the range of activities it regulates. The levels not only take into consideration the seriousness of the violation, but also recognize the fact that private individuals as well as business entities are subject to the Department's regulation. The Department believes that the base fines are set at a reasonable level for the vast majority of the violations. The Department shares the concern that the base penalties may not result in penalties that comport with "reasonable judgment" in every case. However, the Department believes that the vast majority of penalties will be appropriate to the violation and that those instances where they are not will be the exception.

Comment: Underground Injection Control program penalties are too low

EPA commented that the $500 penalty matrix was inappropriate for the Underground Injection Control (UIC) program and that it should be under the $10,000 matrix.

Response:

EPA is referring to Oregon's on-site sewage disposal system. Historically, the Commission has limited on-site sewage disposal penalties to $500 by rule. The Department does not consider residential on-site sewage disposal to be a part of the UIC program. Also, although the penalties in the $500 matrix appear relatively small, they may be assessed on a per day basis.

On-site systems which are larger than 5,000 gallons are required to have a Water Pollution Control Facility permit. Violations involving systems of this size fall under the Department's water quality regulations and are subject to the $10,000 matrix.

Comment: Mandate civil penalties for oil spills

Harry Demaray commented that the "shall incur' language of 340-12-042(2) be replaced with "shall be assessed" to make the language consistent with section 311(b)(6)(A) of the Federal Water Pollution Control Act.

Response:

The section to which Mr. Demaray refers is a program administered by the U.S. Coast Guard. The Coast Guard has not delegated this authority to the state of Oregon. Thus, Oregon is not required to correct any perceived conflict with federal law. The Department also feels that it is unnecessary to mandate penalties for oil spills. Generally, oil spills would fall under the statutory exclusion "[t]he water pollution . . . would not normally be in existence for five days . . ." (ORS 468.125(2)(b) page D-3). However, if a spill were in existence for more than five days, the violation would be subject to the prior notice requirements of ORS 468.125(1) (page D-2). Mandatory language would have no affect in this case as oil spills are not a class specifically excluded from the prior notice requirements.

OAR 340-12-045 CIVIL PENALTY DETERMINATION PROCEDURE

Comment: Change order of letters to spell "PHORCE"

Harry Demaray suggested that the order of the formula factors be changed so that the letters spell "PHORCE" (for force). He suggested that it is both easier to remember and fitting.

Response:

Although the suggestion is attractive, the Department has decided to continue to use the order used in the statute, ORS 468.130(2) (page D-3).

Comment: Too many variables in determining the amount of the penalty

NEDC commented that the Department included too many factors in its civil penalty determination process. It suggested instead that the Department develop specific penalty amounts for all violations taking into account only the most extreme circumstances.

Response:

The Department only included those factors which it is required to consider by statute. NEDC's suggestion would fail to take into

account these factors as is required. It also fails to take into account the range of activities the Department regulates.

Comment: Approach to "Prior Violations"

The Department received several comments concerning the use and weighting of "prior violations". LRAPA commented that the weighting of this factor should be increased and prior violations of the same nature should carry more weight than unrelated ones. Larry Patterson of Pennwalt suggested that only similar prior violations be counted and only those that occurred within five years of the violations for which the penalty is being assessed. Miriam Feder, commenting for Tektronics, suggested that prior violations more that two years old, cross media violations and violations occurring prior to the promulgation of these rules not be counted. Thomas Donaca of Associated Oregon Industries (AOI) and Llewellyn Matthews of Northwest Pulp and Paper Association suggested that cross facility violations not be counted. AOI further suggested that a time limit be placed on how many years the Department can go back in considering violations and suggested two years as a starting point, which could be lengthened later. Craig Johnston of Perkins Coie also suggested that counting violations which occurred prior to the promulgation of the rules may be unfair.

Response:

The Department believes that the weighting of prior violations generally is sufficient. However, the Department agrees with LRAPA that identical prior violations should be given more weight than unrelated violations because a violator is aware that allowing the same violation to occur again carries the risk of additional enforcement. Historically, the Department has always given more weight to identical prior violations than to other unrelated violations. The Department proposes to increase the weighting of the prior violation factor for the recurrence of the same violation.

The Department does not believe it should wipe the slate clean on a violation simply because of its age. The Department believes this potentially gives a break to those who have past violations in that it makes them equal to those who had no prior violations.

The Department will consider cross media and cross facility violations. The Department is not only concerned with an individual facility's compliance, but with compliance company wide. It is a company's responsibility to see that all its facilities in all areas are in compliance at all times.

The Department does not believe that including prior violation which occurred prior to the promulgation of these rules in unfair.

The Department has considered prior violations in penalty assessments for many years. This consideration has been in the Department's earlier rules and the regulated community has been on notice of it. The proposed rule does no more than quantify this consideration.

Comment: Consider eliminating the economic factor from the penalty determination or formula

Several comments were received concerning the use and weighting of the economic factor. OEC suggested it not be considered in determining the amount of the penalty, only in determining a payment schedule. George and Rhonda Ostertag commented that it should not be considered at all. Perkins Coie and EPA suggested that it be removed from the formula, calculated separately and added to the penalty amount.

Response:

ORS 468.130(2)(c) requires the consideration of a violator's economic condition in determining the amount of the penalty. The Department believes that it was the Legislature's intent that this consideration include the examination of facts which would mitigate a penalty as well as aggravate it. The Department believes that although the factor is unable to take into account the specifics of economic benefit or ability to pay, the factor does generally reflect the weight the Department affords this factor in its consideration and recognizes the wide range of individuals and businesses the Department deals with.
The Department agrees with Perkins Coie that it is inappropriate to increase a penalty simply because an entity is economically sound and has removed this reference from the rule. However, the Department believes that the mitigating side should be more heavily weighted and the Department proposes to increase it to a negative four (-4).

Comment: What constitutes a single occurrence?

Pennwalt commented that what constitutes a single occurrence or repeated violation under the "O" factor needed to be clarified.

Response:

The Department agrees that this factor lacks clarity. The Department proposes to add wording to the rule to make it clear that the factor of whether a violation is a single occurrence, or repeated or continuous refers to the period of time during which the violation, for which the penalty is being assessed, occurred. That is, if a violation occurred only on the first day of the month, it would be considered a single occurrence under this factor. If the same violation occurred on the first and third day

of the month, the violation would be considered a repeated violation. If the same violation occurred continuously for several days, it would be considered a continuous violation.

Comment: Weighting of the cause of the violation

OEC commented that the cause of the violation, or "R" factor, should not be weighted at a "-2" for violations which are caused by unavoidable accidents. OEC suggested that unavoidable accidents carry a "0" weighting. LRAPA commented that the other causes of violation (negligence, gross negligence, intent and flagrant) are not weighted heavily enough.

Response:

The Department disagrees with OEC and intends to leave "unavoidable accident" at negative two (-2) as proposed. As stated under the response to the comment concerning economics, the Department believes that the legislature intended to give a break to a person when the cause of a violation was beyond one's control.

The Department agrees with LRAPA that the factors should be more heavily weighted. The Department proposes to change the weighting so that it better reflects the seriousness with which the Department views a violation that is negligent, intentional or flagrant.

Comment: No credit for violator cooperativeness

OEC and George and Rhonda Ostertag commented that the violators cooperativeness, or "C" factor, should not allow a "-2" for a cooperative violator.

Response:

The Department disagrees that a violator's cooperativeness should be assumed. The Department believes that it was the Legislature's intent to give credit to a violator if one cooperated once aware of a violation. The Department believes it is justified in leaving this factor at negative two (-2) as proposed.

OAR 340-12-047 COMPROMISE AND SETTLEMENT OF PENALTIES BY THE DIRECTOR

Comment: Settlement negotiations should not be the sole avenue

NEDC commented that settlement negotiations should not be the sole avenue for the Department to pursue once a penalty has been assessed.

Response:

The Department has never been limited to settlement when pursuing payment of a penalty. The Director is authorized, not required, to seek settlement or compromise of any penalty. All penalty assessments are entitled to a contested case proceeding as described in Chapter 340, Division 11.

OAR 340-12-055 WATER QUALITY CLASSIFICATION OF VIOLATIONS

Comment: Intentional oil spills and miscellaneous reports

EPA noted that the Department included "intentional oil spill" as a class I violations. EPA asked if Oregon had criminal authority for oil spills. EPA also asked if sections (2)(c) and (3)(a) included all required water quality reports.

Response:

ORS 468.990 and 468.992 authorize criminal penalties for willful of negligent violations of Oregon's water pollution laws. ORS 466.995(3) authorizes criminal penalties for violations of ORS 466.605 to 466.680, Oregon's spill response laws. Oregon may pursue criminal penalties for oil spills under these laws. All violations are classified as misdemeanors. Violations of water pollution laws carry a maximum fine of $25,000 per day of violation, while violations of the spill response laws carry a maximum fine of $10,000 per day of violation.

Section (2)(c) includes reports to the extent that they are required by a permit or license. Section (3)(a) applies to discharge monitoring reports. Failure to submit other required reports falls under the catch all "any other violation".

Comment: Change language on discharge without a permit violation

Harry Demaray commented that the language of section (1)(e) should be changed to read "any unpermitted discharge that causes pollution of any waters of the state", as this wording is consistent with ORS 468.720(1)(a).

Response:

The Department believes that the current wording is adequate. The Department does propose to eliminate the word "unpermitted" as it is redundant within the section's context.

OAR 340-12-068 HAZARDOUS WASTE CLASSIFICATION OF VIOLATIONS

Comment: Eliminate some of the Class I violations

AOI urged the Department to reconsider all the Class I Violations for hazardous waste as some appear not to deserve a Class I rating.

Response:

The Department recognizes that the hazardous waste program is a complex one. However, it believes that classing of hazardous waste violations is reasonable due to the potential harm that such violations pose. The Department also would like to clarify that the first occurrence of many of these violations are not eligible for class I status. They are considered Class IIs. To clarify this, the Department proposes to add the term "systematic" to the definition section of the rule.

Comment: Wording changes

EPA suggested several wording changes for sections (1)(q) (now (1)(r)) and (1)(n) (now (1)(o)). EPA also asked why the classification did not include placarding violations.

Response:

The Department proposes to change the wording of section (1)(r) to "failure to conduct unit specific and general inspections," removing the reference to 40 CFR 265.15 and adding an "or" to section (1)(o).

Placarding violations apply to transporters. The Department does not regulate transporters in Oregon. That is the responsibility of the Public Utility Commission.

OAR 340-12-071 POLYCHLORINATED BIPHENYL CLASSIFICATION OF VIOLATIONS

Comment: Misspelled word and meaning of "facility"

PGE pointed out the polychlorinated biphenyl was misspelled (biphenol) and asked whether a mobil PCB treatment facility would be considered a permitted PCB disposal facility.

Response:

The Department has corrected the spelling error. The definition of PCB disposal facility is found in 40 CFR part 761.3, adopted by reference in OAR 340-110-003.

GENERAL COMMENTS

Comment: Determination of number of days of violation

EPA asked how the Department would treat several similar violations for purposes of determining the number of days of violation.

Response:

The Department retains the discretion to treat similar violations as repeated or continuous for purposes of the formula or single separate violations. Generally in situations such as EPA"s example(a water quality source has three consecutive monthly average violations), the Department would view these as separate violations subject to independent penalties.

The Department does not intend to use this general framework for several hazardous waste violations. Several violations (proposed OAR 340-12-068(1)(e),(r),(u),(aa) and (bb), pages A-38 to 40) are termed "systematic", meaning they occur on a regular basis. When such violations are discovered, they will be considered as a single violation as it is the number of times these violations occurred that make them systematic.

Comment: Air quality significant violators

EPA commented that it believed that the proposed rules should provide for mandatory penalties for all air quality "significant violators".

Response:

The Department may not mandate penalties for air quality violations. Such violations are generally subject to the prior notice requirement of ORS 468.125. The Department must evaluate each violation to determine whether it may fit into the statutory exclusion of a source of air pollution not normally in existence for five days (468.125(3)(d)).

Comment: Purpose of penalties

EPA asked what the purpose of issuing penalties will be. Would penalties be issued more routinely, with more predictability or would more violations be subject to penalties.

Response:

Generally the purpose of penalties is to punish violations and deter future ones. The Department believes that the proposed rules may result in the issuance of more and larger penalties.

However, no more violations are subject to penalties than in the past.

Comment: Uniform enforcement program

NEDC commented that the Department should create one enforcement program with subparts that address individual areas of regulation.

Response:

The proposed rules are exactly such a program. OAR 340-12-026 through 048 applies to all programs while OAR 340-12-050 through 073 addresses each program individually.

Comment: Penalty determination system too subjective

NEDC and George and Rhonda Ostertag commented that the proposed penalty system was too subjective.

Response:

The Department agrees that the penalty determination procedures is somewhat subjective. However, the creation of a completely objective system may be impossible. The Department believes that the factors enumerated by ORS 468.130(2) requires the Department to consider the particular circumstances of each violation individually within a set of standards. Thus, the process will always require a certain level of subjectivity in order to assure that each penalty is assessed with regard to the circumstances surrounding each violation. By establishing base penalties, classes of violations, and a formula which requires the Director to make specific findings, the Department believes it has balanced the Department's need to limit the system's subjectivity while considering each violation individually to the extent possible.

Comment: Eliminate prosecutorial discretion

NEDC commented that prosecutorial discretion be eliminated for pursuing the assessment and determining the amount of civil penalty.

Response:

The Department believes prosecutorial discretion is necessary to assure that penalties are assessed fairly with regard to the particular circumstances of the violation. The Department requires the flexibility to determine what cases are most appropriate and best support a penalty assessment.

Comment: Rules limit Commission authority

Perkins Coie commented that the proposed rules appear to limit the Commission's authority to defer penalties completely.

Response:

The Department disagrees with this reading. The proposed rules are intended to limit the Department's authority but not the Commission's authority to defer penalties to any amount as authorized by ORS 468.130(3).

Comment: Take into account "environmental credits"

Perkins Coie commented that the proposed rules do not take into account the issue of whether "environmental credits" or "alternative payments" might be an appropriate way of paying penalties. The concept of "environmental credits" proposes that those who are fined be allowed to apply the amount of the penalty to activities that will confer a direct environmental benefit.

Response:

The Department has examined the concept of "environmental credits" and has used it in at least one instance. The Department believes these credits can be a useful tool. However, the Department would only consider using such credits for activities beyond those required to achieve compliance. The Department did not include such a concept in its rules as it must first examine the legal issue of whether it is permissible to defer money from the general fund.

Comment: Consider litigation practicalities

Perkins Coie commented that the rules do not appear to allow the Department to make penalty adjustments based on litigation practicalities.

Response:

The Department generally takes considerations such as strength of case and likelihood of success into account in its decision whether to pursue a penalty. Thus, it believes it is inappropriate to take such practicalities into account in a post assessment penalty adjustment. Generally, factors which may influence the Department's chances for success may be adjusted under the available factors. The Department therefore believes it unnecessary to promulgate a rule which would take such a factor into account.

Comment: Affect of rules on Oregon Court of Appeals

Perkins Coie commented that the Department does not make clear whether it intends the proposed rules to be binding on the Court of Appeals. The Department should make it clear if it intends to do so.

Response:

The Department does not believe these rules are or should be binding on the Court of Appeals.

Comment: Use of "promptly" and "immediately"

PGE commented that the words "promptly" and "immediately" are used in the classification of violations and should be defined.

Response:

The terms "promptly" and "immediately" have different meanings depending upon the program. The specific meaning of these terms are found under the substantive requirements for the program. Thus, the Department believes it is unnecessary and repetitive to define these words within the proposed rules.

Comment: Meaning of "any"

PGE commented that "any violation of a Commission or Department Order" is listed as a Class I violation. PGE asked if the term "any" in this context meant any violation or any violation which poses a major risk of harm to human health or the environment.

Response:

The Department has proposed that any violation of a Commission or Department order is a Class I violation. This violation does not carry with it an implied requirement that the Department must first prove the violation poses a major risk. The Department believes that all such violations are serious and pose a major risk as such orders are generally issued only after actual environmental harm has occurred. The Department also considers violations of orders to be serious as a violator has the right to participate in the process of finalizing an order either through contested case proceedings or negotiations. The Department considers the violation of stipulated order especially serious as these orders are the product of negotiations and therefore are viewed by the Department as binding contracts.

Comment: Proposed rules as a Clean Air Act State Implementation Plan (SIP) Revision

EPA commented that it believed that the proposed rules should be incorporated in the federally enforceable SIP, while Richard Bach of Stoel, Rives, Boley, Jones and Grey commented that it should not be incorporated as incorporation is not required.

Response:

The Department has traditionally incorporated revisions of its civil penalty rules related to air quality into the SIP. However, incorporation is not required nor would lack of incorporation have any adverse affect on EPA's authority to enforce air quality laws in Oregon. The Department believes the State, EPA agreement (SEA) gives EPA adequate authority to oversee compliance and enforcement proceedings in Oregon. If the Department fails to live up to its commitment under the SEA, EPA has the authority to independently pursue enforcement. The Department agrees with Mr. Bach and proposes that the proposed rules not be incorporated into the state SIP.

Attachments:

1. Written comments provided by Lane Regional Air Pollution Control Authority
2. Written comments provided by Ann Wheeler of Oregon Environmental Council
3. Written comments provided by the U.S. Environmental Protection Agency
4. Written comments provided by Larry Patterson of Pennwalt
5. Written comments provided by George and Rhonda Ostertag
6. Written comments provided by Miriam Feder of Tektronics
7. Written comments provided by Llewellyn Matthews of Northwest Pulp and Paper Association
8. Written comments provided by Thomas Donaca of Associated Oregon Industries
9. Written comments provided by R.J. Hess of Portland General Electric
10. Written comments provided by Marialice Galt of the Northwest Environmental Defense Center

11. Craig Johnston of Perkins Coie

12. Harry Demaray

Yone C. McNally:ycm
229-5152
comments
February 16, 1989

LANE REGIONAL

AIR POLLUTION AUTHORITY

(503) 726-2514
225 North 5th, Suite 501, Springfield, OR 97477

Donald R. Arkell, Director

December 12, 1988

Y.C. McNally
Department of Environmental Quality
Enforcement Division
811 SW Sixth Ave
Portland, OR 97204-1390

RE: REVISIONS TO OAR CHAPTER 340, DIVISION 12
ENFORCEMENT PROCEDURES AND CIVIL PENALTIES

Dear Ms. McNally:

We have conducted a preliminary review of the proposed revisions to the departments enforcement procedures and civil penalties. In general, we support both the concept and your proposed approach in the issuance of civil penalties. The matrix approach provides a degree of certainty to violators that penalties will be issued; yet at the same time, it gives assurance of more uniform treatment. We view both of these as very positive attributes.

As part of our review process, we compared a number of penalties we have issued for violations of air pollution control regulations with those that would have been imposed under the matrix approach. This was done for open burning, asbestos and permit violations. These comparisons produced relatively consistent results among these types of violations. We did have a few instances where penalties calculated from the matrix did not square with reasonable judgement. These were generally attributed to the base penalty and the weighting factors of prior violations and negligence. Based on these limited comparisons, we would suggest as preliminary modifications to your proposal the following:

1. The $10,000 Matrix should be increased as follows:

Class I		Class II		Class III	
Major	$7,500	Major	$3,000	Major	$1,000
Moderate	$4,000	Moderate	$1,500	Moderate	$500
Minor	$2,000	Minor	$750	Minor	$250

2. The weighting factor "P" should be increased considerably. We believe prior violations of the same nature should carry substantially more weight than prior violations of unrelated nature. By the time a third violation of the same type is being considered, the magnitude of the violation should increase at least one step or double, whichever is greater.

3. Likewise, the "R" weighting factor should be expanded to deter flagrant violations. We would suggest the following values: 2 if negligent; 5 if grossly negligent; 10 if intentional; and 15 if flagrant.

Since we all will be using this system if it is adopted, we would be interested in reviewing other comments and evaluations from DEQ regions, industry, or others before a final proposal is acted on by EQC. I have asked Paul Willhite, our Engineering Services Supervisor, to contact you or Van Kollias to arrange a meeting to go over the comments. We look forward to conclusions of this project.

Sincerely,

Donald R. Arkell
Director

/tld

OREGON ENVIRONMENTAL COUNCIL

2637 S.W. Water Avenue, Portland, Oregon 97201
Phone: 503/222-1963

WRITTEN COMMENTS PRESENTED FOR THE
OREGON ENVIRONMENTAL COUNCIL
BY ANN WHEELER

RE: PROPOSED REVISIONS TO OAR CHAPTER 340, DIVISION 12
CIVIL PENALTIES

The Oregon Environmental Council (OEC) applauds and supports the Department of Environmental Quality's (DEQ) efforts to enhance consistency and create predictability in its enforcement procedure. We would like to offer the following comments:

While DEQ has made progress in establishing a public policy concerning its enforcement of Oregon's environmental statutes, the proposed rules do not go far enough in utilizing its authority. The process described in the proposed rules is totally discretionary - from whether to even issue a Notice of Violation to when and how much to fine a violator. The matrices, numerical formulas and list of classes of violations in each program will never be used if there isn't an initial decision that a violation has occurred and that an enforcement action is appropriate. Without more certainty of agency response, there may be no more consistency or predictability than currently exists with no written enforcement policy.

OEC makes the following specific recommendations in an effort to add a necessary element of predictability and fairness to these proposed rules. While at this time we do not have any suggestions for improving the vague definitions included in the rules, we strongly urge that clear, concise words be used, leaving as little room as possible for potential disputes over line drawing.

page D-1, (3) The most appropriate level of enforcement should be that necessary for all the goals listed in 340-12-026, not just to achieve compliance. Protecting the public health and environment, deterring future violations and ensuring appropriate and consistent statewide enforcement should also be part of this policy.

page D-2, (6) Under the definition of "Magnitude of the Violation" the definition should be expanded from "deviation from a standard" to include deviations from permits, rules, orders or standards. Not all violations will involve quantifiable - or for that matter, any - standards.

The definitions of "major", "moderate" and "minor" are too vague. They need to be more specific, especially since these definitions determine the starting position on the Penalty

OREGON ENVIRONMENTAL COUNCIL
2637 S.W. Water Avenue, Portland, Oregon 97201
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Matrices. The words "substantial", "significant" and "slight" also need to be more clearly defined or quantified.

page D-2, (9) The "prior violation" definition, which is a key determinant in assessing values of fines, excludes Notices of Violation. Yet, the plain language clearly means that a violation has occurred when a Notice of Violation is issued. It is inconsistent that such a violation is not a prior violation. The definition of "Prior violation" should be changed to include Notices of Violation, or the definition of Notice of Violation should be amended to make it a "formal" enforcement action.

page D-3, (11)(12) There are too many references to vaguely defined risks - "major", "moderate" and "minor".

page D-5, (1) Eliminate the "Notice of Noncompliance" as an enforcement action. There is no statutory reference to this action and it merely creates an unnecessary additional step in the enforcement process. The Notice of Violation is our recommended first step.

We also propose that the language in section (1)(c) be changed from "may" to "shall" so that this first notice is nondiscretionary. This initial response by DEQ to a violation should be nondiscretionary. We propose additional language which would require the DEQ to review the violation in question within a defined time period of 30 to 60 days and make some determination for subsequent enforcement action which could include the actions outlined in section (2) through (6) as well as a decision that no further action is required to protect public health and safety. If this latter decision is made, the record should include specific findings to support the decision.

We also propose that when one of the follow-up enforcement actions is taken which involves a fine, the base fine as outlined in the penalty matrices should be assessed immediately. Additional fines to be determined by the various factors outlines in section (1) on page D-11 should be assessed later after all the factors are analyzed.

page D-11 The "P" factor or "prior violation" is one of the six factors which are considered in determining the level of fine to be assessed. As stated above this factor should include Notices of Violation in order to take into consideration the first or even multiple violations of regulated source.

page D-12, (c) It is our opinion that the economic condition of a violator should not be a consideration in determining the amount of a fine, only the way the fines will be paid, i.e. the payment

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schedule. However, if such a factor is continued, the rules should define or outline the process for determining a source's "economic condition". In addition, how will an "economic benefit" be defined? Again, words such as "significant" or "moderate" should be defined - perhaps as a percentage of profits.

Finally, it is unclear why violator should receive credit (a -2 in the equation) because it is in poor economic condition or because it gained no economic benefit from the noncompliance. Credit should be given in the equation only when the violator does something - something positive to assist in ending the violation or cleaning up an environmental mess. The two above factors should receive neutral (0) assessments.

page D-13, (E)(F) If a violation occurs from an unavoidable accident, the violator should not receive any credit (-2) for that circumstance. That cause for a violation should receive a neutral assessment. Credit should be awarded only through some positive action by the violator, not because of an accident.

What constitutes "cooperativeness" in correcting a violation? How cooperative does a violator have to be in order to receive a 2 point credit? Should a violator receive credit for complying with mandatory cleanup requirements, or should it have to go over and above the requirements in order to get the credit? We propose that the credit be allowed only when the violator completes extra steps or works ahead of a schedule in eliminating a violation. Otherwise, the source should receive a 0 for complying with schedules or requirements.

In OAR 340-12-050 through 340-1-073 DEQ has done an admirable job cataloguing the many possible violations in each area of its environmental enforcement program.

Thank you for the opportunity to provide these comments.

MCM

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

OREGON OPERATIONS OFFICE
811 S.W. 6TH AVENUE
EXECUTIVE BUILDING, 3RD FLOOR
PORTLAND, OREGON 97204

cc: VAK TRB

REPLY TO ATTN OF: 000

December 21, 1988

Fred Hansen, Director
Oregon Department of Environment Quality
811 SW 6th Avenue
Portland, Oregon 97204-1390

Dear Fred:

We have reviewed DEQ's enforcement procedure and civil penalties. It appears this document if adopted by the Oregon Environmental Commission will provide DEQ with enforcement procedures that will allow establishment of a consistant and equitable program of enforcing violations that EPA considers significant. We also feel that if DEQ implements and follows these procedures, it will result in a predicability of DEQ's enforcement actions that will minimize Federal intervention on enforcement.

Our comments on DEQ's enforcement procedure and civil penalties are attached. They are divided into three groups - water, air, and RCRA.

We congratulate DEQ for undertaking this very large task of preparing an enforcement procedure and civil penalty policy. We look forward to see our comments incorporated into the document and the document adopted by the Environmental Quality Commission.

If you have any questions please contact me at 221-3250.

Sincerely,

Kenneth D. Brooks
Assistant Regional Administrator - 000

cc: Tom Bispham

#1663E

EPA Comments on DEQ's Enforcement Procedure and
Civil Penalty

I. Water Programs Comments

Page D6-D7:

- Enforcement Actions - 340-12-041:

The following enforcement actions are referred to as formal enforcement actions:

- Notice of Violation and Intent to Assess a Civil Penalty
- Notice of Violation and Compliance Order
- Notice of Civil Penalty Assessment
- Order

The term formal enforcement action is not defined though enforcement is defined as any documented action. Formal enforcement is specifically defined and required under certain circumstances in EPA programs and by Oregon's NPDES program pursuant to the Compliance Assurance Agreement. The actions listed above do not automatically meet the EPA definition simply by calling them formal. If the term is to be used, it should be defined.

SUGGESTION: Formal enforcement is an administrative or judicial action that:

- Explicitly requires recipient to take some corrective/remedial action, or refrain action, or refrain from certain behavior, to achieve or maintain compliance;
- Explicitly is based on the issuing Agency's determination that a violation has occurred;
- Requires specific corrective action, or specifies a desired result that may be accomplished however the recipient chooses, and specifies a timetable for completion;
- May impose requirements in addition to ones relating directly to correction (e.g., specific monitoring, planning or reporting requirements); and
- Contains requirements that are independently enforceable without having to prove original violation and subjects the person to adverse legal consequences for noncompliance.

- greater than 3 months late = major

The minimum penalties for the UIC program appear to be too small to serve as an effective deterrent to potential violators.

If we are reading the proposal policy correctly, the $500 "Matrix" would be applied to the Underground Injection Control (UIC) program, as well as some other EPA programs. We believe that any enforcement policy with a $500 maximum penalty is inherently incapable of meeting the objectives of EPA's penalty policy. That policy has as its central tenet the belief that the penalties assessed should, at least, eliminate all economic benefits which the operator accrued as a result of its violation(s). It is not hard to imagine UIC program violations which would save the operator sums which are far in excess of $500. For example, unauthorized injection (injection without a permit from State authorities) could save the operator several thousand dollars in costs. Other examples are not that difficult to identify.

Consequently, we strongly recommend that, if permitted by state statute, the $10,000 matrix be used for UIC program violations. If this is not permitted by statute, we would recommend that DEQ request a change in authority from the state legislature at the earliest available opportunity.

Page D-12 (C)

Suggest separation of economic condition and benefit. The penalty should not be lowered if there was not economic benefit. If there was a benefit, the penalty should perhaps be raised by the amount of benefit if it can be determined. If it cannot be determined, then use 2 or 4 as in (iii) and (iv).

If the economic condition is poor, perhaps the penalty decrease should be case by case rather a standard 2 as in (i).

We strongly recommend that any penalties collected for violations be applied to water quality/aquatic resource restoration/enhancement. For example, if fisheries or wetlands are adversely effected by the violation, penalties should be collected and used to restore or enhance fisheries resources or wetlands within the same waterbody system, stream, watershed, estuary.

Money collected from penalties that simply goes into the "general fund" does nothing to mitigate resource damage or loss. Equals net environmental loss.

Page D-22

- Water Quality Classification of Violations

Class One: (b) intentional oil spills. Doesn't Oregon have criminal remedies for intentional violations?

- Violations

It is not clear how violations are to be counted and run through the penalty calculations. For example, consider three consecutive violations of the monthly average limitation for the same parameter.

1. Are these three separate violations each run through the matrix separately, or is one violation run through the matrix and the other two accounted for in the formula, items "8"?

2. For water quality violations, civil penalties shall range from $50.00 to $10,000 per day. How many days of violation are represented by the three monthly average violations?

- Class and Magnitude of Violations (340-12-055)

Both the class and magnitude of violations are described in narrative form and are quite subjective. While this may have the advantage of increasing the discretion of the Department, it may permit wide variation in penalty assessments and subject the Department to criticism and second guessing during the hearing process. If the policy is too subjective, there is little point in having a policy. The proposed policy would classify some violations as "major," "moderate," or "minor" based on the degree to which the violation deviates from the applicable standard. "Major" would be a "substantial" deviation, while "moderate" would be a "significant" deviation. Unfortunately, these two terms are synonymous in common use. Other types of violations are classified using the same terminology with reference to the potential environmental effects or public health risks associated with the violation.

The subjectivity in class might be difficult to remove, but at least in the NPDES and UIC program, magnitude could be made more objective by utilizing % exceedance for limit violations and time exceedance for schedule violations and late reports.

For example:

- up to 50% exceedance = minor

- 51 - 75% exceedance = moderate

- greater than 75% = major

and

- up to 1 month late = minor

- 1 - 3 months late = moderate

Page D-23 - Class 2 (C) and Class 3 (a)

Does either of these include other required reports such as pretreatment reports, bioassay reports, etc.?

II. Air Programs Comments

EPA supports DEQ's proposed revisions to its enforcement policy and we strongly encourage their adoption. We believe that DEQ's revisions, in conjunction with modifications suggested by our comments below, will produce positive benefits both to air quality within Oregon and to its citizens. EPA also encourages the submittal of the final version of the enforcement policy as a formal revision to the Oregon State Implementation Plan (SIP). Incorporation of the rules into the SIP means that they will be both Federally and State enforceable as well as mutually consistent. This will continue the EPA-DEQ partnership in air quality as well as send a signal to industry that their compliance is expected. Our comments, as related to the air program, follow.

1. The proposed revisions focus on predictability of penalty amounts but not predictability on when penalties will be issued. APB feels strongly that the latter is needed to provide meaningful rules on penalties. Such rules should incorporate EPA policy, including collection of penalties for all "Significant Violators."

2. What will be the purpose of issuing penalities? Will they be issued more routinely, i.e. more of them, or with more predictability? Will more violations be subject to penalties?

3. D-2 The definitions for major, moderate and minor (magnitude of violations) are in subjective terms. A more objective set would be useful. For example, a minor violation might be from 1.0+ to 1.5 times the standard; moderate from 1.5 to 3.0 times the standard and major greater than 3.0 times the standard.

4. D-3 The definitions for risk of harm - major, moderate, minor - should be clarified. As written, the words are defined in terms of themselves.

5. D-3 Definitions for Class I, II and III violations should be clarified, per (3) above.

6. D-5 The words "may be issued" for formal DEQ enforcement actions conflict with the stated intention to increase predictability and promote consistency. For a policy which will be a proposed SIP revision, we suggest the words "will be issued" as a substitute. These words send a stronger message to the regulated community. DEQ may then exercise its enforcement discretion and not issue a NOV if extenuating circumstances exist.

7. D-5 We are curious as to the apparent, self-imposed requirement that DEQ issue two warnings - a Notice of Non-compliance and Notice of Violation with Intent to Issue a Civil Penalty - before a penalty can be issued. In the interests of expediting source compliance as well as conserving scarce Department resources, this procedure appears to be

cumbersome and provide inadequate incentives for sources to achieve compliance. We suggest that DEQ be permitted to issue civil penalties as an initial enforcement action.

III. RCRA Program Comments

1. It appears that DEQ will no longer use Class III as a violation class as everything not listed as a Class I is by definition a CLass II. The new policy will allow DEQ to take formal enforcement action (i.e., an order with penalty) against violators with DEQ Class I violations. It does not make such action mandatory, however. This may lead to situations where an inappropriate action is taken by DEQ against someone EPA would consider a Significant Noncomplier. Such a situation may lead to an unavoidable EPA overfile in the case. Other comments are as follows:

2. A major difference between Oregon's and EPA's Revised Enforcement Response Policy (EPA-ERP) is the distinction between the violation and the violator. Under EPA's policy, a violator with numerous non-repeat small violations (e.g., Class III violations under Oregon) could still be treated as a High Priority Violator and an order with penalty issued, if the violator is believed to be recalcitrant. There appears no such mechanism in DEQ's revised policy.

3. Section 340-12-041(2), Notice of Violation and intent to Assess a Civil Penalty (NOI) is identified as appropriate for responding to a Class I violation. However, at Section 340-12-068, the Class I violations listed are for the most part, those listed as HPV's under EPA policy. Such a notice does not include a penalty or a schedule by which compliance must be achieved. Also the language in sub-section (c) is rather obtuse if what is meant is that Class I violations other than those established through rules, orders, or permits established under ORS 466.005 through 466.385 are the only Class I violations addressed under a NOI. Further, the "or" statement in this subsection would allow repeat Class II or III violations to be addressed through a NOI which is not equivalent to a formal action under EPA's policy.

4. It appears that a Notice of Violation and Compliance Order (NOVCO) can be used as a followup to a Notice of Noncompliance or NOI along with responding to any violation of the hazardous waste regulations. As no penalty is associated with NOV/CO, this could result in a High Priority violator receiving an Order without penalty.

5. The Notice of Civil Penalty Assessment appears similar to an EPA Complaint and can be issued for repeat Class II or III violations or for an intial Class I violation.

6. It is unclear the difference between a NOV/CO and a Department Order under 340-12-041(5) and between and Order and Stipulated Final Order. Is a NOV/CO a type of Department Order?

7. There appears little correlation between the statement in Section 340-12-052(e) and the conditions at 340-12-041(4) on which a Notice of Civil Penalty Assessment can be issued. Class II and III violations must be repeat violations for a penalty action to be athourized.

8. Section 340-12-068(1)(n) has a somewhat different reading than found in EPA's ERP with the substitution of an "and" statement preceeding the words, "cost estimates". The EPA-ERP uses an "or" statement.

9. Section 340-12-068(1)(g) attaches the Class I violation on the failure to conduct general inspections rather than as in the EPA-ERP where the violation is for development of the inspection schedule and also for the

implementation. Limiting the inspection to that required under 40 CFR 165.15 may fail to account to the unit specific inspection requirements.

10. The EPA-ERP includes as a HPV someone who has multiple placarding violations. This example is not included as a DEQ Class I violation.

11. It may be helpful of deleted material is both underlined and bracketed to make review easier. For example, at page D-40 the bracketed material continues through to page D-42.

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 SIXTH AVENUE
SEATTLE, WASHINGTON 98101

JAN . 6 1989

REPLY TO
ATTN OF: HW-112

Stephanie Hallock
Department of Environmental Quality
Executive Building
811 S.W. Sixth Avenue
Portland, Oregon 97204

Dear Ms. Hallock:

We have reviewed DEQ's Revised Enforcement Procedures and Civil Penalties and provided preliminary comments for a consolidated regional response. However, the following final comments incorporate the preliminary comments, clarify some references and statements, and add a concern regarding reporting of High Priority Violators (see comment #2).

In general, we find that a number of violation scenarios have been added to DEQ's enforcement response policy, which should lead to DEQ's establishing a consistent interpretation of inspection observations for those deficiencies EPA considers significant enough to label a violator as a High Priority Violator (HPV). The new policy will allow DEQ to take formal enforcement action (i.e., an order with penalty) against violators with DEQ Class I action violations. In addition, the Notice of Civil Penalty Assessment appears similar to an EPA Complaint and can be issued for repeat Class II violations or for an initial Class I violation. However, it does not make such actions mandatory. This may lead to situations where the action taken by DEQ against a Significant Noncomplier (SNC) differs significantly from the action expected by our policy. Such a situation could result in an EPA overfile in the case.

Our other comments are as follows:

1. A major difference between Oregon's and EPA's Revised Enforcement Response Policy (EPA - ERP) is the distinction between the violation and the violator. Under EPA's policy, a violator with numerous non-repeat small violations (e.g., previously Oregon's Class III violations) could still be treated as a HPV and an order with penalty issued, if the violator is believed to be recalcitrant. There appears to be no such mechanism in DEQ's revised policy. Thus, here is another situation where DEQ's determination may not be considered appropriate under the EPA-ERP.

2. It appears that DEQ will no longer use Class III as a violation class, as everything not listed as a Class I is by definition a Class II. It also appears that EPA's Classes I and II are approximately equivalent to DEQ's Class II, and that EPA's HPV is approximately equivalent to DEQ's Class I. Due to these differences in designation and identification, we are concerned

that there is a potential for misunderstanding and miscommunication with respect to identifying and reporting High Priority Violators to EPA, especially on CMEL. The regulations should clearly describe the difference between DEQ's Class I and HPV. IF there is no difference, we would expect an enforcement response of an order with penalty or other economic sanction in those cases equivalent to EPA's HPV classification. We would also expect a clear understanding of how those cases will be reported to EPA. This is particularly important since the state enforcement program will be evaluated in part on statistics derived from state reporting.

3. Section 340-12-041(2), Notice of Violation and Intent to Assess a Civil Penalty (NOI), is identified as appropriate for responding to an EPA Class I violation. However, in Section 340-12-068, the DEQ Class I violations listed are for the most part those listed as HPV's under EPA's policy. This could lead to DEQ's issuing an NOI to a High Priority Violator, which EPA would consider to be an informal, and inappropriate, action. Such a notice does not include a penalty or a schedule by which compliance must be achieved.

Also, the language in sub-section (c) is unclear if what is meant is that Class I violations other than those established through rules, orders, or permits established under ORS 466.005 through 466.385 are the only Class I violations addressed under an NOI. Further, the "or" statement in this sub-section would allow repeat DEQ Class II violations to be addressed through an NOI, which is not equivalent to a formal action under EPA's policy.

4. It appears that a Notice of Violation and Compliance Order (NOVCO) can be used as a followup to a Notice of Noncompliance or NOI along with responding to any violation of the hazardous waste regulations. As no penalty is associated with an NOV/CO, this could result in an HPV receiving an Order without penalty.

5. The difference is unclear between an NOV/CO and a Department Order under 340-12-041(5) and between an Order and a Stipulated Final Order. Is an NOV/CO a type of Department Order?

6. There appears little correlation between the statement in Section 340-12-042(1)(e) and the conditions in 340-12-041(4) on which a Notice of Civil Penalty Assessment can be issued. Class II violations must be repeat violations for a penalty action to be authorized.

7. Section 340-12-068(1)(n) has a somewhat different reading than found in EPA's ERP with the substitution of an "and" statement preceding the words "cost estimates." The EPA - ERP uses an "or" statement.

8. Section 34-12-068(1)(q) attaches the Class I violation on the failure to conduct general inspections as required under 40 CFR 265.15. Limiting this section to the general inspection requirements may fail to account for the unit-specific inspection requirements. This section should clearly identify that the unit-specific criteria must be met as well as the development of a schedule for inspections.

9. The EPA - ERP includes as an HPV someone who has multiple placarding violations. This example is not included as a DEQ Class I violation.

We hope these comments are helpful. We look forward to discussing them with you during our January 9 conference call.

Sincerely,

Mike

Michael F. Gearheard, Chief
Waste Management Branch

cc: Jan Whitworth, DEQ
Brett McKnight, DEQ
Al Goodman, OOO

PENNWALT CORPORATION

P.O. BOX 4102, PORTLAND, OREGON 97208 · (503) 228-7655

December 16, 1988

Dept. of Environmental Quality
Enforcement Section
811 S.W. Sixth Avenue
Portland, OR 97204

ATTN: Yone C. McNally

The following comments are provided on the proposed revisions to the civil penalty rules.

As proposed, OAR 340-12-045 (1)(c) contains a formula for calculating the amount of a penalty. Factor "P" varies depending on the number and type of violations a facility has experienced. It is suggested the wording be revised as follows:

(A) "P" is whether the repondant has any similar prior violations of statutes, rules, orders and permits during the last 5 years.

A 5 year review period would generally be equivalent to the length of most environmental permits. Since standards and permit conditions generally changes over time, it would seem appropriate to limit the violations to recent standards.

Factor "O" varies depending whether the violation was a single occurence or was repeated. It is not clear how a single violation in 1987 and again in 1988 would be handled. Are these single occurrences or are they repeated? It is suggested that class two and three violations be considered as single occurrences if they occur at least 3 months apart. Two or more class one violations occurring during any 12 month period should be considered as repeated.

Thank you for the opportunity to comment on the proposed rules.

Sincerely,

PENNWALT CORPORATION

Larry D. Patterson

LARRY D. PATTERSON
Environmental Control Director

LDP/pc

January 9, 1989

DEQ Enforcement Section
811 SW Sixth Ave.
Tenth Floor
Portland, OR 97204

We are writing to comment on the revision of Oregon Administrative Rules on pollution enforcement. We believe that 1) your general concept of using fines only after not complying voluntarily is flawed and 2) the fine amounts are too low. The fine matrix concept is fine as it removes some flexibility a lax-enforcement agency might use.

By generally fining companies only after they have been discovered and have not complied voluntarily, these companies have little incentive to clean up their operations before discovery. The fine matrix should be mandatory for all pollution infractions, with steeply increasing fines for noncompliance once warned or for repeated infractions. 340-12-040 (2) should be altered to say a penalty will be accessed in all cases when a infraction is found.

I disagree concerning the predictability. There will still be major disputes over where on the matrix specific infractions belong. In fact, it is probably as arbitrary as the old system.

We urge you the reconsider several of the formula factors. The violators economic condition is not relevant. All violators should be treated the same. Poorly run companies in economic trouble should not be given less of a fine because they are in economic trouble. Their infractions cause just as much environmental damage. 340-12-045 (1-c-C) should be removed and the amount of the base fine increased to make up for lowering of fines this would cause.

A value of "-2" should not be given when the violator was cooperative. All violators should be assumed to be cooperative. Those who are not should be penalized--those who do should not be rewarded. All violaters should be expected to cooperate. Give a positive value to those who don't cooperate. Delete 340-12-045 (1-c-F-i).

We assume polluters will be strongly in favor of these rules. We would if we were in their shoes. I urge you to alter to

the admin rules to deter pollution infractions -- not make it easier for polluters to figure out what the fine would be if they get caught.

Sincerely,

George Ostertag
Rhonda Ostertag

George Ostertag
Rhonda Ostertag
4303 25th Ave. NE #13
Salem, OR 97303

MIRIAM FEDER
ATTORNEY AT LAW
The BROADWAY BLDG., 930
621 SW ALDER STREET
PORTLAND, OREGON 97205
(503) 241-1673

Ms. Yone C. McNally
Department of Environmental Quality
Enforcement Section
811 S.W. Sixth Avenue
Portland, OR 97204

January 12, 1989

re: Proposed Civil Penalty Rules, OAR 340-12-030 through 071.

Dear Ms. McNally;

Tektronix, Inc. welcomes the opportunity to comment on the revised civil penalty rules. Application of the proposed penalty matrix would take into account prior violations of the offender in administering enforcement action. Tektronix makes the following recommendations regarding this use of prior violations and requests the Department to consider these comments in redrafting the definition of that term at 340-12-030.

Tektronix recommends that, for purposes of enhancing a current violation, the Department only look to violations within the previous three years. For example, if a company had violations on March 1, 1989 and March 1, 1991, the Enforcement Section would look to the 1991 violation in considering the appropriate penalty for a violation occuring in March of 1993, but would not consider the 1989 violation. This amnesty provision rewards the person that is succesful in changing a poor record with the Department by allowing that person to grow beyond previous problems. Such a policy may well provide incentive to the repeat violator to correct such behavior in the hope of being able to clean the slate by observing a period of strict compliance.

The addition of this type of amnesty provision necessitates a clearer definition of when the violation is considered to have occurred. Tektronix suggests that the Department use the date alleged in the Notice of Violation, to measure most meaningfully the conduct of the person. Use of this date also gives the Department incentive to take prompt and effective action.

Tektronix also recommends that only those violations that occur after the proposed penalty rules are adopted be used to enhance penalties. Under previous Departmental enforcement policies, a person may not have had the same incentive to oppose enforcement action that it now has. In some instances, it was probably more expedient for a person to pay a small fine or sign a

consent agreement than to retain counsel and contest the Department's allegations. Adoption of this proposed policy will change that practice dramatically. It would be grossly unfair to use enforcement records generated under the previous conditions to enhance penalties to be applied for violations committed in the future, especially since such use would be made mandatory under the proposed rules.

Tektronix further recommends the proposed rules be changed so that only prior violations under the same program as the current enforcement effort be used for penalty enhancement. For example, a prior hazardous waste violation would be used to enhance a hazardous waste violation pending before the Department. However, a prior water violation would not be considered by the Department in assessing a penalty under the hazardous waste program. This change recognizes that the different programs administered by the Department require different approaches, disciplines and perhaps, differing priorities depending on the person's operation. For example, it may take some time and mistrials for a person to bring a complicated system into balance, but the difficulties in those efforts do not necessarily reflect on the person's willingness or ability to comply with other programs of the Department.

Tektronix appreciates the opportunity to recommend these changes to the proposed rules.

Very truly yours,

Miriam Feder

cc: Frank Deaver
Ed Lewis

January 16, 1989

NORTHWEST PULP&PAPER

Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204

ATTENTION: YONE C. MCNALLY

RE: REVISIONS TO CIVIL PENALTIES

Dear Ms. McNally:

The DEQ;s efforts to incorporate its enforcement policy into rules and to provide predictability to the regulated community is to be commended.

The NWPPA would like to call one provision to your attention which could result in serious inequities to large facilities.

OAR 340-12-042(f)(1)(c)(A) on page D-11 establishes multipliers for the respondents' prior violations. This may be appropriate if the same unit was previously involved and the circumstances which caused the prior violation were not adequately corrected. It is not appropriate if altogether a different unit or situation was involved. In the later situation, the regulation would be inequitable to large complex facilities with many different types of pollution control devices (air, water, etc.) or any facility with a continuous emission monitoring device. In such cases the regulation penalizes because of statistics rather than wrong-doing. The essential purpose of enforcement is to secure compliance through changes in operations, maintenance or behavior of the regulated party. Increasing the penalty because of unrelated incidents is merely a financial surcharge on large facilities which submit more data.

You might note that a few years ago, Washington state chose a similar approach with consequences which were extremely burdensome to the Washington Department of Ecology. After the first year of experience, the inequities became apparent and triggered a great deal of criticism of the agency with the result that the agency is now engaged in a much more extensive revision of its enforcement policy than if the policy had been fairly constructed in the beginning.

Oregon could avoid going through some of the same problems by clarifying that the "P" factor relates to similar or related prior violations.

Sincerely,

Llewellyn Matthews

Llewellyn Matthews
Executive Director

LM:sd

P.O. Box 12519
1149 Court St. N.E., Salem,
OR 97309-0519

Telephone:
Salem 503/588-0050
Portland 503/227-5636

January 16, 1989

ASSOCIATED OREGON INDUSTRIES

DEQ Enforcement Section
811 S. W. 6th Ave.
Portland, Oregon 97204

Re: Comments of Associated Oregon Industries, Inc. regarding the proposed revisions of OAR 340, Division 12, Civil Penalties.

The following comments are directed primarily at the apparent, but we suspect unintended harshness of the proposed rules as they will apply under the section on "Hazardous Waste Management and Disposal Classification of Violations" found in OAR 340-12-068. Another issue of concern is the conflict found within the rules as the rules relate to this class of violations.

Initially we reviewed the "Magnitude of Violations" (OAR 340-12-030[6]), "Risk of Harm")OAR 340-12-030[11]) and "Violations" (OAR 340-12-030[12]) and concluded that the classifications were rational and achievable in the context of the proposed enforcement activities. Each category contains a range of options that may be applicable over the number of programs to which the proposed rules will apply.

Review of the matrix, together with the factors to be considered in arriving at the civil penalty for any violation appeared appropriate to provide the necessary basis to enhance or mitigate the penalty to be applied.

One comment, however, is with regard to prior violations in OAR 340-12-045[1][C][A]. We suggest that prior violations should be limited by two additional factors:

(1) Prior violations at the inception of the program should be limited to a period of time in the past. We believe that this period should not exceed two years. After the proposed rules are in effect the period of time in the past could be extended, but, again, there should be a time prior to which previous violations should not count; and

(2) Prior violations should be limited to the facility in which the prior violation occurred. If multiple plant employers are subject to past violations at other company plants they will be placed at a significant disadvantage to a single plant operator as it relates to the amount of penalties that might be assessed, and may not relate at all to the magnitude of the violation itself.

(continued, page 2)

Review of the Class one, two and three violation examples for all programs appear to comply with the general goals of the program. However, one classification presents difficulties and, when combined with other factors in the rules, the penalties appear excessive. We refer here to the provisions of OAR 340-12-068 relating to Hazardous Waste Management and Disposal where virtually all violations are Class one, from subparagraph (a) to (ee). Then there is (ff) which covers any other violation which poses a major risk of harm. There follows a general statement that Class two violations cover all other violations. Unlike all other classifications, there are no Class three violations provided.

We urge you to review the entire list of Class one violations for this classification because we believe that there are included in the present list violations which do not deserve a Class one rating. Some should be rewritten and downgraded and others should be downgraded. Some, but certainly not all, of the paragraphs to look at would be (f), (m), (q), (t), (z) and (aa).

Another reason for urging the above request is that, as proposed in OAR 340-12-068, it appears that most violations will be Class one in nature. If this is the case, as we believe, then under OAR 340-12-041(Enforcement Actions) you will in all such cases, where any action is required, have to issue a Notice of Violation and Intent to Assess a Civil Penalty as provided by Subsection (2) of that Section. We arrive at this conclusion because the Notice of Noncompliance provided in Subsection (1), which gives notice of a violation, appears to be limited to Class two or three or lesser violations. Such a result hardly conforms to the goal of conference, conciliation and persuasion of which the Department is justly proud. Also, we believe such a result would further burden this program which is already unduly complex for both the agency and the regulated community.

In view of this situation we request that you revise the Class one list in OAR 340-12-068 to reflect more closely the severity of the violation to the criteria for Class one, two and three violations and the goals of these proposed rules. You may also want to revise OAR 340-12-041(1) so that a Notice of Noncompliance can be used on Class one violations.

One last comment relating to OAR 340-12-052, Noise Violations, we suggest that paragragh (a) of the Class one violations is approporated, but that paragraph (b) would appear to be a Class two or three violation.

We appreciate this opportunity to comment.

Sincerely,
Associated Oregon Industries, Inc.

Thomas C. Donaca, General Counsel

Portland General Electric Company

January 16, 1989
ES-018-89L
GEN GOV REL 9

Ms. Yone McNally
Oregon Dept Environmental Quality
Enforcement Section
811 SW Sixth Ave
Portland OR 97204

Dear Ms. McNally:

PGE has reviewed the proposed revisions to ORS Chapter 340, Division 12 Civil Penalty Rules and has the following comments:

1. OAR 340-12-030(6)(b) and OAR 340-12-030(11)(b): The word "significant" has the same meaning as "major" (see Roget's II Thesaurus). Another word is needed to define "moderate" Roget's II Thesaurus lists three synonyms: modest, reasonable and temperate.

2. The word biphenyl is spelled incorrectly (biphenol) throughout the proposed revised rules.

3. Why are hazardous waste, PCBs, and asbestos rules excluded from the notice of violation procedure? We do not understand why violations of these rules are different from violations of rules for air quality or water quality.

4. The words "promptly" and "immediately" are used throughout the proposed revisions.

   The rules for Underground Storage Tanks give 24 hours to report suspected spills or releases. Is this "promptly" or "immediately"? Are these "prompt" or "immediate" reports to go to the 1-800-452-0311 number or can they wait until DEQ working hours (8:00 - 5:00)? DEQ needs to clarify what is expected to avoid future legal entanglement over what is "prompt" and "immediate".

5. OAR 340-12-071(1)(a)(A): Is a DEQ approved mobil PCB treatment facility considered a permitted PCB disposal facility"?

6. Throughout the proposed rules, even though classes of violations have been defined in the definitions section, in the body of the rules under the different classes of rules for different types of violations, it often says "any violation of . . ." Does that really mean "any," or does it mean any as originally defined, i.e., "any violation" for Class One still must mean that it poses a major risk of harm to public health? As a specific example, see OAR 340-12-071, subsection 1 on page D-46 of the proposed rules, which says:

   (1) Violations pertaining to the management and disposal of polychlorinated biphenyls (PCBs) shall be classified as follows:

      (a) Class One: . . .

      (C) Any violation of an order issued by the Commission or the Department.

7. Under subsection 2 of OAR 340-12-026 on policy, we would suggest that the wording in the first sentence be revised to read as follows:

   Except as provided by 340-12-040(3), the Department <u>shall use best efforts prior to initiating and following issuance of any enforcement action to solicit compliance by conference, conciliation and persuasion.</u>

   The primary concern in the revision is that the "will endeavor" is replaced by the higher mandate of "shall use best efforts."

8. Under the definitions of OAR 340-12-030, "magnitude of the violation" is defined in subsection 6 on page D-2 as "the extent of a violator's deviation from a standard established in the commissions's and Department's statutes, rules, permits or orders, etc." We would question whether this is a definite objective standard or a shifting target. We don't have a specific word change to recommend, but it is a point that should be addressed.

The revised rules clarify to the regulated community the environmental rules and economic consequences of the DEQ Civil Penalties when required. They should be an improvement over the existing rules. If you have questions or need additional clarification, please contact me at 464-8521.

Sincerely,

R. J. Hess, Manager
Environmental Sciences

RJH:slc
zes 1902

NORTHWEST ENVIRONMENTAL DEFENSE CENTER
10015 S.W. Terwilliger Blvd.
Portland, Oregon 97219

January 16, 1989

To: Environmental Quality Commission
From: Marialice Galt, Law Clerk NEDC
Re: Comment on Revised Civil Penalty rules, OAR 340-12-030 through 12-071, and enforcement policy.

The first issue that needs to be addressed is that of the Departments philosophy of conference, conciliation and persuasion to solicit compliance prior to initiating any enforcement actions. Because of the ongoing degradation to the environment, Congress and the Oregon State Legislature have sent strong messages to the environmental agencies to enforce the standards set forth by various pollution control acts. We believe that enforcement and penalties should ensue immediately upon a finding of noncompliance.

We are in full agreement that rules should be promulgated to take the place of generalized enforcement policies and guidelines.

The Department should create one enforcement program with subparts, to accommodate the different areas which need to be regulated ie. air and water. This would enhance the programs clarity to those regulated and those monitoring and enforcing the laws.

The penalty scheme as it stands now is far to subjective and flexible and should follow the guidelines set forth by the EPA. The Director should not have so much discretion in deciding penalty amounts. This scheme should take on the attributes of criminal sanctions so, one knows how serious the crime of pollution is, and penalties will serve as deterrents to future violations.

Past agency actions should not be the controlling factor in determining what penalties must be paid for todays actions. We need specific penalties which are levied in every circumstance.

Prosecutorial discretion must end for pursuing the assessment of civil penalties, as well as the amount of the penalty levied. If someone is breaking the law, and is found out, then they must suffer the consequences.

If you do not enforce the environmental laws then we are essentially condoning the polluters actions and sending a message to the regulated community that its OK to pollute and that we

really do not take seriously the mission entrusted to us by Congress and the Legislature.

Develop a schedule with specific amounts for specific violations. Then only create exceptions or decreases of penalties for extraordinary reasons or increases for cases of wanton, reckless, or intentional disregard of the law.

The proposed box matrix system can be applied, but too many variables make the system more complicated then it need be. Such as taking into account the violator's economic condition and willingness to cooperate with the agency. Our legal system does not take these factors into consideration with someone who has committed an armed robbery, nor should we with environmental crimes.

Settlement negotiations should not be the sole avenue for DEQ to pursue, in that violators will always know that they can negotiate a more favorable penalty, thus making it more profitable to pollute. The settlement process should also be on the record so it can be reviewed by the courts and scrutinized by the public. Approval by the Director can still take place to expedite compliance but their must be a record showing a rational basis for the settlement which is negotiated.

Thank you for taking our comments into consideration when determining the new proposed rules.

Sincerely,

Malialice Galt
Law Clerk

MKG/

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
U.S. BANCORP TOWER, SUITE 2500 • 111 SOUTHWEST FIFTH AVENUE • PORTLAND, OREGON 97204
TELEPHONE: (503) 295-4400

January 17, 1989

Ms. Yone C. McNally
Oregon Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, OR 97204

Re: Comments on the Proposed Modifications to the Civil Penalty Rules (OAR Chapter 340, Division 112)

Dear Ms. McNally:

Perkins Coie submits these comments on the proposed modifications to the civil penalty rules (OAR Chapter 320, Division 112). While Perkins Coie supports the Department's goal of promulgating rules to ensure consistency in the imposition of civil penalties, we are also concerned that these rules should allow sufficient flexibility to ensure that all equitable factors are taken into account in the penalty assessment process.

Specifically, we offer the following comments:

1. The proposed rules do not adequately take into account the economic benefit that a particular respondent might have realized through non-compliance. As we understand Proposed Rule 340-12-045(1)(c), the maximum allowable adjustment for economic benefit gained by the respondent through its non-compliance is a 40% upward adjustment of the base penalty. In the formula BP + [(.1 x BP)(E)] (where BP represents the base penalty and E represents the economic condition), a maximum allowance of 4 for E where the respondent gains a significant economic benefit through its failure to comply results in a maximum upward adjustment of 40%. Disregarding for present purposes the other adjustment factors, this yields a maximum penalty of 140% of the base penalty.

   In many instances, the actual economic benefit gained through non-compliance may exceed 40% of the base penalty. We are aware of many instances (not in Oregon) where the economic benefit obtained through non-compliance has exceeded the base penalty by 500% or more. This might happen, for example, where a company fails to comply with the RCRA financial responsibility requirements. Does DEQ intend in such cases to allow such a company to pay a penalty that may be less than the economic benefit that it

obtained through its failure to comply? (Note that DEQ will usually have the ability to capture the full economic benefit in such situations, even where the economic benefit exceeds $10,000, by treating this type of continuous violation as more than one violation.) Such a result would be patently unfair to those companies that expend the funds that are necessary to achieve full compliance.

As an alternative approach, we suggest that DEQ follow EPA's approach of separating the gravity based portion of the penalty (which roughly correlates to the formula set forth in Proposed Rule 340-12-045(1)(c) except insofar as the formula includes economic benefit and economic condition components) from the economic benefit and inability-to-pay components. See, e.g., EPA's Civil Penalty Policy at page 19 and EPA's RCRA Civil Penalty Policy at page 3 (both of which are attached hereto). Such an approach would guarantee that the gravity-based component of the penalty would be in addition to the actual economic benefit gained by the company in violation.

We also raise the issue of whether an economic benefit component is appropriate where the respondent is a public agency. The primary purpose of an economic benefit component is to remove any ill-gotten gains achieved through non-compliance. It appears to us that this rationale is largely inapplicable when the violator does not operate pursuant to a profit motive.

2. The proposed rules do not adequately adjust for inability-to-pay problems. As we understand Proposed Rule 340-12-045(1)(c), the maximum allowable adjustment for the adverse economic condition of a given respondent is a 20% downward adjustment. In the formula BP + [(.1 x BP)(E)], a maximum allowance of -2 for E where the economic condition of the respondent is poor results in a maximum downward adjustment of 20%.

In many instances, however, respondents may not be able to afford even 80% of the base penalty. We do not believe that it is DEQ's intention to put all of these companies out of business.

We submit that a better approach would be to leave the economic condition of the respondent completely out of the initial calculation of the penalty. DEQ and/or the EQC could then place the burden on the respondent to show that the penalty as calculated is beyond the respondent's means. If satisfied with the respondent's showing in this

regard, DEQ and/or the EQC would then have the option of adjusting the penalty to the extent necessary to ensure the respondent's continued viability. At the same time, DEQ and/or the EQC could also reserve the option of seeking penalties that might put a company out of business in appropriate circumstances. We do not believe that DEQ and/or the EQC should or would exercise this option in other than the most extreme circumstances (i.e., where a company has shown flagrant disregard toward its compliance responsibilities).

In summary, we do not believe that the approach to inability-to-pay problems that is embodied in the proposed rules affords sufficient flexibility to deal with these problems in a manner that will allow most companies with serious inability-to-pay problems to remain in business so long as they have not proven themselves to be severe environmental recalcitrants. We urge that the rules be modified accordingly.

3. At the other extreme, we do not believe that the base penalty for a particular company should be adjusted upward because that company is performing well financially, as currently seems to be contemplated under Proposed Rule 340-12-045(1)(c)(C)(iii). While, as indicated above, we believe that marginal companies may need special protection in certain situations, we do not believe that prosperous companies should be discriminated against simply because they are doing well.

   On this point, we further note that EPA never adjusts its penalties upward because of the economic condition of the respondent. In fact, EPA specifically disavows this practice on page 20 of the RCRA Civil Penalty Policy.

   We urge that DEQ reconsider the appropriateness of increasing the penalties to be paid by a particular company simply because that company has a strong bottom line.

4. The proposed rules do not consider the issue of whether the complete deferral of penalties may ever be appropriate. Moreover, they appear to impose limits on the discretion of the EQC in this regard which are inconsistent with ORS 468.130(3).

   The closest the rules come to addressing the issue of deferrals is in Proposed Rule 340-12-042(1), which provides that no civil penalty issued by the Director pursuant to the $10,000 matrix shall be less than $50. This language

is similar to language in the present rules (see, e.g., OAR 340-12-055(2)). It is our understanding, however, that DEQ and the EQC have frequently deferred penalties in the past. In fact, the EQC has the express authority to defer or reduce penalties under ORS 468.130(3). Additionally, DEQ has the implied authority to defer penalties by virtue of the fact that the decision to enforce at all is always discretionary.

We submit that the deferral of penalties is appropriate in certain situations. One example of such a situation might occur where a particular respondent acted in good faith and is still faced with substantial compliance costs. Another example might be where the respondent is a public agency that has been acting in good faith. In this latter situation, the necessary penalties may need to come out of scarce public resources if deferrals are not available.

In either of the above situations, the deferrals could be either conditional or unconditional. In some cases, DEQ and/or the EQC might deem it appropriate to condition the granting of such a deferral on the respondent's timely compliance with any compliance schedules agreed to by the Department. Thus, DEQ and/or the EQC could create additional incentives for the respondents of such orders to ensure that these compliance schedules are met.

If it is DEQ's position that deferrals will no longer be available at the level of the Department under the proposed rules, this position should be clearly stated and thus be more clearly subjected to public comment. In any event, it appears that Proposed Rule 340-12-045(2) should be modified to make clear that the EQC always retains the discretion under ORS 468.130(3) to remit or mitigate penalties as it considers proper and consistent with the public health and safety.

5. The proposed rules do not appear to take a position on the issue of whether "environmental credits" (also known as "alternative payments") might ever be appropriate. As DEQ is probably aware, there is a growing trend nationally to seek to apply funds that would otherwise be spent on environmental penalties in ways that will confer direct environmental benefits. We share the view that, in appropriate circumstances, it is preferable to have a company spend these funds in a manner that will directly benefit the environment, as opposed to having them pay a fine that will go to the general revenues (see ORS 468.135(5)). Such an approach is most clearly appropriate

in situations where a particular company is willing to improve its environmental operations in a manner that is not required by law. It might also be appropriate in situations where a company is prepared to put on or fund a public seminar on a timely environmental issue, or to perform other similar public services.

We believe that DEQ's general enforcement discretion together with DEQ and the EQC's settlement discretion include the authority to settle cases in such a manner. We urge DEQ to consider this alternative and to address it in these rules.

6. The proposed rules do not appear to provide DEQ with the authority to make penalty adjustments based on litigation practicalities. These practicalities may include such concerns as the strength of the agency's case and the general benefit to the agency in avoiding litigation. Our experience has been that administrative cases settle much more readily if the agency in question has the explicit authority to make limited adjustments for these types of concerns.

   We believe that ORS 468.130(2)(h) provides the EQC with the authority to promulgate rules allowing both DEQ and the EQC to consider factors other than those enumerated in ORS 468.130(2)(a) through (g). We urge DEQ to recommend to the EQC that it be allowed to consider litigation practicalities such as those set forth above when adjusting penalties.

7. The proposed rules do not clearly address the issue of whether DEQ expects these rules to be binding on the Court of Appeals when that court is faced with appeals regarding the size of a particular penalty. Traditionally, courts retain equitable discretion to impose whatever penalty they deem appropriate in a particular action even after a particular respondent has exhausted its administrative rights. The fact that ORS 468.130(3) confers similar authority on the EQC during the administrative process suggests strongly that the Court of Appeals should have such authority in any subsequent appeals.

   If DEQ intends for these rules to limit the discretion of the Court of Appeals, this intent should be made explicit and thus be more clearly subjected to public comment.

8. The proposed rules do not clearly state whether they will be applied retroactively to violations that occurred prior

to their promulgation. To the extent that the proposed rules appear to reflect a tougher enforcement posture on the part of DEQ, there would appear to be serious fairness concerns inherent in applying them retroactively. This would particularly be true if DEQ were to impose large penalties for past violations on one company, whereas other companies may have already paid lesser amounts for violations occurring during the same time period, or may even have had their penalties completely deferred.

If DEQ intends to apply these rules retroactively, this intent should be made explicit and thus be more clearly subjected to public comment.

We appreciate both this opportunity to comment and the obvious effort put forth by your staff in drafting these proposed modifications. We would appreciate receiving a full set of all comments presented on the proposed rules including transcribed comments made during the public hearing sessions. If any further opportunity for input is made available to address these rules or the comments on or revisions to the rules, we would appreciate being informed of that opportunity at the above address or by phone at (503) 295-4400.

Very truly yours,

Craig N. Johnston

CNJ/paf
6843Z
Enclosures

TO: Ms Yone McNally, DEQ Enforcement Section
FROM: Harry Demaray HD 1/17/89
SUBJECT: OAR 340-12-026, 13 Proposed revisions

340-12-026 (1) Delete the "To" at the beginning of sentences (b) (c) and (d). Add sentences (e) and (f) as follows:

(e) deny by penalty any monetary gain to violators from infraction of rules or statutes.

(f) recover from the violator by penalty the full cost of investigating and prosecuting the violation.

(9) Change to read: "Prior violation means any act or omission of the violator documented

by the Department."

(11) Change to read: "Risk means the level of harm or danger created by ...." "Risk shall be separated into three levels."

340-12-040 (3)(6) Add new sentence "(H) The violation consists of an oil spill caused by intent or neglect as described in 340-12-042(2)."

340-12-042(2) Change to read, "Persons causing oil spills through an intentional or negligent act shall be assessed by the Department a civil penalty of not less than ...." "The amount of the penalty shall be determined by doubling the values contained in the $10,000 matrix

in section (1) of this rule ...." Explanation of change: The weasel-word "incur" must be replaced by the term "shall be assessed by the Department" to match the language and the command of the Clean Water Act Sec. 311(b)(6)(A), 33 U.S.C. 466. The word "incur" has been defined by the Oregon Attorney General to mean "subject to," which is weak and not in keeping with the general requirement that a state law cannot be less restrictive than the basic Federal law that applies.

340-12-045 (1)(c) Change the order of the letters in the formula to spell PHORCE. This

acronym is easily remembered and fitting. With this change it can be said the penalty amount equals the base penalty plus the product of one tenth the base penalty multiplied by the PHORCE. The order of the paragraphs defining the letters ORCE should be rearranged; (C) to (F), (D) to (C), (E) to (D) and (F) to (E).

340-12-055 (1)(e) Change to read, "Any unpermitted discharge that causes pollution of any waters of the state. This wording comes from ORS 468.270(1)(a).

General comments:

The permissive "shall incur" wording in the state oil spill statute ORS468.140(3)(a) is inconsistent and in conflict with the unequivocal "shall be assessed" language of the Clean Water Act, Sec. 311(b)(6)(A) 33 U.S.C. 466. The kind of conflict of law described here is governed by ORS468.815 Effect of federal regulations of oil spillage, which reminds us that state law cannot conflict with applicable federal law. The conflict being the relative permissiveness of state law compared to federal law.

MEMORANDUM

To: Environmental Quality Commission

From: Director

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

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

BACKGROUND

On August 23, 1988, the Environmental Quality Commission held a retreat with Department staff and outside participants. One of the principle topics of discussion was a review of the Department's past enforcement practices, policies, as well as current issues related to this subject. Attachment E is a copy of the issue paper used for the enforcement discussion at the retreat.

As a result of these discussions, the Commission instructed the Department to initiate the following actions related to enforcement:

1. Include civil penalty settlements as a regular Commission agenda item. This activity was initiated at the last Commission meeting.

2. Incorporate the enforcement policy into the Department's rules. The rules would include a classification of violations and a civil penalty assessment matrix. The Commission emphasized its desire to create a rule which establishes penalty predictability for the regulated community yet retains a level of flexibility in enforcement discretion.

The Department has proceeded to evaluate various enforcement policy options and developed a proposed rule (Attachment D) which is described below and

for which the Department requests Commission approval for authorization of a public hearing.

1. Description of Proposed State Rule

There are several major changes proposed: the classification of violations from the most to the least serious; a description of enforcement actions used by the Department; and a civil penalty determination system based on a combination of a box matrix and a factor related formula.

The classification of violation system would categorize violations based on seriousness. Three classes are proposed with Class One being the most serious and Class Three being the least. The classes are based on the actual or potential harm the violation poses under normal circumstances. The Department recognizes that some violations create tangible, identifiable harm, but there are cases where the actual harm is not immediately identifiable and may be irreparable once identified. Therefore, the Department has determined that the potential for harm created by certain violations is so grave that they need to be addressed before harm is tangible and in a similar manner to violations that create actual and immediate harm. Examples of such violations are those related to mismanagement of asbestos containing waste and hazardous waste.

The Department also proposes incorporating descriptions of the Department's common responses to violations and the types of violations for which such responses are generally used. The rule would set out under what circumstances the actions are generally used and who is authorized to issue them.

Related to the violation classification system is the development of a new civil penalty assessment process (Attachment D, pages 7 - 15). The combined system would include a box matrix (Attachment D, pages 8 & 10) and a formula (Attachment D, pages 11 - 13). This system would determine penalties based on the factors the Commission is required to consider pursuant to Oregon Revised Statute (ORS) 468.130(2).

The new process consists of several steps. The first step is to determine where a violation should fall within the box matrix. The purpose of a box matrix is to establish base penalties which may be applied to a particular class of violation identified within the rules and as they relate to the magnitude of the violation, that is, how much the violation has deviated from the regulatory standard established by the Department's statutes, rules, permits and orders. The base penalty is the starting point of the penalty determination process taking into account the gravity, or harm, of the violation, that is, the class of the violation, and its magnitude or

deviation from the standard. It is also the penalty amount the Department would assess if a violation had no aggravating or mitigating circumstance.

There are two box matrices contained in the rule. One box matrix is for violations which carry a ten thousand dollar maximum civil penalty. The other is for violations which carry a five hundred dollar maximum civil penalty. The rule would establish a third matrix, although not actually shown as a box, for oil spills which are caused by a negligent or intentional act. Such violations carry a twenty thousand dollar maximum civil penalty. The Department proposes the matrix in this case to be double the monetary values related to the ten thousand dollar matrix (Attachment D, page 8).

Once the base penalty is determined within the box matrix, the formula system would be applied. The formula takes into account the remaining factors of ORS 468.130(2). It assigns a value to each and indicates when a factor is considered mitigating, neutral or aggravating. The sum of the values is multiplied by an amount equal to one tenth of the appropriate base penalty. The product of the multiplication is then added to base penalty amount. The sum is the final penalty amount.

Not all factors in the formula are equal. Some are weighted more heavily on the aggravating side because of the seriousness of the factor. Mitigating factors are all valued equally. Some factors have no mitigating value, only neutral, because the Department believes that a violator should not be rewarded in certain cases. For example, the fact that a person has no prior violations of the Commission's rules should not be rewarded by considering it a mitigating factor because the person has the obligation to be in compliance. In this example, the lack of prior violations would result in a zero or neutral value.

As stated, the formula system relates to the remaining factors of ORS 468.130(2). Several numerical values are attached to each factor. When determining the amount of penalty for each violation, the rule would require the Director to make a particular finding before a value can be assigned to a factor. For example, one factor considered in the penalty determination is a person's cooperativeness in resolving the violation. If the person cooperated with the Department in resolving the violation, the Director would assign a value of (-2) to the factor, while a value of (+2) would be assigned if it were found a violator was uncooperative. Anytime there is insufficient information to support a finding for any given factor, a value of (0) should be assigned, thus making the factor neutral and removing it from consideration in the penalty amount.

An example of how the penalty process would work in application is included as Attachment C.

The proposed enforcement procedures would help assure fair and consistent statewide enforcement. The proposed penalty determination system would help the Director better articulate his decision, allows a reviewing body clear standards by which to increase or reduce a penalty subsequent to assessment, and affords notice to the regulated community as to how the Department determines penalties.

2. Proposed Clean Air Act State Implementation Plan Revision

Certain proposed changes in the state civil penalty rules must be incorporated into the SIP in order to meet federal requirements. As new authority concerning air quality has been added to Division 12, this is an appropriate time to bring the SIP rules relating to civil penalties up to date. The Department, therefore, is proposing the following SIP actions:

- Add the following proposed rules:
  OAR 340-12-026 (Policy), 340-12-041 (Formal Enforcement Actions), 340-12-042 (Civil Penalty Matrices).
- Retain the following existing rules with proposed modifications: OAR 340-12-030 (Definitions) 340-12-040 (Notice of Violation), 340-12-045 (Civil Penalty Determination Process, formally Mitigating and Aggravating Factors), and 340-12-050 (Air Quality Classification of Violations and Minimum Penalties, formally Schedule of Civil Penalties).
- Retain the following existing rules:
  OAR 340-12-035 (Consolidation of Proceedings), 340-12-046 (Written Notice of Assessment of Civil Penalty), and 340-12-047 (Compromise or Settlement of Penalty).

ALTERNATIVES AND EVALUATION

1. Do not revise Division 12.

If Division 12 is not revised, the Department would not be able to implement the Commission's policy direction. It would also leave the Department with a highly discretionary enforcement process and a subjective civil penalty determination process.

2. Revise Division 12 pursuant to the Commission's direction and establish a box matrix civil penalty determination process.

The box matrix system would establish a limited range of penalties that could be assessed for violations based on their classification and magnitude. While this system provides notice to the regulated community that a penalty should fall within a certain range, it provides no procedure

to adjust the penalty within the range. Thus the system is still subjective within the range.

3. Revise Division 12 pursuant to the Commission's direction and establish a formula based civil penalty determination process.

The formula system would assign values to the factors of ORS 468.130(2) with specific findings attached to each value. This system would require the establishment of base penalties from which the formula product would be added or subtracted. It would also require the establishment of civil penalties below which a penalty would not be mitigated. Although an objective process, it creates the potential for extremely high or low penalties in certain cases which would only be limited by a maximum and minimum penalty.

4. Revise Division 12 as proposed.

The proposed revision would implement the Commission's policy direction, classify violations, describe the Department's common enforcement procedures, establish a civil penalty determination process which combines alternatives 2 and 3. This combination would achieve the objectives of establishing reasonable ranges of penalties based on a violation's seriousness and limit the subjectivity inherent in the present system and alternative three.

5. Do not revise the Oregon SIP.

The Department must have current and appropriate civil penalty rules in the SIP in order to meet federal requirements. Failure to incorporate proposed changes to the state civil penalty rules in the SIP or bring the existing rules in the SIP up to date with current state rules would put the state in technical violation of the Clean Air Act requirements and ultimately force EPA to take remedial or sanction action.

6. Revise the Oregon SIP as proposed.

This alternative would make the federally enforceable SIP rules consistent with current state rules.

DIRECTOR'S RECOMMENDATION

Based upon the summation, it is recommended the Commission pursue the changes outlined in alternatives 4 and 6, and authorize a public hearing to take testimony on the proposed revisions to the civil penalty rules, OAR Chapter 340, Division 12, and the revisions to the SIP.

ATTACHMENT G

Fred Hansen

Attachments

Attachment A: Statement of Need for Rulemaking
Attachment B: Land Use Compatibility Statement
Attachment C: Example of Civil Penalty Matrix
Attachment D: Proposed Division 12
Attachment E: Enforcement Policy Paper
Attachment F: Public Notice

Yone C. McNally:ycm
229-5152
October 10, 1988
e:\wordp\staffrep.nov

PROPOSED CIVIL PENALTY DETERMINATION PROCESS EXAMPLE

A Class One violation relating to the Department's air quality rules occurs. The magnitude of the violation is determined to be moderate. In this case, the box matrix with a $10,000 maximum applies. Therefore, this particular violation falls in the box that establishes a base penalty of $2,500. For purposes of the example, there are no prior violations, the economic condition of the violator is known to be sound, the violation occurred on a single day, was caused by the violator's gross negligence and the violator cooperated with the Department in correcting the violation.

Starting with the base penalty of $2,500, the formula, BP + [(.1 x BP)(P + H + E + O + R + C)], is applied.

In this example, the formula would be applied as follows:

"P" is prior violations of the violator. Since there are no prior violations in this instance, "P" is assigned a value of "0".

"H" is the violator's past history of correcting violations. As there is no past history in this instance, "H" is also assigned a value of "0".

"E" is the violator's economic condition. A value of "1" is assigned to this factor because the violator's condition is sound and there is no showing that the violator received any significant economic benefit through noncompliance.

"O" is whether the violation is a single occurrence or repeated or continuous. A value of "0" is assigned in this instance because the violation was a single occurrence.

"R" is whether the violation was the result of an unavoidable accident or a negligent or intentional act of the violator. A value of "3" is assigned in this case because the violator was grossly negligent.

"C" is whether the violator cooperated with the Department in correcting the violation. A value of "-2" is assigned in this case because the violator was cooperative.

With the above values plugged into the formula, the factor consideration would look like this: $2,500 + [($2,500 x .1)(0 + 0 + 1 + 0 + 3 + (-2))] = $2,500 + ($250 x 2) = $2,500 + $500 = $3,000. Thus, in this case, the penalty is increased by $500 due to the aggravating circumstances of the violation. The penalty for this violation would then be $3,000.

Yone C. McNally
229-5152
October 12, 1988

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: 3/3/89
Agenda Item: P
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)

___ 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 D
Fiscal and Economic Impact Statement Attachment D
Public Notice Attachment E

___ Issue Contested Case Decision/Order
Proposed Order Attachment ___

___ Other: (specify)

DESCRIPTION OF REQUESTED ACTION:

Adopt proposed rules which 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.

AUTHORITY/NEED FOR ACTION:

X	Pursuant to Statute: ORS 468.423-.440 Enactment Date: 1987	Attachment B
___	Amendment of Existing Rule: _____	Attachment ___
___	Implement Delegated Federal Program: _____	Attachment ___
___	Department Recommendation:	Attachment ___
___	Other:	Attachment ___
X	Time Constraints: Must adopt final rules by March in order to allow preparation of the Intended Use Plan, listing proposed loan recipients, and other federally required documents by June 1989.	

DEVELOPMENTAL BACKGROUND:

X	Department Report (Background/Explanation)	Attachment O
X	Advisory Committee Report/Recommendation	Attachment M
X	Hearing Officer's Report/Recommendations	Attachment P
X	Response to Testimony/Comments	Attachment Q
___	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
X	Supplemental Background Information:	
	Supplemental Department Report on Six Statutory Factors EQC Must Consider	Attachment N
	Transition Strategy from Grant Program to Loan Program	
	SRF Application Process Flowchart	Attachment R

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 water pollution control 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.

After the Department held a public hearing and received comments on the proposed rules, amendments were made as appropriate to address concerns raised by the public. The types of amendments fall into four main categories. First, the proposed rules are reorganized to reflect an orderly progression through the SRF loan application process. Second, the preliminary application process is described in greater detail and provides an opportunity for public comment before final adoption of the Intended Use Plan Project List. Third, the environmental review process is expanded to provide more details on the procedures for conducting an environmental review and to provide for consistent public involvement. Fourth, amendments were made in several areas to provide clarification of unclear rule sections. These amendments are addressed in detail in Attachment Q.

PROGRAM 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.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Adopt 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 loans of 5 years or less and 3% for loans of 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.

4. Modify the rules proposed in Attachment A to allow interested public agencies to appeal placement on the priority list or intended use plan project list to the Commission rather than the Director. This alternative is not recommended by staff because it involves evaluating the merits of individual projects rather than making policy decisions.

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.

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 finding loan recipients for all first-use funds, thereby avoiding the loss of unused federal dollars.

The proposed rules are consistent with the Department's proposed strategy for transition from a grant to a loan program which was discussed at the January 19, 1989, EQC Work Session and is discussed in Agenda Item ___ on the March 3, 1989, EQC 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 but later listed as A, B, or C on the FY89 priority list to under $1,500,000.

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.

INTENDED FOLLOWUP ACTIONS:

Develop SRF priority list and intended use plan. Receive EPA program approval. Receive legislative approval to use bond funds for state match. Proceed to issue loans.

Prepare an assessment of the SRF program in 1991 and report to the Commission any need for rule amendments.

Approved:

Section: George F. Davis

Division: Michael D. Williams

Director: Fred Hansen

Contact: Maggie Conley
Phone: 229-5257

MFC:kjc
WJ1486
February 2, 1989

NOTE: The underlined portions of text represent additions made to the proposed rules after they were taken to public hearing.

The bracketed portions of text represent deletions made to the proposed rules after they were taken to public hearing.

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) <u>"Construction" means the erection, installation, expansion or improvement of a water pollution control facility</u>.

(<u>8</u>) "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.

(<u>9</u>) "Department" means the Oregon Department of Environmental Quality.

(<u>10</u>) "Director" means the Director of the Oregon Department of Environmental Quality.

(<u>11</u>) <u>"Documented health hazard" means areawide failure of on-site sewage disposal systems or other sewage disposal practices resulting in discharge of inadequately treated wastes to the environment demonstrated by sanitary surveys or other data collection methods and confirmed by the Department and Health Division as posing a risk to public health</u>.

(12) "Documented water quality problem" means water pollution resulting in violations of water quality statutes, rules or permit conditions demonstrated by data and confirmed by the Department as causing a water quality problem.

(13) "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.

(14) "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.

(15) "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.

(16) "EPA" means the U.S. Environmental Protection Agency.

(17) "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.

(18) "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.

(19) "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.

(20) "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.

(21) "Infiltration" means the intrusion of groundwater into a sewer system through defective pipes, pipe joints, connections, or manholes in the sanitary sewer system.

(22) "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.

(23) "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.

(24) "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.

(25) "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 ready [planning to receive] to enter into a loan agreement for SRF funding within one year 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.]

(26) "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.

(27) "Highly controversial" means public opposition based on a substantial dispute over the environmental impacts of the project. The disputed impacts must bear a close causal relationship to the proposed project.

(28) "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.

(29) "Major sewer replacement and rehabilitation" means the repair and/or replacement of interceptor or collector sewers, including replacement of limited segments.

(30) "Nonpoint source control" means implementation of a plan for managing nonpoint source pollution as described in §319 of the Clean Water Act.

(31) "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.

(32) "Operation and maintenance manual" means a guide used by an operator for operation and maintenance of the water pollution control facility.

(33) "Project" means the activities or tasks identified in the loan agreement for which the borrower may expend, obligate, or commit funds.

(34) "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.

(35) "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.

(36) "Reserve capacity" means that portion of the water pollution control facility [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.

(37) "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.

(38) "Sewage treatment facility" means any device, structure, or equipment used to treat, neutralize, stabilize, or dispose of wastewater and residuals.

(39) "SRF" means State Revolving Fund and includes funds from state match, federal capitalization grants, SRF loan repayments, [and] interest earnings, or any additional funds provided by the state. The State Revolving Fund is the same as the Water Pollution Control Revolving Fund referred to in ORS 468.423 - .440.

(40) "Significant industrial dischargers" means water pollution control facility users as defined in the Department's Pretreatment Guidance Handbook.

(41) "Small community" means a city, sanitary authority or service district with a population of less than 5,000.

(42) "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.

(43) "Water pollution control facility" means a sewage disposal, treatment and/or collection system.

(44) "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 (including financing costs, capitalized interest, and, to the extent permitted by the Clean Water Act, loan reserves).

(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 comply with [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 system or any portion thereof [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 [ground] water 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 or ORS 431.705 to 431.760;

(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 and if the project is publicly owned.

(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 340-54-025. [65 through 340-54-090.]

(6) A project may be phased if the total project cost is in excess of that established in OAR 340-54-075.

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 obligations;

(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.

SRF PRIORITY LIST [DEVELOPMENT]

340-54-025 [065]

(1) General. The Department will develop an annual statewide SRF priority list which numerically ranks [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.]

(2) Eligibility. Projects necessary to correct water quality problems listed on the SRF priority list must be eligible under OAR 340-54-015(1).

[(3) The Department will develop a proposed priority list utilizing criteria and procedures set forth in OAR 340-54-070.]

(3) SRF Priority List Ranking Criteria. The numerical ranking [order] of water quality pollution problems will be based on points assigned from the following three (3) criteria:

(a) Water Quality Pollution Problem Points [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 documented health hazards [declarations] and mandatory health hazard annexation[s] areas required pursuant to ORS 222.850 to 222.915 or ORS 431.705 to 431.760 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 documented health hazards [declaration] or mandatory health hazard annexation areas required pursuant to ORS 222.850 to 222.915 or ORS 431.705 to 431.760 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 Points [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 Points [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:

$$\text{Points} = (Ce * Qe / Qe + Qs)^{2.5}$$ 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.

(4) SRF Point Tabulation Method. Point scores will be accumulated as follows:

(a) Points will be assigned based on the most significant documented water quality pollution problem within each point [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) point [emphasis] categories.

(5) SRF Priority List Contents. The priority list entry for each water quality problem will include, at least, the following:

(a) Problem priority rank based on total points. The water quality 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) Description of project(s) necessary to address the identified problem.

(c) Name of public agency.

[(c) Description of project(s).]

(d) The priority point score used in ranking the water quality pollution problem.

(6) Public Notice and Review.

(a) The Department will publish a public notice and distribute the proposed SRF 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.

(b) The Department will allow 30 days after issuance of the public notice and 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 include a problem not identified on the proposed list or 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 interested [affected] party does not agree with the Department's determination on a priority list [then] the interested party may within 15 days of mailing [the distribution] of the official list file an appeal to present their case to the Director [Commission]. The appeal will be informal and will not be subject to contested case hearing procedures.

[(e) The official priority list will be modified by any action the Commission may take on an appeal.]

(7) Priority List Modification.

(a) The Department may modify the official priority list by adding, removing or reranking projects if notice of the proposed action is provided to all lower priority projects.

(b) Any interested party may, within 15 days of mailing of the notice, request a review by the Department.

(c) The Department shall consider all requests submitted during the comment period before establishing the modified statewide priority list.

(d) The Department will distribute the modified priority list to all interested parties.

(e) If an interested party does not agree with the Department's determination on the modified priority list, the party may within 15 days of the mailing of the modified priority list, file an appeal to present their case to the Director. The appeal will be informal and will not be subject to contested case hearing procedures.

PRELIMINARY APPLICATION PROCESS AND PREPARATION OF THE INTENDED USE PROJECT LIST [PLAN AND THE]

340-54-030 [025]

(1) General.

(a) Each year the Department will prepare and submit an Intended Use Plan to EPA which includes a list of projects for which public agencies have demonstrated the ability to enter into a loan agreement within one year. [ready to submit a final application for SRF funding.]

(b) No project may be included in the Intended Use Plan Project List unless it will address a problem listed in the SRF Priority List.

(c) The Intended Use Plan Project List will consist of two parts, the Fundable List and the Planning List. The Fundable List includes projects which are ready to receive funding and for which adequate SRF funds are anticipated to be available during the funding year. The Planning List includes projects which are ready to receive funding but for which inadequate funds are anticipated to be available during the funding year.

(2) Development of the Intended Use Plan Project List.

(a) In order to develop the [a list of projects for the] Intended Use Plan Project List, 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.

(b) In order for a project to be considered for inclusion [listed] in the Intended Use Plan Project List, the Department must receive [a public agency must return] a completed preliminary SRF application by certified mail within 30 days of the date the Department mails the preliminary application form.

(c) The preliminary SRF application will include, but not be limited to:

(A) A description of the proposed project;

(B) The proposed project costs and SRF loan amount;

(C) The type of SRF loan which will be requested;

(D) The date when the public agency anticipates filing a final SRF application; and

(E) The date when the public agency anticipates beginning the project.

(d) The Department will review and approve for inclusion in the Intended Use Plan Project List all preliminary applications which demonstrate the ability of the public agency to enter into a loan agreement within one year. Approved projects will be listed in rank order as established in the priority list.

(e) If a public agency does not submit a timely preliminary application, its project(s) shall not be considered for inclusion in the Intended Use Plan Project List and will lose its opportunity for SRF financing in that year, unless the Department determines otherwise.

(f) After completion of the proposed Intended Use Plan Project List, the Department will send a copy to all public agencies with projects listed on the priority list.

(g) Any interested party may within 15 days of mailing of the notice request a review by the Department.

(h) The Department shall consider all requests submitted during the comment period before establishing the Intended Use Plan Project List.

(i) If an interested party does not agree with the Department's determination on the Intended Use Plan Project List, the interested party may within 15 days of the distribution of the Intended Use Plan Project List file an appeal to present their case to the Director. The appeal will be informal and will not be subjected to contested case hearing procedures.

(3) Intended Use Plan Modification.

(a) The Department may remove a project from the Fundable List in the Intended Use Plan project list if the Department determines that a public agency which has a project listed in the Fundable List will not be ready to enter into a loan agreement as required under OAR 340-54-030(2)(d).

(b) When the Department removes a project, it will give written notice to the applicant whose project is proposed for deletion and allow the applicant 30 days after notice to demonstrate to the Department its readiness and ability to immediately complete a loan agreement.

(c) When a project is removed from the Fundable List in the Intended Use Plan, projects from the Planning List of the Intended Use Plan will be moved in rank order to the Fundable List to the extent that there are adequate SRF funds available.

[(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 FINANCING [FUNDING] FOR FACILITY PLANNING FOR WATER POLLUTION CONTROL FACILITIES, NONPOINT SOURCE CONTROL PROJECTS, ESTUARY MANAGEMENT PROJECTS AND STORMWATER CONTROL PROJECTS.

340-54-035 [030]

Applicant(s) for SRF loans for [facility planning of water pollution control facilities] nonpoint source control projects, estuary management projects, stormwater control projects, and facility planning for 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 [facility plan] nonpoint source control project, estuary management project, stormwater control projects or water pollution control facility plan; [and]

(3) A demonstration that applicant complies with the requirements of OAR 340-54-055(2) and 340-54-065(1); and [60(1).]

(4) Any other information requested by the Department.

FINAL APPLICATION PROCESS FOR SRF FINANCING [FUNDING] FOR DESIGN AND CONSTRUCTION OF WATER POLLUTION CONTROL FACILITIES

340-54-040 [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 340-54-055(2) [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 evaluation of the opportunities to reduce the amount of wastewater by water use conservation measures and programs.

(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 340-54-050 [040].

(g) Documentation of the existing water quality problems which the facility plan must correct.

(h) Documentation and analysis of public comments and of testimony received at a public hearing held before completion of the facility plan.

(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 340-54-065 [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.]

(6) 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.

(7) Land use compatibility statement from the appropriate local government(s) demonstrating compliance with the LCDC acknowledged comprehensive land use plan(s) and statewide land use planning goals.

(8) Any other information requested by the Department.

FINAL APPLICATION PROCESS FOR SRF FINANCING FOR CONSTRUCTION OF WATER POLLUTION CONTROL FACILITIES

340-54-045

Applicants for SRF loans for construction of water pollution control facilities must:

(1) Comply with the application requirements in OAR 340-54-040 for design and construction of water pollution control projects;

(2) Submit Department approved plans and specifications for the project; and

(3) Submit a value engineering study, satisfactory to the Department, if the total project cost will exceed $10 million.

ENVIRONMENTAL REVIEW

340-54-050 [040]

(1) General. An environmental review is required prior to approval of a loan for design and construction or construction when:

(a) No environmental review has previously been prepared;

(b) A significant change has occurred in project scope and possible environmental impact since a prior environmental review; or

(c) A prior environmental review determination is more than five years old.

(2) Environmental Review Determinations. The Department will notify the applicant during facility planning of the type of environmental documentation which will be required. Based upon the Department's determination:

(a) The applicant may apply for a categorical exclusion; or

(b) The applicant will prepare an environmental information document in a format specified by the Department and the Department will:

(A) Prepare an environmental assessment and a Finding of No Significant Impact; or

(B) Issue a Notice of Intent to Prepare an Environmental Impact Statement; prepare an environmental impact statement and prepare a record of decision.

(3) Categorical exclusions. The categorical exclusions may be made by the Department for projects that have been demonstrated to not have significant impacts on the quality of the human environment.

(a) Eligibility.

(A) 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:

(i) Notify the applicant of categorical exclusion and publish notice of categorical exclusion in a newspaper of state-wide and community-wide circulation;

(ii) Notify the applicant to prepare an environmental information document, or

(iii) Issue Notice of Intent to Prepare an Environmental Impact Statement.

(B) A project is eligible for a categorical exclusion if it meets the following criteria:

(i) The project is directed solely toward minor rehabilitation of existing facilities, toward replacement of equipment, or toward the construction of related facilities that do not affect the degree of treatment or the capacity of the facility. Examples include infiltration and inflow correction, replacement of existing equipment and structures, and the construction of small structures on existing sites; or

(ii) The project will serve less than 10,000 people and is for minor expansions or upgrading of existing water pollution control facilities.

(C) Categorical exclusions will not be granted for projects that entail any of the following activities:

(i) The construction of new collection lines;

(ii) A new discharge or relocation of an existing discharge;

(iii) A substantial increase in the volume or loading of pollutants;

(iv) Providing capacity for a population 30 percent or greater than the existing population;

(v) Known or expected impacts to cultural resources, historical and archaeological resources, threatened or endangered species, or environmentally sensitive areas; or

(vi) The construction of facilities that are known or expected to not be cost-effective or to be highly controversial.

(b) Documentation. Applicants seeking a categorical exclusion must provide the following documentation to the Department:

(A) A brief, complete description of the proposed project and its costs;

(B) A statement indicating the project is cost-effective and that the applicant is financially capable of constructing, operating, and maintaining the facilities; and

(C) Plan map(s) of the proposed project showing:

(i) Location of all construction areas;

(ii) Planning area boundaries; and

(iii) Any known environmentally sensitive areas.

(D) Evidence that all affected governmental agencies have been contacted and their concerns addressed.

(c) Proceeding with Financial Assistance. Once the issued categorical exclusion becomes effective, financial assistance may be awarded; however, if the Department later determines the project or environmental conditions have changed significantly, further environmental review may be required and the categorical exclusion will be revoked.

(4) Environmental Information Document.

(a) General. If a project is not eligible for a categorical exclusion, the applicant must prepare an environmental information document.

(b) An environmental information document must include:

(A) A description of the proposed project and why it is needed;

(B) The potential environmental impacts of the project as proposed;

(C) The alternatives to the project and their potential environmental impacts;

(D) A description of public participation activities conducted and issues raised; and

(E) Documentation of coordination with affected federal and state government agencies and tribal agencies.

(c) If an environmental information document is required, the Department shall prepare an environmental assessment based upon the applicant's environmental information document and:

(A) Issue a Finding of No Significant Impact documenting any mitigative measures required of the applicant. The Finding of No Significant Impact will include a brief description of the proposed project, its costs, any mitigative measures required of the applicant as a condition of its receipt of financial assistance, and a statement to the effect that comments supporting or disagreeing with the Finding of No Significant Impact may be submitted for consideration by the board; or

(B) Issue a Notice of Intent to Prepare an Environmental Impact Statement.

(d) If the Department issues a Finding of No Significant Impact:

(A) The Department will distribute the Finding of No Significant Impact to those parties, governmental entities, and agencies that may have an interest in the proposed project. No action regarding the provision of financial assistance will be taken by the Department for at least 30 days after the issuance of the Finding of No Significant Impact;

(B) The Department will reassess the project to determine whether the environmental assessment will be supplemented or whether an environmental impact statement will be required if substantive comments are

received during the public comment period that challenge the Finding of No Significant Impact; and

(D) The Finding of No Significant Impact will become effective 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.

(e) Proceeding with Financial Assistance. Once the issued Finding of No Significant Impact becomes effective, financial assistance may be awarded; however, if the Department later determines the project or environmental conditions have changed significantly, further environmental review may be required and the Finding of No Significant Impact will be revoked.

(5) Environmental Impact Statement.

(a) General. An environmental impact statement will be required when the Department determines that any of the following conditions exist:

(A) The project will significantly affect the pattern and type of land use or growth and distribution of the population;

(B) The effects of the project's construction or operation will conflict with local or state laws or policies;

(C) The project may have significant adverse impacts upon:

(i) Wetlands,

(ii) Floodplains,

(iii) Threatened and endangered species or their habitats,

(iv) Sensitive environmental areas, including parklands, preserves, other public lands or areas of recognized scenic, recreational, agricultural, archeological or historic value;

(D) The project will displace population or significantly alter the characteristics of existing residential areas;

(E) The project may directly or indirectly, through induced development, have significant adverse effect upon local ambient air quality, local noise levels, surface or groundwater quality, fish, shellfish, wildlife or their natural habitats;

(F) The project is highly controversial; or

(G) The treated effluent will be discharged into a body of water where beneficial uses and associated special values of the receiving stream are not adequately protected by water quality standards or the effluent will not be of sufficient quality to meet these standards.

(b) Environmental Impact Statement Contents. At a minimum, the contents of an environmental impact statement will include:

(A) The purpose and need for the project;

(B) The environmental setting of the project and the future of the environment without the project;

(C) The alternatives to the project as proposed and their potential environmental impacts;

(D) A description of the proposed project;

(E) The potential environmental impact of the project as proposed including those which cannot be avoided;

(F) The relationship between the short term uses of the environment and the maintenance and enhancement of long term productivity; and

(G) Any irreversible and irretrievable commitments of resources to the proposed project;

(c) Procedures.

(A) If an environmental impact statement is required, the Department shall publish a Notice of Intent to Prepare an Environmental Impact Statement in newspapers of state-wide and community-wide circulation.

(B) After the notice of intent has been published, the Department will contact all affected local, state and federal agencies, tribes or other interested parties to determine the scope required of the document. Comments shall be requested regarding:

(i) Significance and scope of issues to be analyzed, in depth, in the environmental impact statement;

(ii) Preliminary range of alternatives to be considered;

(iii) Potential cooperating agencies and the information or analyses that may be needed from them;

(iv) Method for environmental impact statement preparation and the public participation strategy;

(v) Consultation requirements of other environmental laws; and

(vi) Relationship between the environmental impact statement and the completion of the facility plan and any necessary arrangements for coordination of preparation of both documents.

(C) Prepare and submit a draft environmental impact statement to all affected agencies or parties for review and comment;

(D) Following publication of a public notice in a newspaper of community-wide and state-wide circulation, allow a 30 day comment period, and conduct a public hearing on the draft environmental impact statement; and

(E) Prepare and submit a final environmental impact statement (FEIS) addressing all agency and public input.

(F) 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 loan agreement will be conditioned upon such mitigative measures. The Department will allow a 30 day comment period for the ROD and FEIS.

(G) Material incorporated into an environmental impact statement by reference will be organized to the extent possible into a supplemental information document and be made available for public review upon request. No material may be incorporated by reference unless it is reasonably available for inspection by interested persons.

(d) Proceeding with Financial Assistance. Once the issued record of decision becomes effective, financial assistance may be awarded; however, if the Department later determines the project or environmental conditions have changed significantly, further environmental review may be required and the record of decision will be revoked.

(6) Previous Environmental Reviews. 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) Validity of Environmental Review. 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 reevaluate 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.

(8) Appeal. An affected party may appeal a notice of categorical exclusion, a Finding of No Significant Impact, or a Record of Decision pursuant to procedures in the Oregon Administrative Procedures Act, ORS 183.484.

[(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-<u>055</u> [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-<u>035</u>, [025 or] 340-54-<u>040</u> [030], <u>or 340-54-045</u> 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),] <u>T</u>he 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. In addition, for revenue secured loans described under OAR 340-54-065(2), 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, any existing indebtedness [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 including proposed capital costs, site work costs, engineering costs, administrative costs and any other costs which will [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 or a certificate from the public agency which 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 the borrower's [borrow's] obligations under the loan.

LOAN AGREEMENT [DOCUMENTATION] AND CONDITIONS

340-54-060 [050]

The loan agreement [documentation] shall contain conditions including, but not limited to, the following, where applicable to the type of project being financed:

(1) Accounting.

(a) Applicant shall use accounting, audit and fiscal procedures which conform to generally accepted government accounting standards.

(b) Project files and records must be retained by the borrower for at least three (3) years after performance certification. Financial files and records must be retained until the loan is fully amortized.

(c) Project accounts must be maintained as separate accounts.

(2) Wage Rates. [& Labor Laws.] Applicant shall ensure compliance with [state and] federal wage rates established under [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) Value Engineering. A value engineering study satisfactory to the Department must be performed for design and construction projects prior to commencement of construction if the total project cost will exceed $10 million.

(5) Plans and Specifications. Applicant must submit and receive Departmental approval of project plans and specifications prior to commencement of construction, in conformance with OAR Chapter 340, Division 52.

(6) 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, mechanical or electrical

engineer, whichever is appropriate. 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.

(7) 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] If [when] the total of all loan amendments will not exceed 10% of the total amount approved in the original loan agreement, loan amendments increasing the originally approved loan amount may be requested at any time during the project.

(c) [Loan amendments increasing the originally approved loan amount must be requested prior to implementation of changes] If [when] the total of all loan amendments will exceed 10% of the total amount approved in the original loan agreement, loan amendments increasing the originally approved loan amount must be requested prior to implementation of changes in project work. The Department may approve these loan amendments if [when] the borrower demonstrates the legal authority to borrow and 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.]

(8) 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.

(9) Project Performance Certification.

(a) Project performance standards must be submitted by the borrower and approved by the Department before the project is 50 percent complete.

(b) The borrower shall notify the Department within thirty (30) days of the actual date of initiation of operation.

(c) One year after initiation of operation, the borrower shall certify whether the facility meets Department approved project performance standards [specifications].

(d) If the project is completed, or is completed except for minor items, and the facility is operable [ting], 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.]

(e) The borrower shall, pursuant to a Department approved corrective action plan, correct any factor that does not meet the Department approved project performance standards. [specifications. Costs incurred to meet the requirements of this subsection are eligible for loan funding under this Chapter.]

(10) Eligible Costs. Payments shall be limited to eligible work that complies with plans and specifications as approved by the Department.

(11) 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.

(12) Contract and Bid Documents. The borrower shall submit a copy of the awarded contract and bid documents to the Department.

(13) 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.

(14) 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.

(15) 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.

(16) 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.

(17) 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.

(18) 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.

(19) 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

340-54-065 [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) Types of Loans. An SRF loan must be one of [meet] the following types of loans [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. These 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) Follow the payment schedule in the loan agreement which shall require [Make] monthly SRF loan payments to the Department. [, or,] If the Department determines that monthly loan payments are not practicable for the borrower, [make] the payment schedule shall require 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) Discretionary Loan. 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 340-54-065 [060](1)(a), (b), or (c). Discretionary Loans shall comply with OAR 340-54-065 [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) Interest Rates.

(a) Zero percent interest rate. SRF loans which are fully amortized [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.

(b) Three percent interest rate.

(A) All [other] SRF loans, other than Discretionary 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.

(B) A Discretionary Loan shall bear the interest rate of [at not less than] three percent per annum, compounded annually; shall schedule principal and interest 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.

(c) Review of interest rate. The interest rates on SRF loans described in OAR 340-54-065(4)(a) and (b) [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.

(5) Interest Accrual. Interest accrual begins at the time of each loan disbursement from the SRF to the borrower.

(6) Commencement of Loan Repayment. Except as provided in OAR 340-54-065(4)(a), principal and interest repayments on loans shall begin within one year after the date of project completion as estimated in the loan agreement.

[(a) Principal and interest repayments on loans for design and construction of waste water facilities shall begin within one year after initiation of operation or the initiation of operation date established under OAR 340-54-050(7)(c).]

[(b) 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.]

(7) Minor Variations in Loan Terms. The Department may permit insubstantial variations in the financial terms of loans described in this section, in order to facilitate administration and repayment of loans.

[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.]

[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.]

SPECIAL RESERVES [AND LOAN AMOUNTS]

340-54-070 [090]

(1) Facility [ies] Planning Reserve. [(a)] Each fiscal year, 10 percent of the total available SRF will be set aside for loans for facility [ies] planning. However, if preliminary applications for facility [ies] planning representing 10 percent of the available SRF are not approved [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.]

MAXIMUM LOAN AMOUNT

340-54-075

[(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—

(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 hearing, 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 once and repaid, the state does not have to comply with the following federal requirements unless it chooses to do so.

(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

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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 Water 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	Yes [1,3]	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 to Local Governments 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 explains the method which will be used to develop the priority list for the State Revolving Fund.

A priority list must be developed annually for the State Revolving Fund. The ranking system which establishes a numerical rank for each water quality problem is a modification of the Construction Grants priority ranking system. The modification was made to simplify the system, to remove the two tier priority ranking, and to facilitate administration. The system's emphasis was changed from a water pollution and project evaluation system to a system based much more on water quality problems.

The ranking system is made up of three point 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 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 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 more points.

3. The Receiving Waterbody Sensitivity 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 more severe the pollution problem, the more points that are assigned. A maximum of 50 points is allowed. 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 source 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 any 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.

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 three levels of affordability as expressed by three 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

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 following 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 340-54-025).

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 indirect water quality impacts. 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 340-54-065).

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 340-54-065(4)).

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. The size of the community or district to be served by the treatment works.

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 340-54-070(2)). 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)). 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.

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

TO: Environmental Quality Commission DATE: February 6, 1989

FROM: Tom Lucas, Hearing Officer

SUBJECT: Report From the Hearing Held January 25, 1989

PROPOSED STATE REVOLVING FUND RULES

Summary of Proceedings

Notice of the hearing was provided to over 600 cities, counties, service districts, consultants and private citizens.

Five people, other than Department staff, attended the hearing which was held at 2:30 p.m., on January 25, 1989, in Portland, at 811 S.W. Sixth Avenue in the DEQ 4th floor conference room. Tom Lucas, DEQ Construction Grants Section Manager, presided.

No one provided oral testimony at the hearing. Written comments were submitted by thirteen public agencies and the Association of Oregon Sewerage Agencies. Oral comments were received from three public agencies through personal communication with Department staff.

Summary of Testimony

Most of the comments supported adoption of the proposed rules. Twelve of the seventeen commenters provided suggestions for amendments. The comments addressed many subjects and are evaluated individually in Attachment Q.

EVALUATION OF HEARING TESTIMONY ON PROPOSED SRF RULES

The testimony was divided into eight general areas of interest and are analyzed below. Unless otherwise specified, see the attached chart to determine the source of the comments.

1. In Support of the SRF Rules.

   A large majority of the comments supported the SRF program and the proposed rules as a workable method of providing financing to address water quality problems in Oregon. None of the testimony suggested that the rules should not be adopted. Many of the comments, however, suggested adoption of the rules with amendments.

2. Project Eligibility.

   Comments were received regarding types of projects eligible for SRF loans, as well as, the amount of funding available for projects.

   a. Types of Projects. The City of Medford expressed a concern over the connection between the Construction Grant Program and the SRF program. They believe that a community should be eligible to receive a loan regardless of whether they ever applied for a grant. The SRF program is designed so that applying for a grant is not a prerequisite for eligibility under the SRF. Therefore, no rule change is necessary.

      The City of Salem asked for clarification of the scope of projects eligible. The Department added a definition of construction, as Salem suggested, which states that it means the erection, installation, expansion or improvement of a water pollution control facility (OAR 340-54-010(7)).

      The City of Salem proposed that sewage treatment projects not directly related to water quality problems be allowed to receive SRF loans. The Department believes that the focus of the SRF must, at least initially, be to fund projects with direct water quality impacts since there are far more water quality needs than there are SRF funds available.

      The Health Division suggested changes to the rule language to clarify the type of health hazard areas for which collector sewer may be financed. The Department made amendments to the rules by providing a definition of a documented health hazard and by citing statutes authorizing health hazard annexation as recommended by the Health Division (OAR 340-54-015(1)(j) and OAR 340-54-025(3)(a)(B)and (F)).

Bear Creek Valley Sanitary Authority suggested changing the definition of small community to include a city within a Sanitary Authority with a population of less than 5,000. The Department does not believe that a rule amendment is necessary since the rule as currently written includes such a city (OAR 340-54-010(40)).

A question was raised by the City of Gresham regarding the purpose of limiting eligibility of stormwater control projects to those which provide a cost effective solution for infiltration/inflow (I/I). The intent of this provision is to limit SRF financing to stormwater projects which are necessary to eliminate I/I problems by building a separate stormwater collection system or another type of stormwater control project. Stormwater control projects could also be eligible if they are needed to eliminate nonpoint sources of water pollution (OAR 340-54-015(1)(m)). The intent is to avoid funding stormwater projects which are not necessary to address water quality related problems, but which would merely provide storm sewer separation.

b. Amount of Financing for Projects. The City of Gresham requested elimination of the limitation on funding for collectors to 33% of the SRF each year. Since this limitation is imposed by the Clean Water Act, the Department is unable to eliminate this limitation until after the first use of the SRF. At that time, this limitation ceases to apply.

Gresham also expresses concern over the possibility of all SRF loans in a given year going to one or two jurisdictions. The rules are designed to avoid this problem by limiting the loan amount to any public agency to 25% of the total available SRF unless the SRF is not otherwise allocated.

The City of Salem expressed concern that the 25% limitation would make financing of large projects difficult, despite the ability to phase a project and get multi-year SRF funding under the rules. Since there will probably never be enough money in the SRF to address all water quality problems, the current rules focus on trying to assist as many jurisdictions as possible. In the future, the Department may wish to consider allowing large projects which a public agency finances to be refinanced under the SRF at a lower interest rate over several years.

3. Application Requirements and Process.

The Bear Creek Valley Sanitary Authority (BCVSA) commented on the requirement that the user charge system must cover replacement expenses which they interpret to include the entire cost of building a new facility in the future to replace the one for which a public agency seeks SRF financing. In fact, "replacement" is defined in OAR 340-54-015(35) to include only replacement of equipment necessary to maintain the facility seeking SRF financing, rather than replacement of the entire facility. The Department, therefore, finds that their concern is unfounded.

The City of Gresham commented that OAR 340-54-035(8) which allows the Department to request any other information it deems necessary to complete the application is too broad. The Department finds that it is necessary to retain this section in order to assure that information which is unanticipated at this time may be requested if special circumstances arise.

The City of Salem suggested identifying the type of information which the Department would request in the preliminary SRF application. The Department amended the rules to address this suggestion (OAR 340-54-030(2)(c)).

The City of Salem also expressed concern about dropping final application requirements imposed by the Clean Water Act after first use of the SRF. Similarly, the Unified Sewerage Agency of Washington County suggested dropping "red tape" to the extent possible. The Department plans to examine the possibility of dropping these requirements after implementation of the program when the need for these requirements and the difficulty in complying with them may be better assessed.

The Water Resources Department requested that the facilities plan required in the final application for SRF financing be required to include "an evaluation of the opportunities to reduce the amount of wastewater by water use conservation measures and programs." The Department amended the rules to include this language in OAR 340-54-040(2)(d)(E).

The U.S. Environmental Protection Agency (EPA) found that the preliminary application process needed to be expanded to provide the opportunity for public comment on the Intended Use Plan Project List. The Department amended the rules to include this change (OAR 340-54-030(2) and (3).

4. Loan Conditions.

The U.S. Corps of Engineers commented that Value Engineering should be required on all projects rather than just projects over $10,000,000 in order to ensure that projects are built in a cost saving manner (OAR 340-54-060(4)). The Department believes that if the responsibility for planning cost saving projects is left to the public agencies, they will voluntarily plan cost saving projects and effectively use SRF money in order to ensure that they do not have to incur more debt than necessary.

The Corps of Engineers recommended that the Department not limit the type of engineers required to supervise inspections to "civil" engineers. The Department amended the rules to address this comment by requiring electrical or mechanical engineers to supervise inspections when appropriate (OAR 340-54-060(6)).

The Corps of Engineers also recommended that the Department clearly delineate construction safety responsibilities/liabilities and require same to be addressed in all contract documents. While this is important, the Department does not believe rule amendments are necessary to address this concern. The Department believes that rather than impose additional bureaucratic requirements on applicants, the responsibility should be left to the public agencies to make such arrangements with its contractors.

The Oregon Bureau of Labor and Industry recommended that the rule language be amended to only require compliance with Davis-Bacon wage rates since state laws require compliance only with Davis-Bacon wage rates when federal funding is involved. The rules were amended to incorporate this change (OAR 340-54-060(2)).

5. Environmental Review Process.

The U.S. EPA commented that the environmental review process needed to be expanded to comply with the requirements of the Clean Water Act. The Department amended the rules to include a detailed environmental review process consistent with the National Environmental Protection Act and the requirements of the Clean Water Act (OAR 340-54-050).

The Bear Creek Valley Sanitary Authority suggested that collector sewers should be allowed as a categorical exclusion from the environmental information documentation. The Department has included all of the categorical exclusions allowed by the Clean Water Act and cannot change the rules to address this comment.

6. Program Implementation.

The Association of Oregon Sewerage Agencies commented that the Department needs to provide technical assistance to assist communities in financing water quality needs and expand its ability to administer a financial program and make credit quality decisions. The Department recognizes these needs and hopes to expand its staffing or to hire consultants to assist in providing a financial outreach program and to implement the SRF program.

The Bear Creek Valley Sanitary Authority suggests providing pre-approval of projects in order to allow them to have accurate cost information prior to getting voter approval to develop Local Improvement Districts. The Department anticipates that certain parts of the application, such as the facility plan, could be reviewed and approved early to encourage development of local financing mechanisms to be used in conjunction with SRF financing.

The Bear Creek Valley Sanitary Authority suggested that the Department provide a list of loan requirements to potential borrowers. The Department plans to do this in the Procedures Manual which will be provided to applicants.

The Oregon Department of Energy suggested that DEQ coordinate provision of financing for water pollution control facilities with the Department of Energy financing program. The Department agrees that coordination with all state and federal programs that provide financing is necessary to assure that water quality needs are addressed.

7. Need for Future Rule Changes.

The Association of Oregon Sewerage Agencies suggested developing a task force composed of financial, legal, and local government specialists to advise the Department on the development of rules for disbursement of second use loans from the SRF. The Department agrees that this should be done and will develop such a task force in the near future.

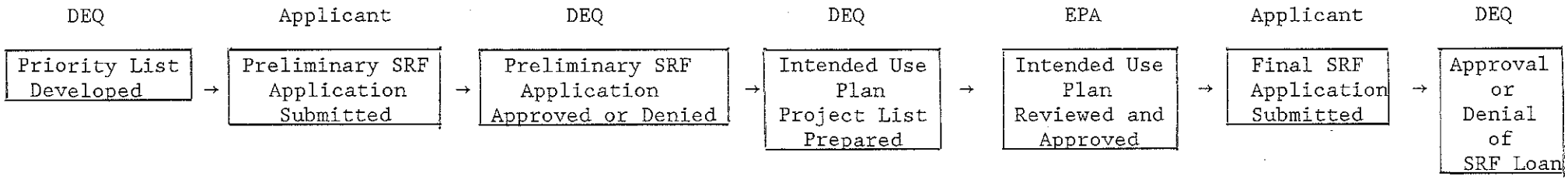
The Unified Sewerage Agency suggested that the EQC will need to consider raising interest rates in 1991 in order to increase the value of the SRF. In 1991, the Department will evaluate the need to adjust interest rates and will report its findings to the EQC.

Commenter	Subject Area of Comment						
	General Support of SRF Rules	Project Eligibility	Application Process	Loan Conditions	Environmental Review Process	Program Implementation	Need for Future Rule Changes
Association of Oregon Sewerage Agencies	X					X	
Bear Creek Valley Sanitary Authority	X		X	X	X	X	
City of Gresham		X	X	X			
City of Medford	X	X					
City of Monmouth	X						
Oregon Bureau of Labor and Industry				X			
Oregon Department of Energy						X	
Oregon Department of Human Resources - Health Division	X	X					
Oregon Water Resources Department	X		X				
City of Ontario	X						
City of Oregon City	X						
City of Salem	X	X	X				
City of Stanfield	X						
City of The Dalles	X						
Unified Sewerage Agency of Washington County	X		X				X
U.S. Environmental Protection Agency	X				x		
U.S. Department of the Army - Corps of Engineers				X			

Attachment R

SRF

Application Process



WC4484

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: 3/3/89
Agenda Item: _____
Division: WQ
Section: SD

SUBJECT:

Discharge of Municipal Sewage Treatment Plant Effluent into a Reservoir Requiring Commission Approval.

PURPOSE:

This agenda item is a request for the Commission to consider the City of Lowell, Oregon's proposal to discharge treated and disinfected sewage treatment plant effluent into Dexter Reservoir near the reservoir outlet. The staff report evaluates the environmental and economic implications of the proposal.

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: Approval of Discharge to Reservoir

DESCRIPTION OF REQUESTED ACTION:

The Department is requesting that the Environmental Quality Commission (EQC) approve a proposed discharge from the City of Lowell's upgraded sewage treatment plant into Dexter Reservoir.

AUTHORITY/NEED FOR ACTION:

___ Pursuant to Statute: _____ Attachment ___
Enactment Date: _____
___ Statutory Authority: _____ Attachment ___
___ Amendment of Existing Rule: _____ Attachment ___
___ Implement Delegated Federal Program:
_____ Attachment ___
___ Department Recommendation: Attachment ___

_X_ Other:
The EQC must take action on proposed discharges into lakes and reservoirs pursuant to Oregon Administrative Rules (OAR 340-41-026 (4)) which states that "No discharges of wastes to lakes or reservoirs shall be allowed without specific approval of the EQC."

_X_ Time Constraints:
The issue must be resolved before community officials can move forward with their plans to construct upgraded sewage treatment and disposal facilities.

DEVELOPMENTAL BACKGROUND:

___ Advisory Committee Report/Recommendations Attachment ___
___ Hearing Officer's Report/Recommendations Attachment ___
___ Response to Testimony/Comments Attachment ___
_X_ Prior EQC Agenda Items: Attachment A
Agenda Item O, January 22, 1988, EQC Meeting
Request for Issuance of an Environmental Quality Commission Compliance Order for the City of Lowell, Oregon

___ Other Related Reports/Rules/Statutes:
Attachment ___
_X_ Supplemental Background Information: Attachment B
Department Report, January 31, 1989
City of Lowell, Oregon Sewage Treatment Plant Upgrade and Outfall Relocation Project

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The City of Lowell has completed the planning and design phases of work for upgrading their sewage treatment and disposal facilities. They are preparing to advertise for construction bids on the project. The outfall work has been listed as a separate item on the bid schedule and the instruction to bidders states that the outfall portion of the contract may be dropped from the project depending on the outcome of the March 3rd EQC meeting. City officials are awaiting the outcome of the EQC meeting so that they can advertise for bids and award the construction contract.

Since being issued an EQC compliance order on January 22, 1988, community officials have worked conscientiously with Department staff to meet the schedule specified in the order. With considerable effort, they have arranged for financing of the project as proposed. If a more costly discharge alternative is required, additional financial burden will be placed on the community. It would be difficult for the community to raise the additional funds required to implement the next lowest cost discharge alternative.

PROGRAMMATIC CONSIDERATIONS:

The community's existing sewage treatment plant is over 35 years old. Due to the age and poor condition of the plant, it has discharged inadequately treated sewage on a number of occasions. Department staff have been working with community officials. The community is currently under an EQC compliance order (Attachment A) directed at upgrading their existing facilities.

The community currently disposes of their effluent through an outfall line that discharges into the middle of Dexter Reservoir offshore from the sewage treatment plant. At the time the outfall was constructed, there was little known about the detrimental effects on water quality associated with discharging effluent to slow moving waters such as reservoirs and lakes. More recently, studies across the country have shown that discharges of wastes into reservoirs and lakes can lead to eutrophication. Eutrophication is the process by which a body of water becomes overly enriched with nutrients such as nitrogen and phosphorus. The large amount of available nutrients can stimulate heavy algal growth resulting in the development of undesirable conditions in the water body. Discoloration, unstable oxygen levels, and odor problems are some of the nuisance conditions that are associated with nutrient enriched (eutrophic) waters.

During previous negotiations, Department staff informed officials from the City of Lowell that their existing discharge would have to be moved from Dexter Reservoir. Staff had concerns about the potential for eutrophication and did not support the concept of continued discharge at the existing location. A mixing zone study conducted by the Department in August 1986 concluded that the City's discharge may be affecting the algal characteristics of the reservoir. The requirement for removal of the existing discharge from the reservoir had also been placed as one of the compliance conditions in the City's discharge permit.

Because the discharge of wastes into slow moving waters can lead to eutrophication, state rules now prohibit discharge of wastes to lakes or reservoirs unless specifically approved by the EQC. These rules prevent the indiscriminate discharge of wastes to lakes or reservoirs but allow the Commission to grant specific exceptions where water quality would not be threatened by a proposed discharge.

In meeting the conditions of the EQC Order, Community officials and their engineers developed a sewage disposal alternative that would involve continued discharge into Dexter Reservoir near the reservoir outlet. Department staff believe that the proposed discharge alternative has both environmental and economic merit and should be considered for approval by the EQC.

The current proposal is to move the existing effluent outfall to a location where the concern for eutrophication would no longer exist and where impact on the environment would be minimized. Although the proposed relocation site (near the reservoir outlet approximately 20 feet from the face of the dam) would result in a discharge within the reservoir, the effluent would be diluted, mixed, and rapidly pass out of the reservoir into the Middle Fork of the Willamette River. The proposed discharge would not present the characteristics or concerns typically associated with reservoir discharges. Attachment B includes a technical analysis of the potential water quality impacts from discharge at the proposed location. The analysis finds that the proposed discharge would not have detrimental impact on water quality.

The sewage treatment and disposal upgrade project has involved the coordination of several state and federal agencies. The Environmental Protection Agency and the State Economic Development Department have participated in funding the project. The Oregon Fish and Wildlife Department has been involved because of concerns about the effect of chlorine used for disinfection on a nearby salmon holding

facility. These concerns have resulted in the requirement that dechlorination facilities be provided at the upgraded plant. The Army Corps of Engineers are the regulators of Dexter Reservoir and they have been consulted about the project. All agencies have conceptually agreed with the project as proposed. The detailed positioning and placement of the submerged outfall line, however, is still being negotiated.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Commission Approval of the Requested Discharge

   If the Commission approves of the discharge, officials from the City of Lowell can continue with their current efforts to upgrade their sewage treatment and disposal facilities. The community could begin the process for awarding the construction contract and begin construction work on the project this upcoming spring/summer. The existing project budget is adequate to finance upgrade of the sewage treatment and disposal facilities if discharge to the reservoir outlet is allowed.

2. Commission Denial of the Requested Discharge

   If the Commission does not approve of the discharge, City officials must reconsider their plans for effluent disposal to the Middle Fork of the Willamette River.

   Since no suitable land for disposal of effluent was found during the planning stage of the project, land disposal is not a feasible alternative.

   Discharge to the Middle Fork of the Willamette River below the dam would require further design work. Additional money would also have to be obtained since the existing project budget is not large enough to implement this alternative. This disposal alternative would add an estimated $310,000 to the total project budget.

   If the Commission does not approve of the proposed discharge, City officials can still move forward with their plans to upgrade the sewage treatment plant. The sewage treatment plant upgrade could occur now and the outfall relocation could be required later according to an agreed upon schedule. This schedule would be dependent on the community's ability to secure adequate

funding to implement the more costly disposal alternative.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission approve of the request to allow the City of Lowell, Oregon to discharge into Dexter Reservoir near the reservoir outlet.

Department Staff's technical analysis found that there will not be detrimental water quality impacts from a discharge at the proposed location nor will water quality standards be violated. The incoming sewage will receive secondary treatment in the winter and advanced secondary treatment in the summer. The effluent will be chlorinated for disinfection and then dechlorinated and reaerated prior to discharge. The effluent will be diluted and mixed thoroughly with ambient reservoir water and will have only a minimal residence time in the reservoir.

Discharge near the reservoir outlet would have less impact on the environment than would discharge directly to the Middle Fork of the Willamette River because of the large amount of dilution that would occur and the rapid mixing that would take place as the effluent passes out of the reservoir through the turbine or the spillway.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

OAR 340-41-026 (4) requires approval of the EQC before the Department can allow discharges to lakes or reservoirs.

ISSUES FOR THE COMMISSION TO RESOLVE:

The Commission must decide between Alternatives 1 and 2, approval or denial of the requested discharge.

INTENDED FOLLOWUP ACTIONS:

If the Commission approves of the request, City officials could move forward immediately with their plans to upgrade the existing sewage treatment and disposal facilities. Within the month, they could advertise for bids on the construction contract for work on both the sewage treatment plant and outfall. Construction would begin this

spring/summer and the new plant and relocated outfall would be brought on line next fall/winter.

If the Commission denies the request, City officials could advertise for bids and award the construction contract for the sewage treatment part of the project. Department staff could begin negotiations with City officials for setting a schedule to identify and arrange financing for an alternate method of sewage disposal.

The schedule in the existing EQC compliance order would be revised to reflect changes in the project schedule.

Approved:

Section: Mary M. Hollinton

Division:

Director: Fred Hansen

Report Prepared By: Ken Vigil
Phone: 229-5622
Date Prepared: 1/31/89

KMV:kjc
WJ1483
2/1/89

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

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

Request For Issuance Of An Environmental Quality Commission Compliance Order For The City Of Lowell, Oregon.

Background and Problem Statement

The Department is requesting that the Commission issue a compliance order to the City of Lowell. The compliance order would be used to resolve National Pollution Discharge Elimination System (NPDES) permit compliance problems and address other policy issues related to the Federal Water Pollution Control Act Amendments of 1972 (the Clean Water Act).

The City of Lowell operates a sewage treatment plant that is located within its city limits directly adjacent to Dexter Reservoir. The plant is approximately 35 years old and consists of a bar screen, Parshall flume, Imhoff tank, trickling filter, secondary clarifier, and a chlorine contact basin. The City currently discharges its treated effluent to Dexter Reservoir under NPDES permit number 3680-J (Attachment A). The existing permit was issued on May 16, 1983 and it expires on May 31, 1988.

As described in Attachment B, the City of Lowell has had difficulty meeting its NPDES effluent discharge requirements due to the age and condition of the sewage treatment plant and due to the occurrence of high inflow and infiltration into the sewage collection system. During 1985-86 the City violated its monthly average biochemical oxygen demand (BOD) concentration limit (30 mg/l) 17 out of 24 times, or 71% of the time. BOD loading limits were also exceeded during this time period. Total Suspended Solids (TSS) concentration limits were not exceeded during 1985-86 but loading limits were. Fecal coliform limits were exceeded during 1985-86 as well but on an infrequent basis. The City has had a better record in meeting its NPDES permit requirements during 1987. Concentration limits for BOD and SS have

not been exceeded. Loading limits for BOD and SS, however, were exceeded during February and March. Notices of Violation have been sent in the past but the city was actively involved in planning for construction of new sewage treatment facilities and, therefore, no further enforcement action was taken (Attachment C).

The City of Lowell violates provisions of the Clean Water Act by exceeding secondary treatment limits. In order to address such violations and to achieve the water quality objectives of the Act, the Environmental Protection Agency (EPA) introduced the National Municipal Policy (NMP) in 1984. The NMP is designed to bring all noncomplying Publicly Owned Treatment Works (POTWs) into compliance with the Clean Water Act as soon as possible, but no later that July 1, 1988. If the July 1, 1988 deadline cannot be met, the EPA and the State are to work with the affected municipality to ensure that they are on enforceable schedules for achieving compliance. Additionally, interim measures are to be taken to abate water pollution while working towards achieving compliance.

The City has initiated work to achieve compliance with its NPDES permit as required by the Clean Water Act. They have prepared a wastewater facilities plan that reviews the problems of their existing facilities and outlines various alternatives for adequately collecting, treating, and disposing of their sewage. The draft facilities plan is currently under review by the Department.

In conjunction with the planned upgrade and expansion of the existing treatment facilities outlined in the draft facilities plan, the City will be required to remove its effluent discharge from Dexter Reservoir. This is consistent with Oregon Administrative Rules 340-41-026(4) which states that "no discharges of waste to lakes or reservoirs shall be allowed without specific approval of the Environmental Quality Commission."

The City proposes to finance the alternative recommended in the final facilities plan through a combination of EPA and Oregon Economic Development Department (EDD) grants and local funding. They have submitted an application for EDD assistance and are awaiting announcement of the EDD awards. Once their facilities plan is accepted by the Department, they can prepare engineering plans and specifications for the Department's review and then apply for an EPA construction grant. EPA has advised the Department, however, that to qualify for a construction grant, the City must be under a compliance order since construction activities would extend beyond the July 1, 1988 deadline listed in the National Municipal Policy.

The City of Lowell has completed a project implementation schedule as part of the facilities planning process. The implementation schedule provides a reasonable timetable for completing planning, design, and construction. The schedule leads to the goal of obtaining operational level of acceptable sewage treatment and disposal facilities by December 1, 1989.

Alternatives and Evaluation

For the Commission's consideration, the Department has identified the following alternatives that would address the City of Lowell's noncompliance with the Clean Water Act:

1. Direct the Department to renew the NPDES permit and include interim and final effluent limits and a compliance schedule that identifies dates to complete specific tasks that would bring the City into compliance.

Alternative 1 would not involve an administrative order or further EQC action. The NPDES permit would be used as a compliance mechanism and the City would be expected to meet the compliance schedule and conditions outlined in the permit.

The Department has been advised by EPA, however, that for minor municipal facilities, compliance conditions, schedules, and interim limits for meeting requirements of the Clean Water Act should be contained in Administrative Orders. EPA also maintains that the National Municipal Policy prevents them from awarding construction grants to municipalities where construction of sewage treatment facilities would take place after July 1, 1988 unless the municipality is covered by an Administrative Order.

2. Direct the Department to litigate against the City of Lowell pursuant to ORS 468.035 and ORS 454.020 for noncompliance and have a federal or state court issue a court order that would include compliance conditions and a schedule that extends beyond July 1, 1988.

The Department staff do not recommend pursuing this alternative. It implies that the City of Lowell is being uncooperative and it would not necessarily expedite compliance. The City of Lowell has been conscientiously working towards a solution to its sewage treatment and disposal problems. They have submitted a draft facilities plan that addresses their sewerage needs and outlines an implementation schedule for coming into compliance with the Clean Water Act. They are also pursuing funding assistance and will contribute local funds in order to pay for the required wastewater treatment facilities.

3. Issue a Stipulated and Final Order to the City of Lowell. The Order would contain interim effluent limitations, a schedule of milestones for bringing the City into compliance, and penalties for failure to meet milestones by the specified dates in the compliance schedule (Attachment D).

The Department staff recommends Alternative 3 for the following reasons: (a) it recognizes the Commission's authority to enforce water quality objectives of the State under ORS 468.090 et. seq., (b) this approach has been used in the past to address similar water quality violations by other municipalities, (c) the Commission Order recognizes that the terms of the existing NPDES permit cannot be met, (d) Commission Orders have been acceptable to EPA in the past with regard to the National Municipal Policy and compliance with the Clean Water Act, (e) the City of Lowell is agreeable to the Order, and (f) the Order would be a positive reinforcement to the City's ongoing sewer system planning efforts and commit the city to attaining the necessary long-term solution to its sewage treatment and disposal needs in a timely manner.

Summation

1. Due to the age and condition of its sewage treatment plant and due to the occurrence of large quantities of inflow and infiltration into the sewage collection system, the City of Lowell frequently violates provisions of the Clean Water Act by failing to meet its NPDES permitted discharge limits.

2. The City is unable to meet the July 1, 1988 deadline for achieving secondary treatment standards as required by the National Municipal Policy.

3. The City of Lowell has submitted a draft facilities plan that outlines wastewater treatment and disposal alternatives and is pursuing federal and local funding to pay for the alternative recommended in the final facilities plan.

4. Each alternative outlined in this report for addressing Lowell's compliance problems involves setting interim and final effluent limits and establishing a compliance schedule. The first alternative would do this through the NPDES permit process; the second alternative, through litigation and a court order; and the third alternative, through an EQC order.

5. The Department staff prefers the issuance of an EQC order since it would: address EPA's concerns with regard to noncompliance and the National Municipal Policy, address the Department's concerns about continued discharge to Dexter Reservoir, and act as a positive commitment by the City to adequately treat and dispose of its municipal sewage.

Directors Recommendation

Based on the Summation, the Director recommends that the Commission issue the Compliance Order as discussed in Alternative 3 by signing the document prepared as Attachment D.

Fred Hansen for Lydia Taylor

Attachments

A. NPDES permit number 3680-J
B. Summary of NPDES permit violations Jan. 1985 to Oct. 1987
C. Past Notices of Violation
D. Proposed Environmental Quality Commission Compliance Order

Ken Vigil:c
WC2869
229-5622
December 30, 1987

Permit Number: 3680-J
Expiration Date: 5-31-88
File Number: 51447

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

WASTE DISCHARGE PERMIT
Department of Environmental Quality
522 Southwest Fifth Avenue, Portland, OR
Mailing Address: Box 1760, Portland, OR 97207
Telephone: (503) 229-5696

Issued pursuant to ORS 468.740 and The Federal Clean Water Act

ISSUED TO:

City of Lowell
P. O. Box 347
Lowell, OR 97452

SOURCES COVERED BY THIS PERMIT:

Type of Waste	Outfall Number	Outfall Location
Treated municipal sewage	001	Dexter Reservoir

PLANT TYPE AND LOCATION:

Trickling Filter
Sewage Treatment Plant

RECEIVING SYSTEM INFORMATION:

Major Basin: Willamette
Minor Basin: Middle Fork Willamette R.
Receiving Stream: Dexter Reservoir
County: Lane
Applicable Standards: OAR 340-41-445

Issued in response to Application No. OR 202004-4 received 10-11-82.

William H. Young
William H. Young, Director

MAY 16 1983
Date

PERMITTED ACTIVITIES

Until this permit expires or is modified or revoked, the permittee is authorized to construct, install, modify, or operate a waste water collection, treatment, control and disposal system and discharge to public waters adequately treated waste waters only from the authorized discharge point or points established in Schedule A and only in conformance with all the requirements, limitations, and conditions set forth in the attached schedules as follows:

Each other direct and indirect discharge to public waters is prohibited.

This permit does not relieve the permittee from responsibility for compliance with any other applicable federal, state, or local law, rule, standard, ordinance, order, judgment, or decree.

SCHEDULE A

1. Waste Discharge Limitations not to be Exceeded After Permit Issuance.

Outfall Number 001

Parameter	Average Effluent Concentrations Monthly	Weekly	Monthly Average lb/day	Weekly Average lb/day	Daily Maximum lbs
BOD	30 mg/1	45 mg/1	25	38	50
TSS	30 mg/1	45 mg/1	25	38	50
FC per 100 m1	200	400			

Other Parameters (year-round)	Limitations
pH	Shall be within the range 6.0-9.0
Average dry weather flow to the treatment facility	.1 MGD

2. Notwithstanding the effluent limitations established by this permit, no wastes shall be discharged and no activities shall be conducted which will violate Water Quality Standards as adopted in OAR 340-41-445 except in the following defined mixing zone:

That portion of Dexter Reservoir within a radius of 150 ft. of the point of discharge.

SCHEDULE B

Minimum Monitoring and Reporting Requirements
(unless otherwise approved in writing by the Department)

Outfall Number 001 (sewage treatment plant outfall)

Item or Parameter	Minimum Frequency	Type of Sample
Total Flow (MGD)	Daily	Measurement
Quantity Chlorine Used	Daily	Measurement
Effluent Chlorine Residual	Daily	Grab
BOD-5 (influent)	2/monthly	Composite
BOD-5 (effluent)	2/monthly	Composite
TSS (influent)	2/monthly	Composite
TSS (effluent)	2/monthly	Composite
pH (influent and effluent)	3/week	Grab
Fecal Coliform (effluent)	2/monthly	Grab
Average Percent Removed (BOD & TSS)	2/monthly	Calculation
Sludge Disposed	Each Occurrence	
1) Quantity		
2) Location of disposal		

Monitoring reports shall include a record of the location and method of disposal of all sludge and a record of all applicable equipment breakdowns and bypassing.

Reporting Procedures

Monitoring results shall be reported on approved forms. The reporting period is the calendar month. Reports must be submitted to the Department by the 15th day of the following month.

SCHEDULE C

Compliance Conditions and Schedules

1. As soon as practicable, but not later than June 1, 1986, the permittee shall initiate work to remove the existing point source effluent discharge from Dexter Reservoir by September 1, 1988.

P51447 (g)

NPDES GENERAL CONDITIONS

G1. All discharges and activities authorized herein shall be consistent with the terms and conditions of this permit. The discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by this permit shall constitute a violation of the terms and conditions of this permit.

G2. Monitoring records:

a. All records of monitoring activities and results, including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records, shall be retained by the permittee for a minimum of three years. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or when requested by the Director.

b. The permittee shall record for each measurement or sample taken pursuant to the requirements of this permit the following information: (1) the date, exact place, and time of sampling; (2) the dates the analyses were performed; (3) who performed the analyses; (4) the analytical techniques or methods used; and (5) the results of all required analyses.

c. Samples and measurements taken to meet the requirements of this condition shall be representative of the volume and nature of the monitored discharge.

d. All sampling and analytical methods used to meet the monitoring requirements specified in this permit shall, unless approved otherwise in writing by the Department, conform to the Guidelines Establishing Test Procedures for the Analysis of Pollutants as specified in 40 CFR, Part 136.

G3. All waste solids, including dredgings and sludges, shall be utilized or disposed of in a manner which will prevent their entry, or the entry of contaminated drainage or leachate therefrom, into the waters of the state, and such that health hazards and nuisance conditions are not created.

G4. The diversion or bypass of any discharge from facilities utilized by the permittee to maintain compliance with the terms and conditions of this permit is prohibited, except (a) where unavoidable to prevent loss of life or severe property damage, or (b) where excessive storm drainage or runoff would damage any facilities necessary for compliance with the terms and conditions of this permit. The permittee shall immediately notify the Department in writing of each such diversion or bypass in accordance with the procedure specified in Condition G12.

G5. The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State, or local laws, or regulations.

G6. Whenever a facility expansion, production increase, or process modification is anticipated which will result in a change in the character of pollutants to be discharged or which will result in a new or increased discharge that will exceed the conditions of this permit, a new application must be submitted together with the necessary reports, plans, and specifications for the proposed changes. No change shall be made until plans have been approved and a new permit or permit modification has been issued.

G7. After notice and opportunity for a hearing, this permit may be modified, suspended, or revoked in whole or in part during its term for cause including but not limited to the following:

a. Violation of any terms or conditions of this permit or any applicable rule, standard, or order of the Commission;

b. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;

c. A change in the condition of the receiving waters or any other condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.

G8. If a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under Section 307(a) of the Federal Act for a toxic pollutant which is present in the discharge authorized herein and such standard or prohibition is more stringent than any limitation upon such pollutant in this permit, this permit shall be revised or modified in accordance with the toxic effluent standard or prohibition and the permittee shall be so notified.

G9. The permittee shall, at all reasonable times, allow authorized representatives of the Department of Environmental Quality:

a. To enter upon the permittee's premises where an effluent source or disposal system is located or in which any records are required to be kept under the terms and conditions of this permit;

b. To have access to and copy any records required to be kept under the terms and conditions of this permit;

c. To inspect any monitoring equipment or monitoring method required by this permit; or

d. To sample any discharge of pollutants.

G10. The permittee shall maintain in good working order and operate as efficiently as practicable all treatment or control facilities or systems installed or used by the permittee to achieve compliance with the terms and conditions of this permit.

G11. The permittee shall provide an adequate operating staff which is duly qualified to carry out the operation, maintenance and testing functions required to insure compliance with the conditions of this permit.

G12. The Department of Environmental Quality, its officers, agents, or employees shall not sustain any liability on account of the issuance of this permit or on account of the construction or maintenance of facilities because of this permit.

G13. In the event the permittee is unable to comply with all the conditions of this permit because of a breakdown of equipment or facilities, an accident caused by human error or negligence, or any other cause such an an act of nature, the permittee shall:

a. Immediately take action to stop, contain, and clean up the unauthorized discharges and correct the problem.

b. Immediately notify the Department of Environmental Quality so that an investigation can be made to evaluate the impact and the corrective actions taken and determine additional action that must be taken.

c. Submit a detailed written report describing the breakdown, the actual quantity and quality of resulting waste discharges, corrective action taken, steps taken to prevent a recurrence, and any other pertinent information.

Compliance with these requirements does not relieve the permittee from responsibility to maintain continuous compliance with the conditions of this permit or the resulting liability for failure to comply.

G14. If the permittee wishes to continue an activity regulated by the permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

G15. All applications, reports, or information submitted to the Director shall be signed and certified in accordance with 40 CFR 122.6.

G16. This permit is not transferable except as provided in OAR 340-45-045.

G17. Definitions of terms and abbreviations used in this permit:

a. BOD means five-day biochemical oxygen demand.
b. TSS means total suspended solids.
c. mg/l means milligrams per liter.
d. kg means kilograms.
e. m^3/d means cubic meters per day.
f. MGD means million gallons per day.
g. Composite sample means a combination of samples collected, generally at equal intervals over a 24-hour period, and apportioned according to the volume of flow at the time of sampling.
h. FC means fecal coliform bacteria.
i. Averages for BOD, TSS, and Chemical parameters based on arithmetic mean of samples taken.
j. Average Coliform or Fecal Coliform is based on geometric mean of samples taken.

CITY OF LOWELL
NPDES PERMIT VIOLATIONS
JAN 1985-TO-DEC 1986

1. Monthly average BOD concentration limit (30mg/l) exceeded 17 out of 24 times, (71%).

2. Weekly average BOD concentration limit (45mg/l) exceeded 20 out of 48 times, (42%).

3. Monthly average BOD loading limit (25#/d) exceeded 13 out of 24 times, (54%).

4. Weekly average BOD loading limit (38#/d) exceeded 10 out of 48 times, (21%).

5. Daily maximum BOD loading limit (50#/d) exceeded 8 out of 48 times, (17%).

6. Total suspended solids concentration limits were not exceeded during 1985-86; but the daily, weekly, and monthly TSS loading limits, (#/d) were exceeded 3 (6%), 4 (8%), and 3 (12.5%) times, respectively. Excessive inflow and infiltration is a major problem in Lowell.

7. Weekly and monthly average fecal coliform limits were exceeded 3 (6%) and 3 (12.5%) times, respectively.

City of Lowell
NPDES Permit Violations
January to October 1987

VIOLATION	PERMIT LIMIT
August Monthly Average	
Fecal Coliform = 255/100 ml	200/100 ml
March Monthly Average	
BOD = 65 lbs	25 lbs
TSS = 50 lbs	25 lbs
March 18, Daily Maximum	
BOD = 123 lbs	50 lbs
TSS = 91.7 lbs	50 lbs
February Monthly Average	
BOD = 200 lbs	25 lbs
TSS = 154 lbs	25 lbs
February 4, Daily Maximum	
BOD = 330 lbs	50 lbs
TSS = 250 lbs	50 lbs
February 18, Daily Maximum	
BOD = 69 lbs	50 lbs
TSS = 57 lbs	50 lbs

Attachment C
51447

VICTOR ATIYEH
GOVERNOR

Department of Environmental Quality
WILLAMETTE VALLEY REGION

895 SUMMER, N.E., SALEM, OR 97310 PHONE (503) 378-8240

May 25, 1984

Mr. Stanley Denton
City of Lowell
P.O. Box 347
Lowell, OR 97452

RE: NOTICE OF VIOLATION WVR-84-65
WQ-City of Lowell; File #51447
Lane County

Dear Mr. Denton:

Your monitoring reports for the last few months have shown violations of your permit limits for BOD and suspended solids. Since you are actively pursuing a new wastewater treatment system, no further enforcement action will be taken at this time. Please remember to note on the report the causes for any violations, if they are known.

If you have any questions, please call me at 686-7601, Eugene.

Sincerely,

Mark W. Whitson
Environmental Consultant

MWW:gs
cc: Water Quality Division via Regional Operations

51447

July 13, 1984

Mr. Stanley Denton
City of Lowell
P.O. Box 347
Lowell, OR 97452

RE: NOTICE OF VIOLATION
WQ-WVR-84-86
WQ-City of Lowell
File 51447; Lane County

Dear Mr. Denton:

Your monitoring report for the month of May showed violations of the BOD and Suspended Solids limits of your waste discharge permit. Since you are actively pursuing a new wastewater treatment system, no further enforcement action will be taken at this time.

If you have any questions, please call me at 686-7601, Eugene.

Sincerely,

Mark W. Whitson
Environmental Consultant

MWW/wr

cc: Water Quality Division
cc: Regional Operations

VICTOR ATIYEH
GOVERNOR

Department of Environmental Quality
WILLAMETTE VALLEY REGION
895 SUMMER, N.E., SALEM, OR 97310 PHONE (503) 378-8240

February 25, 1985

Mr. Stan Denton, City Administrator
City of Lowell
P.O. Box 347
Lowell, OR 97452

RE: NOTICE OF VIOLATION
WQ-WVR-85-30
City of Lowell
File 51447; Lane County

Your January monitoring report showed violations of the BOD limits established in your permit. Since you are pursuing a solution to the sewage treatment plant problems, no further enforcement action will be taken at this time.

Please remember to note the cause of any violations on your monitoring report. If you have any questions, please call me at 686-7601, Eugene.

Sincerely,

Mark W. Whitson, P.E.
Environmental Engineer

MWW/wr

cc: Enforcement Section
cc: [redacted]

May 1, 1985

Mr. Stan Denton, City Administrator
City of Lowell
P.O. Box 347
Lowell, OR 97452

RE: NOTICE OF VIOLATION
WQ-WVR-85-65
City of Lowell
File ~~51447~~, Lane County

Your March monitoring report showed a violation of your BOD permit limit. I have repeatedly asked for explanations of any violations.

Please provide a written explanation for the violation that occurred in March. Failure to provide written explanations for future violations may result in further enforcement action. This may include the assessment of civil penalties.

If you have questions, please call me.

Mark Whitson is no longer with the Agency. We anticipate hiring a replacement for his position by June 3.

Sincerely,

David St. Louis, P.E.
Region Manager

DSL/wr
cc: Water Quality Division
cc: Enforcement Section

51447

DMR VIOLATION FORM

file

PERMITTEE: Lowell

COUNTY: Gaston

WQ FILE NUMBER: 51447 # Discharge

PERMIT #:

REPORTING PERIOD: Feb 87 / 800 TSS

MAJOR: YES NO

VIOLATION(s): 4 Feb 336 350
14 Feb 69 57
Permit Limit Daily Max 50 50
Wkly Avg 38 38 } all exceeded
Mo. Avg 25 25
Flow was 17, 7 and 7 times the allowed 0.1 mgd dry weather limits

ACTION TAKEN:

HQ working on interim limits & construction sched.
copy sent to permittee.

SIGNATURE ______

cc: City Council
City of Lowell
PO Box 347
Lowell

DATE ___ 198_

Division Copy

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY, OF THE STATE OF OREGON, Department, v. CITY OF LOWELL, Respondent.	STIPULATION AND FINAL ORDER No. WQ-WVR-88-02 Lane County

WHEREAS:

1. On May 16, 1983, the Department of Environmental Quality ("Department") issued National Pollutant Discharge Elimination System ("NPDES") Waste Discharge Permit Number 3680-J ("Permit") to City of Lowell, ("Respondent") pursuant to Oregon Revised Statutes ("ORS") 468.740 and the Federal Water Pollution Control Act Amendments of 1972, P.L. 92-500. The Permit authorizes the Respondent to construct, install, modify or operate waste water treatment control and disposal facilities and discharge adequately treated waste waters into Dexter Reservoir, waters of the State, in conformance with the requirements, limitations and conditions set forth in the Permit. The Permit expires on May 31, 1988.

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2. Condition 1 of Schedule A of the Permit does not allow Respondent to exceed the following waste discharge limitations after the Permit issuance date:

Outfall Number 001

	Average Effluent Concentrations		Effluent Loadings Monthly Average	Weekly Average	Daily Maximum
	Monthly	Weekly	lb/day	lb/day	lbs
Parameter					
BOD	30 mg/l	45 mg/l	25	38	50
TSS	30 mg/l	45 mg/l	25	38	50
FC per 100 ml	200	400			

Other Parameters (year-around)	Limitations
pH	Shall be within the range 6.0 - 9.0
Average dry weather flow to the treatment facility.	.1 MGD

3. During the time period the Permit has been in effect, Respondent has not been able to consistently meet the above effluent limitations due to the age and condition of the sewage treatment plant and due to the high inflow and infiltration into the sewage collection system.

4. Department and Respondent recognize that until new or modified waste water treatment facilities are constructed and put into full operation with discharge of waste water to the middle fork Willamette River, Respondent will continue to violate the permit effluent limitations at times. In addition, Respondent will not be able to meet the compliance schedule contained in Schedule C of the Permit which requires Respondent to remove its effluent discharge from Dexter Reservoir by September 1, 1988.

///

5. Respondent presently is capable of treating its effluent so as to meet the following effluent limitations, measured as specified in the Permit:

	Average Effluent Concentrations		Effluent Loadings		
	Monthly	Weekly	Monthly Average lb/day	Weekly Average lb/day	Daily Maximum lbs
Parameter					
BOD	75 mg/l	75 mg/l	70	70	70
TSS	30 mg/l	45 mg/l	60	60	60
FC per 100 ml	200	400			

Other Parameters (year-around)	Limitations
pH	Shall be within the range 6.0 - 9.0.
Average dry weather flow to the treatment facility	.1 MGD

6. The Department and Respondent recognize that the Environmental Quality Commission has the power to impose a civil penalty and to issue an abatement order for violations of conditions of the Permit. Therefore, pursuant to ORS 183.415(5), the Department and Respondent wish to settle those past violations referred to in Paragraph 3 and to limit and resolve the future violations referred to in Paragraph 4 in advance by this stipulated final order.

7. This stipulated final order is not intended to settle any violation of any interim effluent limitations set forth in Paragraph 5 above. Furthermore, this stipulated final order is not intended to limit, in any way, the Department's right to proceed against Respondent in any forum for any past or future violation not expressly settled herein.

///

NOW THEREFORE, it is stipulated and agreed that:

A. The Environmental Quality Commission shall issue a final order:

(1) Requiring Respondent to comply with the following schedule:

(a) By February 1, 1988, submit to the Department a facilities plan which meets the facility plan requirements for obtaining a federal sewage construction grant.

(b) By March 1, 1988, arrange for local funding and notify the Department in writing when such has been accomplished.

(c) By June 1, 1988, submit to the Department engineering plans and specifications.

(d) By July 1, 1988, submit to the Department a complete construction grant application.

(e) By November 1, 1988, advertise for bids.

(f) By January 1, 1989, award contract for construction.

(g) By March 1, 1989, begin construction of facilities.

(h) By May 1, 1989 and August 1, 1989, submit progress reports to the Department.

(i) By October 1, 1989, complete construction of facilities.

(j) By December 1, 1989, attain operational level and meet all waste discharge limitations of the NPDES waste discharge permit in effect at that time.

(2) Requiring Respondent to meet the interim effluent limitations set forth in Paragraph 5 above until December 1, 1989.

(3) Requiring Respondent to comply with all the terms, schedules and conditions of the Permit, except those modified by Paragraph A(2) above and except for Schedule C of the Permit, or of any other

NPDES waste discharge permit issued to Respondent while this stipulated final order is in effect.

(4) Requiring Respondent, should Respondent fail to comply with the above schedule, to cease allowing new connections to Respondent's sewage collection system upon written requirement of the Department.

B. Regarding the violations set forth in Paragraph 3 and 4 above, which are expressly settled herein without penalty, Respondent and Department hereby waive any and all of their rights to any and all notices, hearings, judicial review, and to service of a copy of the final order herein. Department reserves the right to enforce this order through appropriate administrative and judicial proceedings.

C. Regarding the schedule set forth in Paragraph A(1) above, Respondent acknowledges that Respondent is responsible for complying with that schedule regardless of the availability of any federal or state grant monies.

D. Respondent acknowledges that it has actual notice of the contents and requirements of this stipulated and final order and that failure to fulfill any of the requirements hereof would constitute a violation of this stipulated final order. Therefore, should Respondent commit any violation of this stipulated order, Respondent hereby waives any rights it might have to an ORS 468.125(1) advance notice prior to the assessment of civil

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penalties. However, Respondent does not waive its rights to an ORS 468.135(1) notice of assessment of civil penalty.

RESPONDENT

Date

(Name_____)
(Title_____)

DEPARTMENT OF ENVIRONMENTAL QUALITY

Date

Fred Hansen
Director

FINAL ORDER

IT IS SO ORDERED:

ENVIRONMENTAL QUALITY COMMISSION

Date

James E. Petersen, Chairman

Date

Mary V. Bishop, Member

Date

Wallace B. Brill, Member

Date

Arno H. Denecke, Member

Date

William P. Hutchison, Jr., Member

CITY OF LOWELL, OREGON
SEWAGE TREATMENT PLANT UPGRADE
AND OUTFALL RELOCATION PROJECT

PROJECT BACKGROUND

On January 22, 1987, the EQC issued Stipulation and Final Order No. WQ-WVR-88-02 to the City of Lowell. This order requires the City to complete a specified schedule of activities directed at upgrading their existing sewage treatment facilities to meet the effluent treatment standards established in the Clean Water Act (Public Law 92-500). These standards are specified in the community's National Pollution Discharge Elimination System (NPDES) permit.

Community officials have worked conscientiously with Department staff and their engineers to complete the following activities required in the Stipulation and Final Order:

1. They submitted a facilities plan that describes the communities sewage treatment and disposal needs and meets the requirements for obtaining a federal sewage works construction grant.

2. They arranged for local funding for upgrading the existing sewage treatment facilities through a combination of City finances and an Oregon Economic Development Department Grant.

3. They submitted engineering plans and specifications for upgrading the sewage treatment facilities for the Department's review.

4. They submitted an Environmental Protection Agency sewage works construction grant application and were awarded a grant of $ 625,000.

The facilities planning document developed six alternatives for upgrading the community's sewage treatment facilities. The community selected the alternative of upgrading their existing trickling filter plant to the trickling filter/solids contact process and adding a new secondary clarifier.

The facilities plan also developed alternatives for effluent disposal. Since suitable land for land disposal of effluent was not found to be available in the project area, the plan focused on presenting discharge alternatives. The discharge alternatives presented were: (1) discharge to Dexter Reservoir near the STP (existing discharge location), (2) discharge near the outlet of the reservoir, and (3) discharge to the Middle Fork of the Willamette River below Dexter Dam (Figure 1). Table 1 is a summary of

KCM
Kramer, Chin & Mayo, Inc.
Consulting Engineers and Planners
7110 S.W. Fir Loop, Portland, Oregon 97224
Phone (503) [illegible]

OUTFALL ALTERNATIVES

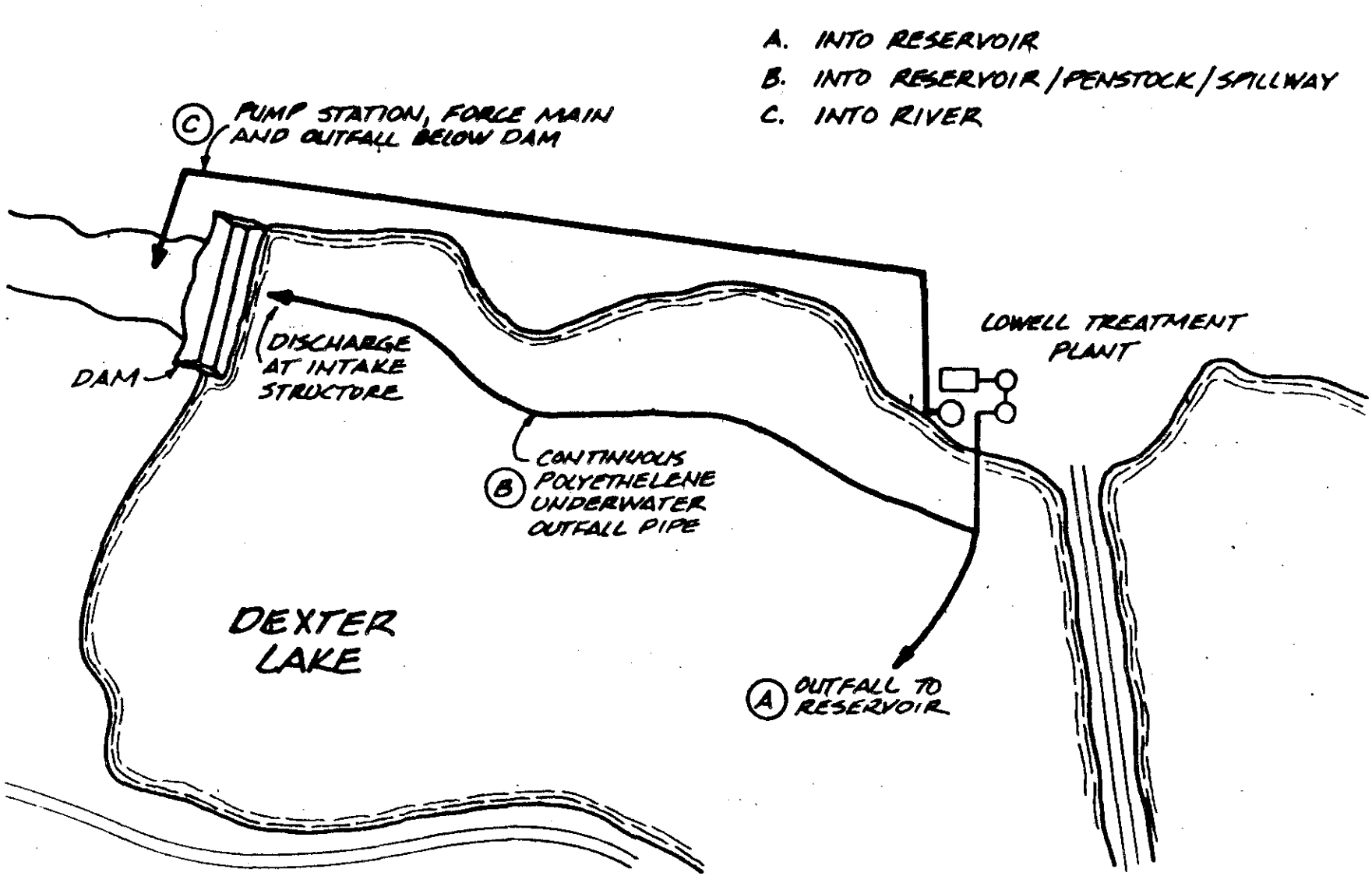


FIGURE 1.

OUTFALL ALTERNATIVES

total project costs (STP upgrade, operation and maintenance costs, outfall costs) on a present worth basis for the three discharge alternatives.

Table 1

Total Project Cost for Sewage Treatment and Disposal by Discharge Alternative

To Reservoir	To Reservoir Outlet	To Willamette River
$ 1,123,000	$ 1,342,000	$ 1,653,000

Community officials chose discharge to the reservoir outlet as their preferred discharge alternative. Department staff encouraged selection of this alternative over reservoir discharge because of the benefit that it would have to water quality in the reservoir. Moreover, staff felt that discharge through the reservoir outlet structures (turbine or spillway gate depending on operational mode) would provide excellent mixing and aeration of the effluent before it reached the river.

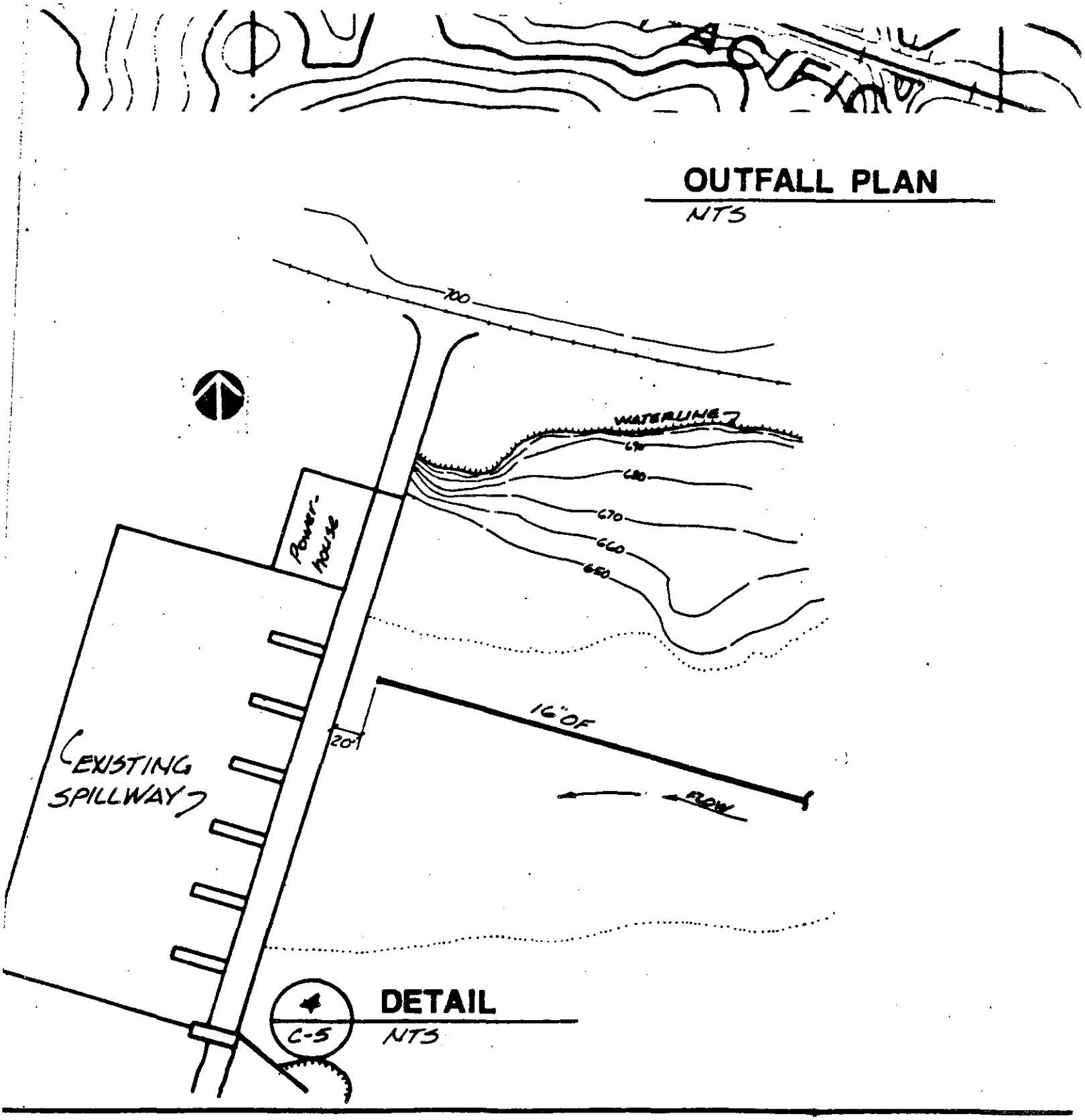
When the design documents for the outfall were submitted for review, however, they showed the outfall discharging into the reservoir approximately 20 feet from the face of the dam (Figure 2). The placement of the end of the outfall was determined, in part, through discussions with the Army Corps of Engineers (regulators of the dam). The Corps stressed to the design engineer that the outfall must be kept far enough from the dam's outlet structures to allow for routine maintenance and dredging.

Conceptually, the same project that was presented during the planning stage of the project is the project that was designed and presented for our review and approval. The discharge would be near the reservoir outlet, but strictly speaking into Dexter Reservoir. A discharge into Dexter Reservoir requires prior approval of the Environmental Quality Commission (EQC). Oregon Administrative Rules (OAR 340-41-026 (4)) states that "No discharges of wastes to lakes or reservoirs shall be allowed without specific approval of the EQC."

WATER QUALITY ANALYSIS

The sewage treatment plant (STP) outfall would be relocated from its existing location, in Dexter Reservoir near the STP, to a point near the penstock and spillway outlets from the reservoir. The outfall would be submerged, anchored to the bottom, and brought to within approximately 20 feet of the face of Dexter Dam.

Three factors that would mitigate water quality impacts from STP effluent discharged at this location are: (1) the large amount of dilution that would occur, (2) the quality of the effluent, and (3) the short residence time of the effluent in the reservoir.



City of Lowell

WASTEWATER TREATMENT FACILITY UPGRADE DESIGN

FIGURE 2.

OUTFALL LOCATION

DILUTION.

The effect of dilution can be investigated by comparing the STP discharge with the total reservoir discharge. Table 2 is a summary of this comparison with a dilution factor (D) calculated for the low reservoir flow (7Q10) of 599 CFS, STP average dry weather flow (ADWF) of .15 MGD, average wet weather flow (AWWF) of .30 MGD, and peak wet weather flow (PWWF) of 1.25 MGD. These are the design flows for the STP upgrade project.

Table 2. STP and Reservoir Flows

STP FLOW (MGD)	STP FLOW (CFS)	RESERVOIR FLOW (CFS) (7Q10)	DILUTION (D)
ADWF = 0.15	0.23	599	2604
AWWF = 0.30	0.46	599	1302
PWWF = 1.25	1.93	599	310

D = RESERVOIR FLOW / STP FLOW

Review of Table 2 shows that a large amount of dilution would occur during all expected flow conditions.

TREATMENT.

Secondary treatment will be provided at the Lowell wastewater treatment plant. The effluent will be treated to 10 mg/l BOD and TSS during the summer discharge period and 30 mg/l BOD and TSS during the winter discharge period. Chlorination will be provided to disinfect the effluent. In addition, dechlorination will be provided to remove chlorine residuals because of concerns about a downstream salmon holding facility and potential chlorine toxicity. The effluent will be reaerated prior to discharge into the outfall pipeline.

There will be few if any settleable solids in the effluent since both primary and secondary sedimentation will be provided at the plant. No accumulation of solids would be expected to occur at the end of the outfall pipe.

The localized oxygen demand at the outfall will be small since secondary treatment will be provided at the plant for removal of most of the carbonaceous oxygen demand. Nitrification will also likely occur at low to average loadings reducing the nitrogenous oxygen demand during the more critical summer discharge period. The oxygen deficit in the receiving water due to the oxygen demand of the effluent would result in ambient dissolved oxygen concentrations greater than 96.6 percent of saturation. Basin standards require dissolved oxygen concentrations of 90 to 95 percent of saturation.

The City of Lowell is almost exclusively residential. There are a few commercial establishments but no industry is currently located within the community. The effluent discharged from the City of Lowell's facilities

will be domestic sewage that has been treated, dechlorinated, and reaerated.

RESIDENCE TIME.

Effluent Plume.

Since the pipeline will be submerged in the reservoir for more than a mile, the temperature of the discharged effluent should be approximately equal to the temperature of the reservoir. Therefore, there should not be an immediate buoyant rise of the effluent plume do to density differences between the effluent and the receiving water. Instead, the effluent should remain submerged as it mixes with the ambient water and is "pulled" towards the penstock or spillway opening in response to the prevailing flow pattern at the reservoir discharge.

If the temperature of the effluent is greater than the ambient temperature of the reservoir, the effluent plume will rise towards the surface. This condition was investigated by using the EPA computer model UMERGE. Results from the modeling showed that when Dexter reservoir is stratified (normal summer conditions), the plume will be trapped below the reservoir surface (Figure 3). When the reservoir has a uniform temperature throughout, the plume will rise to the surface but not before traveling some distance in the horizontal direction (Figure 4).

Under normal operating conditions, Dexter Reservoir discharges through a penstock and turbine located at the bottom of the dam (Figure 5). When the turbine is shut down for maintenance, which occurs maybe once or twice a year, the spillway gates open to allow discharge. Considering the location of the normal reservoir discharge (penstock/turbine) and the tendency for the effluent plume to stay submerged because of stratified conditions in the reservoir, we can expect the effluent from the STP to pass quickly out of the reservoir and into the Middle Fork of the Willamette River. Even when the turbine is shut down for maintenance, the effluent should pass quickly out of the reservoir and the effluent plume should stay submerged.

Algal Growth.

The discharge of nutrients into a water body can stimulate the growth of algae which is generally undesirable. The potential for algal growth due to STP discharge near the penstock and spillway can be evaluated by estimating the rate of algal growth during the residence time of the discharged effluent in the reservoir:

Algal growth can be described by Equation 1, a first order differential equation that relates the growth of algae (dX/dt) as a function of algal concentration (X) and a growth function (U).

$$dX/dt = U\ X \qquad (1)$$

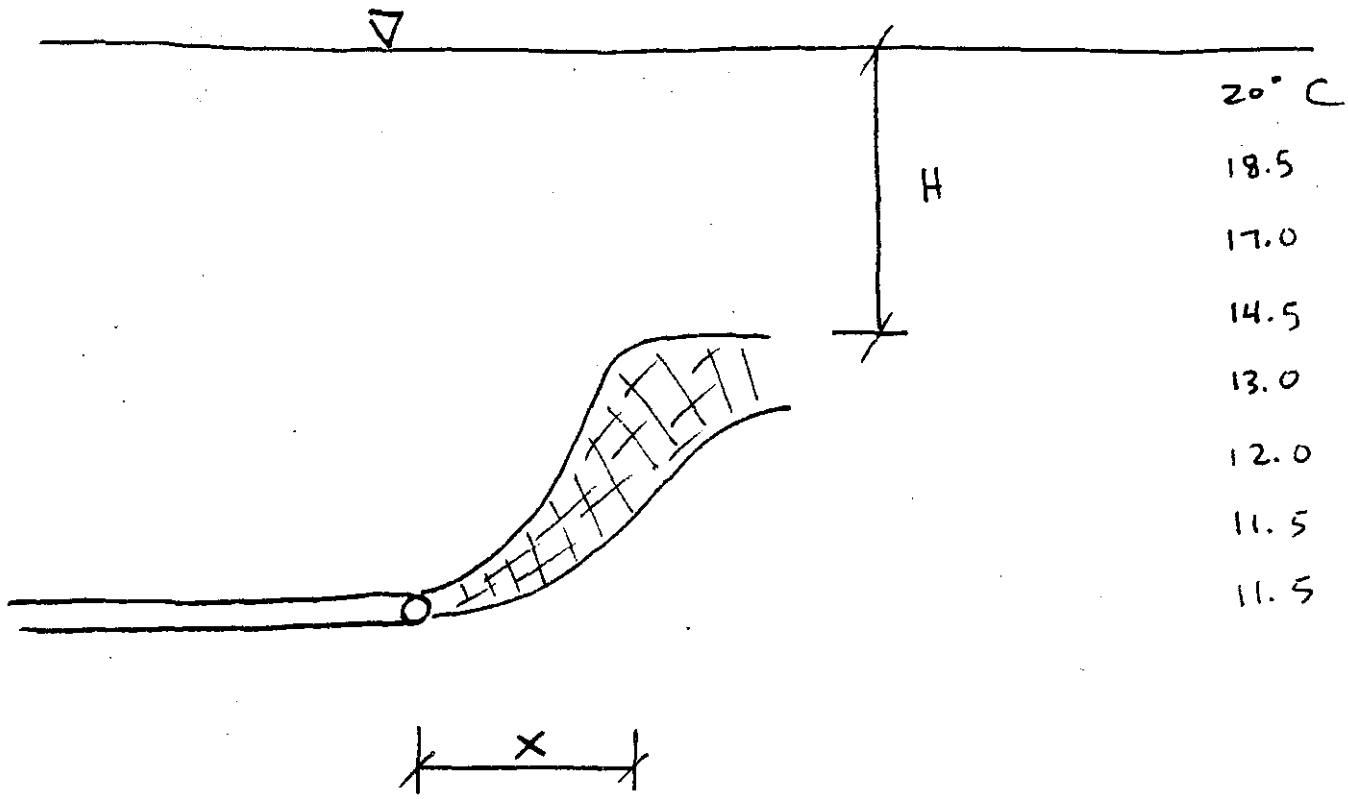
The specific growth rate function (U) can be further defined by considering it a function of phosphorus (P) concentration.

$$U = (umax)\ (P)/(Ks + P) \qquad (2)$$

FIGURE 3.

STRATIFIED RESERVOIR

EFFLUENT TEMP. > AMBIENT TEMP

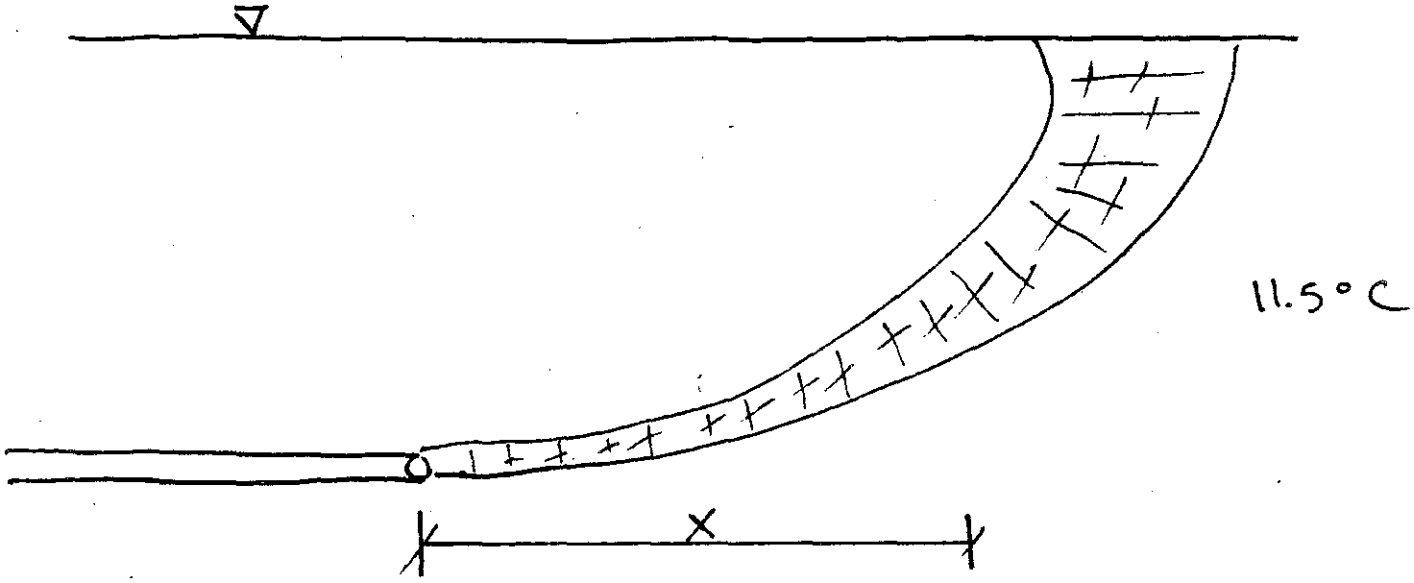


PLUME "TRAPPED" WHEN DENSITIES BECOME EQUAL. IN ABOVE FIGURE, X AND H VARY DEPENDING ON EFFLUENT FLOW RATE AND DEGREE OF STRATIFICATION — ALSO EFFLUENT TEMP. AND AMBIENT TEMP.

FIGURE 4.

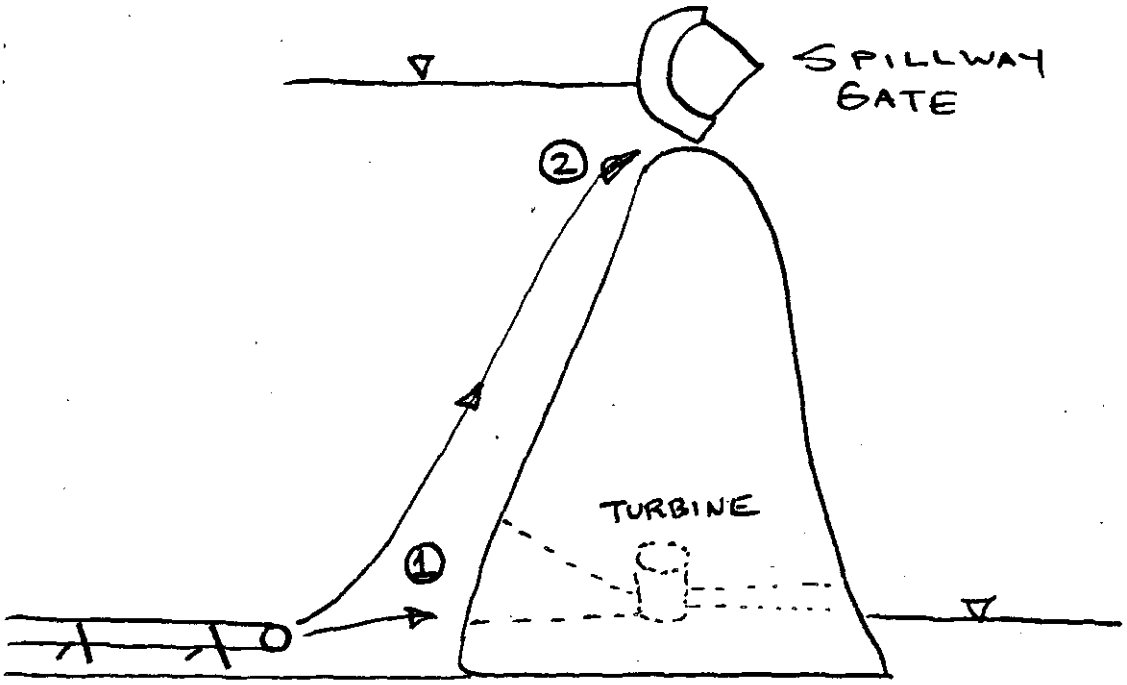
NON-STRATIFIED RESERVOIR

EFFLUENT TEMP > AMBIENT TEMP



PLUME DOES NOT TRAP. IT SURFACES AT SOME DISTANCE X. X VARIES DEPENDING ON EFFLUENT FLOW RATE AND TEMP. DIFFERENCES BETWEEN EFFLUENT AND AMBIENT. X APPROXIMATELY 35' WHEN EFFLUENT TEMP. = 11.6 °C AND AMBIENT TEMP = 11.5°C

FIGURE 5.
DEXTER DAM



TWO FLOW POSSIBILITIES FOR FLOW OUT OF DEXTER RESERVOIR. (1) UNDER NORMAL CONDITIONS FLOW IS DIVERTED INTO TURBINE FOR GENERATING ELECTRICITY. (2) WHEN MAINTENANCE IS DONE ON THE TURBINE SPILLWAY GATES OPEN.

In Equation 2, umax is the maximum specific growth rate of algae under optimum conditions and Ks is the half velocity constant, concentration of P when U = 1/2 (umax).

The maximum rate of algal growth occurs when the specific growth rate function is equal to umax. This condition would occur in an ideal environment with unlimited amounts of phosphorus available. Under the assumption that U = umax, Equation 1 becomes:

$$dX/dt = umax\ X \qquad (3)$$

The solution to Equation 3 for an initial algal concentration of Xo is:

$$X = Xo\ e^{**}(umax\ t) \qquad (4)$$

In Equation 4, e is the exponential function and t is the time allowed for growth to occur.

The reported values of umax for various algal species are generally less than 3/day (EPA 1985).

Effluent will not remain in the reservoir for a long period of time once it is discharged. Using conservative assumptions, the residence time will be on the order of 6 minutes or less. The solution to Equation 4 with umax = 3/day and t = 6 minutes is:

$$X = Xo\ (1.013) \qquad (5)$$

Equation 5 shows a 1 percent increase in algal concentration over background values.

The solution to Equation 4 with umax = 6/day and t = 12 minutes is:

$$X = Xo\ (1.051) \qquad (6)$$

Equation 6 shows a 5 percent increase in algal population over background values.

Since ideal growth conditions for algae will not occur, however, there should not be even a 1 or 5 percent increase in algal concentrations due to Lowell's planned discharge. When climatic conditions are most favorable for algal growth (summertime), the effluent plume will be submerged, away from direct light, and be pulled immediately into the penstock and out of the reservoir.

SUMMARY

Lowell's proposed discharge near the face of Dexter Dam near the reservoir outlet will not have a detrimental impact on the water quality of Dexter Reservoir or the Middle Fork of the Willamette River. The quality of the effluent that will be discharged, the large amount of dilution and mixing that will occur, and the short residence time of the effluent in the reservoir will all act to protect water quality.

REFERENCES

EPA. June 1985. Rates, constants, and kinetics formulations in surface water quality modeling. Second Edition. EPA/600/3-85/040.

Prepared By:
Ken Vigil
Water Quality Division
January 31, 1989

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: 3/3/89
Agenda Item: R
Division: Hazardous & Solid Waste
Section: Waste Reduction

SUBJECT:

Lists which define principal recyclable materials for each wasteshed in Oregon.

PURPOSE:

The lists identify materials which are candidates for being recyclable materials at some place in the wasteshed. The lists become the basis for determining what is to be recycled at each city and disposal site in the wasteshed where the opportunity to recycle is required.

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 Department report on status of principle recyclable materials lists and conclusion that changes are not appropriate at this time. — Attachment A

DESCRIPTION OF REQUESTED ACTION:

No action requested. Report intended to update the EQC on the status of the principal recyclable materials lists.

The report (Attachment A) contains the following information:

Background summary of the purpose for which the lists of principal recyclable materials were developed.
Review of market prices for the principal recyclable materials.
Review of disposal cost trends.
Evaluation of plastics as a principal recyclable material.
Evaluation and Department recommendation for changes in the lists of principal recyclable materials.

AUTHORITY/NEED FOR ACTION:

___ Required by Statute: _____ Attachment ___
Enactment Date: _____
_X_ Statutory Authority: ORS 459.170(1)(d) Attachment ___
___ Amendment of Existing Rule: _____ Attachment ___
___ Implement Delegated Federal Program:
_____ Attachment ___

_X_ Other: Attachment ___

OAR 340-60-030(16) requires the Department to review the list of principal recyclable materials annually and propose changes to the Commission.

___ Time Constraints: (explain)

None

DEVELOPMENTAL BACKGROUND:

___ 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 ___
___ Supplemental Background Information	Attachment ___

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

Recycling service providers may want some items deleted from the list of materials which should be recycled in their area of the wasteshed since market prices have dropped. As a result, costs for providing recycling service are not able to be covered through the combination of sale of materials and current rates collected for service.

PROGRAM CONSIDERATIONS:

None

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1) Make no changes in the lists of principal recyclable materials.

2) Delete materials which are not economically recyclable in certain wastesheds (i.e. oil, tin cans, etc.) from the list of principal recyclable materials for those wastesheds.

3) Add plastics to the list of principal recyclable materials in certain wastesheds.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission adopt Alternative 1 (no changes at this time). Short-term market fluctuations do not warrant the addition or deletion of materials from these lists.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The report satisfies a statutory requirement that the Department periodically review the lists of principal recyclable materials and submit any proposed changes to the Commission.

ISSUES FOR COMMISSION TO RESOLVE:

Whether or not changes should be made to the list. The Department recommends no changes at this time.

INTENDED FOLLOWUP ACTIONS:

The Department will concentrate its efforts on improving the existing collection programs and encouraging pilot programs for new collection and recycling systems technologies, such as for plastics.

Approved:

Section: David L. Ford

Division: Stephanie Hallock

Director: Fred Hansen

Report Prepared By: Lissa Wienholt

Phone: 229-6823

Date Prepared: February 15, 1989

EAW:eaw
prmrev.eqc
2/15/89

Attachment A.

REVIEW OF PRINCIPAL RECYCLABLE MATERIALS LISTS CONTAINED IN OAR 340-60-030

AN INFORMATIONAL REPORT

Department of Environmental Quality
Hazardous and Solid Waste Division
Waste Reduction Section

February 1989

Background:

ORS 459.170(1)(d) requires the Environmental Quality Commission to adopt rules identifying the principal recyclable materials in each wasteshed. These rules were adopted in 1984 and are contained in OAR 340-60-030. OAR 340-60-030(16) requires the Department to review the principal recyclable materials list for each wasteshed and to submit any proposed changes to these rules to the Commission.

The list of principal recyclable materials for a wasteshed is a list of materials which are considered candidates for being "recyclable materials" at some place in the wasteshed. Figure 1 shows the principal recyclable materials for each wasteshed contained in OAR 340-60-030. The lists were developed as a reference for affected persons in the wastesheds to use in determining what was a recyclable material at each location where the opportunity to recycle was to be provided.

"Recyclable material" is defined by ORS 459.005(15) as "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". As such, changes in the market price of materials and the cost of collection and disposal will affect whether materials are to be considered recyclable.

Market Prices:

Market prices for all the principal recyclable materials have varied greatly over the years. Figure 2 illustrates the fluctuations in market prices since 1975 for most of the principal recyclable materials. Market prices for newspaper rose from a low of $45/ton in 1986 to a high of $100/ton in early 1988. Similarly, corrugated cardboard prices rose from $45/ton to $85/ton during the same time period. This dramatic increase in price was stimulated by Northwest mills running at capacity, as well as by strong export markets. Prices for both these products started to decline in February 1988 and are now at $45/ton for newsprint and $60/ton for corrugated cardboard. This substantial decline is due to strikes at the Northwest's major newspaper recycling plants and a softening of export markets, combined with an increased amount of material being recycled and available on the market. This type of price fluctuation is not unusual for the paper industry, as evidenced by Figure 2, although this is the first time the difference between the high and the low price has been so dramatic.

Glass prices have remained steady at $40/ton since early 1987 and are projected to remain at that level. Oil prices began increasing in 1987 after bottoming out at a point where generators had to pay $40/ton to get the material recycled. The price peaked in 1988 at $7.50/ton before dropping to zero. Yard debris, which

was recently added to the list of principal recyclable materials in five wastesheds, is currently being accepted by yard debris processors at a cost of $29/ton to the generator. Tin can prices climbed from $58/ton in 1987 to $65/ton in early 1988 and have remained steady.

Other metal products, not shown in Figure 2, have also recovered from recent lows in market prices. Most non-ferrous metals have almost tripled in price since 1986. Lead-acid battery prices have declined, however, due to the closing of the Bergsoe battery processing plant and the refusal of many major metal companies to accept this material. Batteries that are recycled are either shipped to Los Angeles or overseas, with the cost of freight being almost as high as the value of the batteries at their destination.

Steel scrap processors have become much more selective about the materials they will purchase for recycling. Some are now refusing items such as oil-coated metal turnings and are requiring that batteries, catalytic converters, mufflers, motors, electrical components that may contain PCB's, and other potentially hazardous materials be removed from scrap before it will be accepted. The price paid for scrap metal is higher than in 1986, having climbed from $67/ton to $80/ton. With the increased preparation costs, however, the net value of some scrap steel items such as appliances has fallen considerably.

Cost of Disposal:

The cost of disposal of material as garbage has continued to increase in some wastesheds. Tipping fees at the St. John's landfill went up in November 1988 from $16.70/ton to $42.25/ton to begin covering the cost of closing the landfill. A similar increase in cost was incurred at all METRO public access disposal sites. Disposal prices in the METRO area are expected to continue to climb over the next couple of years to a high of $50-$60/ton as the remaining costs of closing the St. John's landfill and transportation costs to Gilliam County are factored in.

Other wastesheds throughout the state are anticipating major increases in disposal fees as they prepare to close landfills or install leak detection devices around existing disposal sites.

Plastics:

The Department has evaluated the current markets for recycled plastics and the existing technologies for collection and transportation of the material. Although it appears that there are suitable markets for some plastic products in the Portland area, the Department does not feel that the collection and transportation technologies have advanced to the point that the material could meet the statutory definition of a recyclable material. The major problem in the collection of plastics is the high volume-to-weight ratio of the material. The Department knows

of no on-site/on-route densification systems which have been developed for use either for curbside or depot collection which have adequately addressed this problem. As a result, the Department is not recommending that plastics be added to the list of principal recyclable materials at this time.

Evaluation:

The Department does not recommend any changes in the lists of principal recyclable materials. The lists still serve as a good starting point for determining the recyclable materials at each location where the opportunity to recycle is required. The recent drop in market prices for some materials is seen as a short term fluctuation and, therefore, it would be inappropriate to delete materials from the lists every time these fluctuations occur. Materials should only be dropped from the lists if the Department finds that conditions have substantially changed so that the group of materials is not expected to meet the definition of "recyclable material" in the long run at any location in the wasteshed. Similarly, materials should only be added to the lists when it is felt that the material will be recyclable in the long term and there are existing collection and recycling systems available for the material.

(11) Yamhill wasteshed is all of the area within Yamhill County and all of the area within the City of Willamina.

(2) Any affected person may appeal to the Commission for the inclusion of all or part of a city, county, or local government unit in a wasteshed.

Principal Recyclable Material

340-60-030 (1) The following are identified as the principal recyclable materials in the wastesheds as described in Sections (4) through (12) of this rule:

(a) Newspaper;
(b) Ferrous scrap metal;
(c) Non-ferrous scrap metal;
(d) Used motor oil;
(e) Corrugated cardboard and kraft paper;
(f) Aluminum;
(g) Container glass;
(h) Hi-grade office paper;
(i) Tin cans;
(j) Yard debris

(2) In addition to the principal recyclable materials listed in section (1) of this rule, other materials may be recyclable material at specific locations where the opportunity to recycle is required.

(3) The statutory definition of "recyclable material" (ORS 459.005(15)) determines whether a material is a recyclable material at a specific location where the opportunity to recycle is required.

(4) In the following wastesheds, the principal recyclable materials are those listed in subsections 1(a) through (j) of this rule:

(a) Clackamas wasteshed;
(b) Multnomah wasteshed;
(c) Portland wasteshed;
(d) Washington wasteshed;
(e) West Linn wasteshed.

(5) In the following wastesheds, the principal recyclable materials are those listed in subsections 1(a) through (i) of this rule:

(a) Benton and Linn wasteshed;
(b) Clatsop wasteshed;
(c) Hood River wasteshed;
(d) Lane wasteshed;
(e) Lincoln wasteshed;
(f) Marion wasteshed;
(g) Polk wasteshed;
(h) Umatilla wasteshed;
(i) Union wasteshed;
(j) Wasco wasteshed;
(k) Yamhill wasteshed.

(6) In the following wastesheds, the principal recyclable materials are those listed in subsections 1(a) through (g) of this rule:

(a) Baker wasteshed;
(b) Crook wasteshed;
(c) Jefferson wasteshed;
(d) Klamath wasteshed;
(e) Tillamook wasteshed.

(7) In the following wastesheds, the principal recyclable materials are those listed in subsections 1(a) through (h) of this rule:

(a) Coos wasteshed;

(b) Deschutes wasteshed;

(c) Douglas wasteshed;

(d) Jackson wasteshed;

(e) Josephine wasteshed.

(8) In the following wasteshed, the principal recyclable materials are those listed in subsections (1)(a) through (f) of this rule:
Malheur wasteshed.

(9) In the following wastesheds, the principal recyclable materials are those listed in subsections 1(a) through (g) and (i) of this rule:

(a) Columbia wasteshed;

(b) Milton-Freewater wasteshed.

(10) In the following wastesheds, the principal recyclable materials are those listed in subsections 1(a) through (e) of this rule:

(a) Curry wasteshed;

(b) Grant wasteshed;

(c) Harney wasteshed;

(d) Lake wasteshed.

(11) In the following wastesheds, the principal recyclable materials are those listed in subsections 1(a) through (d) of this rule:

(a) Morrow wasteshed;

(b) Sherman wasteshed;

(c) Wallowa wasteshed.

(12) In the following wastesheds, the principal recyclable materials are those listed in subsections (1)(b) through (d) of this rule:

(a) Gilliam wasteshed;

(b) Wheeler wasteshed.

(13) (a) The opportunity to recycle shall be provided for each of the principal recyclable materials listed in sections (4) through (12) of this rule and for other materials which meet the statutory definition of recyclable material at specific locations where the opportunity to recycle is required.

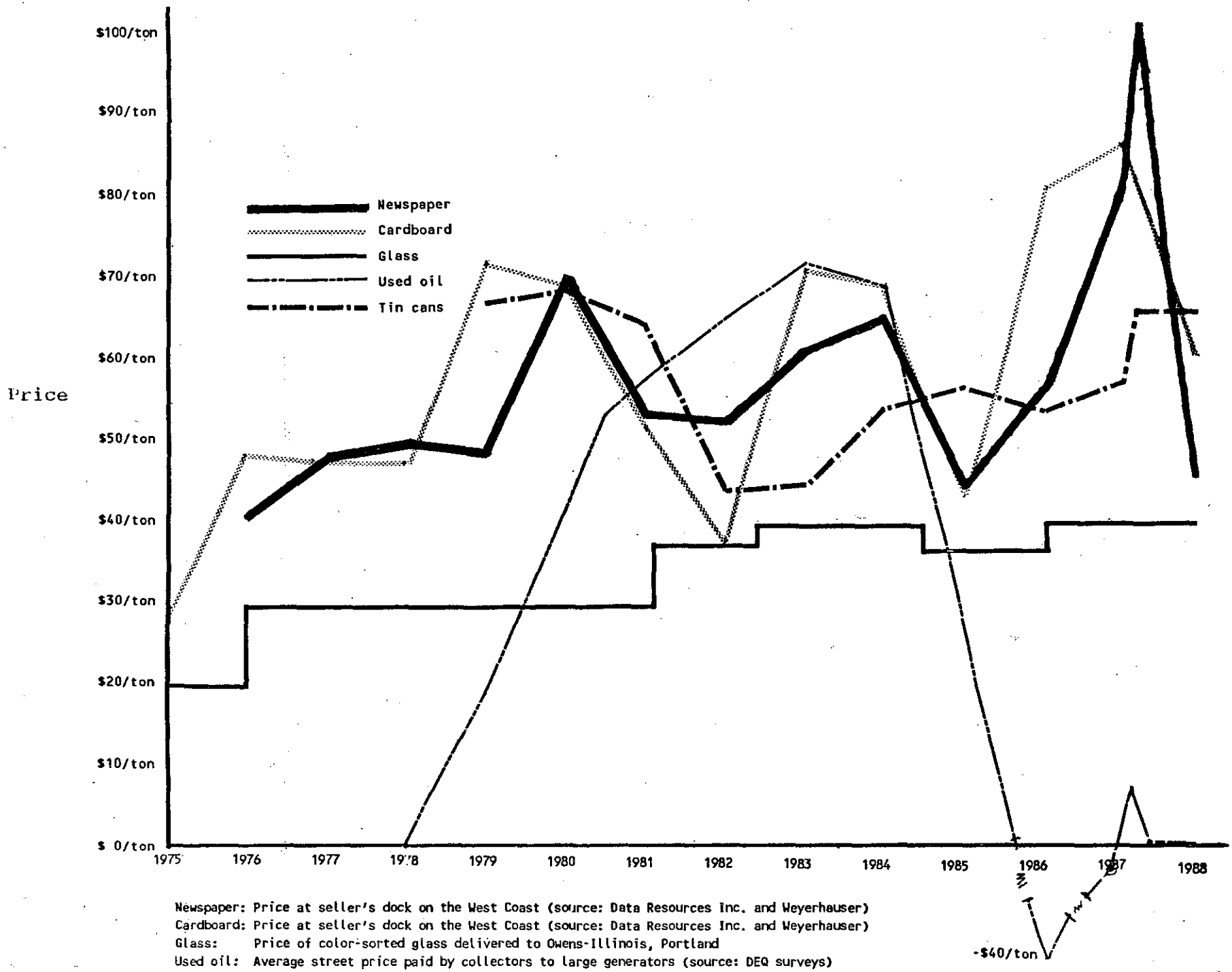
(b) The opportunity to recycle is not required for any material which a recycling report, approved by the Department, demonstrates does not meet the definition of recyclable material for the specific location where the opportunity to recycle is required.

(14) Between the time of the identification of the principal recyclable materials in these rules and the submittal of the recycling reports, the Department will work with affected persons in every wasteshed to assist in identifying materials contained on the principal recyclable material list which do not meet the statutory definition of recyclable material at some locations in the wasteshed where the opportunity to recycle is required.

(15) Any affected person may request the Commission modify the list of principal recyclable material identified by the Commission or may request a variance under ORS 459.185.

(16) The Department will at least annually review the principal recyclable material lists and will submit any proposed changes to the Commission.

Figure 2. Market Price of Recyclable Materials: 1975 - 1988.



Newspaper: Price at seller's dock on the West Coast (source: Data Resources Inc. and Weyerhauser)
Cardboard: Price at seller's dock on the West Coast (source: Data Resources Inc. and Weyerhauser)
Glass: Price of color-sorted glass delivered to Owens-Illinois, Portland
Used oil: Average street price paid by collectors to large generators (source: DEQ surveys)
Tin cans: Price of post-consumer scrap tin cans paid to Oregon collectors by MRI Inc., Seattle

TRACKED DEQ BILLS

(Updated as of 3/2/89)

Note these abbreviations used in text: House E and E = House Environment and Energy Committee; Ag and Nat Res = Agriculture and Natural Resources; HR = Hearing Room; HB = House Bill; SB = Senate Bill; SJM = Senate Joint Memorial

HB 2176 - Hazardous Substance and Groundwater Protection Fund
Status: Referred to House E and E with subsequent referral to Ways and Means 1/10/89.
Public Hearing held 2/1/89.
Public Hearing held 2/3/89.
Public Hearing held 2/27/89.

HB 2177 - Equipment Replacement Reserve Fund
Status: Referred to House Ways and Means 1/10/89.

HB 2178 - Pollution Control Tax Credits
Status: Referred to House E and E with subsequent referral to Revenue and School Finance 1/10/89.

HB 2179 - Clarification of Hazardous Waste and PCB Authority
Status: Referred to House E and E with subsequent referral to Ways and Means 1/11/89.

HB 2483 - Hazardous Waste Management/Minimization Programs
Status: Referred to House E and E with subsequent referral to Ways and Means 1/26/89.
Public Hearing Scheduled at 1:30 pm in HR E 3/1/89.

* *

SB 166 - Used Oil/Road Oil Regulation
Status: Referred to Ag and Nat Res, then Judiciary 1/19/89.
Third reading. Carried by Kintigh. Passed 2/13/89.
First reading. Referred to Speaker's desk. 2/14/89.
Referred to House E and E 2/15/89.

SB 167 - Underground Storage Tank Program.
Status: Referred to Ag and Nat Res, then Ways and Means 1/19/89.
Public Hearing and Work Session held 1/24/89.
Work Session held 2/9/89.
Work Session held 2/16/89.
Recommendation: Do pass with Amendments. Referred to Ways and Means by prior reference 2/23/89.

SB 168 - Section 401 Certification Fees
Status: Referred to Ag and Nat Res 1/18/89.
Public Hearing and Work Session held 2/9/89.
Public Hearing and Work Session held 2/16/89.

SB 422 - Air Pollution Regulations, Penalties; Defines PM10; New Wood Stove Fee
Status: Public Hearing and Work Session held. Referred to Ag and Nat Res, then Revenue, then Ways and means 1/26/89.
Public Hearing and Work Session held 2/7/89.
Public Hearing and Work Session held 2/23/89.
Public Hearing and Possible Work Session scheduled at 1:00 pm in HR C 3/2/89.

SB 423 - State-wide Groundwater protection Program
Status: Referred to Ag and Nat Res, then Ways and Means 1/26/89.
Public Hearing and Work Session held 2/2/89.
Public Hearing and Work Session held 2/9/89.
Public Hearing scheduled at 3:00 pm in HR C 3/2/89.
Public Hearing and Possible Work Session scheduled at 3:00 pm in HR C 3/2/89.

SB 424 - Household Waste: Collection, Management; DEQ Pilot Programs, Solid Waste Disposal Site Fee
Status: Referred to Ag and Nat Res, then Ways and Means 1/31/89.

OTHER TRACKED HOUSE AND SENATE BILLS

HB 2031 - Infectious Waste Registration and Guidelines
Status: Public Hearing and Possible Work Session scheduled at 1:30 pm in HR E 3/8/89.

HB 2074 - MVD Proof of Compliance: Pollution Control Equipment
Status: Public Hearing and Possible Work Session scheduled at 3:00 pm in 137 3/1/89.

HB 2088 - Mineral Exploration Regulation
Status: Referred to Ag and Nat Res 2/23/89.

HB 2089 - Requires Permit for Oil and Gas Exploration
Status: Referred to Ag and Nat Res 2/23/89.

HB 2155 - Fire Marshall Fee on Employers Hazardous Waste
Status: Public Hearing held 1/20/89.

HB 2156 - Grant Program by Fire Marshall/Equipment for Hazardous Spills
Status: Public Hearing held 1/20/89.

HB 2172 - Well Construction Fees
Status: Public Hearing and Possible Work Session scheduled at 5:00 pm in HR D 3/2/89.

HB 2174 - Fire Marshall Emergency Plan for Hazardous Substances
Status: Public Hearing held 1/20/89.

HB 2331 - Hazardous Substance, Waste and Emergency Response Program Funding
Status: Public Hearing held 2/27/89.

HB 2332 - DEQ Regulation of Household Hazardous Waste
Status: Public Hearing and Work Session held 2/10/89.

HB 2333 - Lead Acid-Battery Prohibition
Status: First Reading. Referred to House E and E 1/11/89.

HB 2334 - Reduction of Toxic and Hazardous Substances Program
Status: Public Hearing scheduled at 1:30 pm in HR E 3/1/89.

HB 2335 - Metro Service District Exemption From Funding for Solid Waste Landfill
Status: Recommendation: Do pass. Referred to Ways and Means by prior reference 2/15/89.

HB 2336 - Limited Purpose Landfill Regulations
Status: Public Hearing and Work Session held 2/13/89.

HB 2337 - Infectious Waste Requirements, Specifications
Status: Public Hearing and Possible Work Session scheduled at 1:30 pm in HR E 3/8/89.

HB 2434 - Field Burning: Phase-out, Alternatives, Guidelines
Status: Public Hearing held 2/24/89.

HB 2490 - City/County Prohibition on Fees, Taxes on Solid Waste in Metro District
Status: Status: Referred to Intergovernmental Affairs 1/31/89.

HB 2522 - Allows Use of Self-Service Gas Pumps, Requires State Fire Marshall Safety Rules
Status: Referred to Business and Consumer Affairs 2/1/89.

HB 2523 - "Lot of Record" Definition/Single Family Dwelling
Status: Referred to House E and E 1/31/89.

HB 2526 - Prohibition of Perennial or Grass Seed Open Field Burning Effective 9/1/90
Status: Public Hearing held 2/24/89.

HB 2586 - Division of State Lands Study of Wetlands/Policy for Use and Protection of Wetlands
Status: Public Hearing and Possible Work Session scheduled at 1:30 pm in HR E 3/6/89.

HB 2607 - Tax Credit for Residential Connection to Sewage Treatment Works as of 1/1/85
Status: Referred to Intergovernmental Affairs with subsequent referral to Revenue and School Finance 2/10/89.

HB 2642 - Prohibits Self-Service at Places Where Motor Vehicle Fuel is Dispensed at Wholesale
Status: Referred to Business and Consumer affairs 2/15/89.

HB 2663 - Establishes Guidelines for Infectious Waste, Specifies Infectious Waste is Solid Waste, EQC to Adopt Rules. Operative 1/1/90.
Status: Public Hearing and Possible Work Session scheduled at 1:30 pm in HR E 3/8/89.

HB 2697 - Concerning Domestic Water Supply and Sanitary Districts
Status: Public Hearing and Possible Work Session scheduled at 1:30 pm in HR E 3/2/89.

HB 2700 - School District Bonds to Fund Asbestos Abatement in School Buildings
Status: Public Hearing and Possible Work Session scheduled at 1:30 pm in HR D 2/28/89.

HB 2852 - Prohibits Use of Chlorofluorocarbons in Manufacturing
Status: Referred to House E and E 2/22/89.

HB 2854 - Guidelines for Sale and Use by State Agencies of Food Packaged in Polystyrene Foam Containers
Status: Referred to House E and E 2/22/89.

HB 2865 - Allows Local Government to Apportion Part of User Fee to Enhance Surrounding Solid Waste Disposal Site
Referred to House E and E 2/28/89.

HB 2902 - Directs EQC to Set Guidelines for Asbestos Abatement Project Inspectors
Status: Referred to House E and E with subsequent reference to Ways and Means 2/27/89.

HB 2931 - Industrial Air Pollution Civil Penalty/Permits DEQ to Require Operation Cessation Until Remedied
Status: Referred to House E and E 2/27/89.

HB 2968 - 10-Year Deferral on Connection to Sewer Treatment Plants for Operational Sewage Disposal Systems
Status: Referred to Intergovernmental Affairs 2/28/89.

HB 2969 - Prohibits Sewage Treatment Assessment Lien
Status: Referred to Intergovernmental Affairs 2/27/89.

HB 2970 - Prohibits Full Fee Assessment for Sewage Treatment Works Previously Financed With Federal Moneys
Status: Referred to Intergovernmental Affairs 2/27/89.

HB 2971 - Requires Secretary of State Audit on EQC-Ordered Sewage Treatment Sites
Status: Referred to Intergovernmental Affairs 2/28/89.

HB 2972 - Allows Tax Credit for Installation or Connection to State-Mandated Sewage Treatment Works
Status: Referred to Intergovernmental Affairs with subsequent referral to Revenue and School Finance 2/27/89.

HB 5033 - Budget Bill
Status: Work Session held 2/24/89.

HB 5062 - Bonded Debt Limit
Status: Referred to Trade and Economic Development with subsequent referral to Ways and Means 1/24/89.

* *

SB 13 - Streamflow Conversion
Status: Work Session held 2/14/89.

SB 38 - Radioactive Material Transport: State/Federal Guidelines
Status: Third reading. Carried by D. Jones. Passed 2/16/89.

SB 55 - Asbestos Abatement for State Facilities Established by General Services
Status: Recommendation: Do pass with Amendments. Referred to Ways and Means by prior reference 2/27/89.

SB 154 - Definition of Boundary of Groundwater Area
Status: Public Hearing and Possible Work Session scheduled at 3:00 pm in HR C 3/2/89.

SB 177 - Eliminates State Land Board Approval, Fill Removal Within Scenic Waterway
Status: Work Session scheduled at 3:00 pm in HR C 2/28/89.

SB 305 - Means of Judicial Review for State/Exemptions
Status: Referred to Judiciary 1/19/89.

SB 344 - Plastic Container Labeling/Civil Penalty for Violation
Status: Public Hearing held 2/23/89.

SB 345 - EQC Designation for Plastics
Status: Public Hearing held 2/23/89.

SB 347 - Fee for Out-of-State Waste
Status: Referred to Ag and Nat Res, then Ways and Means 1/25/89.

SB 348 - Straw and Wood Waste Utilization Board
Status: Referred to Ag and Nat Res, then Ways and Means 1/25/89.

SB 350 - Biodegradable/Recyclable Containers for Alcoholic Liquor
Status: Public Hearing held 2/23/89.

SB 351 - Outer Continental Shelf Oil and Gas Lease: Governor's Response Requirement
Status: Work Session held 2/13/89.

SB 352 - Prohibits Sale of Beverage Containers Connected by Plastic Rings
Status: Public Hearing held 2/23/89.

SB 353 - Polystyrene Foam Food Packaging
Status: Public Hearing held 2/23/89.

SB 373 - Groundwater Permit Waiver for Schools and Fields Less Than Ten Acres
Status: Recommendation: Do pass with Amendments. Second reading. 2/27/89.

SB 377 - Herbicide/Pesticide Exemption
Status: Public Hearing and Work Session held 2/13/89.

SB 391 - Civil Penalty for Pesticide Violations
Status: Work Session scheduled at 3:00 pm in HR C 3/2/89.

SB 425 - Perennial or Grass Seed Open Field Burning Prohibition; Prescribes Penalties
Status: Referred to Ag and Nat Res, then Judiciary 1/31/89.

SB 471 - Prohibits Local Government From Requiring Acceptance of One Essential Service as Condition for Receiving Another
Status: Referred to Government Operations and Elections 2/6/89.

SB 482 - Prohibits Use of Waste Tires in Constructing Artificial Reefs in Ocean Waters.
Status: Public Hearing held 2/27/89.

SB 555 - Prohibits Rental of Any Place Deemed Uninhabitable Due to Illegal Drug Manufacturing
Status: Referred to Government Operations and Elections 2/17/89.

SB 567 - Permits Suspension or Revocation of Fishing License if Owner Discharges Waste into Water
Status: Referred to Ag and Nat Res 2/17/89.

SB 572 - Requires Deposit on Wine Cooler Bottles
Status: Referred to Ag and Nat Res 2/20/89.

SB 576 - Requires Department of Energy to Develop Strategy to Reduce Emission in State of Gases Causing Global Warming
Status: Public Hearing and Possible Work Session scheduled at 3:00 pm in HR C, 2/28/89.

SB 619 - Allows Sewage Works to Provide Drainage Works, County Service District to Adopt Management Plans and Regulations
Status: Referred to Government Operations and Elections 2/23/89.

* *

SJM 1 - Outer Continental Shelf Lands Act Amendment, Urges Joint Management with Federal Government
Status: Referred to House E and E 2/20/89.

SJM 2 - Urges Congress to Reauthorize and Amend Federal Coastal Zone Management Act
Status: Referred to House E and E 2/20/89.

DRAFT

STRATEGY FOR NON-POINT POLLUTION FOR NURSERIES IN WASHINGTON COUNTY

The Non-Point Pollution Control Plan for Washington County will be divided into three sections: Urban, Rural, and Forestry. These are being compiled and completed by each group to be incorporated into one plan. The Container Nurseries will be included in the agriculture section.

The Strategy for the agriculture section will include putting in monitoring stations coordinated with stations that the Department of Environmental Quality and the Unified Sewerage Agency to keep down the costs of duplication of testing.

It would be necessary to have monitoring stations starting with where water drains from forestry into the agriculture section, and one where water drains into the urban area. The urban area then will need to monitor its drainage. A private consulting firm, Environmental Engineering Services, is providing a base map that can be used county-wide for location of monitoring stations. As monitoring at these locations begins, it will be possible to identify drainages that are producing the pollutants of concern. Once these have been identified, then follow up monitoring will be needed to identify the specific sites that are providing the pollutants. Various Best Management Practices can be combined into a Best Management System that fits the individual sites. Monitoring can be continued to determine if the Best Management System is working. The monitoring program will need to continue as land use or cropping patterns change, the pollution potential may change. The Washington County Soil and Water Conservation District has the ability to call on several resource agencies as well as Oregon State University to assist with the development of Best Management Systems or research that may be needed to improve the systems.

This plan will be completed by June 30, 1989. The SWCD is in the process of determining methods that can be used to assist with the costs of operation of the program as well as looking at funding sources that may be used to implement needed Best Management Systems. With the cooperation and support of the rural area and other agencies the plan should be in place by March 1993.

The Non-Point Pollution Control Program will be under the guidance of the Department of Environmental Quality or their Designated Management Agency. The Washington County Soil and Water Conservation District can assist landowners in developing the system to meet the pollution requirement. Should a landowner or manager refuse to develop a management system to meet the criteria, the Department of Environmental Quality would be notified for enforcement procedures.

The enforcement procedures could start by the issuance of a consent order that provides the operator an opportunity to bring their operation in compliance in an orderly manner.

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMO

TO: Ms. Yone McNally
DEQ Enforcement Section

DATE: February 28, 1989

FROM: Harry Demaray Harry M. Demaray

SUBJECT: OAR 340-12-026 through 73,
Proposed Revisions

340-12-026(1) Delete the "To" at the beginning of sentences (b), (c) and (d). Add sentences (e) and (f) as follows:

(e) Deny by penalty any monetary gain to violators from infraction of rules or statutes.

(f) Recover from the violator by penalty the full cost of investigating and prosecuting the violation.

(9) Change to read: "Prior violation means any act or omission of the violator documented by the Department."

(11) Change to read: "Risk means the level of harm or danger created by...." "Risk shall be separated into three levels."

340-12-040(3)(b) Add new sentence:

"(H) The violation consists of an oil spill caused by intent or neglect as described in 340-12-042(2)."

340-12-042(2) Change to read: "Persons causing oil spills through an intentional or negligent act shall be assessed by the Department a civil penalty of not less than...." "The amount of the penalty shall be determined by doubling the values contained in the $10,000 matrix in Section (1) of this rule...." Explanation of change: The weasel-word, "incur," must be replaced by the term "shall be assessed by the Department" to match the language and the command of the Clean Water Act, Sec. 311(b)(6)(A), 33 U.S.C. 466. The word "incur" has been defined by the Oregon Attorney General to mean, "subject to," which is weak and not in keeping with the general requirement that a state law cannot be less restrictive than the basic Federal law that applies.

340-12-045(1)(c) Change the order of the letters in the formula to spell PHORCE. This acronym is easily remembered and fitting. With this change it can be said the penalty amount equals the base penalty, plus the product of one-tenth the base penalty, multiplied by the PHORCE. The order of the

paragraphs defining the letters ORCE should be rearranged; (C) to (F), (D) to (C), (E) to (D) and (F) to (E).

340-12-055(1)(e) Change to read, "Any unpermitted discharge that causes pollution of any waters of the state. This wording comes from ORS 468.270(1)(a).

General Comments:

The permissive "shall incur" wording in the state oil spill statute ORS 468.140(3)(a) is inconsistent and in conflict with the unequivocal "shall be assessed" language of the Clean Water Act, Sec. 311(b)(6)(A) 33 U.S.C. 466. The kind of conflict of law described here is governed by ORS 468.815 Effect of federal regulations of oil spillage, which reminds us that the state law cannot conflict with applicable federal law. The conflict being the relative permissiveness of state law compared to federal law.

HMD:y
RY8251

Proposed Revisions to DEQ New Development Rules
Final
2/27/89

340-41-006 (18) "Land Development" refers to any human induced change to improved or unimproved real estate, including but not limited to construction, installation or expansion of a building or other structure, land division, drilling, and site alteration such as that due to land surface mining, dredging, grading, construction of earthen berms, paving, improvements for use as parking or storage, excavation or clearing.

(19) "Stormwater Quality Control Facility" refers to any structure or drainage way that is designed, constructed, and maintained to collect and filter, retain, or detain surface water runoff during and after a storm event for the purpose of water quality improvement and flow attenuation.

340-41-455 (3) Non-point source pollution control in Tualatin River sub-basin and lands draining to Oswego Lake:

(a) These rules shall apply to any new land development within the Tualatin River sub-basin except those developments with application dates prior to the effective date of these rules. The application date shall be the date on which a complete application for development approval is received by the local jurisdiction in accordance with the regulations of the local jurisdiction. These rules shall not apply to development within a jurisdiction which has adopted a Department approved program plan in accordance with OAR 340-41-470(3)(g).

(b) For land development, no preliminary plat, site plan or permit shall be approved by any jurisdiction in this sub-basin unless conditions of the plat or plan approval includes interim stormwater quality control facilities to be constructed prior to land development and to be operated during construction to control the discharge of sediment in the stormwater runoff. The erosion control plan shall utilize protection techniques to control soil erosion and sediment transport. See Figures 1 to 6 for examples. The erosion control plan shall include temporary sedimentation basins when erosion from any land development exceeds one (1) ton per acre, as calculated using the Soil Conservation Service Universal Soil Loss Equation. See Tables 1 to 6. The sedimentation basins shall be sized using 1.5 feet maximum sediment storage depth plus 2.0 feet storage depth above for a settlement zone. When the erosion potential has been removed, the sediment basin can be removed and the site restored as per the final site plan.

TABLE 1 UNIVERSAL SOIL LOSS EQUATION

o Computing the sediment storage volume - The sediment storage volume required is the volume required to contain the annual sediment yield to the trap and can be estimated by using the Universal Soil Loss Equation (USLE) developed by the United States Department of Agriculture.

$$A = R*K*LS*CV*PR$$

Where	A	=	annual sediment yield in tons per acre
	R	=	rainfall erosion index;
	K	=	soil erodibility factor, from Table 3 or as determined by field and laboratory testing by a geologist, soil scientist, or geotechnical engineer.
	LS	=	length-slope factor; from Table 4 (note, lengths measured are horizontal distance from a plan view)
	CV	=	cover factor, use 1.0 which represents no ground cover during the construction process. TABLE 5 and 6
	PR	=	erosion control practice factor; use 0.9 which represents trackwalking up and down slope. (Dozer cleat marks parallel to contours)

o Annual sediment yield calculation, step-by-step procedure:

a. Compute the R value by obtaining the R value from the 2-year/6 -hour Isopluvial Map in TABLE 2

b. Divide the site into areas of homogeneous SCS. soil type and of uniform slope and length.

c. Note the K value from the SCS soils chart (Table 3) for each soil type.

d. Determine the LS value for each uniform area (See Table 4).

e. Compute the annual sediment yield (A) in tons per acre for each homogeneous/uniform area by multiplying R times the K and LS values for each area.

f. Multiply the annual sediment yield (A) for each area by the acreage to be exposed (only that area to be cleared) of each area. Sum the results to compute the total annual sediment load (in tons) to the trap (L_A).

o The sediment storage volume (V_s) is then determined by dividing the total annual sediment load (in tons) (L_A) by an average density for the sediment deposited use 0.05 ton per cubic foot. $V_s = L_A/P_{avg}$.

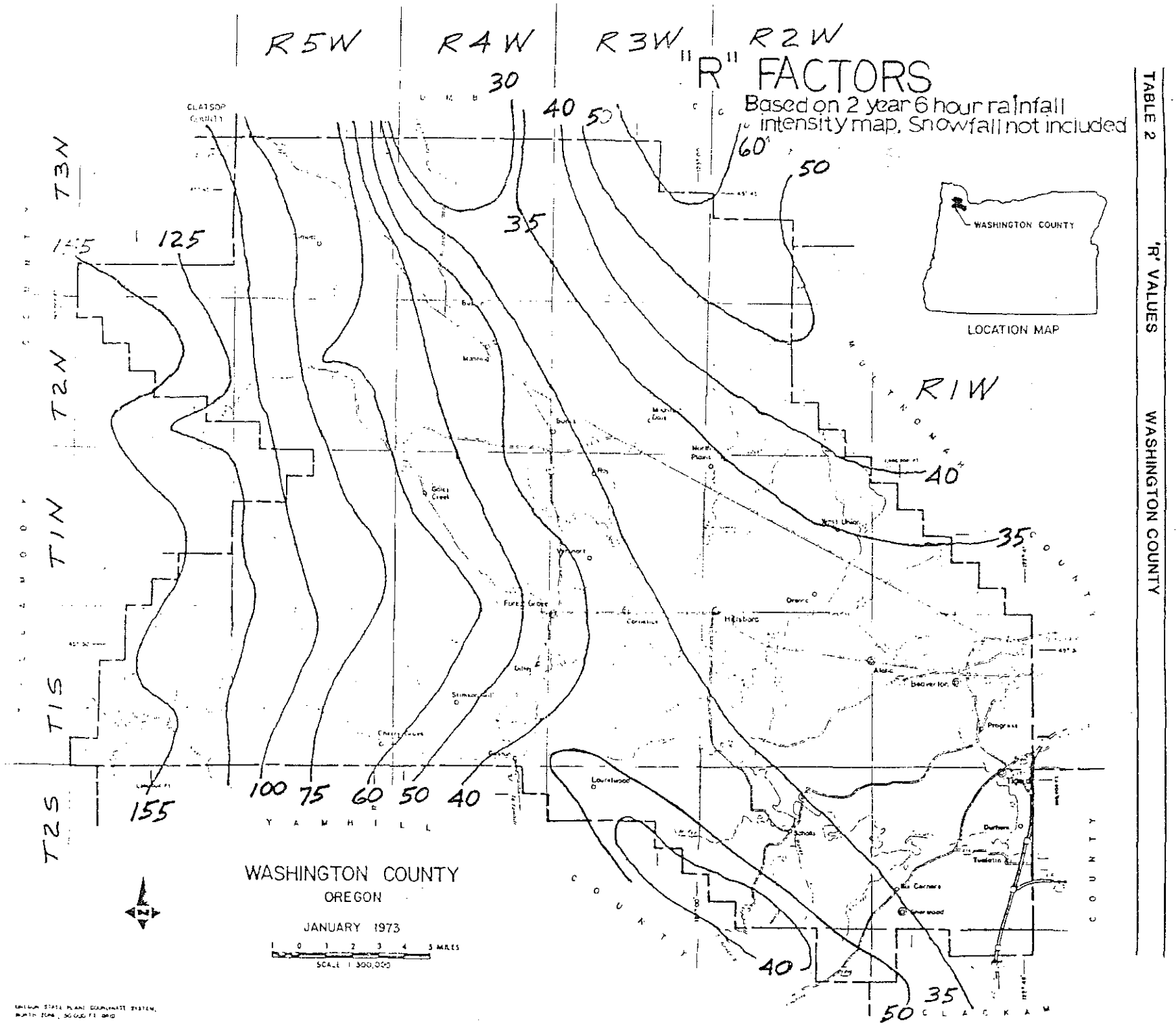


TABLE 2 'R' VALUES WASHINGTON COUNTY

TABLE 3 HYDROLOGIC SOIL GROUP OF THE SOILS WASHINGTON COUNTY

Soil Group	Map Symbol	Hydro-logic Group	Soil Erod-ibility Factor, "K"	Soil Group	Map Symbol	Hydro-logic Group	Soil Erod-ibility Factor, "K"
ALOHA	1	C	0.43	HUBERLY	22	D	0.37
AMITY	2	C	0.32	JORY	23	C	0.2
ASTORIA	3	B	0.24	KILCHIS	24	C	0.15
BRIEDWELL	4	B	0.20	KLICKITAT	24G	B	0.1
BRIEDWELL	5	B	0.17	KNAPPA	26	B	0.37
CARLTON	6	B	0.32	LABISH	27	D	0.2
CASCADE	7	C	0.37	LAURELWOOD	28	B	0.43
CHEHALEM	8	C	0.37	MCBEE	30	B	0.28
CHEHALIS	9	B	0.24	MELBOURNE	31	B	0.24
CHEHALIS	10	B	0.37	MELBY	32	C	0.32
CORNELIUS	11	C	0.37	OLYIC	34	B	0.32
KINTON	11B	C	0.43	PERVINA	36	C	0.24
CORNELIUS VARIANT	12	C	0.37	QUATAMA	37	C	0.37
COVE	13	D	0.20	SAUM	38	C	0.32
COVE	14	D	0.17	TOLKE	39	B	0.28
DAYTON	15	D	0.43	UDIFLUVENTS	40	B	0.17
DELENA	16	D	0.43	VERBOORT	42	D	0.20
GOBLE	17	C	0.37	WAPATO	43	D	0.32
GOBLE	18	C	0.37	WILLAMETTE	44	B	0.32
HELVETIA	19	C	0.37	WOODBURN	45	C	0.32
HEMBRE	20	B	0.32	XEROCHREPTS	46	B	0.43
HILLSBORO	21	B	0.49	HAPLOXEROLLS	46F	C	0.32
				XEROCHREPTS	47	D	0.02
				ROCK OUTCROP	47D	NA	0.02

HYDROLOGIC SOIL GROUP CLASSIFICATIONS

A. (Low runoff potential). Soils having high infiltration rates, even when thoroughly wetted, and consisting chiefly of deep, well-to-excessively drained sands or gravels. These soils have a high rate of water transmission.

B. (Moderately low runoff potential). Soils having moderate infiltration rates when thoroughly wetted, and consisting chiefly of moderately fine to moderately coarse textures. These soils have a moderate rate of water transmission.

C. (Moderately high runoff potential). Soils having slow infiltration rates when thoroughly wetted, and consisting chiefly of soils with a layer that impedes downward movement of water, or soils with moderately fine to fine textures. These soils have a slow rate of water transmission.

D. (High runoff potential). Soils having very slow infiltration rates when thoroughly wetted and consisting chiefly of clay soils with a high swelling potential, soils with a permanent high water table, soils with a hardpan or clay layer at or near the surface, and shallow soils over nearly impervious material. These soils have a very slow rate of water transmission.

* From SCS

TABLE 4 LS VALUES*

Slope ratio	Slope gradient s, %	LS values for following slope lengths l, ft (m)									
		10 (3.0)	20 (6.1)	30 (9.1)	40 (12.2)	50 (15.2)	60 (18.3)	70 (21.3)	80 (24.4)	90 (27.4)	100 (30.5)
	0.5	0.06	0.07	0.07	0.08	0.08	0.09	0.09	0.09	0.09	0.10
100:1	1	0.08	0.09	0.10	0.10	0.11	0.11	0.12	0.12	0.12	0.12
	2	0.10	0.12	0.14	0.15	0.16	0.17	0.18	0.19	0.19	0.20
	3	0.14	0.18	0.20	0.22	0.23	0.25	0.26	0.27	0.28	0.29
	4	0.16	0.21	0.25	0.28	0.30	0.33	0.35	0.37	0.38	0.40
20:1	5	0.17	0.24	0.29	0.34	0.38	0.41	0.45	0.48	0.51	0.53
	6	0.21	0.30	0.37	0.43	0.48	0.52	0.56	0.60	0.64	0.67
	7	0.26	0.37	0.45	0.52	0.58	0.64	0.69	0.74	0.78	0.82
12½:1	8	0.31	0.44	0.54	0.63	0.70	0.77	0.83	0.89	0.94	0.99
	9	0.37	0.52	0.64	0.74	0.83	0.91	0.98	1.05	1.11	1.17
10:1	10	0.43	0.61	0.75	0.87	0.97	1.06	1.15	1.22	1.30	1.37
	11	0.50	0.71	0.86	1.00	1.12	1.22	1.32	1.41	1.50	1.58
8:1	12.5	0.61	0.86	1.05	1.22	1.36	1.49	1.61	1.72	1.82	1.92
	15	0.81	1.14	1.40	1.62	1.81	1.98	2.14	2.29	2.43	2.56
6:1	16.7	0.96	1.36	1.67	1.92	2.15	2.36	2.54	2.72	2.88	3.04
5:1	20	1.29	1.82	2.23	2.58	2.88	3.16	3.41	3.65	3.87	4.08
4½:1	22	1.51	2.13	2.61	3.02	3.37	3.69	3.99	4.27	4.53	4.77
4:1	25	1.86	2.63	3.23	3.73	4.16	4.56	4.93	5.27	5.59	5.89
	30	2.51	3.56	4.36	5.03	5.62	6.16	6.65	7.11	7.54	7.95
3:1	33.3	2.98	4.22	5.17	5.96	6.67	7.30	7.89	8.43	8.95	9.43
	35	3.23	4.57	5.60	6.46	7.23	7.92	8.55	9.14	9.70	10.22
25:1	40	4.00	5.66	6.93	8.00	8.95	9.80	10.59	11.32	12.00	12.65
	45	4.81	6.80	8.33	9.61	10.75	11.77	12.72	13.60	14.42	15.20
2:1	50	5.64	7.97	9.76	11.27	12.60	13.81	14.91	15.91	16.91	17.82
	55	6.48	9.16	11.22	12.96	14.48	15.87	17.14	18.32	19.43	20.48
1¾:1	57	6.82	9.64	11.80	13.63	15.24	16.69	18.03	19.28	20.45	21.55
	60	7.32	10.35	12.68	14.64	16.37	17.93	19.37	20.71	21.96	23.15
1½:1	66.7	8.44	11.93	14.61	16.88	18.87	20.67	22.32	23.87	25.31	26.68
	70	8.98	12.70	15.55	17.96	20.08	21.99	23.75	25.39	26.93	28.39
	75	9.78	13.83	16.94	19.56	21.87	23.95	25.87	27.66	29.34	30.92
1¼:1	80	10.55	14.93	18.28	21.11	23.60	25.85	27.93	29.85	31.66	33.38
	85	11.30	15.98	19.58	22.61	25.27	27.69	29.90	31.97	33.91	35.74
	90	12.02	17.00	20.82	24.04	26.88	29.44	31.80	34.00	36.06	38.01
	95	12.71	17.97	22.01	25.41	28.41	31.12	33.62	35.94	38.12	40.18
1:1	100	13.36	18.89	23.14	26.72	29.87	32.72	35.34	37.78	40.08	42.24

Slope ratio	Slope gradient s, %	LS values for following slope lengths l, ft (m)														
		150 (46)	200 (61)	250 (76)	300 (91)	350 (107)	400 (122)	450 (137)	500 (152)	600 (183)	700 (213)	800 (244)	900 (274)	1000 (305)		
	0.5	0.10	0.11	0.11	0.12	0.12	0.13	0.13	0.13	0.14	0.14	0.14	0.15	0.15		
100:1	1	0.14	0.14	0.15	0.16	0.16	0.16	0.17	0.17	0.18	0.18	0.19	0.19	0.20		
	2	0.23	0.25	0.26	0.28	0.29	0.30	0.32	0.33	0.34	0.36	0.37	0.39	0.40		
	3	0.32	0.35	0.38	0.40	0.42	0.43	0.45	0.46	0.49	0.51	0.54	0.55	0.57		
	4	0.47	0.53	0.58	0.62	0.66	0.70	0.73	0.76	0.82	0.87	0.92	0.96	1.00		
20:1	5	0.66	0.76	0.85	0.93	1.00	1.07	1.13	1.20	1.31	1.42	1.51	1.60	1.69		
	6	0.82	0.95	1.06	1.16	1.26	1.34	1.43	1.50	1.65	1.78	1.90	2.02	2.13		
	7	1.01	1.17	1.30	1.43	1.54	1.65	1.75	1.84	2.02	2.18	2.33	2.47	2.61		
12½:1	8	1.21	1.40	1.57	1.72	1.85	1.98	2.10	2.22	2.43	2.62	2.80	2.97	3.13		
	9	1.44	1.66	1.85	2.03	2.19	2.35	2.49	2.62	2.87	3.10	3.32	3.52	3.71		
10:1	10	1.68	1.94	2.16	2.37	2.56	2.74	2.90	3.06	3.35	3.62	3.87	4.11	4.33		
	11	1.93	2.23	2.50	2.74	2.95	3.16	3.35	3.53	3.87	4.18	4.47	4.74	4.99		
8:1	12.5	2.35	2.72	3.04	3.33	3.59	3.84	4.08	4.30	4.71	5.08	5.43	5.76	6.08		
	15	3.13	3.62	4.05	4.43	4.79	5.12	5.43	5.72	6.27	6.77	7.24	7.68	8.09		
6:1	16.7	3.72	4.30	4.81	5.27	5.69	6.08	6.45	6.80	7.45	8.04	8.60	9.12	9.62		
5:1	20	5.00	5.77	6.45	7.06	7.63	8.16	8.65	9.12	9.99	10.79	11.54	12.24	12.90		
4½:1	22	5.84	6.75	7.54	8.26	8.92	9.54	10.12	10.67	11.68	12.62	13.49	14.31	15.08		
4:1	25	7.21	8.33	9.31	10.20	11.02	11.78	12.49	13.17	14.43	15.58	16.66	17.67	18.63		
	30	9.74	11.25	12.57	13.77	14.88	15.91	16.87	17.78	19.48	21.04	22.49	23.86	25.15		
3:1	33.3	11.55	13.34	14.91	16.33	17.64	18.86	20.00	21.09	23.10	24.95	26.67	28.29	29.82		
	35	12.52	14.46	16.16	17.70	19.12	20.44	21.68	22.86	25.04	27.04	28.91	30.67	32.32		
25:1	40	15.50	17.89	20.01	21.91	23.67	25.30	26.84	28.29	30.99	33.48	35.79	37.96	40.01		
	45	18.62	21.50	24.03	26.33	28.44	30.40	32.24	33.99	37.23	40.22	42.99	45.60	48.07		
2:1	50	21.83	25.21	28.18	30.87	33.34	35.65	37.81	39.85	43.66	47.16	50.41	53.47	56.36		
	55	25.09	28.97	32.39	35.48	38.32	40.97	43.45	45.80	50.18	54.20	57.91	61.45	64.78		
1¾:1	57	26.40	30.48	34.08	37.33	40.32	43.10	45.72	48.19	52.79	57.02	60.96	64.66	68.15		
	60	28.35	32.74	36.60	40.10	43.31	46.30	49.11	51.77	56.71	61.25	65.48	69.45	73.21		
1½:1	66.7	32.68	37.74	42.19	46.22	49.92	53.37	56.60	59.66	65.36	70.60	75.47	80.05	84.38		
	70	34.77	40.15	44.89	49.17	53.11	56.78	60.23	63.48	69.54	75.12	80.30	85.17	89.78		
	75	37.87	43.73	48.89	53.56	57.85	61.85	65.60	69.15	75.75	81.82	87.46	92.77	97.79		
1¼:1	80	40.88	47.20	52.77	57.81	62.44	66.75	70.80	74.63	81.76	88.31	94.41	100.13	105.55		
	85	43.78	50.55	56.51	61.91	66.87	71.48	75.82	79.92	87.55	94.57	101.09	107.23	113.03		
	90	46.55	53.76	60.10	65.84	71.11	76.02	80.63	84.99	93.11	100.57	107.51	114.03	120.20		
	95	49.21	56.82	63.53	69.59	75.17	80.36	85.23	89.84	98.42	106.30	113.64	120.54	127.06		
1:1	100	51.74	59.74	66.79	73.17	79.03	84.49	89.61	94.46	103.48	111.77	119.48	126.73	133.59		

*Calculated from

$$LS = \left(\frac{65.41 \times s^2}{s^2 + 10{,}000} + \frac{4.56 \times s}{\sqrt{s^2 + 10{,}000}} + 0.065\right)\left(\frac{l}{72.5}\right)^m$$

LS = topographic factor
l = slope length, ft (m × 0.3048)
s = slope steepness,
m = exponent dependent upon slope steepness
(0.2 for slopes < 1%, 0.3 for slopes 1 to 3%,
0.4 for slopes 3.5 to 4.5%, and
0.5 for slopes > 5%)

TABLE 5 'C' VALUES MULCH FACTORS[1]

Type of mulch	Mulch Rate	Land Slope	Factor C	Length limit[2]
	Tons per acre	*Percent*		*Feet*
None	0	all	1.0	—
Straw or hay,	1.0	1-5	0.20	200
tied down by	1.0	6-10	.20	100
anchoring and				
tacking	1.5	1-5	.12	300
equipment[3]	1.5	6-10	.12	150
Do.	2.0	1-5	.06	400
	2.0	6-10	.06	200
	2.0	11-15	.07	150
	2.0	16-20	.11	100
	2.0	21-25	.14	75
	2.0	26-33	.17	50
	2.0	34-50	.20	35
Crushed stone,	135	<16	.05	200
¼ to 1½ in	135	16-20	.05	150
	135	21-33	.05	100
	135	34-50	.05	75
Do.	240	<21	.02	300
	240	21-33	.02	200
	240	34-50	.02	150
Wood chips	7	<16	.08	75
	7	16-20	.08	50
Do.	12	<16	.05	150
	12	16-20	.05	100
	12	21-33	.05	75
Do.	25	<16	.02	200
	25	16-20	.02	150
	25	21-33	.02	100
	25	34-50	.02	75

[1] From Meyer and Ports (24). Developed by an interagency workshop group on the basis of field experience and limited research data.

[2] Maximum slope length for which the specified mulch rate is considered effective. When this limit is exceeded, either a higher application rate or mechanical shortening of the effective slope length is required.

[3] When the straw or hay mulch is not anchored to the soil, C values on moderate or steep slopes of soils having K values greater than 0.30 should be taken at double the values given in this table.

TABLE

"C" FACTORS (OREGON)
CONSTRUCTION SITES

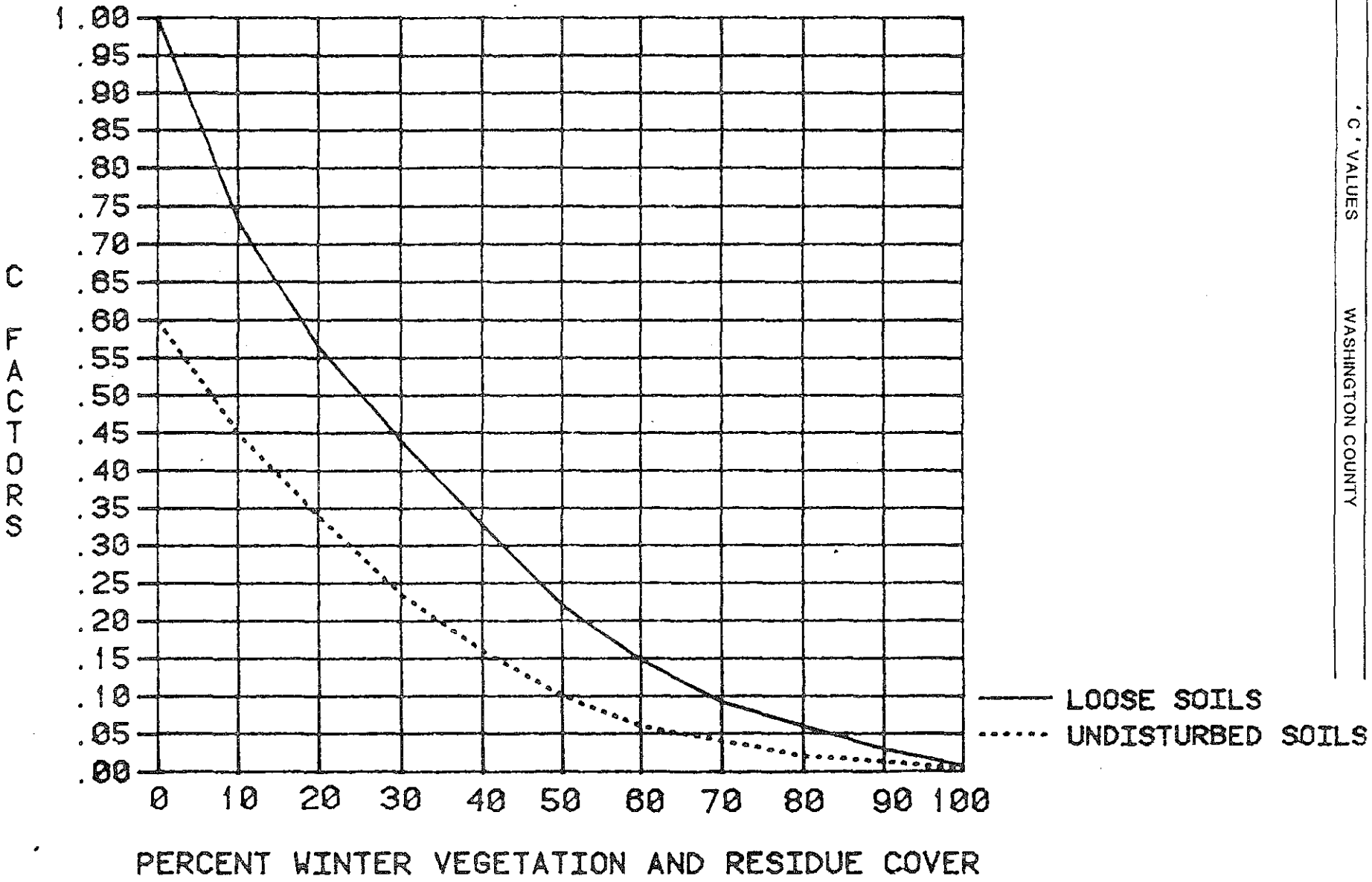
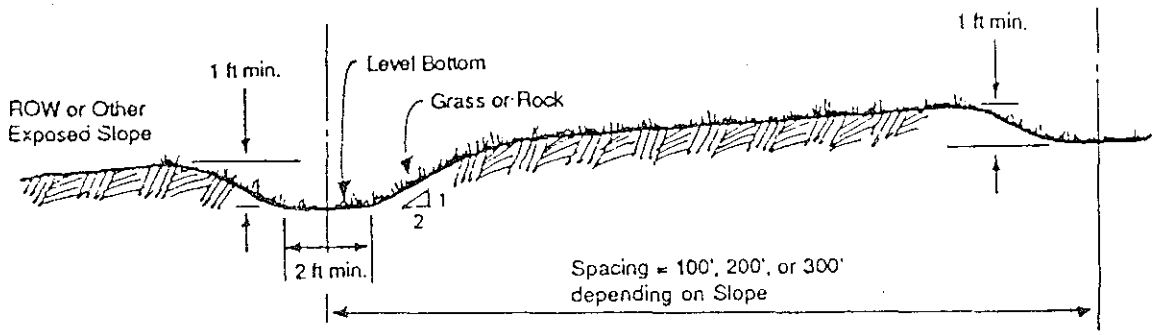


TABLE 6 'C' VALUES WASHINGTON COUNTY

FIGURE 1 INTERCEPTOR SWALE



Bottom Width	2 feet minimum; the bottom width shall be level
Depth	1 foot minimum
Side Slope	2H:1V or flatter
Grade	Maximum 5 percent, with positive drainage to a suitable outlet (such as sedimentation pond)
Stabilization	Seed as per Grassed Channel or, Rock: 12 inches thick, pressed into bank and extending at least 8 inches vertical from the bottom.

FIGURE 2 TEMPORARY INTERCEPTOR DIKES

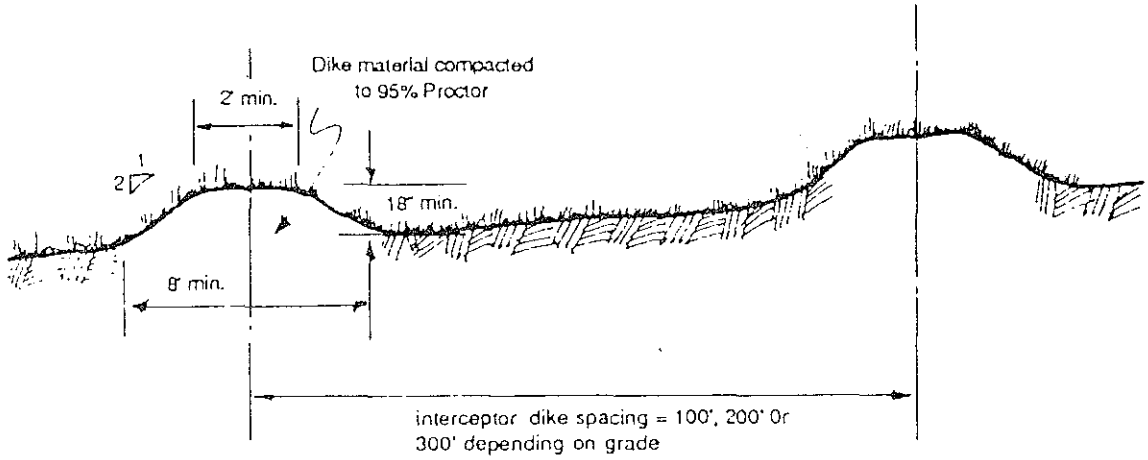


FIGURE 3 LEVEL SPREADER

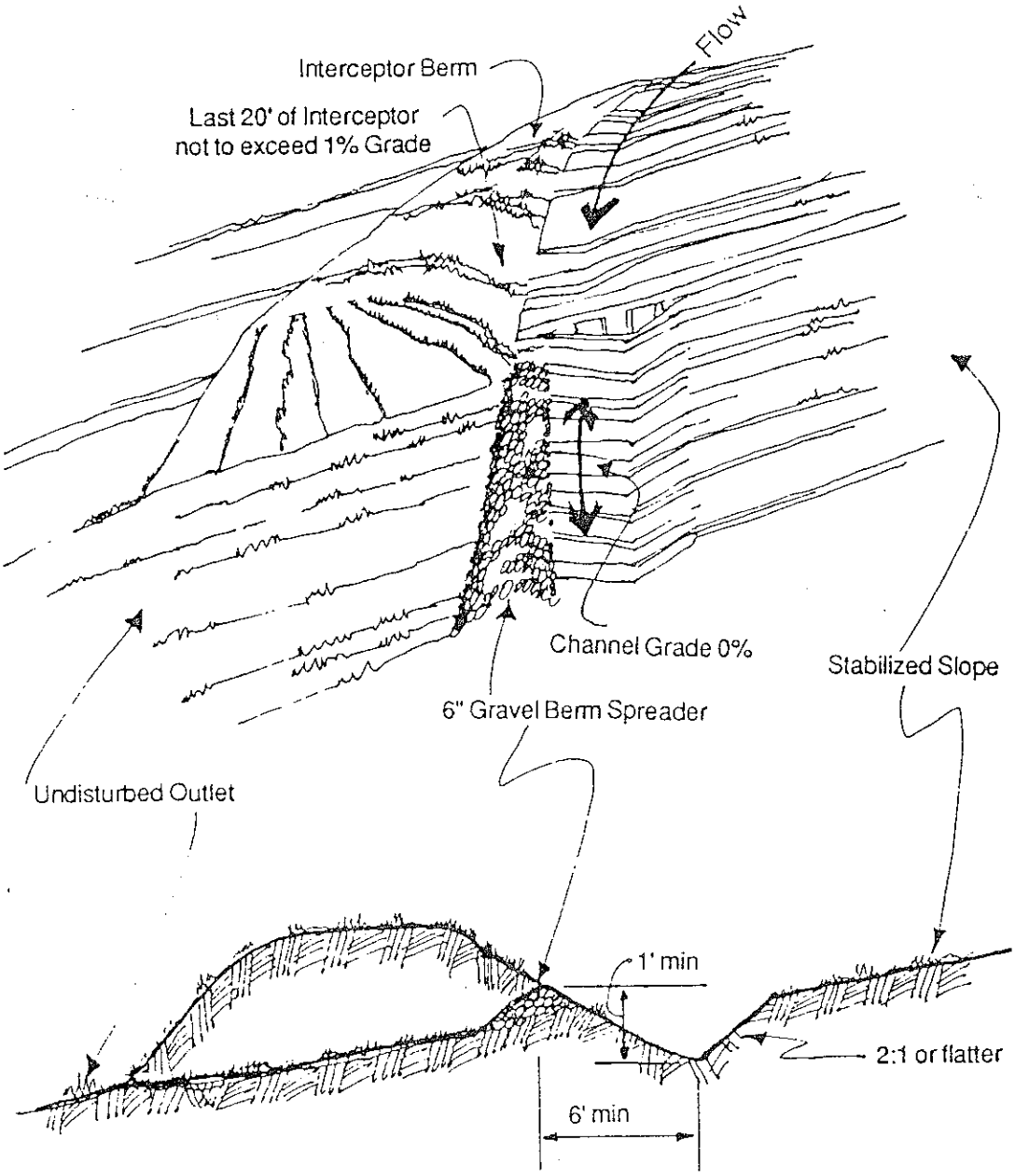
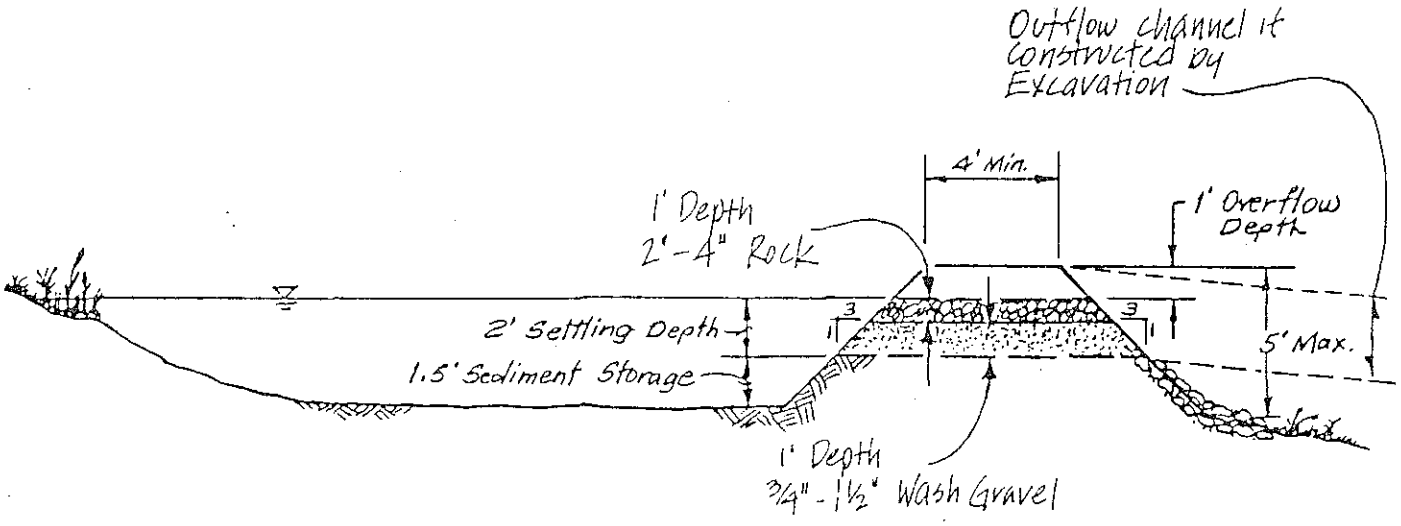
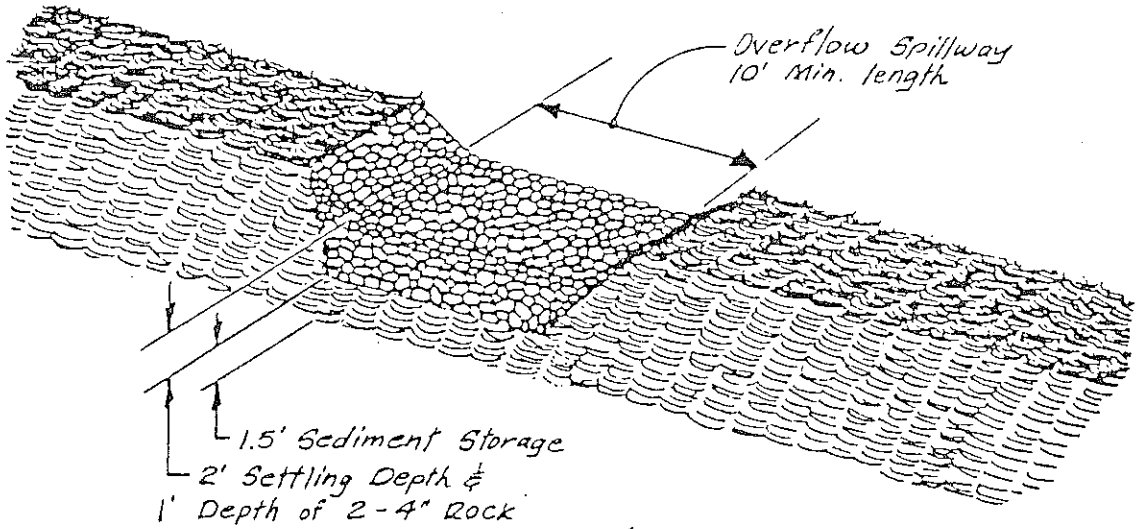


FIGURE 4 SEDIMENT TRAP



CROSS SECTION
No Scale

Note: May be constructed by excavation or by building a berm



SEDIMENT TRAP OUTLET
No Scale

FIGURE 5 PIPE SLOPE DRAINS

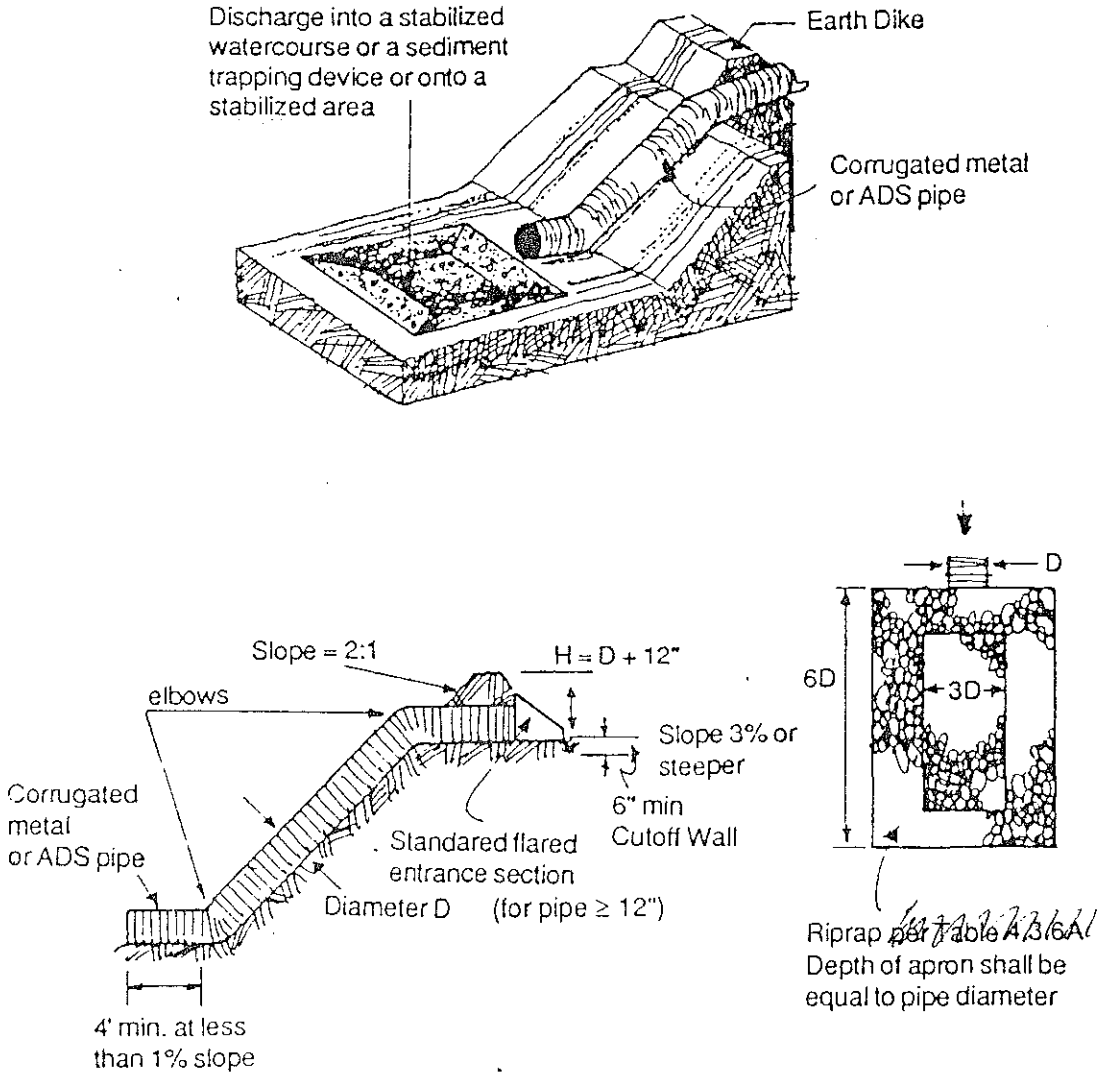
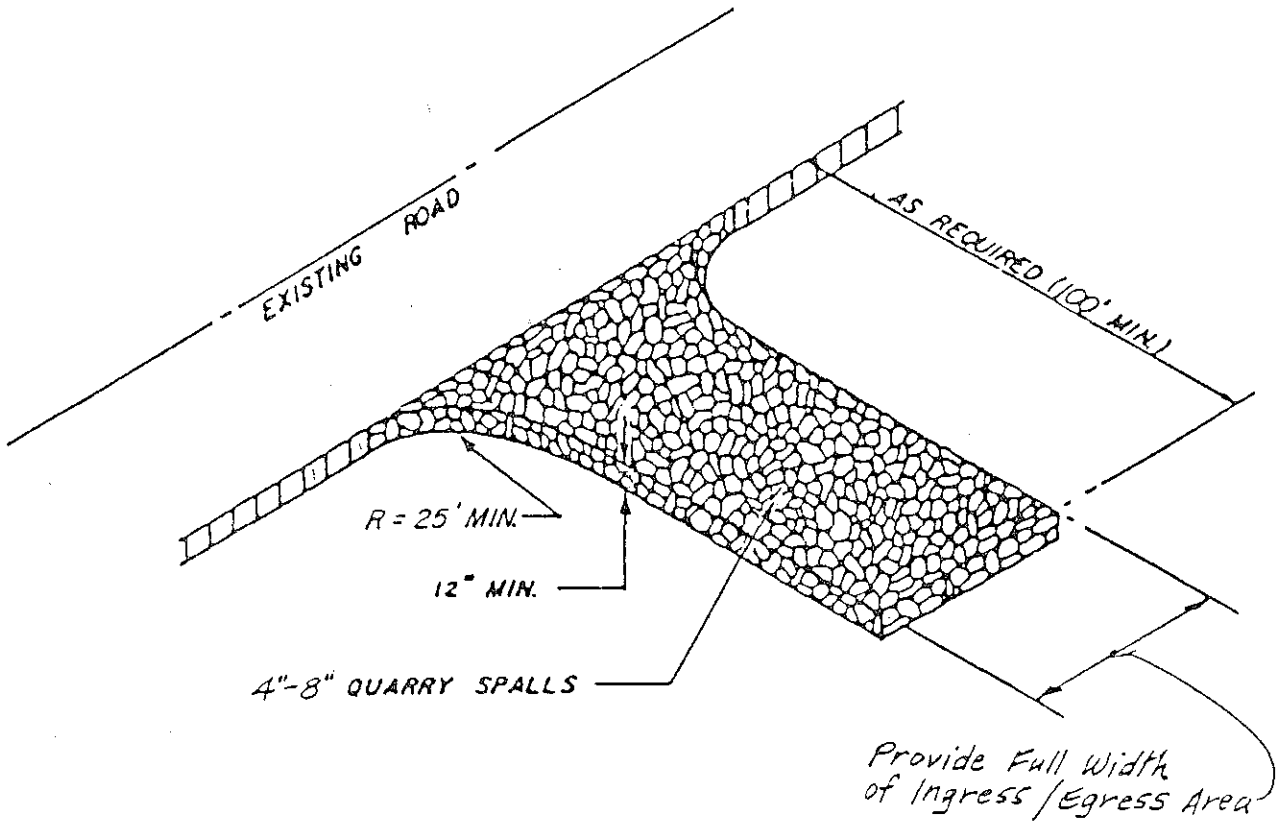


FIGURE 6 · STABILIZED CONSTRUCTION ENTRANCE



(c) For land development within the urban growth boundary, the jurisdiction may choose to require a one-time development fee to be assessed by the jurisdictions in this sub-basin in lieu of complying with subsection (d) below. The fee will be an option for new developments until such time that an area-wide stormwater quality control plan is in place as per OAR 340-41-470(3)(g), ~~or until December 31, 1990, which ever comes first at which time this subsection (c) will no longer be in effect~~. The fee to be levied by the jurisdictions will be for the purpose of funding of area-wide stormwater quality control facilities as per the area-wide plan. The jurisdictions will also preserve sites within the watershed of the development where possible locations for future stormwater control facilities are located. These lands may be released from the reserve when the lands are no longer needed for implementation of the area-wide stormwater quality control plan.

(d) For land development not assessed the one-time development fee:

A. No preliminary plat or preliminary site plan shall be approved by any jurisdiction in this sub-basin unless conditions of the preliminary plat or site plan includes permanent stormwater quality control facilities designed to achieve 65% removal of phosphorus and 85% of sediment from the runoff from the mean summertime storm event totaling 0.36 inches once the development is complete. This to be based upon the design criteria stated in Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs (See Appendix A) or total capture of this runoff with drain down within the average antecedent dry period between events of 96 hours.
(and infiltration

B. No final plat or final site plan approved using design criteria in Subsection (A) shall be approved in this sub-basin unless the following requirements are met:

1. The final plat or site plan proposed by the developer shall include plans and a certification prepared by a registered, professional engineer that the proposed stormwater control facilities have met the design criteria of Subsection (A).

2. A financial assurance, or equivalent security acceptable to the jurisdiction, shall be provided by the developer with the jurisdiction that assures that the stormwater control facilities are constructed according to the plans established in the final plat or site plan approval.

3. The jurisdiction must assure that the permanent stormwater control facilities will be operated and maintained in perpetuity.

(e) An exception to Subsection (d) may be granted to the jurisdiction by the Director subject to all the following requirements:

A. An area-wide stormwater control system will be provided to control the release of sediment and phosphorus pollutants in the storm runoff;

B. The land development or subdivision would be served by the area-wide stormwater control system;

C. Land necessary for the stormwater quality control facilities has been acquired by the jurisdication;

D. An area-wide stormwater control plan has been developed and approved by the Department of Environmental Quality. The plan shall include a time schedule for ensuring the facilities are installed before or concurrently with the development; and

E. A permit has been issued by the Department to the local jurisdiction assuring adequate operation and maintenance of the stormwater control facilities.

(f) The jurisdiction may require review of the plans to construct and operate a stormwater control facility required by Subsection (d) by the Department of Environmental Quality prior to construction.

(g) Construction of one (1) and two (2) family dwellings on existing Lots of Record are exempt from the requirements in Sections (c), (d), (e) ~~and (f).~~

(h) As local jurisdictions adopt a DEQ-approved program plan, these requirements will no longer apply to the development in that jurisdiction.

(i) The developer may choose an alternative design criteria for a permanent stormwater quality control facility requirement that is not found in Subsection (d)(A). In this case, a preliminary plat or site plan shall not be approved by any jurisdiction unless the conditions of the approval require that the developer applies for and receives a permit from the Department. Any application for a permit for a stormwater quality control facility shall include necessary technical documentation to support that the proposed system has been designed to achieve 65% removal of phosphorus and 85% removal of sediment once the development is completed.

(j) As the Department obtains additional information on appropriate Best Management Practices (BMP) for controlling stormwater quality, the Director may add or delete BMPs and associated design criteria to or from Subsection (d)(A).

APPENDIX A

Controlling Urban Runoff: A Practical Manual for Planning and Desiging Urban BMPs

Enforcing Oregon's Environmental Statutes

An Assessment of the Enforcement Program of the Department of Environmental Quality

Prepared by the
Oregon Environmental Council

February 1989

Acknowledgments

We would like to gratefully acknowledge the following individuals for their contributions to the publication of this document: Ann Wheeler, who conducted extensive interviews and authored the document; Nancy Nesewich, Russ Jolley, and Christy O'Quinn for their research assistance; Jean Cameron, Peter Ravella, and John Charles for their critical reviews of the drafts; Wendy Hudson for editing the document; and lastly, all the many DEQ employees who assisted us in compiling the information for this document.

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503/222-1963

Executive Summary

In November 1987, the Oregon Environmental Council (OEC) initiated an analysis of the enforcement process for the environmental statutes administered by the Oregon Department of Environmental Quality (DEQ). The analysis included an inventory of DEQ's statutory authority; an examination of DEQ's record of past enforcement actions and policies; and interviews with DEQ employees, industry representatives, and others involved in the enforcement process.

With its year-long study completed, OEC has concluded that DEQ is not adequately enforcing Oregon's environmental statutes, despite ample statutory authority to do so. This problem stems from an unnecessarily narrow reading of agency legal authority by DEQ managers, and from a lengthy list of administrative impediments, outlined below.

Statutory Interpretation and Non-Enforcement

A narrow interpretation of its statutory authority has led DEQ to pursue an often protracted period of conciliation with polluters in which violations continue unabated. Such a conciliatory approach encourages the negotiation and mitigation of fines and penalties. Because fines and penalties are frequently waived, DEQ's enforcement program has limited value as a deterrent.

Administrative Impediments to Enforcement

- Inadequate fines: fines are generally set too low to promote industrial compliance or even to cover the administrative costs of enforcement.

- Arbitrary compliance standards: The steps to compliance with permit and cleanup standards are quite arbitrary, depending on a variety of factors that include the size and location of the source, the relationship of the violating industry with DEQ and the local community, whether the source is public or private, and the availablity of the field inspector to conduct regular site visits.

- Inadequate data and record-keeping on compliance: No data exist to demonstrate what the compliance record is among any of the DEQ programs. In addition, DEQ has insufficient record-keeping for tracking correspondence, telephone calls, and site inspections. A clear paper trail is essential to maintaining adequate administrative records.

- Inadequate resources for conducting monitoring and sampling: Most of the data are supplied by private consultants hired by the regulated industry. In general, DEQ lacks the resources to do its own testing or to split samples for verifying the conclusions of the industrial consultants.

- Inadequate resources to conduct its mission: Resources in general are lacking. Regional offices are inadequately staffed and there is a general dearth of field inspectors to verify industrial compliance.

- Inefficient chain of command and flow of information: DEQ is hampered by a growing disaffection between headquarters and regional offices. In addition, information gathered by field inspectors such as sample data, responses to complaints, recommendations for remediation and enforcement actions are often lost or ignored as the information moves up the management ladder.

- Absence of an overall enforcement policy: DEQ has yet to adopt a comprehensive enforcement policy to guide enforcement decisions at all levels.

Based on the above findings, OEC makes the following recommendations:

1) DEQ needs to adopt a strong, clear, consistent enforcement process that includes a schedule of fines adequate to promote compliance. Certain statutory changes, outlined in the Recommendations section, should also be considered.

2) DEQ should establish an informal task force to analyze the bureaucratic problems outlined above and to make recommendations for change. The task force should be comprised of representatives from both headquarters and regional offices and it should file its recommendations within six months of its inception.

3) DEQ should develop immediately a plan for a coordinated effort to collect accurate and timely data on compliance and environmental health from each DEQ program. In the absence of available resources to conduct its own monitoring and sampling, DEQ should split samples to verify the controversial or questionable conclusions of the industries.

4) DEQ should mitigate fines only in rare and appropriate circum-stances and when factors of public health and safety have been fully considered; follow the procedural steps outlined in the policy, allowing for variations only when special considerations are reasonably justified; and, provide findings to explain any circumstance when special consideration is given to a regulated industry or when time for compliance or cleanup is extended.

5) For certain first-time violations, DEQ should institute a system of automatic fines that will be rebuttably presumed to apply unless the regulated industry requests a hearing to provide evidence as to why the fine should not apply. The situations and fine levels should be created within the overall enforcement policy. Such a system could be developed that complies with existing statutes and would create certainty, fairness, and efficiency with regard to a large category of first-time violators.

6) In certain narrow programs, DEQ should decentralize the enforcement process, giving more authority to the regional offices. The areas included in this decentralization would be directed by general DEQ policy and have headquarters

oversight, but would be able to conduct initial stages of enforcement at the regional level.

7) DEQ should investigate the possibility of developing a cooperative enforcement program with the Oregon State Police Department (similar to that between the OSPD and the Oregon Department of Fish and Wildlife) to protect the health and safety of the public from environmental hazards.

8) DEQ should consider approaching the state legislature to seek a few important statutory changes that will help the agency to enforce its policies consistently and to alleviate the administrative costs of enforcement.

Introduction

For several years, the Oregon Environmental Council (OEC) has accumulated anecdotal information on the apparent inadequacy of the law enforcement process used by the Oregon Department of Environmental Quality (DEQ). Although much of the information was disturbing, it was difficult to draw any conclusions because of the random way in which it had been collected. To remedy this analytical problem, OEC initiated in November 1987 a study of DEQ's enforcement program to confirm or deny the perceived inadequacy and to provide data to support recommended changes.

To conduct the analysis, OEC first reviewed Oregon's environmental statutes to gain a clear understanding of DEQ's enforcement authority.Second, OEC reviewed the record of DEQ enforcement activities for the past several years. Third, OEC conducted extensive interviews with individuals knowledgeable about DEQ's enforcement process and management structure. These included past and present employees of DEQ, representatives from the regulated industry, employees of the U.S. Environmental Protection Agency (EPA), and representatives from randomly selected regulated sources. Finally, OEC examined the files of several of the regulated industries to illustrate its findings in the form of case studies.

The overall goal of this report is to make recommendations to the Environmental Quality Commission and the Oregon legislature on ways in which the DEQ could improve its enforcement process and its overall management.

Statutes and Documents Reviewed

1. Statutory Authority

Statutes and rules reviewed included:

- ORS 468.090 - 468.140; General Enforcement Authority, including Notices of Violation (468.125), and Civil Penalties (468.130).
- ORS 459.376, 459.780; Solid Waste Enforcement Authority.
- ORS 466.090, 466.225; Hazardous Waste Enforcement Authority.
- ORS 454.635; Sewage Treatment and Disposal Enforcement Authority.
- ORS 467.040; Noise Enforcement Authority.
- ORS 468.990; General Criminal Penalty Enforcement Authority for violation of pollution control statutes.
- ORS 466.995; Criminal Penalty Enforcement Authority for violations of hazardous waste statutes.

- ORS 459.992; Criminal Penalty Enforcement Authority for violation of solid waste statutes.

- ORS 467.990; Criminal Penalty Enforcement Authority for violations of noise pollution control statutes.

- OAR Chapter 340, Division 12; Scedules for Civil Penalties.

2. DEQ Documents Examined

The following documents were supplied by DEQ and reviewed for this report. Information from these documents has been used throughout the analysis.

- Enforcement Memorandum - prepared for an Environmental Quality Commission retreat on August 22-23, 1988.

- Draft Enforcement/Compliance Policy, including a Proposed Department of Environmental Quality System for Determining Civil Penalties (undated, but completed some time in 1986).

- Summaries of DEQ's formal Enforcement Actions,1987, 1986, 1985.

Analysis Methodology

1. Interviews

Personal or telephone interviews were conducted with 34 individuals knowledgeable about DEQ's enforcement process and management structure. They included: 16 at some management level within DEQ, 11 at a field inspector or non-managerial program level; two former DEQ employees, one EPA regional supervisor, one hearings officer, one Department of Justice attorney, one Department of Fish and Wildlife employee, and one officer from the Oregon State Police Department.

The interviews were conducted largely by one person for an emphasis on consistency. The interviewer asked each subject for his or her connection to the enforcement process, the reaction to this process, specific examples of strengths and weaknesses in the current process, desired changes,andexperiences with enforcement systems outside Oregon. To ensure open discussion of DEQ's enforcement policy, interview subjects were not required to comment for attribution.

2. Industry Case Studies

Based on information gathered during the interviews, OEC examined pertinent DEQ files of several of its regulated industries. Each file was reviewed to corroborate issues raised in the personal interviews. Where necessary, a DEQ employee was consulted to assist in interpreting the past and present status of an

enforcement action of a regulated industry. Case studies were then developed to illustrate OEC's findings.

Examination of regulated industry files that are part of the public record is difficult. A citizen with an interest in a particular regulated industry must first determine in which department to start. Files are not cross-referenced, so one must search each possibly related department to avoid missing key memos. For example, an industry may have a permit in the water or air divisions, be regulated under one of the hazardous waste divisions, and also have a file in the regional office in which the industry is located. After all the files are gathered, one must sort through potentially hundreds of pages of information containing charts, acronyms, complex scientific data, etc., searching for the answer to a few simple questions such as: What kind of pollution does the industry produce? What violations have occurred and how has DEQ responded? Has the violation stopped, and if not, why not or when will it stop? While the questions may be simple, finding the answers frequently is not.

3. Industry Source Telephone Survey

In addition to examining DEQ's pollution control program files, representatives of eight regulated industries were surveyed by telephone to obtain general information about their relationship with DEQ.

Each industry representative was asked to describe the frequency of contact with DEQ and to characterize that contact, as well as to describe any problems with DEQ inspectors and the degree of satisfaction with DEQ technical support.

Discussion

Oregon's statutes currently give DEQ extensive civil and criminal penalty authority. Criminal penalties are rarely, if ever, used though the authority is fairly broad. Willful or negligent violation of permit conditions, or general pollution control prohibitions are considered misdemeanors punishable by large fines and confinement of up to one year.

The DEQ's civil penalty authority is also quite broad. It is intended to be used when a violation is continuous, where a significant violation occurs following a Notice of Intent [to assess a civil penalty], or in certain circumstances when a penalty may be assessed without a Notice of Intent. These circumstances include instances when the violation is intentional; consists of disposing of solid waste or sewage at an unauthorized disposal site; consists of constructing a sewage disposal system without a DEQ permit; results in air or water pollution that would not normally last five days; or results in air or water pollution from a source that might leave the state.

Clearly, DEQ possesses adequate statutory authority to enforce Oregon's environmental laws, yet its record is characterized by inconsistent and reluctant application of that authority. This is due, in part, to the way in which DEQ chooses

to interpret its statutory mission, and to a variety of self-imposed bureaucratic impediments. The following analyzes these problems.

Statutory Interpretation As It Affects Regulatory Enforcement

One sentence in DEQ's environmental statutes has provided the agency with its most often-used excuse for waiving or mitigating a fine or for not responding quickly to a violation. That sentence states that, after DEQ conducts an investigation of a substantiated complaint and subsequently finds that a violation exists, DEQ "shall by conference, conciliation, and persuasion endeavor to eliminate the source or cause of the pollution..." (see ORS 468.090).

While the statute does not specify any duration for conciliation or persuasive efforts, DEQ has historically interpreted the sentence to mean that each of these techniques should be extensively used before exercisingany other enforcement authority. DEQ has interpreted the sentence to mean that the agency does not have the authority to issue a civil penalty for any kind of first violation. Because of the emphasis DEQ places on this brief sentence, many regulated industries engage in protracted discussion and lengthy explanations to avoid incurring any enforcement action altogether. Twelve current and past DEQ employees expressed dissatisfaction with the way in which DEQ interprets this section of the enforcement statutes.

Often the violating industry is able to negotiate a vastly reduced or waived fine, despite serious violations. As one DEQ employee said, "Oregon's system [of enforcement] is one in which industry has an incentive to argue." A former DEQ employee described the agency as "wishy-washy and nonaggressive with industry, with a 'be-kind-to-business' attitude." Finally, another employee described the DEQ enforcement program as a "good ole boy system." The same employee drew a comparison between DEQ regulations and IRS regulations. Both systems rely on "voluntary" compliance, but everyone knows exactly what will happen if one does not pay taxes. The taxpayer is seldom allowed to negotiate a mitigation of taxes and fines.

The Gould, Inc., case study illustrates the problem. Gould was a Portland-based company that used to recycle batteries. The Gould file revealed that the company's first violation occurred in late 1980. (There had been a long history of violations and Notices of Violation in the 1970's when the company was called NL Industries.) Yet, despite the violation of six state regulations and a recommendation for a civil penalty, no penalty was ever assessed. In fact, an August 10, 1982, memo states that "...it was decided that no cleanup of the site is warranted by the groundwater data that has been received to date. This decision is based on the fact that there is no known beneficial use of the groundwater in the vicinity." One year later, the Gould, Inc., was listed by EPA as a Superfund National Priority cleanup site due to the presence of high levels of lead contamination in the ambient air, soil, and groundwater.

The Cascade Wood Products case study illustrates how, over time, conciliation can turn into irresponsibility. In November 1985, a pentachlorophenol

(wood preservative compound) spill occurred, yet no Notice of Violation was ever issued nor was a fine ever assessed. Instead, the entire following year was spent planning, reviewing, and assessing the problem, as well as determining the time to initiate cleanup. The file contains no entries of activity for 1987. Finally, in May 1988, two and-a-half years after the spill, the case was referred to the RCRA program of the Hazardous Waste Division and a draft consent agreement for cleanup is currently awaiting final consensus from all parties.

Similarly, in August 1985, DEQ issued a Notice of Violation to Moore Mill and Lumber Company for hazardous waste violations involving the leaching of toxic chemicals into the Coquille estuary. However, there was little follow-up by the agency. On August 6, 1986, the President of Moore Mill wrote a letter to the Director of DEQ noting that Moore Mill had changed its practices and was no longer contaminating the areas concerned. "...Your willingness to permit such changes to take place over a reasonable period of time have been noticed and appreciated." The president described his company as a leading employer in the community and closed with the following statement,

> "I am confident, based on your past understanding of our plight and your appreciation of the needs to balance your concern (which we share) with the employment and economic needs of the region, that we can reach a reasonable accommodation."

As of February 1988, no cleanup had been accomplished. A memo at that time notes that, while the company has expressed a willingness to comply with remediation requests, there is a history of procrastination and non-compliance. No penalties have ever been assessed in this case.

The final case study involves the McCormick and Baxter Creosoting Company — located in a densely populated, residential area — that was cited for groundwater and soil contamination violations in December 1983. Five years after a DEQ remediation process was begun against the company, cleanup is still incomplete. Throughout this time, no civil penalties were ever assessed.

Bureaucratic Impediments to Adequate Regulatory Enforcement

1. Fines are set too low to promote industrial compliance or to cover the administrative costs of enforcement.

Twelve interview subjects specifically stated that the fines usually assessed by DEQ were too low to serve any possible purpose. For example, it costs approximately $6,000 to transport a load of hazardous waste to the Bay Area for disposal. However, if industry employs some illegal shortcuts, transportation costs can be cut in half. The maximum fine for violating hazardous waste transportation regulations is only $10,000. Thus, all the industry has to do is transport two or three loadsillegally without getting caught to have benefitted economically. Clearly, it is better to take the risk of occasionally getting caught, especially if it is known that any fine is likely to be mitigated. Penalties should be adequately severe to motivate some compliance.

Not only are fines too low to encourage industrial compliance, but they are also too low to cover DEQ's administrative costs of enforcing the law. Although DEQ is currently unable to use the fines directly in any of its programs (money collected goes to the general fund), it is possible to determine enforcement administration costs and assess fines accordingly. This would at least make sense from a state budgeting standpoint even if it would not help DEQ directly, and it could eventually be the basis for a discussion with the state legislature about statutory changes to allow cost recovery for the agency.

2. Enforcement of DEQ compliance standards is arbitrary.

The procedural steps necessary to comply with permit requirements and cleanup standards are quite arbitrary, depending on a variety of factors that include the size and location of the source, the relationship of the violating industry with DEQ and the local community, whether the source is public or private, and the availablity of the field inspector to conduct regular site visits.

A "typical" process for a violating industry to reach compliance with DEQ standards is difficult to describe because so many variables and so much discretion at every agency level exist. In general, though, after a violation is brought to DEQ's attention and an investigator confirms it, a polluter may receive a telephone call, a visit, an informal letter noting the violation, or any combination of the three. Depending on the nature of and gravity of the violation, DEQ may conduct with the violator over the course of several months an informal discussion of the violation, its cause, cleanup, and future prevention. Unless the discussion is by mail, there may be no formal record of any of this communication.

Depending on the cooperativeness of the polluter, the gravity of the violation, the cost to the polluter to come into compliance, and the perceived threat to human health, the polluter may be instructed to contract with a private consulting firm to collect data to assess the extent of the environmental impact and the cost of cleanup. The consulting firm must develop an assessment plan for approval by DEQ. Once approved, the plan is implemented and the resulting data are presented to DEQ in a written report.

Based on the results of the privately conducted monitoring, DEQ enters into a negotiating process with the polluter to determine the cleanup steps, costs, and timetable. The result is a consensus document that may become a legal document (i.e., an enforcement order) or that may remain a DEQ-industry agreement. Throughout the entire process, it is possible that not a single Notice of Violation nor Notice of Intent to assess a civil penalty is ever issued by DEQ.

A case study from the Air Quality Division illustrates the disparity in enforcement responses to small and large pollution sources. In southern Oregon, the DEQ shut down a small wig-wam burner after the owner neglected to remedy its polluting effects. In the same area, a large industry with the same kind of burner was able to negotiate a two-year remediation schedule. As one former DEQ employee stated, "There's a tendency to go after the little guy and to leave the big guy alone, unless [the big guy] gets caught and there's some form of publicity."

The Director of DEQ expressed concern about the agency problem of arbitrary enforcement. He stated that some industries were treated too gently, and that occasionally field inspectors "just didn't work hard enough" to collect information necessary to put an adequate case together against a polluting industry. He felt that DEQ often "drifted into" a conciliation agreement rather than making a conscious, deliberate decision to reconcile for particular reasons.

3. Every DEQ program lacks sufficient data on compliance.

No one knows what percentage of industries is in compliance with DEQ regulations at any given time. One DEQ management level employee estimated compliance within the Air, Water, and Solid Waste programs to be 90-95 percent, but offered no evidence to support this conclusion. In contrast, another interview subject estimated a noncompliance rate among industries dealing with hazardous waste at 80-95 percent. It is impossible to reconcile these two conclusions. Only annual summaries of DEQ's enforcement actions are maintained. In general, there is a dearth of data and, where data are collected, they are neither adequate nor analyzed to determine compliance rates or to support development of new or different approaches to enforcement. A clear paper trail, recording all communication with a regulated industry, does not exist.

4. DEQ lacks the necessary resources to conduct its own monitoring and sampling.

Determining the degree of compliance is dependent, in part, upon adequate monitoring and sampling (i.e., DEQ site inspections). Within the Water Quality Division, inspections of major dischargers, which used to be conducted quarterly, now occur only once a year or once every two years, depending on the source. Also within the Water Quality Division, an entire category of permits, known as general permits, is being ignored. The permit is issued with general conditions to all of that regulated industry. Since field inspectors are already overworked, no one inspects this category of permits, resulting in a large number of "regulated" industries that is essentially unregulated. Increasingly, DEQ is relying on the permittees, or in the case of sewage treatment compliance, on the local communities, to do their own monitoring and sampling. Such practices give rise to the perception that "the fox is guarding the henhouse."

The Pope & Talbot case study illustrates one problem with this approach. Regulated by the DEQ Water Division, Pope & Talbot has been conducting its own sampling to determine its compliance with its discharge permits. One of the standards it was required to meet was a color requirement. Pope & Talbot petitioned DEQ to eliminate this requirement as long as the industry could demonstrate that there would be no impact on the river. The EQC approved the petition despite the fact that DEQ conducts no stream sampling of its own and that the nearest sampling location is 19 miles downstream.

Even worse is the previously cited case study involving Gould, Inc. In 1982, DEQ's Air Quality Division determined that it had inadequate resources to conduct ambient air and lead sampling at the Gould site. Consequently, responsibility was turned over to Gould to demonstrate compliance with ambient regulations. Gould hired private consultants to conduct the required sampling, but an examination of the Gould files shows at least two instances of discrepancy with EPA files for

identical samples. A January 13, 1982 memo states that EPA samples showed much higher values than those of the private consultants. The memo states that DEQ "discounted these [EPA] results because standard ambient sampling methods were not used." In a February 14, 1984 memo, a similar discrepancy is noted, but not resolved (presumably). Had DEQ reconciled in 1982 the differences between the sampling data sets, it is possible that Gould could have been forced to take action that would have kept it from becoming a Superfund site.

Both examples demonstrate the potential problems that arise when astate regulatory agency relies on industry-paid consultants to provide the only information on the compliance record of the regulated industry.

5. DEQ lacks adequate resources to conduct and support its mission.

Not only are resources lacking for monitoring and sampling, but resources in general are lacking. Regional offices are inadequately staffed and there is a general dearth of field inspectors. All DEQ regional office employees interviewed complained that such offices were drastically understaffed. In addition, interview subjects from the Solid Waste and Enforcement divisions noted that the recent emphasis on increasing staff in the Hazardous Waste Division has left other important programs seriously understaffed.

6. DEQ's enforcement methods are too predictable to be an effective deterrent.

Although effective, surprise and night inspections are not a part of DEQ's enforcement practices. One former DEQ employee who conducted night inspections did so because this employee had heard that certain companies were turning off pollution controls at night. The employee was not encouraged, and in fact, was discouraged from continuing this practice. The employee was eventually laid off.

According to one management employee, it is "more efficient to notify the industry because people who know that you're coming can be more prepared for your visit and will be able to provide you with more and be able to accomplish more." This employee called this a "matter of trust" and felt that DEQ trusted its regulated industries. Since, in the area of air quality, most of the "bad stuff is visible or smellable," it does not matter if you do a surprise visit, according to this same employee.

Contrary to this apparent DEQ policy, the regional supervisor of the EPA office in Portland recommended to the interviewer that DEQ begin more frequent, random, unannounced inspections to collect data and to get a broader picture of compliance issues. Whether he has made this recommendation to DEQ at the quarterly EPA/DEQ compliance meetings is unknown. Under a recently signed Compliance/Assurance Agreement, EPA's enforcement role is limited and seldom employed. The EPA may intervene in an enforcement action only when there is a significant violation of a federal standard by a major industrial source. These so-called overfiles occur infrequently, due to an apparent unwillingness by EPA to challenge DEQ lethargy.

7. DEQ lacks an efficient chain of command to investigate violations and to respond to staff recommendations.

Too much time passes before incidents are investigated, before results are achieved, before measures to remedy the environmental degradation are taken, and before fines are levied. In some cases, this is because there is too much centralization at headquarters in Portland so that regional offices cannot act quickly. According to a regional office manager, there can be a long bottleneck — as long as 6-8 weeks — with the contamination continuing before there is any attention from headquarters. By the same token, while regional offices complain of being hampered by headquarters' inefficiency, headquarters staff complain that violations are often misunderstood by regional offices due their frequent lack of scientific and regulatory knowledge. Some of the time delay in communication between a DEQ regional field inspector and the industry is simply due to bureaucratic inefficiency.

Field inspectors, who often have the most reliable information about the nature of the violations, argue that their authority is undermined and their time wasted when their recommendations are so consistently ignored or modified by headquarters in the interest of conciliation. In the Gould, Inc., case study, for example, no penalty was ever assessed, despite the recommendations of the field inspector.

8. DEQ lacks an overall written enforcement policy to guide enforcement decisions at all levels.

In 1986, after more than several meetings, recommendations were made by an intragency committee for a comprehensive enforcement policy. However, no formal action to adopt any of the recommendations was taken. According to one management level employee, it was too difficult to reach a consensus within the agency on any written enforcement policy. Consequently, the use of unwritten policies continued. In 1988, the EQC, motivated partially by the interest raised from this study, finally ordered DEQ to draft enforcement rules that are currently under consideration for adoption.

Recommendations

1. DEQ should adopt a written departmental enforcement policy that spells out enforcement responses by violation classification, including a practical time schedule and a schedule of fines adequate to cover administrative costs and to serve as realistic deterrents to continuedviolation.

2. DEQ should mitigate fines only in rare and appropriate circumstances and when factors of public health and safety have been fully considered; follow the procedural steps outlined in the policy, allowing for variations only when special considerations are reasonably justified; and, provide written findings to explain why fines are mitigated or why the time for compliance or cleanup is extended.

3. DEQ should consider the idea of assigning automatic fines to a certain narrow, but frequently occurring class of violations. Such a system might be modeled after the current traffic violations system. These fines should be levied at the regional level within a particular matrix developed by DEQ and approved by EQC. The statutory requirement for conference and conciliation would have been met in each of these cases by providing, within the context of a continuing relationship, technical assistance and education.

In each case, there would be a rebuttable presumption that the industry would receive a fine of a given amount (after the industry has had communication over time with a field inspector regarding methods for attaining and maintaining compliance) unless it requests and attends a hearing and demonstrates why there should be no fine. The industry would have a right to this hearing in front of a hearings officer within the region in which the violation occurred. The hearing would occur within a short period of time, would be conducted as a contested case with a recommendation to the director, and would be appealable to the EQC.

To meet those situations where a five-day notice is required, the industry would receive a notice that a fine will be levied in five days if the violation still occurs. After a reinspection, the fine would be levied and the hearing provision would apply.

The levels of these fines would consider several factors: 1) the levels of profits of the violators who have been operating without compliance, 2) the degree of environmental harm caused, 3) clean up costs, and 4) administrative costs of enforcement. In the case of second offenses, larger fines should be considered and the action should go through the usual enforcement process directed from headquarters and the director's office.

4. DEQ should establish an informal task force to analyze its bureaucraticproblems and to make recommendations for change. The task force should be comprised of representatives from both headquarters and regional offices and it should file its recommendations within six months of its inception.

5. DEQ should make an immediate commitment to aggressive monitoring and sampling, including the institution of random, unannounced site inspections. In the absence of available resources to conduct its own monitoring and sampling, DEQ should split samples to verify the controversial or questionable conclusions of the industries. The agency should improve its maintenance of data inventories and general administrative record keeping. A clear paper trail, tracking correspondence, telephone calls, and site inspections is essential to maintaining adequate administrative records.

6. DEQ must address the disaffection between headquarters and the regional offices. Two suggestions for DEQ to examine are decentralizing headquarters' authority or redefining the purpose of regional offices. With the former, certain narrow permit programs, such as open air burning and on-site sewage treatment facilities, might be appropriately managed by regional offices. With the latter, regional offices might be reorganized to serve only as centers of education and

technical assistance, while headquarters would be responsible for all other activities (i.e., regulatory, compliance verification, and enforcement). Such a restructuring would separate the technical assistance role from the enforcement role and allow each to function more efficiently and consistently. Neither suggestion alone is a panacea to DEQ's bureaucratic difficulties, but each offers a possible beginning to a complex problem.

7. DEQ should investigate the possibility of developing a cooperative enforcement program with the Oregon State Police Department (OSPD). Currently, a cooperative relationship exists between the Oregon Department of Fish and Wildlife (ODFW) and the OSPD to enforce the state fish and game regulations. A biannual budget of 11-14 million dollars lends approximately 110 state police officers to ODFW to carry out the enforcement action. The state police officer in charge of the game division expressed enthusiasm about expanding the current program to include an "Environmental Protective Source." This source might include oversite of placer mining on state lands and illegal dumping and transportation of hazardous waste. It might also include enforcement of any other regulations concerning spills and storage of potentially environmentally harmful substances, including investigations into any alleged violation.

8. DEQ should consider approaching the state legislature to seek the following statutory changes: 1) DEQ should be allowed to recover the administrative costs of enforcement from the fines that are collected from civil penalties; 2) Also, DEQ should be allowed to create a narrow class of violations that would carry an automatic penalty for the first violation; 3) Finally, the enforcement policy, as currently stated in ORS 468.090 (1), should be redrafted to direct DEQ to enforce, without equivocation, the environmental protection standards.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Inventory Factsheet
February 21, 1989

STATUS OF DEQ INVENTORY OF CONFIRMED RELEASES

WHAT IS THE INVENTORY OF CONFIRMED RELEASES?

The Oregon Environmental Cleanup Law (SB122) requires the Department to develop and maintain an inventory of all facilities where a release of hazardous substances is confirmed by the Department. The purpose of the inventory is to provide public information about sites in Oregon contaminated with hazardous substances. Beginning January 15, 1989 it is to be submitted annually to the Legislature, Governor and Environmental Quality Commission (EQC).

HOW MANY SITES WERE PROPOSED FOR LISTING ON THE INVENTORY?

Owners of 325 sites were notified on November 30, 1988 that their facilities were proposed for listing on the Inventory of Confirmed Releases. Based on evidence compiled by the Department, hazardous substances had been released to the environment at these facilities. By law, owners had 15 days to appeal the decision of the Department to list their site on the Inventory. Of the 325 sites whose owners were notified, 210 contested case appeals were requested.

WHAT IS THE STATUS OF THE INVENTORY?

The large number of contested case appeals prompted the Department, with the concurrence of the Environmental Quality Commission, to postpone submitting the Inventory to the Legislature. Therefore no facilities, even those where the owner did not appeal, are listed on the Inventory at this time. The Department and the Environmental Quality Commission concur that the Inventory will be held in abeyance until a Legislative solution can be fully explored.

WHAT HAPPENS TO THE INVENTORY NOW?

The Department has been working with public interest and industry organizations to revise the threshold and process for placing facilities on the Inventory. Based upon those discussions, the Department has proposed a bill (HB3235) amending those sections of the Environmental Cleanup Law dealing with the Inventory. An initial discussion of the bill has been tentatively scheduled before the House Environment and Energy Committee on Friday, March 3rd at 1:30pm in Hearing Room E of the State Capitol in Salem.

WHAT ARE THE PROPOSED CHANGES TO THE LAW?

First, the EQC would be required to adopt regulations within six months to clarify what constitutes a confirmed release of hazardous substances. Based upon this new definition, the Department would review the 325 sites to determine which ones met the confirmed release criteria. Those sites would be maintained as part of the Department's database, and a list would be provided to anyone upon request.

Second, the threshold for being placed on the Inventory would be raised above the current statutory definition of confirmed release. The new threshold would be confirmed release, as defined by the EQC, and the need for further investigation or cleanup based upon a preliminary assessment conducted or approved by the Department. This new threshold would also be defined by EQC rules within six months of enactment.

Third, the current formal contested case process for appealing listing on the new Inventory would be replaced by a two step process that would provide the owner or operator of a site the opportunity to participate in the preliminary assessment investigation. The first step would come when the Department conducts the preliminary assessment. The owner and operator would be notified and invited to provide any information they have that would help the Department to conduct an accurate and complete assessment.

The second step would come when the Department has finished the preliminary assessment and has determined that the facility meets the criteria for listing on the Inventory. The owner and operator would be notified, provided a copy of the preliminary assessment, and invited to provide any additional relevant information or corrections to the assessment. The Department would be required to consider any relevant and appropriate information provided by the owner/operator in making the final listing decision.

Finally, the EQC would be required to adopt rules providing for delisting facilities from the Inventory once the cleanup is complete. Also, rules would be required to establish a hazard ranking system to prioritize facilities according to the hazard they pose to public health and the environment.

WHO DO I CONTACT IF I HAVE QUESTIONS?

If you want additional information on the legislative process, call the House Environment and Energy Committee at 378-8828. Questions about the Department's proposed bill should be directed to Mike Downs at 229-5254. If you have other questions about your site, please call the Site Assessment Section of the Department at 229-5733.

INVFACTS.WKS

COLUMBIA RIVER GORGE COMMISSION

P.O. Box 730 • 288 E. Jewett Blvd. • White Salmon, WA 98672 • (509) 493-3323

Richard P. Benner, Executive Director

February 22, 1989

Governor Neil Goldschmidt
254 State Capitol
Salem, OR 97310

Dear Governor Goldschmidt:

In the past six months, the Columbia River Gorge Commission has heard from a number of concerned citizens and are businesses regarding the water quality of the Columbia River. At its September 13, 1988, meeting the Commission heard reports and details of statutory and funding limitations from a water quality panel consisting of representatives from Oregon Department of Environmental Quality, Washington Department of Ecology and the Environmental Protection Agency.

The Commission shares the concerns of many people in this six county area that the water quality of the river has declined and what seems to be a lack of communication and coordination among agencies responsible for water quality of the Columbia River is not helping the situation. The Commission questions whether the amount of monitoring and information gathering that is currently taking place is adequate. The river and the 285,000 acre area surrounding the river gorge demands integrated planning and, as a matter of public interest must be looked at as a region.

The Commission endorses the idea of an independent water quality initiative whose strategy could be set by a dedicated task force. This task force could address multi-jurisdictional concerns and coordinate responses by local, state, and federal agencies.

Through its Safety Committee, the Gorge Commission is willing to be part of such an initiative to help facilitate efforts to halt the decline of water quality in high-use areas of the Columbia River.

Sincerely,

Stafford Hansell
Chairman

cc: Environmental Protection Agency
Washington Department of Ecology
Oregon Department of Environmental Quality
Oregon Environmental Quality Commission
Northwest Power Planning Council
U.S. Forest Service NSA Office
Confederated Tribes and Band of the Yakima Indian Nation
Nez Perce Tribe
Confederated Tribes of the Warm Springs Reservation
Confederated Tribes of the Umatilla Indian Reservation
U.S. Fish and Wildlife Service
Oregon Department of Health
Washington Department of Health
Friends of the Columbia Gorge
Columbia River Intertribal Fish Commission
Ron Cease, Oregon House Energy and Environment
Bill Bradbury, Oregon Senate Agriculture and Natural Resources
Jerry Novotny, U.S. Fish & Wildlife Service, Cook, Washington
Marilyn Couch, Northwest Environmental Advocates
Columbia Boardsailors Association

COLUMBIA RIVER GORGE COMMISSION

P.O. Box 730 • 288 E. Jewett Blvd. • White Salmon, WA 98672 • (509) 493-3323

Richard P. Benner, Executive Director

February 22, 1989

Governor Booth Gardner
Legislative Building AS-13
Olympia, WA 98504

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Chairman

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Ron Cease, Oregon House Energy and Environment
Bill Bradbury, Oregon Senate Agriculture and Natural Resources
Jerry Novotny, U.S. Fish & Wildlife Service, Cook, Washington
Marilyn Couch, Northwest Environmental Advocates
Columbia Boardsailors Association

NEIL GOLDSCHMIDT
GOVERNOR

Forestry Department
FOREST GROVE DISTRICT
801 GALES CREEK ROAD, FOREST GROVE, OREGON 97116-1199 PHONE 357-2191/229-5104

TELEFAX HEADER SHEET

TO: Fred Hansen

FROM: Dave Dickins, NW Oregon RC&D

DATE: 3-1-89 TIME: 9'30

No. of pages to follow: 2

MEMO: Please note this is a revised draft copy.

DRAFT

STRATEGY FOR NON-POINT POLLUTION FOR NURSERIES IN WASHINGTON COUNTY

The Non-Point Pollution Control Plan for Washington County will be divided into three sections: Urban, Rural, and Forestry. These are being compiled and completed by each group to be incorporated into one plan. The Container Nurseries will be included in the agriculture section.

The Strategy for the agriculture section will include putting in monitoring stations coordinated with stations that the Department of Environmental Quality and the Unified Sewerage Agency to keep down the costs of duplication of testing.

It would be necessary to have monitoring stations starting with where water drains from forestry into the agriculture section, and one where water drains into the urban area. The urban area then will need to monitor its drainage. A private consulting firm, Environmental Engineering Services, is providing a base map that can be used county-wide for location of monitoring stations. As monitoring at these locations begins, it will be possible to identify drainages that are producing the pollutants of concern. Once these have been identified, then follow up monitoring will be needed to identify the specific sites that are providing the pollutants. Various Best Management Practices can be combined into a Best Management System that fits the individual sites. Monitoring can be continued to determine if the Best Management System is working. The monitoring program will need to continue as land use or cropping patterns change, the pollution potential may change. The Washington County Soil and Water Conservation District has the ability to call on several resource agencies as well as Oregon State University to assist with the development of Best Management Systems or research that may be needed to improve the systems.

This plan will be completed by June 30, 1989. The SWCD is in the process of determining methods that can be used to assist with the costs of operation of the program as well as looking at funding sources that may be used to implement needed Best Management Systems. With the cooperation and support of the rural area and other agencies the plan should be in place by March 1993.

The Non-Point Pollution Control Program will be under the guidance of the Department of Environmental Quality or their Designated Management Agency. The Washington County Soil and Water Conservation District can assist landowners in developing the system to meet the pollution requirement. Should a landowner or manager refuse to develop a management system to meet the criteria, the Department of Environmental Quality would be notified for enforcement procedures.

The enforcement procedures could start by the issuance of a consent order that provides the operator an opportunity to bring their operation in compliance in an orderly manner.

TUALATIN VALLEY
ECONOMIC DEVELOPMENT CORPORATION

rec'd in Salem 3/2/89

March 1, 1989

Fred Hanson
Department of Environmental Quality
Salem, Oregon

Dear Mr. Hanson:

The membership of the Tualatin Valley Economic Development Corporation (TVEDC), would like to bring to your attention some of our concerns about the proposed Interim Development Standards for Surface Water Management currently under review by your staff. TVEDC supports DEQ's process and its goals. Also, we support the wise management of our resources, in this case soil erosion control and control of phosphorus levels in surface water runoff. Of immediate concern, however is the extraordinarily short period of time that you have been allowed for research to evaluate the economic impact of the proposed standards on future development in the state of Oregon.

Surface water runoff and its management is a statewide water quality issue. We believe that the standards currently under consideration for implementation in Washington County will become the base standards used throughout the state of Oregon. Indeed, it is our belief that this is as it should be; it would be wrong to impose one set of standards on urban development in Beaverton or Tigard without setting those same basic standards for Medford, Pendleton, Astoria, or Coos Bay.

Therefore, TVEDC is urging that time be allowed for a careful, thoughtful assessment of the economic impact the proposed standards would have on future development in the state. We are not asking that the process be put on permanent hold, or unduly delayed. However, we do ask you to consider an additional 30 to 60 days for further research and analysis. During that time, the proposed standards could be evaluated in terms of cost effectiveness using two or three existing development projects from around the state. This information should be useful to the Commissioners in the final decision making process.

10170 S.W. Nimbus Avenue • Suite H-1 • Tigard, Oregon 97223 • (503) 620-1142

Clearly, Oregon is recovering from the economic injury suffered during the early 1980's. It is equally clear that our economy is not robust. Oregon businesses that are considering expansion or relocation are being lured out-of-state. New businesses considering locating here look at the increasing cost of building in Oregon. All of this impacts the future availability of family wage jobs for Oregonians.

If we impose costly standards on development without carefully examining the cost/effect ratios, we will create an enormously negative impact on Oregon's future.

We must protect our resources, because they are important to the Oregon of tomorrow. However, we must also create a sound economic future for Oregonians. Achieving this balance is one of the most difficult tasks facing us today. We must not rush any decisions that impact the creation and maintenance of this balance. Too much is at stake.

TVEDC asks you to consider these concerns as you advise and guide the Commissioners in the next several months. The short delay costs little. The possible negative impact of haste could be very expensive indeed.

Thank you.

Sincerely,

Mary L. Tobias

Mary L. Tobias
President

For March 3
EQC/Legislators
Breakfast

The Honorable Mike Thorne, Co-Chair^R
Ways and Means Committee
State Capitol, Room S219^R
Salem, Oregon 97310^R
Senator Thorne^R
^E
The Honorable Jeff Gilmour, Co-Chair^R
Ways and Means Committee
State Capitol, Room H480^R
Salem, Oregon 97310^R
Representative Gilmour^R
^E
The Honorable John Kitzhaber, President^R
Oregon State Senate
State Capitol, Room S203^R
Salem, Oregon 97310^R
Senator Kitzhaber^R
^E
The Honorable Vera Katz, Speaker^R
Oregon House of Representatives
State Capitol, Room 269^R
Salem, Oregon 97310^R
Representative Katz^R
^E
The Honorable Dick Springer, Chair^R
Senate Agriculture and Natural Resources Committee
State Capitol, Room S310^R
Salem, Oregon 97310^R
Senator Springer^R
^E
The Honorable Bill Bradbury^R
Oregon State Senate
State Capitol, Room S223^R
Salem, Oregon 97310^R
Senator Bradbury^R
^E
The Honorable John Brenneman^R
Oregon State Senate
State Capitol, Room S319^R
Salem, Oregon 97310^R
Senator Brenneman^R
^E
The Honorable Jim Bunn^R
Oregon State Senate
State Capitol, Room S311^R
Salem, Oregon 97310^R
Senator Bunn^R
^E
The Honorable Wayne Fawbush^R
Oregon State Senate
State Capitol, Room S309^R
Salem, Oregon 97310^R
Senator Fawbush^R
^E
The Honorable Grattan Kerans^R

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Feldmann

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Oregon State Senate
State Capitol, Room S305^R
Salem, Oregon 97310^R
Senator Kerans^R
^E
The Honorable Bob Kintigh^R
Oregon State Senate
State Capitol, Room S223^R
Salem, Oregon 97310^R
Senator Kintigh^R
^E
The Honorable Ron Cease, Chair
House Environment and Energy Committee^R
State Capitol, Room H279^R
Salem, Oregon 97310^R
Senator Cease^R
^E
The Honorable Fred Parkinson
Oregon House of Representatives^R yes
State Capitol, Room H372^R
Salem, Oregon 97310^R
Representative Parkinson^R
^E
The Honorable Bernie Agrons
Oregon House of Representatives^R yes
State Capitol, Room H291^R
Salem, Oregon 97310^R
Representative Agrons^R
^E
The Honorable David Dix
Oregon House of Representatives^R
State Capitol, Room H372^R
Salem, Oregon 97310^R
Representative Dix^R
^E
The Honorable Carl Hosticka
Oregon House of Representatives^R yes
State Capitol, Room H495^R
Salem, Oregon 97310^R
Representative Hosticka^R
^E
The Honorable Delna Jones
Oregon House of Representatives^R yes
State Capitol, Room H385^R
Salem, Oregon 97310^R
Representative Jones^R
^E
The Honorable Phil Keisling
Oregon House of Representatives^R yes
State Capitol, Room H278^R
Salem, Oregon 97310^R
Representative Keisling^R
^E
The Honorable Bob Pickard
Oregon House of Representatives^R yes

State Capitol, Room H384^R
Salem, Oregon 97310^R
Representative Pickard^R
^E
The Honorable Rodger Wehage
Oregon House of Representatives^R yes
State Capitol, Room H471^R
Salem, Oregon 97310^R
Representative Wehage^R
^E
The Honorable Larry Hill
Ways and Means Subcommittee on
Transportation and Regulation^R maybe
State Capitol, Room S205^R
Salem, Oregon 97310^R
Senator Hill^R
^E
The Honorable Mae Yih
Ways and Means Subcommittee on
Transportation and Regulation^R
State Capitol, Room S214^R
Salem, Oregon 97310^R
Senator Yih^R
^E
The Honorable Tom Hanlon
Ways and Means Subcommittee on
Transportation and Regulation^R
State Capitol, Room S303^R
Salem, Oregon 97310^R
Representative Hanlon^R
^E
The Honorable Denny Jones
Ways and Means Subcommittee on
Transportation and Regulation^R
State Capitol, Room S205^R
Salem, Oregon 97310^R
Representative Jones^R
^E

February 10, 1989

^F1^
^F2^
^F3^

Dear ^F4^:

The Environmental Quality Commission (EQC), which establishes policies for operation of the Department of Environmental Quality (DEQ), will be meeting in Salem on March 2 and 3, 1989. A work session is planned for Thursday, March 2, and the regularly scheduled EQC meeting will be on Friday, March 3. Attached is a tentative agenda for your information.

On behalf of the Commission, I would like to invite you to an informal breakfast meeting to discuss items not on the regular agenda. This would be an opportunity for you to present to the Commission any concerns you may have or to learn more about the Commission and DEQ activities.

The breakfast meeting will be held in Room 50, State Capitol, from 7:30 until 8:30 a.m.

If you wish to attend the breakfast meeting, please call me or my assistant, Tina Payne, at 229-5301. Thank you.

Sincerely,

Fred Hansen
Director

/kp
Attachment
cc William P. Hutchison, Chairman
Environmental Quality Commission

APPLICATION AND PERMIT FOR USE OF CAPITOL FACILITIES

Name of Applicant OR Department of Environmental Quality Date 2/8/89

Address 811 S. W. Sixth Avenue, Portland, Oregon Telephone 229-5301

Purpose for which facility will be used EQC and Legislative Breakfast

Estimated attendance 30

Day of Week	Dates of Use	Room Required	Maximum Capacity	Hours of Use
Friday	March 3, 1989	50		7:30-8:30
				from: to:

RULES OF CAPITOL USE

1. Legislative entities have room use priority. In the event the room your group has rented is required by a legislative committee, every effort will be made to find you an alternate room in the Capitol.
2. The number of occupants in a room must not exceed the posted capacity.
3. There will be a charge for cancellations received within 24 hours of the scheduled meeting, unless cancellation is necessitated by inclement weather.
4. No alcoholic beverages are to be served, except on approval of the Legislative Administrator or designee.
5. No foods are to be served, other than in Room 50 or the Galleria.
6. No commercial products or services are to be promoted and/or offered for sale, except those that are related to the Capitol Gift Shop.
7. Gatherings are not to impede foot traffic circulation within the Capitol, hinder the carrying out of day-to-day business within the Capitol, or result in injury to property and persons within the Capitol.
8. Rooms may not be used for organized partisan political activities or religious activities including, but not limited to, rallies, religious holiday observances, or religious services.
9. The Legislative Administration Committee reserves the right to require a security deposit or demand that rent be paid in advance.
10. Users are encouraged to keep the rooms clean. If an unusual amount of custodial time is required to clean space following use, the extra time will be billed to the users.
11. Legislative Assembly Media Systems can provide video tape duplications, audio tape duplications, televised meetings/"overflows", portable P.A.'s, and teleconferencing, if required, at an additional charge. Requests for these services should be made through Visitor Services.
12. No weekend meetings will be scheduled without the approval of the Legislative Administrator. Custodial time required for weekend use of the Capitol will be billed to the user. Users may also be charged for any required heating.
13. No agendas or other materials are to be taped to the walls or doors of the meeting rooms.
14. We request that a copy of your agenda or program be given to Visitor Services for information purposes.
15. Users may be exempted from room rental fees when the room is used exclusively for educational purposes directly related to the legislative process including, but not limited to: proper use of the building, the steps of how a bill becomes law, lobbying procedures and ethics, testifying before committees, and citizen participation in the legislative process. In order to qualify for the exemption, no admission charge may be imposed on the participants for the educational program. Fees will not be waived when the meeting is for the purpose of issue-oriented lobbying.
16. Rooms are to be used "as is" with the exception of Rooms 50, 137 and 354, which can accomodate minimal rearranging. Please inform Visitor Services of any special set up needs.
17. Capitol users should not tamper with the microphones or sound systems found in the rooms. A fee will be assessed for any damage to audio/visual equipment.
18. Room fees will be charged according to the attached fee schedule.

The undersigned has read both sides of this document and agrees that applicant will observe all Capitol rental regulations and rules, and will promptly pay the actual cost incurred. The Legislative Administration Committee shall be held harmless for any malfunction, injury, liability, or property damage arising from applicant's use. The applicant further certifies the organization, if any, has an open membership without restrictions for race, color, creed or sex.

Judith L Nathan
Applicant Signature

Diane Dunn
Visitor Services Representative

IMPORTANT: Please complete and return one (1) copy of this contract to Visitor Services, Oregon State Capitol, Salem, Or., 97310.
RENTAL FEE DOES NOT APPLY

ROOM USE FEE SCHEDULE

ROOM #	CAPACITY	4 HOURS	8 HOURS
50	125	$ 50	$ 75
137*	40	25	40
170, 174, 177	35	20	30
257*	35	20	30
243*	35	20	30
343	85	40	65
350*	50	30	55
354	35	20	30
357	85	40	65
454*	30	20	30
A & F	150	60	85
B, C, D, & E	100	50	75

PROPERTY MANAGEMENT FEE SCHEDULE

1/2" Video Player & Recorder	$25.00 - 8 hours 15.00 - 4 hours
Folding Tables	$ 4.00 ea per day
Overhead Projector	$ 15.00 - 8 hours 7.50 - 4 hours
Easels	$ 2.00 ea per day
16MM or 35MM Projector w/Screen	$ 15.00 - 8 hours 7.50 - 4 hours
Set up/Break down fee	$ 25.00

There is no charge for FM sound system for hearing impaired

FACILITY SERVICES CHARGES

Custodial	$ 12.00/hour
Heating Plant (for extraordinary heating requirements)	$ 60.00/hour
Executive Security (for extraordinary security coverage)	$ 18.00/hour

TRACKED DEQ BILLS

(Updated as of 2/24/89)

Note these abbreviations used in text: House E and E = House Environm and Energy Committee; Ag and Nat Res = Agriculture and Natural Resourc HR = Hearing Room; HB = House Bill; SB = Senate Bill; SJM = Senate Joi Memorial

HB 2176 - Hazardous Substance and Groundwater Protection Fund
Status: Referred to House E and E with subsequent referral Ways and Means 1/10/89.
Public Hearing held 2/1/89.
Public Hearing held 2/3/89.
Public Hearing Scheduled at 1:30 pm in HR E 2/27/89.

HB 2177 - Equipment Replacement Reserve Fund
Status: Referred to House Ways and Means 1/10/89.

HB 2178 - Pollution Control Tax Credits
Status: Referred to House E and E with subsequent referral Revenue and School Finance 1/10/89.

HB 2179 - Clarification of Hazardous Waste and PCB Authority
Status: Referred to House E and E with subsequent referral Ways and Means 1/11/89.

HB 2483 - Hazardous Waste Management/Minimization Programs
Status: Referred to House E and E with subsequent referral Ways and Means 1/26/89.
Public Hearing Scheduled at 1:30 pm in HR E 3/1/89.

* *

SB 166 - Used Oil/Road Oil Regulation
Status: Referred to Ag and Nat Res, then Judiciary 1/19/89.
Third reading. Carried by Kintigh. Passed 2/13/89.
First reading. Referred to Speaker's desk. 2/14/89.
Referred to House E and E 2/15/89.

SB 167 - Underground Storage Tank Program.
Status: Referred to Ag and Nat Res, then Ways and Means 1/1
Public Hearing and Work Session held 1/24/89.
Work Session held 2/9/89.
Work Session held 2/16/89.

SB 168 - Section 401 Certification Fees
Status: Referred to Ag and Nat Res 1/18/89.
Public Hearing and Work Session held 2/9/89.
Public Hearing and Work Session held 2/16/89.

SB 422 - Air Pollution Regulations, Penalties; Defines PM10; New Wood
Status: Public Hearing and Work Session held. Referred to Nat Res, then Revenue, then Ways and means 1/26/89.
Public Hearing and Work Session held 2/7/89.
Public Hearing and Possible Work Session scheduled at 1:00 p HR C 2/23/89.

SB 423 - State-wide Groundwater protection Program
Status: Referred to Ag and Nat Res, then Ways and Means 1/2
Public Hearing and Work Session held 2/2/89.
Public Hearing and Work Session held 2/9/89.
Public Hearing scheduled at 3:00 pm in HR C 3/2/89.

SB 424 - Household Waste: Collection, Management; DEQ Pilot Programs Waste Disposal Site Fee
Status: Referred to Ag and Nat Res, then Ways and Means 1/3

OTHER TRACKED HOUSE AND SENATE BILLS

HB 2031 - Infectious Waste Registration and Guidelines
Status: Public Hearing held 2/6/89.

HB 2074 - MVD Proof of Compliance: Pollution Control Equipment
Status: Referred to transportation 2/17/89.

HB 2088 - Mineral Exploration Regulation
Status: First reading. Referred to President's desk 2/21/8

HB 2155 - Fire Marshall Fee on Employers Hazardous Waste
Status: Public Hearing held, 1/20/89.

HB 2156 - Grant Program by Fire Marshall/Equipment for Hazardous Spill
Status: Public Hearing held 1/20/89.

HB 2172 - Well Construction Fees
Status: Public Hearing and Work Session held 1/26/89.

HB 2174 - Fire Marshall Emergency Plan for Hazardous Substances
Status: Public Hearing held 1/20/89.

HB 2331 - Hazardous Substance, Waste and Emergency Response Program Fu
Status: Public Hearing scheduled at 1:30 pm in HR E 2/27/89

HB 2332 - DEQ Regulation of Household Hazardous Waste
Status: Public Hearing and Work Session held 2/10/89.

HB 2333 - Lead Acid-Battery Prohibition
Status: First Reading. Referred to House E and E 1/11/89.

HB 2334 - Reduction of Toxic and Hazardous Substances Program
Status: Public Hearing scheduled at 1:30 pm in HR E 3/1/89.

HB 2335 - Metro Service District Exemption From Funding for Solid Wast
Status: Recommendation: Do pass. Referred to Ways and Mean reference 2/15/89.

HB 2336 - Limited Purpose Landfill Regulations
Status: Public Hearing and Work Session held 2/13/89.

HB 2337 - Infectious Waste Requirements, Specifications
Status: Public Hearing held 2/6/89.

HB 2434 - Field Burning: Phase-out, Alternatives, Guidelines
Status: Public Hearing scheduled at 1:30 pm in HR E 2/24/89

HB 2490 - City/County Prohibition on Fees, Taxes on Solid Waste in Met District
Status: Status: Referred to Intergovernmental Affairs 1/31

HB 2522 - Allows Use of Self-Service Gas Pumps, Requires State Fire Ma Safety Rules
Status: Referred to Business and Consumer Affairs 2/1/89.

HB 2523 - "Lot of Record" Definition/Single Family Dwelling
Status: Referred to House E and E 1/31/89.

HB 2526 - Prohibition of Perennial or Grass Seed Open Field Burning Ef 9/1/90
Status: Public Hearing scheduled at 1:30 pm in HR E 2/24/89

HB 2586 - Division of State Lands Study of Wetlands/Policy for Use and of Wetlands
Status: Public Hearing and Possible Work Session scheduled in HR E 3/6/89.

HB 2607 - Tax Credit for Residential Connection to Sewage Treatment Wo of 1/1/85
Status: Referred to Intergovernmental Affairs with subseque to Revenue and School Finance 2/10/89.

HB 2642 - Prohibits Self-Service at Places Where Motor Vehicle Fuel is at Wholesale
Status: Referred to Business and Consumer affairs 2/15/89.

HB 2663 - Establishes Guidelines for Infectious Waste, Specifies Infec is Solid Waste, EQC to Adopt Rules. Operative 1/1/90.
Status: Referred to House E and E 2/20/89.

HB 2697 - Concerning Domestic Water Supply and Sanitary Districts
Status: Referred to Intergovernmental Affairs 2/16/89.

HB 2700 - School District Bonds to Fund Asbestos Abatement in School B
Status: Public Hearing and Possible Work Session scheduled in HR D 2/28/89.

HB 5033 - Budget Bill
Status: Work Session scheduled at 1:30 pm in H 177 2/24/89.

HB 5062 - Bonded Debt Limit
Status: Referred to Trade and Economic Development with sub referral to Ways and Means 1/24/89.

* *

SB 13 - Streamflow Conversion
Status: Work Session held 2/14/89.

SB 38 - Radioactive Material Transport: State/Federal Guidelines
Status: Third reading. Carried by D. Jones. Passed 2/16/8

SB 55 - Asbestos Abatement for State Facilities Established by Gener
Status: Work Session held 2/21/89.

SB 154 - Definition of Boundary of Groundwater Area
Status: Referred to Ag and Nat Res 1/19/89.

SB 177 - Eliminates State Land Board Approval, Fill Removal Within Sc Waterway
Status: Public Hearing and Work Session held 1/17/89.

SB 305 - Means of Judicial Review for State/Exemptions
Status: Referred to Judiciary 1/19/89.

SB 344 - Plastic Container Labeling/Civil Penalty for Violation
Status: Public Hearing scheduled at 3:00 pm in HR C 2/23/89

SB 345 - EQC Designation for Plastics
Status: Public Hearing scheduled at 3:00 pm in HR C 2/23/89

SB 347 - Fee for Out-of-State Waste
Status: Referred to Ag and Nat Res, then Ways and Means 1/2

SB 348 - Straw and Wood Waste Utilization Board
Status: Referred to Ag and Nat Res, then Ways and Means 1/2

SB 350 - Biodegradable/Recyclable Containers for Alcoholic Liquor
Status: Public Hearing scheduled at 3:00 pm in HR C 2/23/89

SB 351 - Outer Continental Shelf Oil and Gas Lease: Governor's Respo Requirement
Status: Work Session held 2/13/89.

SB 352 - Prohibits Sale of Beverage Containers Connected by Plastic R
Status: Public Hearing scheduled at 3:00 pm in HR C 2/23/89

SB 353 - Polystyrene Foam Food Packaging
Status: Public Hearing scheduled at 3:00 pm in HR C 2/23/89

SB 373 - Groundwater Permit Waiver for Schools and Fields Less Than T
Status: Work Session held 2/21/89.

SB 377 - Herbicide/Pesticide Exemption
Status: Public Hearing and Work Session held 2/13/89.

SB 391 - Civil Penalty for Pesticide Violations
Status: Public Hearing and Work Session held 2/13/89.

SB 425 - Perennial or Grass Seed Open Field Burning Prohibition; Pre Penalties
Status: Referred to Ag and Nat Res, then Judiciary 1/31/89.

SB 482 - Prohibits Use of Waste Tires in Constructing Artificial Reef Waters.
Status: Referred to Ag and Nat Res 2/7/89.

SB 555 - Prohibits Rental of Any Place Deemed Uninhabitable Due to Il Manufacturing
Status: Referred to Government Operations and Elections 2/1

SB 567 - Permits Suspension or Revocation of Fishing License if Owner Waste into Water
Status: Referred to Ag and Nat Res 2/17/89.

SB 572 - Requires Deposit on Wine Cooler Bottles
Status: Referred to Ag and Nat Res 2/20/89.

* *

SJM 1 - Outer Continental Shelf Lands Act Amendment, Urges Joint Man with Federal Government
Status: Referred to House E and E 2/20/89.

SJM 2 - Urges Congress to Reauthorize and Amend Federal Coastal Zone Act
Status: Referred to House E and E 2/20/89.

OREGON ENVIRONMENTAL COUNCIL

2637 S.W. Water Avenue, Portland, Oregon 97201
Phone: 503/222-1963

February 28, 1989

Mr. Bill Hutchison
Chair, Environmental Quality Commission
811 SW Sixth
Portland, OR 97204

Dear Chairman Hutchison,

Enclosed is a conceptual outline for a comprehensive smoke reduction program. I am currently working with the appropriate legislative committees to promote this concept. I would appreciate discussing it with members of the Commission and the DEQ staff on Friday, perhaps during lunch. It has already been reviewed by the technical staff of the air quality division, and most of their suggestions have been incorporated into the current draft.

Sincerely,

John A. Charles
Executive Director

cc: Fred Hansen
Nick Nikkila
John Loewy

OREGON ENVIRONMENTAL COUNCIL

2637 S.W. Water Avenue, Portland, Oregon 97201
Phone: 503/222-1963

Testimony of John Charles
Executive Director, Oregon Environmental Council
Regarding SB 422
February 22, 1989

Mr. Chairman, members of the Committee, pollution from woodstoves is as much an economic issue as it is an environmental issue. Since air is a free good, it is over-utilized by virtually everyone. Absent any government intervention, this degradation will continue -- to the detriment of everyone -- because it will never be in any individual's best interest to voluntarily stop polluting if there is no assurance that others will.

For the last 5 years, the primary strategy in Oregon and elsewhere has been a reliance on the woodstove certification program -- the "technical fix". Unfortunately this approach isn't working, for reasons the committee is already aware of. This means the legislature must address the problem directly at the source: the individual home.

After looking at pollution control programs around the country, it is OEC's conclusion that the best hope for an effective program in Oregon lies in designing an approach that utilizes both regulatory enforcement and financial incentives. And in each case, major commitments must be made. Neither window-dressing regulation nor polite endearments to "be good citizens" will do the job. Strictly enforced regulations combined with generous cash subsidies will be necessary for people to go through the hassle of making lifestyle changes.

So what are the options? We believe the use of an opacity standard (which measures visible smoke) and restrictions on the installations of stoves in non-attainment areas is the most direct form of regulation. While "curtailment" programs may also have a role, it is our view that curtailment is simply a smoke management strategy, not a smoke reduction strategy. If curtailment is the backbone of the state's approach, it will institutionalize mediocre air. Curtailment only deals with the small percentage of days when air actually becomes extremely unhealthful in a community. If the air quality is poor but not demonstrably unhealthful, curtailment has no effect. When weighed against the intense public opposition that the whole concept seems to engender, the political "cost/benefit" ratio seems very low.

Opacity standards and installation restrictions are not new ideas. Other states in the west are already utilizing them, as the DEQ survey shows. Therefore making them work should not be difficult if there is the political will **and** if we design concomitant financial incentives to comply.

This second issue is much tricker than the first. How do we generate sufficient revenue to do the job, and what do we do with the money when we get it? Here we find that other states have not done much that is creative. There is little we can borrow, so we will have to come up with something new.

Our suggestion is the following: Assign a price to clean air and charge individual users, just as we assign a price to publicly-owned fish and wildlife and charge it to those who hunt and fish. In other words, create "Clean Air" permits and require that people using residential wood heating devices buy a permit on an annual basis. Such permits could be sold in the same manner that fishing licenses or sno-park permits are sold. The permit itself could be a small window sticker that one affixes to the front door (or elsewhere, if appropriate) of a residential dwelling. Such visible proof of compliance would be important from an enforcement standpoint.

Would this be politically acceptable? That depends in part on where the money goes. If the money was funnelled back into community in the form of cash payments for stove upgrades, weatherization or fuel-switching, people might get very interested in making some changes.

The next question then, is, would a permit system generate enough revenue to do the job? If we accept the DEQ estimates that there are between 300,000 and 400,000 stoves in use throughout the state, and established an annual permit fee of, say, $45, we could calculate that 350,000 stoves x $45 = $15,750,000. Subtracting 15% for non-compliant users (people who refuse to buy a permit) leaves $13,387,500. Assuming that there will be some overhead costs of running the program, we might wind up with an even $13,000,000.

If cash grants from this fund were used as "carrots" to soften the message of the friendly enforcement officer who knocks on the door to inform you that your woodstove is violating the opacity standard, we might get swift results. The homeowner could make a rational calculation: either pay an annual $45 fee for the next ___ years, and face possible fines for violations of the opacity standard, or make a change (stove upgrade, weatherization, fuel-switching) and walk off with a cash subsidy of possibly $2,500. The polluter pays, and those who stop polluting get paid. A simple concept.

The subsidies should be on a sliding scale of 25-100%, based on such factors as airshed benefits and family income. If each subsidy cost the fund an average of $2,000, you could deal with 6,500 residences per year. If those were concentrated in the non-attainment areas -- a likelihood since that is where opacity standard enforcement would be the strongest -- it could have a significant effect on PM-10 emissions. We estimate that vigorous enforcement of an opacity standard coupled with financial incentives could result in PM-10 reductions of up to 80% on an annual basis in non-attainment areas. This is the level of reductions that will be necessary if we are to achieve compliance with the federal standard.

As a stand-alone strategy, we believe this approach has merit. However, we also feel strongly that to pursue this without simultaneously addressing PM-10 emissions from the 3 other major contributors -- slash burning, industry, and agricultural burning -- would be a serious mistake. We believe this for the following reasons:

1. The pot of money needs to be larger. If we want to reimburse local governments for the costs of enforcing opacity standards and administering the home financing program -- which we should -- the fund is going to need other infusions of money.

2. To be politically saleable, a control strategy must be, or at least appear to be, equitable. A strategy that deals only with woodstoves fails this test. As Commissioner Jeff Golden stated emphatically 3 weeks ago before this committee, his constituents (and yours) are smart enough to know that atrocious air quality in July is **not** from woodstoves. The public will not be fooled into thinking that a single-issue approach is fair or even effective.

3. Focusing only on woodstoves will not solve the actual problem. The data from DEQ's emissions inventory show that woodstoves are simply one of four major human-caused sources of pollution. Slash burning is the largest single source in the state, field burning is an intense problem in the middle and late Summer, and industrial sources are significant on a year-round basis. The facts suggest that a piece-meal approach will not work if we actually want **good** air quality, not just mediocre air that barely complies with EPA standards.

4. A comprehensive approach means that we don't need to reduce any one source to zero emissions. By casting a wide net, reductions from each source of 50-80% would result in significant improvements on a state-wide basis. We think the public will accept this as reasonable, and therefore view the woodstove element also as reasonable.

The attached bill concept outlines how such a comprehensive approach might work. We recognize that the scope of the proposal is a bit difficult to absorb. No one in the country has tried something this aggressive. But that's just another good reason to do it in Oregon first.

OEC draft #3
2/22/89

Oregon Clean Air Act

Conceptual Outline

GOAL: A 50% reduction in state-wide PM-10 emissions caused by human activities within 5 years.

WORKING PRINCIPLES

1. Polluter pays
2. Fair treatment for all sources
3. Pollution prevention, not pollution management
4. State-wide in scope, not just non-attainment areas
5. Flexibility

I. Woodstoves

1. Everyone who uses a residential wood heating device must purchase an annual "Clean Air" permit for $45, beginning October, 1989. Permits are sold in a manner similar to fishing licenses or snow-park permits. Permittee receives a small sticker to put on front door of house as proof of compliance. Revenues from sale of permits turned over to DEQ for a new Pollution Prevention fund, to be used only for the purposes described in this Act.

2. DEQ adopts a statewide opacity standard for woodstoves, enforceable with civil penalties by either local governments, local/state police, or DEQ, or authorized subcontractors. Enforcement costs of local governments or police reimbursed by DEQ through pollution prevention fund.

3. For all new residential dwellings within urban growth boundaries, the following applies:

a. Woodstoves must meet DEQ 1988 certification standards.

b. Homes must have an alternative fuel source.

4. For non-attainment areas, no new stoves allowed.

a. The only replacement stoves allowed are pellet stoves or those meeting 1988 DEQ standards.

5. All stoves installed statewide for any reason must be DEQ-certified to at least 1986 standards.

6. Everyone must pay into permit program described above at

least once in order to be eligible for benefits listed below.

II. Field Burning

1. Scope: All agricultural burning, state-wide.

2. Burning is prohibited, except through a permit process. Prohibition goes into effect in 1990.

3. Applicants for a burning permit must satisfy the following requirements:

a. Demonstrate a need* for open or stack burning. Prior history of burning shall not, by itself, demonstrate a need.

b. Demonstrate that there are no feasible alternatives.

c. Pay a $20 per/acre permit fee, which goes into DEQ's Pollution Prevention Fund.

d. Burning allowed only on a Monday, Tuesday, Wednesday or Thursday, during the time of July 7 - October 7.

e. Under no circumstances can a permit be issued for the same acreage in consecutive years, except when applicant proves that inability to burn will leave the property owner with no feasible agricultural use of the land.

4. Propaning and other technological approaches regulated as follows:

a. Permit required

b. Permit fee is $10 per/acre

c. Propaning regulated by EQC for stubble height, re-growth levels, opacity of emissions, and other parameters.

d. EQC directed to tighten program as alternative, commercially available technologies come on line.

e. DOA given authority to reduce or waive fees for practices deemed to be low or non-polluting.

5. Program administered by Department of Agriculture through MOU with EQC; reviewed by DEQ/EQC annually with public notification/participation opportunities.

6. Smoke management program expanded state-wide; all elements of burning subject to SMP regulations.

---

* See attached memo from Willamette Institute for Biological Control for possible interpretation of "need".

7. Eligibility for subsidies through the pollution control tax credit program to continue at 50% rate through 1995.

III. Slash Burning

1. Scope: state-wide

2. All burning prohibited except through a DOF permit process.

3. Applicant must demonstrate need and prove that no feasible alternatives exist.

4. Applicant must pay a fee of $50 per/acre into DEQ's Pollution Prevention fund.

5. Burning allowed only on a Monday,Tuesday, Wednesday or Thursday, during the periods of April 15-May 30, and September 15-October 30.

6. Pollution Control Tax Credit program allows on-site chippers and related technology for 50% credit through 1995.

7. Direct DEQ to amend SIP so USFS and BLM burning is regulated in same manner.

8. Smoke management plan expanded state-wide

9. Program reviewed annually by EQC/DEQ with public participation opportunities.

IV. Industry

1. Authorize DEQ to tax major industrial sources of PM-10 at the rate of $50 per/ton, per/year, for first _____ tons. After that level, fee doubles to $100 per/ton. Fees collected through the permitting process. Revenues go into the Pollution Prevention fund.

V. Management of the Pollution Prevention Fund

1. EQC adopts rules to carry out the following policies:

a. Woodstove users eligible for subsidies, on sliding scale of 25-100% of total costs, for upgrading to best technology stoves, weatherization, or shifting to a non-wood fuel source. Homeowner attaches covenant to deed to prevent re-installation of wood heating devices by future homeowners. Program administered by local governments with administrative costs reimbursed by DEQ from fund.

b. Fund research and demonstration projects on alternatives to field and slash burning, biomass utilization, woodstove technologies, pollution prevention/control technologies for industrial sources, or technical assistance for implementation of any of the above. DEQ creates broad-based advisory committee to help make funding decisions.

2. DEQ recovers administrative costs from fund, including costs of enforcement.

Estimated Revenues, 1990

Woodstoves:	297,500 x $45 =	$ 13,387,500
Field: open:	100,000 x $20 =	2,000,000
propane:	100,000 x $10 =	1,000,000
stack:	50,000 x $ 5 =	250,000
Slash:	70,000 x $50 =	3,500,000
Industry:	26,000 x $75 =	1,950,000
	TOTAL	$ 22,087,500

Estimated Emissions Reductions

1987 PM-10 Emissions (state-wide)		1990 (estimated)
Woodstoves	33,000 tons	23,800 tons
Ag. Burning*	23,100	11,618
Slash burning**	54,000	24,500
Industry	26,000	24,700
Total	134,000 tons	84,618 tons

Net reduction: 49,382 tons

* All sources, state-wide, including propaning: approximately 339,817 acres.

** Approximately 155,000 acres state-wide

WILLAMETTE INSTITUTE FOR BIOLOGICAL CONTROL, INC.
25776 Alpine Road
Monroe, OR 97456

23 January 1989

A PROPOSAL FOR REGULATING FIELD BURNING

****

THE PROPOSAL:

We propose:

1. That permits for field burning be issued only for those fields in which there is a documented, current need to control either or both of the diseases known as "blind seed disease" and "ergot" in crops of grass seed grown for sale as certified seed;

2. That priority for assignment of permits be based on the degree of current need, with those fields having the highest level of infestation receiving the highest priority for burning; and

3. That assessment of current need be based on a standardized examination and analysis of a sample of seed, drawn in a statistically valid way from the current crop, and examined and certified by the Oregon State University Seed Laboratory, in cooperation with the appropriate departments at Oregon State University, the Oregon Department of Agriculture, and the U.S. Department of Agriculture.

ARGUMENTS IN FAVOR OF THE PROPOSAL:

1. The proposed rule would materially reduce the acreage burned each year, thus reducing the level of seasonal air pollution from smoke generated by field burning.

2. The proposed rule would permit continued control of "blind seed disease" and "ergot" by field burning; such control is essential to continuation of the grass seed industry.

3. The proposed rule is based on sound principles of Integrated Pest Management.

4. The required protocols for sampling, analysis, and certification of seed samples either already exist or could easily be developed from established principles and existing information.

5. The institutional infrastructure for sampling and analysis of seed samples already exists at Oregon State University.

6. The proposed rule establishes a just and objective basis for assigning burning permits; it would be viewed as fair and impartial by both the grass seed industry and the public impacted by field burning.

ARGUMENTS AGAINST THE PROPOSAL:

1. The proposed rule would still permit some level of field burning, resulting in continuing, though reduced, problems of air pollution and reduced visiblity on highways.

2. The proposed rule would not permit field burning for purposes other than the control of "blind seed disease" and "ergot," even though field burning accomplishes other valid purposes, such as reduction of straw residue, reduction of weed seed, and reduction of insects and other disease fungi.

Evelyn Lee, President
Willamette Institute for
Biological Control
(503) 847-6028

Willamette Institute for Biological Control Inc. is a private, nonprofit, Oregon corporation dedicated to the promotion of biologically and economically sound methods of pest control.

MOBILE CHIPPER TO END SLASH BURNING

By John Keller

Dick Hopkins presented SAF members with an alternative to slash burning at the November Longview Chapter meeting—the use of an all-terrain chipper.

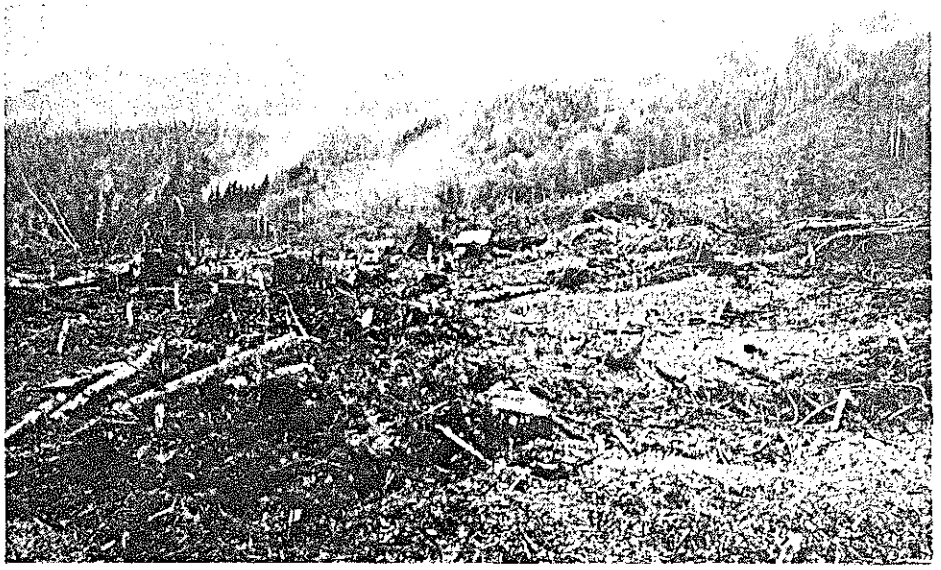
Hopkins, of Mineral Creek Foresters, is developing a prototype machine which he hopes will be capable of reducing extreme fire hazards by chipping slash rather than burning.

A Timberjack 520 Clambunk Skidder with a grapple loader will be modified by removing the clambunk and mounting a 58" Morbark disk chipper. The grapple loader has a boom reach of at least 25 feet and will grapple-feed slash up to 6" in diameter into the chipper as it travels back and forth through the unit. Chips will be blown out into "chip windrows" 100 feet apart, and reduce slash volumes to levels acceptable under existing Washington State extreme fire hazard laws.

Presently, Timberjacks 520s are being used to uphill log on 50 percent slopes. Hopkins believes that the machine when modified for chipping could be functional on slopes up to 60 percent. With its high ground clearance of 30", negotiating second-growth stumps is not expected to be difficult. A two-person crew would probably be used, with one equipment operator and a sawyer going ahead of the machine to buck where heavy debris accumulations required.

Hopkins cited a number of benefits to using a chipper over slash burnng. Slash treatment could be accomplished year-around, as weather would not normally limit operations. No smoke regulation problems would occur, and bad public relations following unexpected wind shifts during burning would be avoided. Since there is no fire, there are no liability worries from escaped slash burns. Also, there is no risk of a hot burn removing duff and compromising soil nutrient levels. Hopkins believes hazard abatement may be possible up to several years following planting if operator care is used.

Per acre costs for chipping are presently estimated at $200. While this may not compete with today's average slash burning costs of about $150 per acre, Hopkins believes the "true" expense of burning is underestimated. If the hidden cost of developing burn plans, preparing equipment and personnel for burning, acquiring a burn permit, getting Washington State Department of Natural Resources (DNR) and Department of Ecology approval, delays, escape risks, etc. were included, the chipper method could compete with slash burning economically.



Only haze, no smoke, will be evident when a chipper and grapple loader are combined into an all-terrain vehicle capable of eliminating the hazard of slash burning. The feasibility of such a machine to reduce slash to chips was tested at Morton, Washington.

Prior to beginning development of the machine, Mineral Creek Foresters created a simulation area on Murray-Pacific forestland near Morton, WA. Second-growth slash was hand-fed into a cat-drawn chipper to examine the results. After completion, DNR officials agreed that the extreme fire hazard liability had been eliminated. A fire hazard reduction had been accomplished, and reforestation access also was enhanced, though in areas with competing vegetation problems, herbicide use would still be needed. The prototype chipping machine is expected to be ready for operation this spring.

Hopkins has researched mechanical slash treatment in Finland, Sweden, and eastern Canada.

The Oregonian

Founded Dec. 4 1850. Established as a daily Feb. 4, 1861. The Sunday Oregonian established Dec. 4, 1881. Published daily and Sunday by the Oregonian Publishing Co., 1320 S.W. Broadway, Portland, Oregon 97201.

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WEDNESDAY, FEBRUARY 8, 1989

Cleanse total airshed

Having healthy air to breathe throughout the Willamette Valley goes beyond the issue of burning grass-seed straw. The entire airshed of the valley and all of the sources of pollution should be considered.

The valley does not suffer just from the late-summer smoke of burning fields, but also from slash fires in logging areas and even from wood stoves that are the only source of heat for many families. Indeed there have been times when the Department of Environmental Quality has received complaints about field burning when not a single field was afire.

If the air is to be cleansed, it is necessary first to identify all places where the problems originate and look for solutions accordingly. That has been the approach to the airshed of the metropolitan area. The concept should be applied valleywide.

There is a problem, no question about that. But a cooperative search for answers ought to take shape at the Legislature before lines solidify into hard positions that leave no opportunity for common ground. It should not become a case of either-or (burn the fields or close the industry) or us-vs.-them (grass-seed growers against everybody else).

After all, everyone in the state, whether urban or rural, east or west, has a stake in both timber and grass seed. Timber is the state's largest industry. Grass seed is the one agricultural product in Oregon that dominates world markets.

The financial ripple effect of these industries accounts for much of the state's economy. Add the number of people relying on wood stoves and it becomes apparent that there is little room for finger-pointing among Oregonians on the three major contributors of valley smoke.

It is just as apparent that Oregonians, through their legislators and their organizations, should band together to cleanse the air. Reducing smoke from forest and farm generally means finding something else to do with the material being burned, then torching what cannot otherwise be used only when atmospheric conditions are right.

By approaching the valley as a single airshed with the intent of reducing pollution from all sources, the Legislature and affected industries ought to find more constructive uses to products that are now just going up in smoke.

The Oregonian 2/24/89

Fairness urged on grass-burning issue

By IRVIN H. JACOB

IN MY OPINION

The field-burning issue once again has surfaced before the Oregon Legislature. Three different bills already have been introduced with more to come. Legislators have been taking testimony on the field-burning issue since last July.

The goal of this process should be to balance the needs of the industry with the needs of the public. But that balance has been elusive.

Grass-seed growers who burn fields are part of Oregon's agricultural community, and this community is now asking for equal treatment and fair consideration.

The rhetoric and hyperbole that always accompany the political process are at full blast. The opponents of field burning are adamant about the need to eliminate all field burning, and an initiative petition has been filed to accomplish that.

One of the main opponents is state Sen. Grattan Kerans, D-Eugene.

The opposition to burning is based largely on the environmental consequences. That "farmers are throwing millions and millions of tons of garbage over the fence ..." is a paraphrase that characterizes the spirit of Kerans' argument. This kind of rhetoric is not particularly constructive to the process of achieving fairness and balance.

If the process of making laws can be viewed as the beginning of justice then the act of making laws about field burning should include fairness and reason rather than emotion. The Legislature has been intervening and making laws with respect to field burning since 1969 and has yet to satisfy the farmers or the public. Could this be because a standard of fairness has not been applied?

It may be useful to examine how this segment of agriculture is being treated. The relevant facts were summarized in a discussion paper released by the governor's office last November.

The study concluded that field burning is one of seven significant sources of particle emissions in Oregon. Dust from all sources (dirt roads, windstorms, farming, and others, which produce 95,000 tons per year) is by far the largest single cause of haze.

Second is forestry slash burning that accounts for 80,000 tons of particulates per year. Much of this comes from the Coast Range, and it has to move over the Willamette Valley to find enough air shed with which to mix.

Domestic use of woodstoves weighs in as the third-largest contributor to pollution at nearly 30,000 tons per year. Much of this hovers over small lumber-dependent communities such as Klamath Falls, Grants Pass and Medford where it becomes a significant year-round problem.

Emissions from open-field burning have been estimated at less than 18,000 tons (There were 1987 data, so this figure would be less in 1988 since 25 percent fewer fields were burned.)

Other contributors to emissions are industrial burning, transportation, wildfires and agricultural propane burning of all kinds. Six of these seven sources are manageable, wildfires being the exception. (Wildfires often occur on the worst days when there is no wind for smoke dispersal.)

So if people like Kerans were truly concerned about the environment they should be concerned about all of these sources of pollution. He could apply a standard of fairness were he to suggest that all these controllable sources of pollution be reduced, including forestry slash burning.

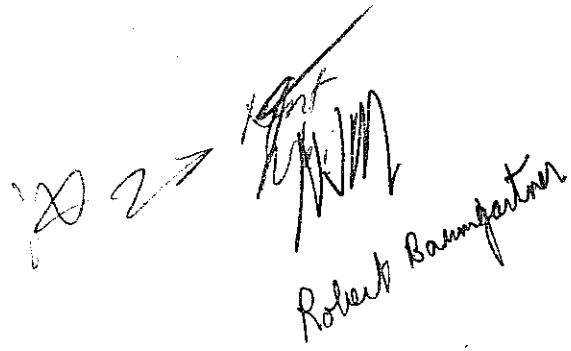
In fact, Kerans probably is sensitive to this issue of fairness, and might be counted to support a new idea that is gathering momentum at the Capitol. Other legislators have already agreed in principle to a balanced approach to pollution control.

John Charles, executive director of the Oregon Environmental Council, is working behind the scenes to draft a comprehensive, bipartisan approach to reducing smoke emissions. His idea is to develop a coordinated management plan with permit fees, research grants, abatement incentives and more.

The specifics of this plan are yet to be determined, but this approach could become a prototype for many other issues awaiting solutions. The Legislature can and should orchestrate a rational process based on fairness.

Irvin H. Jacob is president of Cascade International Seed Co. of Salem.

RJN



News Review 2-14-89

Council gives final OK to storm drain plan

The Roseburg City Council Monday gave final approval to an ordinance establishing a storm drainage utility, rejecting a request to exempt public schools from the charge in the process.

Larry Sconce, assistant schools superintendent, said the Roseburg School Board felt the charge "appeared to be more of a tax than a user fee." He also said the school district would prefer the city take over the maintenance of major storm drain lines that pass through district property if schools are not made exempt.

The city hopes to raise about $650,000 each year through the new utility in order to deal with an identified $10 million of immediate storm drainage needs over a 10-year period.

City Councilor Jeri Kimmel, wife of School Board member Max Kimmel, cast the lone vote against the ordinance.

"I know we need a storm drainage utility," Kimmel said. "I know that. But I don't like to see schools taxed."

But other council members objected to the use of the word "tax" when describing the charges that will result from the new utility.

"This is not a tax," Councilor Daniel Robertson said. "It is a utility. It is a fee. To exempt the schools from the utility and the fee would be an attempt to destroy the utility."

"The word tax is inappropriate unless we do what is suggested by the School Board and expempt them," he added. "Then we would have a tax."

The council then directed staff to work with the Utility Commission to determine a policy for maintaining the primary storm drainage lines that run through all properties, not just the school district's.

The council delayed setting rates for the storm drainage utility until city staff can complete further studies on the amount of property to be affected by the proposed charges.

The Utility Commission, however, has tentatively recommended the monthly fee for storm drainage be set at $2.85 for each residential unit. Under the recommendation, property not used for single family residences or duplexes would pay $2.85 each month for each full 3,000 square feet of impervious surface.

An impervious surface has been defined as a surface that does not allow a percentage of rainwater to be absorbed. Examples include rooftops, sidewalks, patio areas and parking lots.

Proposed Revisions to DEQ New Development Rules
Final
2/27/89

340-41-006 (18) "Land Development" refers to any human induced change to improved or unimproved real estate, including but not limited to construction, installation or expansion of a building or other structure, land division, drilling, and site alteration such as that due to land surface mining, dredging, grading, construction of earthen berms, paving, improvements for use as parking or storage, excavation or clearing.

(19) "Stormwater Quality Control Facility" refers to any structure or drainage way that is designed, constructed, and maintained to collect and filter, retain, or detain surface water runoff during and after a storm event for the purpose of water quality improvement and flow attenuation.

340-41-455 (3) Non-point source pollution control in Tualatin River sub-basin and lands draining to Oswego Lake:

and lands draining to Oswego Lake,

(a) These rules shall apply to any new land development within the Tualatin River sub-basin except those developments with application dates prior to the effective date of these rules. The application date shall be the date on which a complete application for development approval is received by the local jurisdiction in accordance with the regulations of the local jurisdiction. These rules shall not apply to development within a jurisdiction which has adopted a Department approved program plan in accordance with OAR 340-41-470(3)(g).

(b) For land development, no preliminary plat, site plan or permit shall be approved by any jurisdiction in this sub-basin unless conditions of the plat or plan approval includes interim stormwater quality control facilities to be constructed prior to land development and to be operated during construction to control the discharge of sediment in the stormwater runoff. The erosion control plan shall utilize protection techniques to control soil erosion and sediment transport. See Figures 1 to 6 for examples. The erosion control plan shall include temporary sedimentation basins when erosion from any land development exceeds one (1) ton per acre, as calculated using the Soil Conservation Service Universal Soil Loss Equation. See Tables 1 to 6. The sedimentation basins shall be sized using 1.5 feet maximum sediment storage depth plus 2.0 feet storage depth above for a settlement zone. When the erosion potential has been removed, the sediment basin can be removed and the site restored as per the final site plan.

to less than one (1) ton per acre

Permits ?

- Computing the sediment storage volume - The sediment storage volume required is the volume required to contain the annual sediment yield to the trap and can be estimated by using the Universal Soil Loss Equation (USLE) developed by the United States Department of Agriculture.

  $A = R*K*LS*CV*PR$

  Where
  - A = annual sediment yield in tons per acre
  - R = rainfall erosion index;
  - K = soil erodibility factor, from Table 3 or as determined by field and laboratory testing by a geologist, soil scientist, or geotechnical engineer.
  - LS = length-slope factor; from Table 4 (note, lengths measured are horizontal distance from a plan view)
  - CV = cover factor, use 1.0 which represents no ground cover during the construction process. TABLE 5 and 6
  - PR = erosion control practice factor; use 0.9 which represents trackwalking up and down slope. (Dozer cleat marks parallel to contours)

- Annual sediment yield calculation, step-by-step procedure:

  a. Compute the R value by obtaining the R value from the 2-year/6 -hour Isopluvial Map in TABLE 2

  b. Divide the site into areas of homogeneous SCS. soil type and of uniform slope and length.

  c. Note the K value from the SCS soils chart (Table . 3 .) for each soil type.

  d. Determine the LS value for each uniform area (See Table 4).

  e. Compute the annual sediment yield (A) in tons per acre for each homogeneous/uniform area by multiplying R times the K and LS values for each area.

  f. Multiply the annual sediment yield (A) for each area by the acreage to be exposed (only that area to be cleared) of each area. Sum the results to compute the total annual sediment load (in tons) to the trap (L_A).

- The sediment storage volume (V_s) is then determined by dividing the total annual sediment load (in tons) (L_A) by an average density for the sediment deposited use 0.05 ton per cubic foot. $V_s = L_A/P_{avg}$.

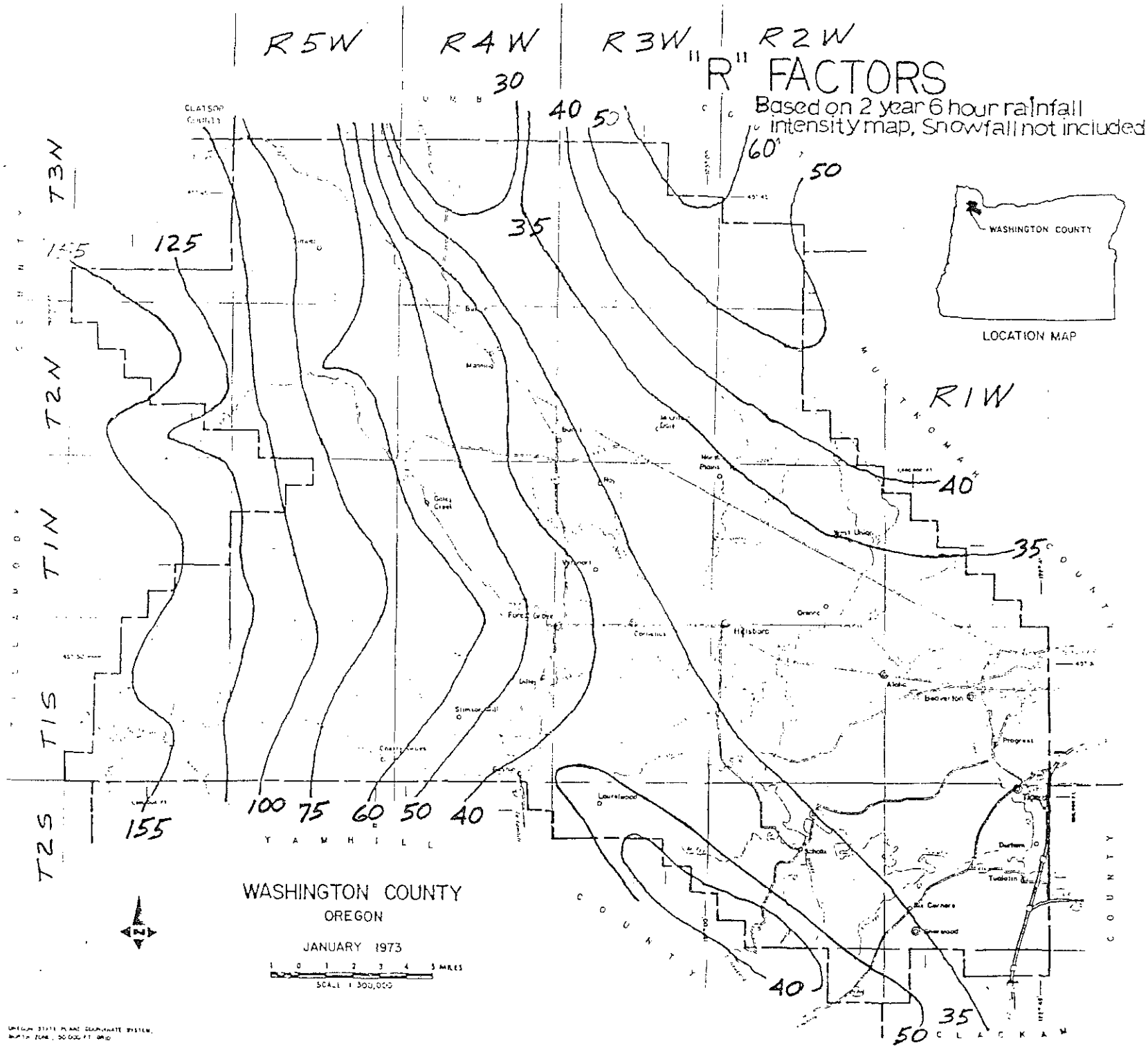


TABLE 2 'R' VALUES WASHINGTON COUNTY

TABLE 3 HYDROLOGIC SOIL GROUP OF THE SOILS WASHINGTON COUNTY

Soil Group	Map Symbol	Hydro-logic Group	Soil Erod-ibility Factor, "K"	Soil Group	Map Symbol	Hydro-logic Group	Soil Erod-ibility Factor, "K"
ALOHA	1	C	0.43	HUBERLY	22	D	0.37
AMITY	2	C	0.32	JORY	23	C	0.2
ASTORIA	3	B	0.24	KILCHIS	24	C	0.15
BRIEDWELL	4	B	0.20	KLICKITAT	24G	B	0.1
BRIEDWELL	5	B	0.17	KNAPPA	26	B	0.37
CARLTON	6	B	0.32	LABISH	27	D	0.2
CASCADE	7	C	0.37	LAURELWOOD	28	B	0.43
CHEHALEM	8	C	0.37	MCBEE	30	B	0.28
CHEHALIS	9	B	0.24	MELBOURNE	31	B	0.24
CHEHALIS	10	B	0.37	MELBY	32	C	0.32
CORNELIUS	11	C	0.37	OLYIC	34	B	0.32
KINTON	11B	C	0.43	PERVINA	36	C	0.24
CORNELIUS VARIANT	12	C	0.37	QUATAMA	37	C	0.37
COVE	13	D	0.20	SAUM	38	C	0.32
COVE	14	D	0.17	TOLKE	39	B	0.28
DAYTON	15	D	0.43	UDIFLUVENTS	40	B	0.17
DELENA	16	D	0.43	VERBOORT	42	D	0.20
GOBLE	17	C	0.37	WAPATO	43	D	0.32
GOBLE	18	C	0.37	WILLAMETTE	44	B	0.32
HELVETIA	19	C	0.37	WOODBURN	45	C	0.32
HEMBRE	20	B	0.32	XEROCHREPTS	46	B	0.43
HILLSBORO	21	B	0.49	HAPLOXEROLLS	46F	C	0.32
				XEROCHREPTS	47	D	0.02
				ROCK OUTCROP	47D	NA	0.02

HYDROLOGIC SOIL GROUP CLASSIFICATIONS

A. (Low runoff potential). Soils having high infiltration rates, even when thoroughly wetted, and consisting chiefly of deep, well-to-excessively drained sands or gravels. These soils have a high rate of water transmission.

B. (Moderately low runoff potential). Soils having moderate infiltration rates when thoroughly wetted, and consisting chiefly of moderately fine to moderately coarse textures. These soils have a moderate rate of water transmission.

C. (Moderately high runoff potential). Soils having slow infiltration rates when thoroughly wetted, and consisting chiefly of soils with a layer that impedes downward movement of water, or soils with moderately fine to fine textures. These soils have a slow rate of water transmission.

D. (High runoff potential). Soils having very slow infiltration rates when thoroughly wetted and consisting chiefly of clay soils with a high swelling potential, soils with a permanent high water table, soils with a hardpan or clay layer at or near the surface, and shallow soils over nearly impervious material. These soils have a very slow rate of water transmission.

* From SCS

TABLE 4 LS VALUES*

Slope ratio	Slope gradient s, %	LS values for following slope lengths *l*, ft (m)										LS values for following slope lengths *l*, ft (m)												
		10 (3.0)	20 (6.1)	30 (9.1)	40 (12.2)	50 (15.2)	60 (18.3)	70 (21.3)	80 (24.4)	90 (27.4)	100 (30.5)	150 (46)	200 (61)	250 (76)	300 (91)	350 (107)	400 (122)	450 (137)	500 (152)	600 (183)	700 (213)	800 (244)	900 (274)	1000 (305)
	0.5	0.06	0.07	0.07	0.08	0.08	0.09	0.09	0.09	0.09	0.10	0.10	0.11	0.11	0.12	0.12	0.13	0.13	0.13	0.14	0.14	0.14	0.15	0.15
100:1	1	0.08	0.09	0.10	0.10	0.11	0.11	0.12	0.12	0.12	0.12	0.14	0.14	0.15	0.16	0.16	0.16	0.17	0.17	0.18	0.18	0.19	0.19	0.20
	2	0.10	0.12	0.14	0.15	0.16	0.17	0.18	0.19	0.19	0.20	0.23	0.25	0.26	0.28	0.29	0.30	0.32	0.33	0.34	0.36	0.37	0.39	0.40
	3	0.14	0.18	0.20	0.22	0.23	0.25	0.26	0.27	0.28	0.29	0.32	0.35	0.38	0.40	0.42	0.43	0.45	0.46	0.49	0.51	0.54	0.55	0.57
	4	0.16	0.21	0.25	0.28	0.30	0.33	0.35	0.37	0.38	0.40	0.47	0.53	0.58	0.62	0.66	0.70	0.73	0.76	0.82	0.87	0.92	0.96	1.00
20:1	5	0.17	0.24	0.29	0.34	0.38	0.41	0.45	0.48	0.51	0.53	0.66	0.76	0.85	0.93	1.00	1.07	1.13	1.20	1.31	1.42	1.51	1.60	1.69
	6	0.21	0.30	0.37	0.43	0.48	0.52	0.56	0.60	0.64	0.67	0.82	0.95	1.06	1.16	1.26	1.34	1.43	1.50	1.65	1.78	1.90	2.02	2.13
	7	0.26	0.37	0.45	0.52	0.58	0.61	0.69	0.74	0.78	0.82	1.01	1.17	1.30	1.43	1.54	1.65	1.75	1.84	2.02	2.18	2.33	2.47	2.61
12½:1	8	0.31	0.44	0.54	0.63	0.70	0.77	0.83	0.89	0.91	0.99	1.21	1.40	1.57	1.72	1.85	1.98	2.10	2.22	2.43	2.62	2.80	2.97	3.13
	9	0.37	0.52	0.64	0.74	0.83	0.91	0.98	1.05	1.11	1.17	1.44	1.66	1.85	2.03	2.19	2.35	2.49	2.62	2.87	3.10	3.32	3.52	3.71
10:1	10	0.43	0.61	0.75	0.87	0.97	1.06	1.15	1.22	1.30	1.37	1.68	1.94	2.16	2.37	2.56	2.74	2.90	3.06	3.35	3.62	3.87	4.11	4.33
	11	0.50	0.71	0.86	1.00	1.12	1.22	1.32	1.41	1.50	1.58	1.93	2.23	2.50	2.74	2.95	3.16	3.35	3.53	3.87	4.18	4.47	4.74	4.99
8:1	12.5	0.61	0.86	1.05	1.22	1.36	1.49	1.61	1.72	1.82	1.92	2.35	2.72	3.04	3.33	3.59	3.84	4.08	4.30	4.71	5.08	5.43	5.76	6.08
	15	0.81	1.14	1.40	1.62	1.81	1.98	2.14	2.29	2.43	2.56	3.13	3.62	4.05	4.43	4.79	5.12	5.43	5.72	6.27	6.77	7.24	7.68	8.09
6:1	16.7	0.96	1.36	1.67	1.92	2.15	2.36	2.54	2.72	2.88	3.04	3.72	4.30	4.81	5.27	5.69	6.08	6.45	6.80	7.45	8.04	8.60	9.12	9.62
5:1	20	1.29	1.82	2.23	2.58	2.88	3.16	3.41	3.65	3.87	4.08	5.00	5.77	6.45	7.06	7.63	8.16	8.65	9.12	9.99	10.79	11.54	12.24	12.90
4½:1	22	1.51	2.13	2.61	3.02	3.37	3.69	3.99	4.27	4.53	4.77	5.84	6.75	7.54	8.26	8.92	9.54	10.12	10.67	11.68	12.62	13.49	14.31	15.08
4:1	25	1.86	2.63	3.23	3.73	4.16	4.56	4.93	5.27	5.59	5.89	7.21	8.33	9.31	10.20	11.02	11.78	12.49	13.17	14.43	15.58	16.66	17.67	18.63
	30	2.51	3.56	4.36	5.03	5.62	6.16	6.65	7.11	7.54	7.95	9.74	11.25	12.57	13.77	14.88	15.91	16.87	17.78	19.48	21.04	22.49	23.86	25.15
3:1	33.3	2.98	4.22	5.17	5.96	6.67	7.30	7.89	8.43	8.95	9.43	11.55	13.34	14.91	16.33	17.64	18.86	20.00	21.09	23.10	24.95	26.67	28.29	29.82
	35	3.23	4.57	5.60	6.46	7.23	7.92	8.55	9.14	9.70	10.22	12.52	14.46	16.16	17.70	19.12	20.44	21.68	22.86	25.04	27.04	28.91	30.67	32.32
2½:1	40	4.00	5.66	6.93	8.00	8.95	9.80	10.59	11.32	12.00	12.65	15.50	17.89	20.01	21.91	23.67	25.30	26.84	28.29	30.99	33.48	35.79	37.96	40.01
	45	4.81	6.80	8.33	9.61	10.75	11.77	12.72	13.60	14.42	15.20	18.62	21.50	24.03	26.33	28.44	30.40	32.24	33.99	37.23	40.22	42.99	45.60	48.07
2:1	50	5.64	7.97	9.76	11.27	12.60	13.81	14.91	15.91	16.91	17.82	21.83	25.21	28.18	30.87	33.34	35.65	37.81	39.85	43.66	47.16	50.41	53.47	56.36
	55	6.48	9.16	11.22	12.96	14.48	15.87	17.14	18.32	19.43	20.48	25.09	28.97	32.39	35.48	38.32	40.97	43.45	45.80	50.18	54.20	57.91	61.45	64.78
1¾:1	57	6.82	9.64	11.80	13.63	15.24	16.69	18.03	19.28	20.45	21.55	26.40	30.48	34.08	37.33	40.32	43.10	45.72	48.19	52.79	57.02	60.96	64.66	68.15
	60	7.32	10.35	12.68	14.64	16.37	17.93	19.37	20.71	21.96	23.15	28.35	32.74	36.60	40.10	43.31	46.30	49.11	51.77	56.71	61.25	65.48	69.45	73.21
1½:1	66.7	8.44	11.93	14.61	16.88	18.87	20.67	22.32	23.87	25.31	26.68	32.68	37.74	42.19	46.22	49.92	53.37	56.60	59.66	65.36	70.60	75.47	80.05	84.38
	70	8.98	12.70	15.55	17.96	20.08	21.99	23.75	25.39	26.93	28.39	34.77	40.15	44.89	49.17	53.11	56.78	60.23	63.48	69.54	75.12	80.30	85.17	89.78
	75	9.78	13.83	16.94	19.56	21.87	23.95	25.87	27.66	29.34	30.92	37.87	43.73	48.89	53.56	57.85	61.85	65.60	69.15	75.75	81.82	87.46	92.77	97.79
1¼:1	80	10.55	14.93	18.28	21.11	23.60	25.85	27.93	29.85	31.66	33.38	40.88	47.20	52.77	57.81	62.44	66.75	70.80	74.63	81.76	88.31	94.41	100.13	105.55
	85	11.30	15.98	19.58	22.61	25.27	27.69	29.90	31.97	33.91	35.74	43.78	50.55	56.51	61.91	66.87	71.48	75.82	79.92	87.55	94.57	101.09	107.23	113.03
	90	12.02	17.00	20.82	24.04	26.88	29.44	31.80	34.00	36.06	38.01	46.55	53.76	60.10	65.84	71.11	76.02	80.63	84.99	93.11	100.57	107.51	114.03	120.20
	95	12.71	17.97	22.01	25.41	28.41	31.12	33.62	35.94	38.12	40.18	49.21	56.82	63.53	69.59	75.17	80.36	85.23	89.84	98.42	106.30	113.64	120.54	127.06
1:1	100	13.36	18.89	23.14	26.72	29.87	32.72	35.34	37.78	40.08	42.24	51.74	59.74	66.79	73.17	79.03	84.49	89.61	94.46	103.48	111.77	119.48	126.73	133.59

*Calculated from

$$LS = \left(\frac{65.41 \times s^2}{s^2 + 10{,}000} + \frac{4.56 \times s}{\sqrt{s^2 + 10{,}000}} + 0.065\right)\left(\frac{l}{72.5}\right)^m$$

LS = topographic factor
l = slope length, ft (m × 0.3048)
s = slope steepness,
m = exponent dependent upon slope steepness
(0.2 for slopes < 1%, 0.3 for slopes 1 to 3%,
0.4 for slopes 3.5 to 4.5%, and
0.5 for slopes > 5%)

TABLE 5 'C' VALUES MULCH FACTORS[1]

Type of mulch	Mulch Rate	Land Slope	Factor C	Length limit[2]
	Tons per acre	*Percent*		*Feet*
None	0	all	1.0	---
Straw or hay,	1.0	1-5	0.20	200
tied down by	1.0	6-10	.20	100
anchoring and				
tacking	1.5	1-5	.12	300
equipment[3]	1.5	6-10	.12	150
Do.	2.0	1-5	.06	400
	2.0	6-10	.06	200
	2.0	11-15	.07	150
	2.0	16-20	.11	100
	2.0	21-25	.14	75
	2.0	26-33	.17	50
	2.0	34-50	.20	35
Crushed stone,	135	<16	.05	200
¼ to 1½ in	135	16-20	.05	150
	135	21-33	.05	100
	135	34-50	.05	75
Do.	240	<21	.02	300
	240	21-33	.02	200
	240	34-50	.02	150
Wood chips	7	<16	.08	75
	7	16-20	.08	50
Do.	12	<16	.05	150
	12	16-20	.05	100
	12	21-33	.05	75
Do.	25	<16	.02	200
	25	16-20	.02	150
	25	21-33	.02	100
	25	34-50	.02	75

[1] From Meyer and Ports (*24*). Developed by an interagency workshop group on the basis of field experience and limited research data.

[2] Maximum slope length for which the specified mulch rate is considered effective. When this limit is exceeded, either a higher application rate or mechanical shortening of the effective slope length is required.

[3] When the straw or hay mulch is not anchored to the soil, C values on moderate or steep slopes of soils having K values greater than 0.30 should be taken at double the values given in this table.

TABLE

"C" FACTORS (OREGON)
CONSTRUCTION SITES

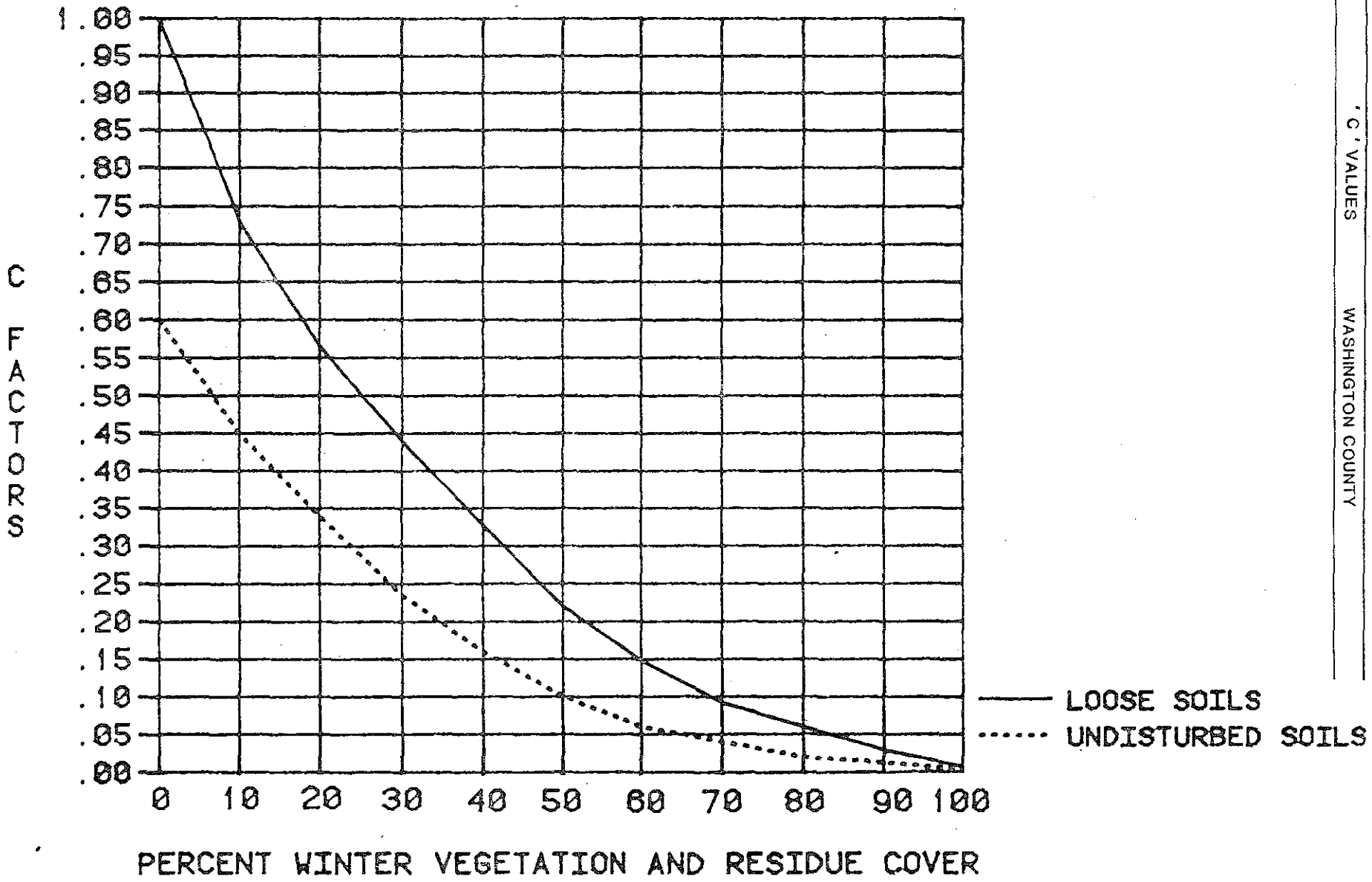
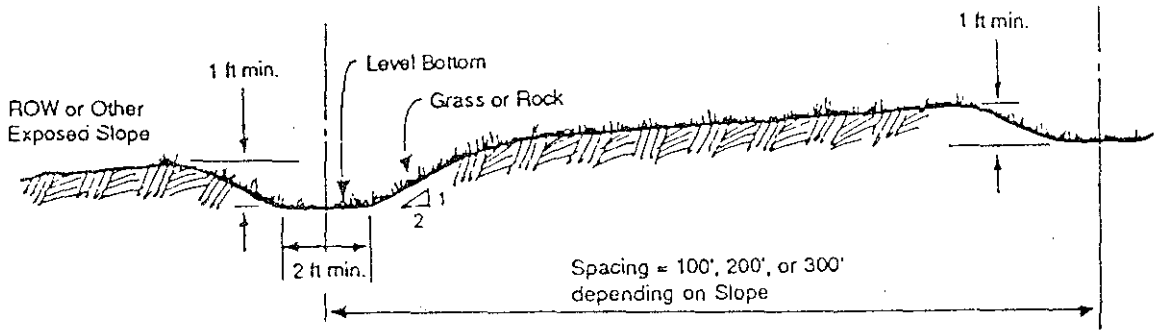


TABLE 6 'C' VALUES WASHINGTON COUNTY

FIGURE 1 INTERCEPTOR SWALE



Bottom Width	2 feet minimum; the bottom width shall be level
Depth	1 foot minimum
Side Slope	2H:1V or flatter
Grade	Maximum 5 percent, with positive drainage to a suitable outlet (such as sedimentation pond)
Stabilization	Seed as per Grassed Channel or, Rock: 12 inches thick, pressed into bank and extending at least 8 inches vertical from the bottom.

FIGURE 2 TEMPORARY INTERCEPTOR DIKES

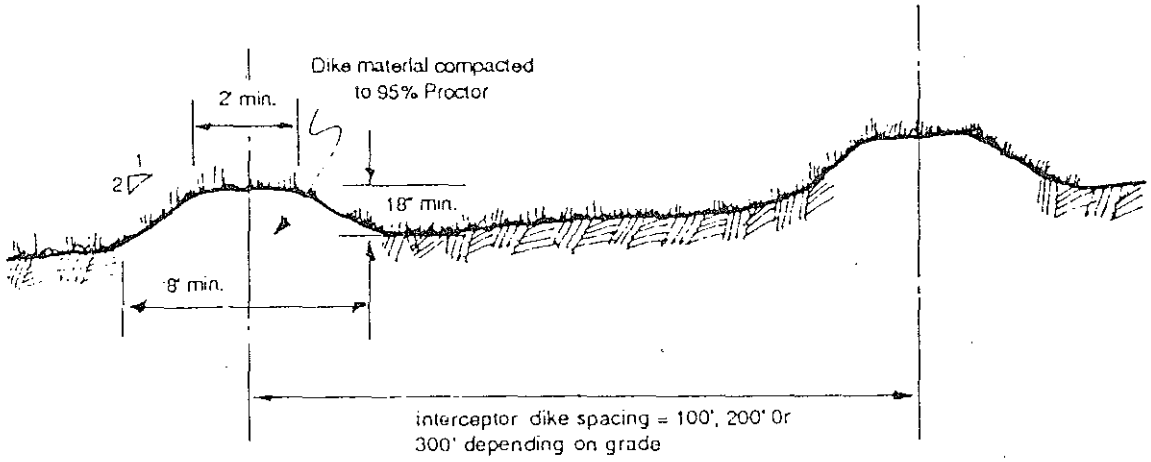


FIGURE 3 LEVEL SPREADER

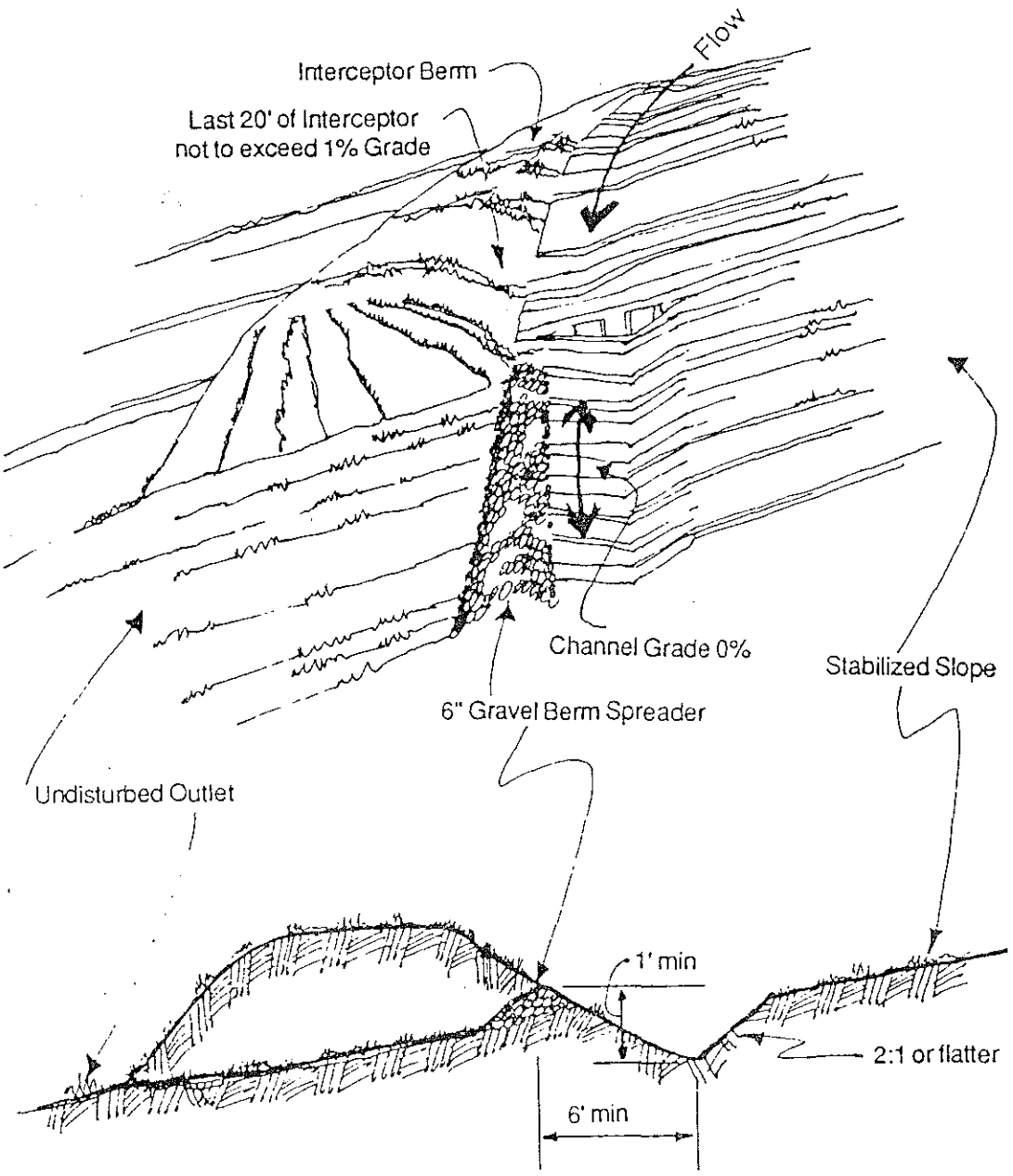
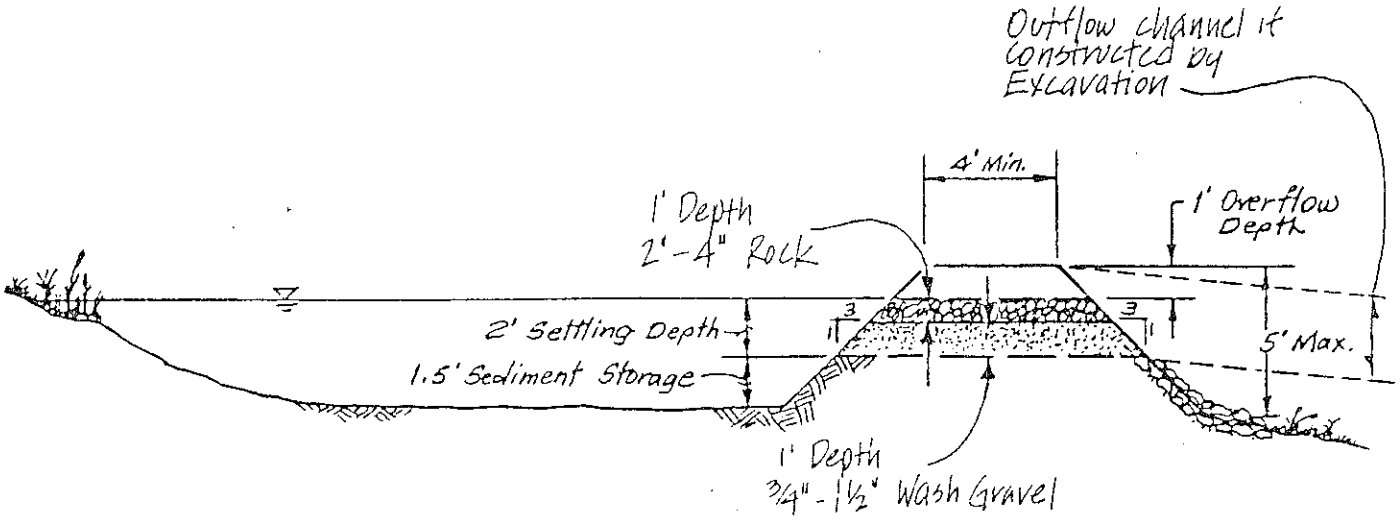
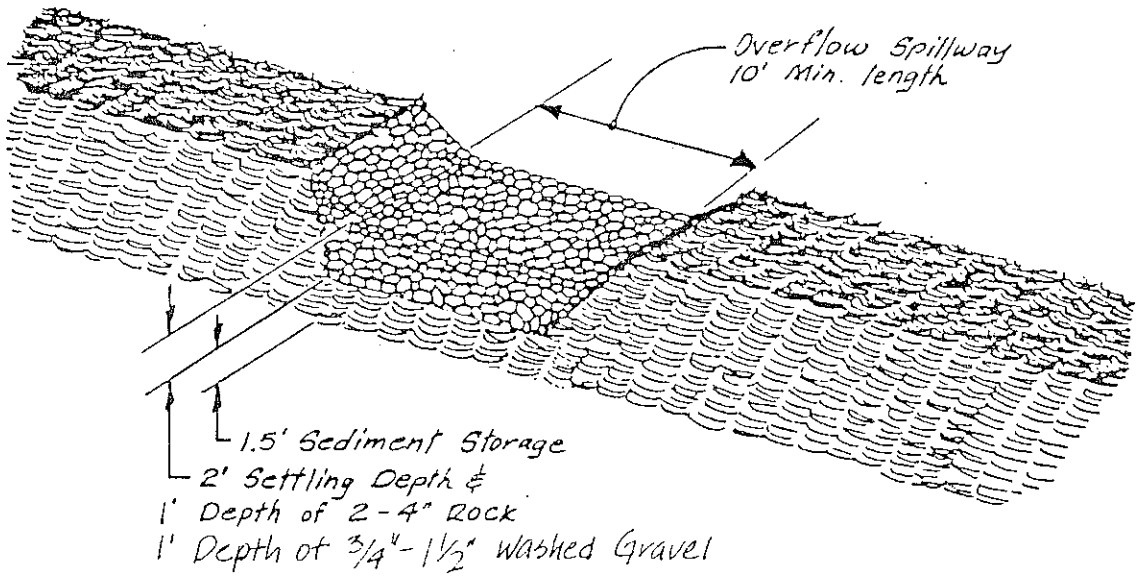


FIGURE 4 SEDIMENT TRAP



CROSS SECTION
No Scale

Note: May be constructed by excavation or by building a berm



SEDIMENT TRAP OUTLET
No Scale

FIGURE 5 PIPE SLOPE DRAINS

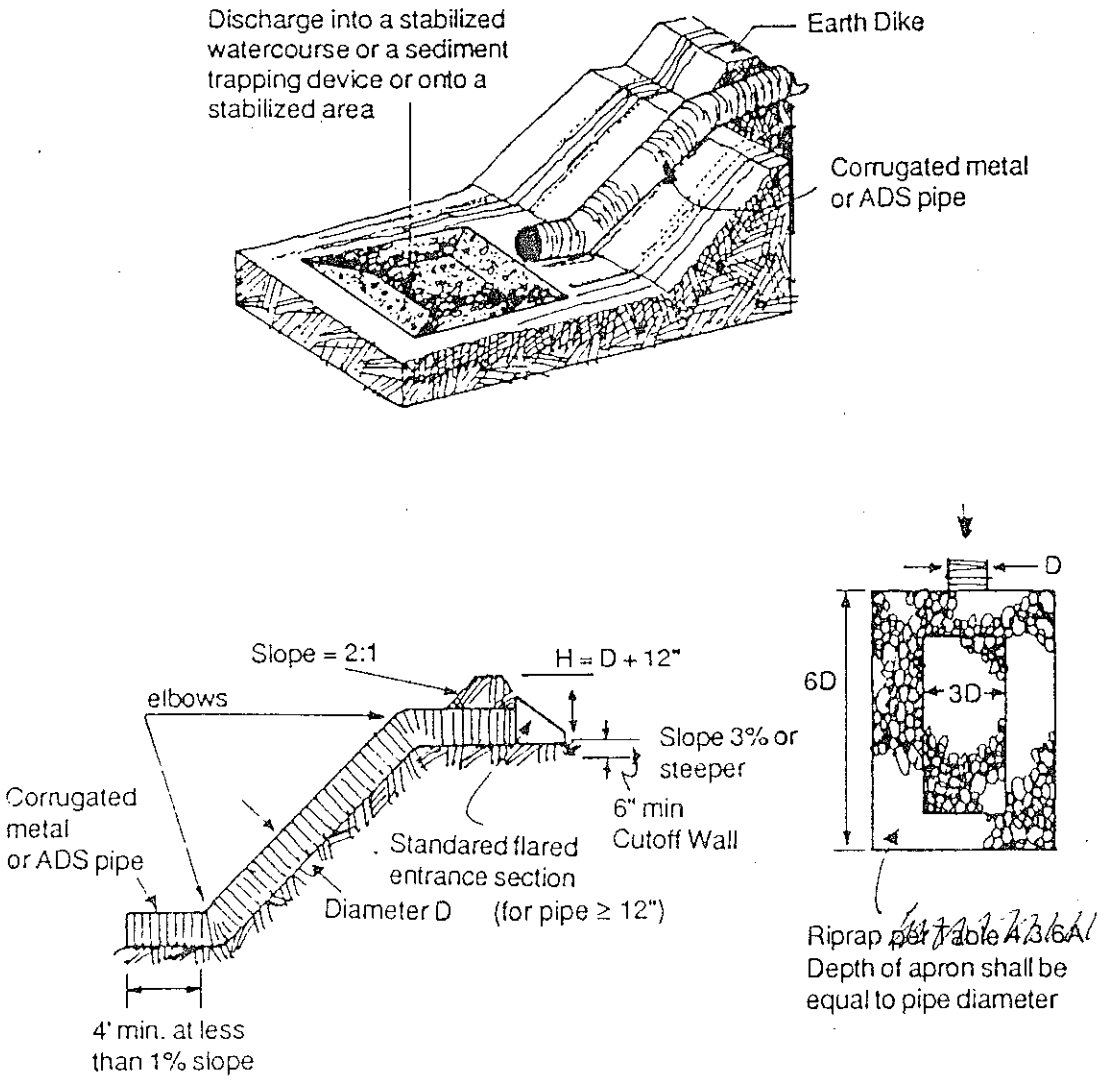
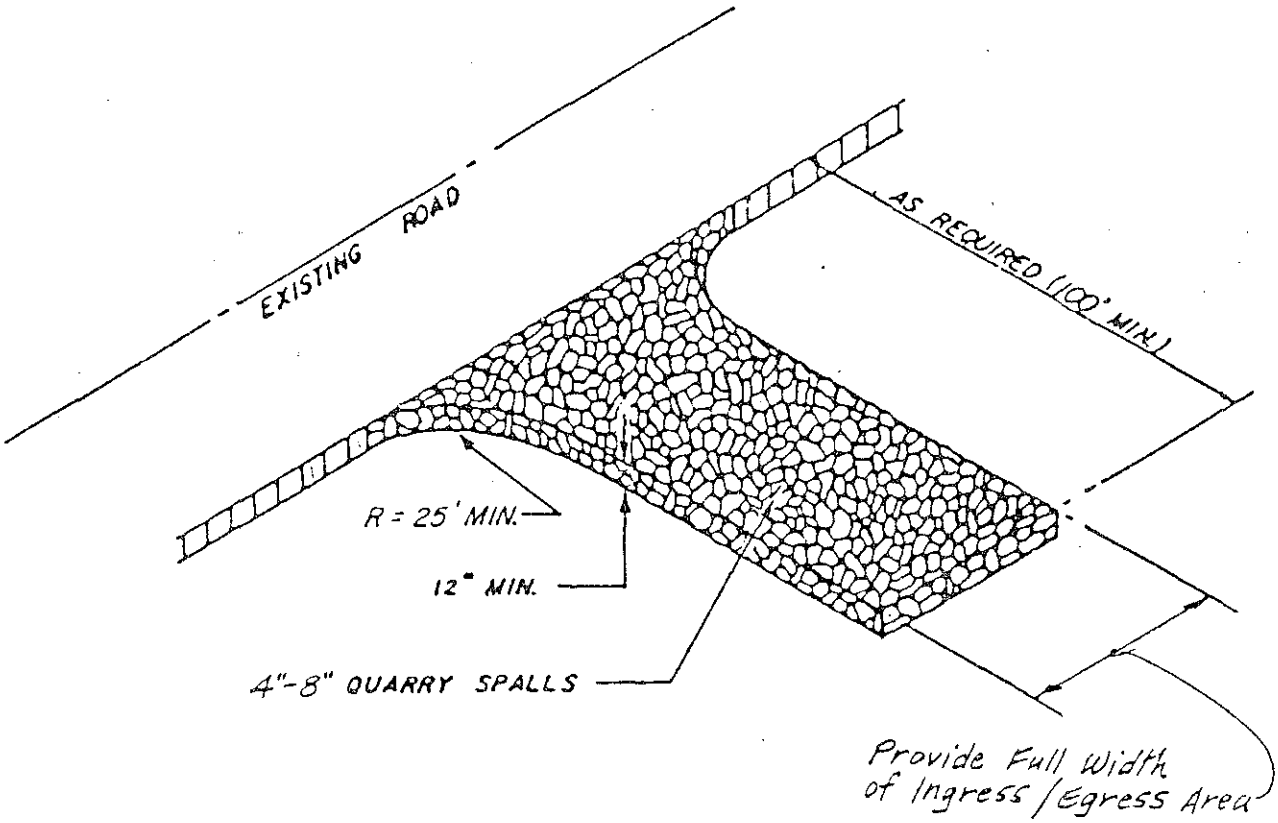


FIGURE 6 · STABILIZED CONSTRUCTION ENTRANCE



(c) For land development within the urban growth boundary, the jurisdiction may choose to require a one-time development fee to be assessed by the jurisdictions in this sub-basin in lieu of complying with subsection (d) below. The fee will be an option for new developments until such time that an area-wide stormwater quality control plan is in place as per OAR 340-41-470(3)(g), ~~or until December 31, 1990, which ever comes first at which time this subsection (c) will no longer be in effect~~. The fee to be levied by the jurisdictions will be for the purpose of funding of area-wide stormwater quality control facilities as per the area-wide plan. The jurisdictions will also preserve sites within the watershed of the development where possible locations for future stormwater control facilities are located. These lands may be released from the reserve when the lands are no longer needed for implementation of the area-wide stormwater quality control plan.

(d) For land development not assessed the one-time development fee:

A. No preliminary plat or preliminary site plan shall be approved by any jurisdiction in this sub-basin unless conditions of the preliminary plat or site plan includes permanent stormwater quality control facilities designed to achieve 65% removal of phosphorus and 85% of sediment from the runoff from the mean summertime storm event totaling 0.36 inches once the development is complete. This to be based upon the design criteria stated in Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs (See Appendix A) or total capture of this runoff with drain down within the average antecedent dry period between events of 96 hours.
(and infiltration)

B. No final plat or final site plan approved using design criteria in Subsection (A) shall be approved in this sub-basin unless the following requirements are met:

1. The final plat or site plan proposed by the developer shall include plans and a certification prepared by a registered, professional engineer that the proposed stormwater control facilities have met the design criteria of Subsection (A).

2. A financial assurance, or equivalent security acceptable to the jurisdiction, shall be provided by the developer with the jurisdiction that assures that the stormwater control facilities are constructed according to the plans established in the final plat or site plan approval.

3. The jurisdiction must assure that the permanent stormwater control facilities will be operated and maintained in perpetuity.

(e) An exception to Subsection (d) may be granted to the jurisdiction by the Director subject to all the following requirements:

A. An area-wide stormwater control system will be provided to control the release of sediment and phosphorus pollutants in the storm runoff;

B. The land development or subdivision would be served by the area-wide stormwater control system;

C. Land necessary for the stormwater quality control facilities has been acquired by the jurisdication;

D. An area-wide stormwater control plan has been developed and approved by the Department of Environmental Quality. The plan shall include a time schedule for ensuring the facilities are installed before or concurrently with the development; and

E. A permit has been issued by the Department to the local jurisdiction assuring adequate operation and maintenance of the stormwater control facilities.

(f) The jurisdiction may require review of the plans to construct and operate a stormwater control facility required by Subsection (d) by the Department of Environmental Quality prior to construction.

(g) Construction of one (1) and two (2) family dwellings on existing Lots of Record are exempt from the requirements in Sections (c), (d), (e) ~~and (f).~~

(h) As local jurisdictions adopt a DEQ-approved program plan, these requirements will no longer apply to the development in that jurisdiction.

(i) The developer may choose an alternative design criteria for a permanent stormwater quality control facility requirement that is not found in Subsection (d)(A). In this case, a preliminary plat or site plan shall not be approved by any jurisdiction unless the conditions of the approval require that the developer applies for and receives a permit from the Department. Any application for a permit for a stormwater quality control facility shall include necessary technical documentation to support that the proposed system has been designed to achieve 65% removal of phosphorus and 85% removal of sediment once the development is completed.

(j) As the Department obtains additional information on appropriate Best Management Practices (BMP) for controlling stormwater quality, the Director may add or delete BMPs and associated design criteria to or from Subsection (d)(A).

APPENDIX A

Controlling Urban Runoff: A Practical Manual for Planning and Desiging Urban BMPs

LEGISLATIVE ADMINISTRATION COMMITTEE

VISITOR SERVICES
ROTUNDA, STATE CAPITOL
SALEM, OREGON 97310
PHONE 378-4423

CAPITOL ROOM SCHEDULING FORM

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
FEB 06 1989
OFFICE OF THE DIRECTOR

TO: DEQ
811 SW Sixth
Portland, Oregon 97204

RENTAL [X] CHANGE [ ]

CANCELLATION [ ] CONFIRMATION [X]

GROUP/AGENCY Dept. of Environmental Quality

CONTACT PERSON Julie PHONE 229-5395

ADDRESS

ROOM(S) REQUESTED Room 50 DATE March 3, 1989

SCHEDULED MEETING TIME 7 - 9:30 AM ROOM OPENED AT

1. Legislative entities have room use priority. In the event the room your group has rented is required by a legislative committee, every effort will be made to find you an alternate room in the capitol.
2. There will be an extra charge for the following:
evening and weekend meetings, furniture rearranging or if the room is not left in its original condition.
3. There will be a minimum charge of $10.00 for damage to audio/video equipment.
4. The number of occupants in a room must not exceed the capacity posted.
5. There may be a charge for cancellations received within 24 hours of the scheduled meeting.

CALL:	378-4423	if you have questions
	378-8633	for supply and furniture rearrangement needs
	378-8697	for audio/video needs

RENTER

APPLICATION AND PERMIT FOR USE OF CAPITOL FACILITIES

Name of Applicant _____ Date _____

Address _____ Telephone _____

Purpose for which facility will be used _____

Estimated attendance _____

Day of Week	Dates of Use	Room Required	Maximum Capacity	Hours of Use	
				from:	to:

RULES OF CAPITOL USE

1. Legislative entities have room use priority. In the event the room your group has rented is required by a legislative committee, every effort will be made to find you an alternate room in the Capitol.
2. The number of occupants in a room must not exceed the posted capacity.
3. There will be a charge for cancellations received within 24 hours of the scheduled meeting, unless cancellation is necessitated by inclement weather.
4. No alcoholic beverages are to be served, except on approval of the Legislative Administrator or designee.
5. No foods are to be served, other than in Room 50 or the Galleria.
6. No commercial products or services are to be promoted and/or offered for sale, except those that are related to the Capitol Gift Shop.
7. Gatherings are not to impede foot traffic circulation within the Capitol, hinder the carrying out of day-to-day business within the Capitol, or result in injury to property and persons within the Capitol.
8. Rooms may not be used for organized partisan political activities or religious activities including, but not limited to, rallies, religious holiday observances, or religious services.
9. The Legislative Administration Committee reserves the right to require a security deposit or demand that rent be paid in advance.
10. Users are encouraged to keep the rooms clean. If an unusual amount of custodial time is required to clean space following use, the extra time will be billed to the users.
11. Legislative Assembly Media Systems can provide video tape duplications, audio tape duplications, televised meetings/"overflows", portable P.A.'s, and teleconferencing, if required, at an additional charge. Requests for these services should be made through Visitor Services.
12. No weekend meetings will be scheduled without the approval of the Legislative Administrator. Custodial time required for weekend use of the Capitol will be billed to the user. Users may also be charged for any required heating.
13. No agendas or other materials are to be taped to the walls or doors of the meeting rooms.
14. We request that a copy of your agenda or program be given to Visitor Services for information purposes.
15. Users may be exempted from room rental fees when the room is used exclusively for educational purposes directly related to the legislative process including, but not limited to: proper use of the building, the steps of how a bill becomes law, lobbying procedures and ethics, testifying before committees, and citizen participation in the legislative process. In order to qualify for the exemption, no admission charge may be imposed on the participants for the educational program. Fees will not be waived when the meeting is for the purpose of issue-oriented lobbying.
16. Rooms are to be used "as is" with the exception of Rooms 50, 137 and 354, which can accomodate minimal rearranging. Please inform Visitor Services of any special set up needs.
17. Capitol users should not tamper with the microphones or sound systems found in the rooms. A fee will be assessed for any damage to audio/visual equipment.
18. Room fees will be charged according to the attached fee schedule.

The undersigned has read both sides of this document and agrees that applicant will observe all Capitol rental regulations and rules, and will promptly pay the actual cost incurred. The Legislative Administration Committee shall be held harmless for any malfunction, injury, liability, or property damage arising from applicant's use. The applicant further certifies the organization, if any, has an open membership without restrictions for race, color, creed or sex.

_____ Applicant Signature

Diane Dunn
Visitor Services Representative

IMPORTANT: Please complete and return one (1) copy of this contract to Visitor Services, Oregon State Capitol, Salem, Or., 97310.
RENTAL FEE DOES NOT APPLY

ROOM USE FEE SCHEDULE

ROOM #	CAPACITY	4 HOURS	8 HOURS
50	125	$ 50	$ 75
137*	40	25	40
170, 174, 177	35	20	30
257*	35	20	30
243*	35	20	30
343	85	40	65
350*	50	30	55
354	35	20	30
357	85	40	65
454*	30	20	30
A & F	150	60	85
B, C, D, & E	100	50	75

PROPERTY MANAGEMENT FEE SCHEDULE

1/2" Video Player & Recorder	$25.00 - 8 hours 15.00 - 4 hours
Folding Tables	$ 4.00 ea per day
Overhead Projector	$ 15.00 - 8 hours 7.50 - 4 hours
Easels	$ 2.00 ea per day
16MM or 35MM Projector w/Screen	$ 15.00 - 8 hours 7.50 - 4 hours
Set up/Break down fee	$ 25.00

There is no charge for FM sound system for hearing impaired

FACILITY SERVICES CHARGES

Custodial	$ 12.00/hour
Heating Plant (for extraordinary heating requirements)	$ 60.00/hour
Executive Security (for extraordinary security coverage)	$ 18.00/hour