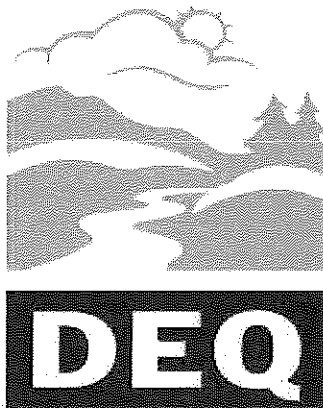


Part 1 of 3
OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 10/19/1989



State of Oregon
**Department of
Environmental
Quality**

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R E V I S E D A G E N D A

OREGON ENVIRONMENTAL QUALITY COMMISSION

NOTE: An Environmental Quality Commission strategic planning retreat is scheduled for October 18, 1989, at 11:30 a.m. in Room C-106, Commons Building, Marylhurst College. Discussion will continue through the morning of October 19, 1989, beginning at 8:30 a.m. The Commission will break for lunch at noon and resume strategic planning discussion until 2:00 p.m.

WORK SESSION

October 19, 1989
Marylhurst College
Commons Building, Room C-106
Marylhurst, Oregon

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

- 2:30 p.m. - 1. Enforcement Rules - Discussion of Implementation Experience
- 3:15 p.m. - 2. Oregon's Municipal Sludge Management Program

OREGON ENVIRONMENTAL QUALITY COMMISSION

REGULAR MEETING

October 20, 1989
Marylhurst College
Administration Building, Room 200
Marylhurst, Oregon

NOTE: Because of the agenda length, items considered at this meeting will be taken by the Commission in the order listed. Testimony will not be taken on rule adoption items, for which rulemaking hearings have already been held. However, the Commission may choose to question interested parties present at the meeting.

8:30 a.m. - Consent Items

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

- A. Minutes of the September 8 and 9, 1989, EQC work session and regular meeting.
- B. Civil Penalties Settlements
- C. Tax Credits for Approval
- D. Commission member reports:
 - Pacific Northwest Hazardous Waste Advisory Council (Hutchison)
 - Governor's Watershed Enhancement Board (Sage)
 - Strategic Planning (Wessinger)

Public Forum

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

Action Items

- E. New Source Approval - Proposed WTD Pulp Mill on the Lower Columbia River
- F. Site Inventory Listings - Proposed EQC Order Dismissing Contested Case Proceedings
- G. Site Inventory Listing - Proposed Hearings Officer's Order Regarding the City of Milwaukie

Rule Adoption

- H. General Groundwater Protection Policy - Adoption of Proposed Amendments

Action Items

- I. Interim Standards for Maximum Measurable Levels of Contaminants in Groundwater - Adoption of Temporary Rules
- J. Request by Northwest Environmental Defense Center (NEDC) for EQC to Initiate Rulemaking to Codify Internal Department Procedures Regarding Content of Permit Evaluations and Public Notices
- K. Request for Declaratory Ruling - Salt Caves Hydroelectric Project 401 Certification
- L. Assessment Deferral Loan Program - Approval of Applications for Funding for 1989-91 Biennium
- M. Underground Storage Tanks - Adoption of Temporary Rules to Implement Loan Guarantee Program Enacted in House Bill 3080

NOTE: Item M is pending and may be held over until the December 1, 1989 EQC meeting.

- N. Waste Tire Storage Site Cleanup - Approval of Funding Assistance for:
 - 1. DuBois Auto Recycling
 - 2. Ed Flater
- O-1. Request for Variance from Solid Waste Compacting Rules - Reidel Environmental, Inc. Composting Facility

Rule Adoptions

- O-2. Adoption of New Federal Rules - New Source Performance Standards (NSPS) and New National Emission Standards for Hazardous Air Pollutants (NESHAPS)
- P. Waste Tire Rules - Addition of Provisions Relating to Denial of Waste Tire Carrier Permits

Hearing Authorizations

- Q. Asbestos Abatement Program - Rule Amendments
- R. Emission Exceedances - Rule Revisions on Reporting Requirements and Actions for Sources which Experience Excess Emissions due to Startup, Shutdown, Scheduled Maintenance and Breakdowns

- S. Incinerator Rule - Amendments to Better Address Municipal and Hospital Units
- T. Special Waste - Proposed Rules
- U. Waste Tire Rules - Proposed Amendments to Remove Ocean Reefs from Reimbursement Eligibility; Adding Beneficial Use Permit; Change Rate of Reimbursement for Demonstration Projects; Additional Criteria for Financial Assistance in Removing Tires and Other Housekeeping Amendments

Informational Items:

- V. Container Nurseries - Update on Current Status

Because of the uncertain length of time needed, the Commission may deal with any item at any time in the meeting except those set for a specific time. Anyone wishing to be heard on any item not having a set time should arrive at 8:30 a.m. to avoid missing any item of interest.

The next Commission meeting will be Friday, December 1, 1989. There will be a short work session prior to this meeting on the afternoon of Thursday, November 30, 1989.

Copies of the staff reports on the agenda items are available by contacting the Director's Office of the Department of Environmental Quality, 811 S. W. Sixth Avenue, Portland, Oregon 97204, telephone 229-5395, or toll-free 1-800-452-4011. Please specify the agenda item letter when requesting.

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Approved
Approved with Corrections _____
Corrections Made _____

MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

ENVIRONMENTAL QUALITY COMMISSION

Minutes of the One Hundred Ninety-Seventh Meeting,
September 7 and 8, 1989

**Work Session
Thursday, September 7, 1989
12:00 p.m.**

The work session began at noon with the Commission viewing a videotape of the presentation "The Willamette: A River Restored". Fred Hansen, Director, announced the appointment of Lydia Taylor as Administrator of the Water Quality Division.

Work Session Item 1: Emission Exceedances--A Discussion on improvement to rules regarding excess emissions of air contaminants, and the benefit in developing uniform regulations within the Department for dealing with all excess emissions.

The Department asked the Commission to provide guidance on proposed upset rule amendments regarding temporary excess emissions of air contaminants.

The Department's current air quality upset rules require industry to promptly report all air contaminant emissions in excess of applicable standards. However, these rules imply that if the owner/operator reports the upset to the Department, the upset is automatically considered not to be a violation of applicable standards.

As a result of federal court actions, State Implementation Plan (SIP) rules deem all excess emissions as potential violations of standards. The burden of proof is placed on the source to demonstrate whether the period of excess emission should be excused from further enforcement action as a result of an unavoidable condition. The source must demonstrate that prompt notification and remedial action occurred, that control equipment was properly maintained and operated and that the excess emissions were not a recurring problem.

The Department will be proposing rule amendments to revise the SIP provisions dealing with excess emissions.

The Department recommended that Oregon's emission certification program be deferred to the EPA program as a way of streamlining government administrative requirements. The Department also suggested that they should retain the current program for efficiency testing and labeling to meet statutory requirements and to monitor lowest emission technology. Promotion of the manufacturing of BEST (best existing woodstove technology) should be pursued to effectively address the state's responsibility under federal law to reduce wood smoke so that federal air quality standards can be met.

John Kowalczyk and David Collier, Air Quality Division, gave a presentation of the woodstove certification program. Participating in the discussion were John Charles, representing the Oregon Environmental Council; Joe Weller, representing the American Lung Association; and Jim Herman of Earth Stoves representing the Wood Heating Alliance.

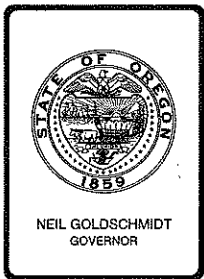
Mr. Weller handed out a copy of his presentation which is made a part of this meeting record. Mr. Weller referred to a recent survey of Oregonians about the air quality problem caused by woodstoves. He said that while he was disappointed by the responses, there was an awareness that some steps must be taken to reduce woodstove emissions. Mr. Weller indicated he believed the people of Oregon are ready to ask woodstove manufacturers to produce stoves with reduced emissions.

Mr. Herman stated that stoves have not been built yet that are durable. After July 1990, a voluntary testing program will begin. He said that most woodstove owners notify the stores when their stoves are not operating correctly. Mr. Kowalczyk responded that research and data show that people do not know when problems are occurring.

By consensus the Commission agreed that Oregon's woodstove emission certification program should be deferred to EPA and that efficiency certification and labelling should be retained. The Commission also agreed that at least as an interim step a voluntary stress test should be pursued as means of promoting durable stoves. The Commission directed staff to develop information on stress test methods and expectations of such a test program and to review this with the Commission before a final implementation decision is made. The Commission also requested that a report be presented by July 1990 on how the latest designed certified stoves are performing in the home. Finally, the Commission directed staff to explore incentive programs that could reduce emissions from existing woodstoves such as weatherization

Work Session and
EQC Meeting
Page 4
September 7 and 8, 1989

subsidies and use of the Department's current tax credit authority
for replacement heating systems.



Environmental Quality Commission

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

TO: Environmental Quality Commission DATE: October 19, 1989

FROM: Fred Hansen, Director

SUBJECT: EQC Work Session Item 1 - Enforcement Rules/Discussion
of Implementation Experience

On March 3, 1989, the Environmental Quality Commission adopted a new Enforcement Policy and Civil Penalty Procedure for incorporation in the Department's rules. The purpose of these rules is to provide statewide consistency and predictability in applying enforcement actions.

At the time of adoption, the Commission emphasized that these rules are part of a dynamic process and that future refinements could be anticipated as experience is gained through rule implementation. Considering the significance of the rule change, the Commission requested a status report within six months on progress made to date and any recommended rule modifications.

With this report, we would like to provide you with a summary of our implementation experience and advise you of our future actions.

Implementation

With six months experience in applying the new rules and policy, we believe major strides have been made towards upgrading our enforcement programs. Statewide consistency and predictability are being established with the uniform application of the rules, particularly with the use of Notices of Noncompliance and the civil penalty matrix. The new rules have also strengthened management of the overall process.

Because the new rules represented a significant new direction in the Department's enforcement practices, staff training and the development of guidance was necessary. Training was conducted through work sessions in our regional offices. This training not only included instructions on the new policy and rules but included presentations by the Attorney General's office on evidence gathering. Guidance on standardized wording for Notices of Noncompliance (NONs) as well as a new enforcement referral form was provided (Attachment 1). The latter is intended as a checklist of basic enforcement information necessary for a formal enforcement action and to establish statewide consistency in case development. Guidance has also been developed and distributed related to civil penalty imposition in the hazardous waste program.

In addition to training Department staff, at the request of Weyerhaeuser Corp., orientation on the new policy and rules was provided to all of its environmental managers.

One of the most significant elements of the new rules requires that every documented violation receive a Notice of Noncompliance (NON). This requirement has eliminated the field inspectors' discretion to resolve issues on an informal basis and provided management a greater ability to direct enforcement actions. Our rules now recognize the NON as meeting the statutory requirement (ORS 468.090) of first attempting to attain compliance through cooperation and conciliation. By issuing the NON as soon as possible (generally within a week if all evidence is available and violation(s) documented), a violator has a quick confirmation of the violation(s), the need for corrective action and, where appropriate, is advised if a referral for more formal enforcement action is being considered. This prevents unnecessary surprises when a formal action is received at a later date. Attachment 2 is a summary of the NONs issued from April through July 1989.

In addition to the NON, we are developing a Notice of Investigation (Attachment 3) which can be issued by the inspector at the time of the inspection. The purpose of this notice is to present a potential violator with a written record of our initial findings at the conclusion of our inspection. The notice would advise a violator of any immediate corrective action, and the potential for further enforcement action. Once the inspector has fully evaluated the results of the inspection including monitoring data/sampling results, any documented violations would be followed up by an NON and any other necessary formal enforcement action. We believe this field notice will have particular value when dealing with individuals and smaller sources that haven't previously dealt with the Department, and instances where management isn't available to discuss the results of an inspection.

Good documentation is one key to a sound enforcement program. Another that is equally important is follow-up. Without the latter, we lose the attention of a source and creditability in the field. To enhance our follow-up capabilities, we are incorporating a computerized enforcement tracking system into each of our field offices. This system will allow managers and administrators to routinely review the status of enforcement actions, compliance schedules, dates in orders, etc. Attachment 4 is an example of some of the types of tracking we expect to be doing by November 1989.

With respect to formal enforcement actions, the work load has more than doubled. At the end of August 1989, the Enforcement Section had logged in 174 formal action referrals (5-day warnings, civil penalties, orders and stipulated orders) as compared to 85 at the same time in 1988. As a further comparison, the 174 cases received through August exceeded the total number of formal actions (109) issued in 1988.

As we anticipated, civil penalty assessments increased in number and amount. Attachment 5 summarizes the number and amounts of penalties issued by the Department during the 8 1/2 year period from 1981 through June 30, 1989. Note that the \$152,890 of penalties imposed from January through June 30, 1989 far exceeds the highest yearly total of \$94,210 imposed in 1988.

The increase in formal actions has been accommodated without an increase in field and Enforcement Section staff. This has affected our ability to process actions in what has been considered an acceptable time frame (45-60 days from date of violation documentation). The increase in formal enforcement actions has been in the more traditional areas of air, water and hazardous waste. We believe two additional positions are needed now to handle this work. In addition to our traditional work, we are receiving enforcement referrals from a number of new or expanded programs. These include asbestos, confined animal feeding operations, waste tires, and underground storage tanks. We would project that an additional 2 to 3 positions are needed to cover these programs.

Aside from adding staff to process enforcement actions, the Department needs to continue evaluating its rules and permit conditions to ensure that they are enforceable and properly address meaningful environmental issues. We want to ensure that our resources are focused on the most critical of environmental problems.

The Next Step

For the most part, the Department believes that the revisions to Division 12, Enforcement Procedures and Civil Penalties, adopted by the Commission on March 3, 1989, have helped clarify the enforcement process for both the Department and the regulated community. The Department believes that the main component of the rules, the civil penalty determination process, has proven to be a vast improvement over the prior rules. It sees little need for any changes to the overall civil penalty determination process.

With the approximately 6 months of experience in using these rules, the Department believes, however, that revisions to the rules are necessary for several reasons:

- o Housekeeping. Because the revisions were developed over a relatively short period of time, there is need to clean up some of the language (excess words) and correct typographical errors and incorrect cross references.
- o Program Consistency. Penalty procedures for field burning, volatile organic compounds (VOC) and leaking underground storage tanks were not included in the revisions adopted in March. The Department believes that all programs should be classified. The rules require revisions in order to add these programs and to delete the civil penalty schedule from Division 26, Rules for Open Field Burning.

The justifications for proposed changes follow.

General Housekeeping Changes and Clarifications

Most of the proposed changes are intended to establish consistent wording between the program violation classifications. Other changes will clarify meanings and eliminate confusion. We are retitling "OAR 340-12-040 Notice of Violation" to read "Prior Notice and Exceptions". In addition, the definition of prior violation is being modified to clarify that violations established by contested cases are included with the definition.

The Department also proposes changing the reference in OAR 340-12-045(3) from subsection (1)(c)(C)(i) to subsection (1)(c)(C)(iv) as the reference is incorrect.

Substantive Changes to Specific Rules

The Department also proposes to make changes that will effect the substance of the following rules:

1. **OAR 340-12-030(9). Definition of "intentional".** The current definition of intentional contained in this rule comes from the Oregon Criminal Code. The Department believes that the use of such a definition is inappropriate for use in its rules as any violation of Oregon's environmental laws that met such a standard would constitute criminal conduct and should be treated as such. Thus, the Department believes the definition of "intentional" should reflect the civil nature of the Department's enforcement authority and laws.
2. **OAR 340-12-045. Civil Penalty Determination Procedure.** The Department believes that the civil penalty determination procedure has improved the way the Department assesses civil penalties and has made the process more efficient. However, the Department also believes that the weighing of the factors in the formula require refinement.

In response to several comments during the rulemaking process for the current rules, the Department stated that it did not believe that a violator's prior violations should be completely forgiven for the purposes of weighing in the civil penalty determination formula. However, the Department has discovered through the use of the formula that the effect of prior violations is extremely harsh in that the value can increase very quickly and remain at the upper level of the scale regardless of one's compliance history. While this approach may be fair for those whose compliance record is consistently poor, it fails to account for those whose compliance history is generally strong but experienced violations that are an aberration, not a way of doing business.

The Department believes it is necessary to take good overall compliance histories into account and to better distinguish between good and bad actors. The Department proposes to do this by modifying the values for the formula's prior violations factor. Instead of wiping the slate clean after a period of time, the Department proposes that the value of the prior violation or "P" factor be reduced by one step if the prior violations are more than three years old.

The Department also proposes changing the types of prior violations used to determine the value of "P". This portion of the formula has resulted in confusion both to the regulated community and the Department. Currently, unrelated and identical prior violations enter into determining the "P" value. There has been disagreement as to what is an "identical" violation as each violation has its own variables: statutes or rule cited, cause of the violation, location, etc. Also, violations are not equally addressed in terms of Class I, II and III.

This rule can be simplified and clarified by dropping the usage of the terms "unrelated" and "identical" and only use Class I or "Class One equivalents" to determine the "P" value. A Class I equivalent will be defined as: two Class II violations or one Class II and two Class III violations or three Class III violations. Therefore, all Class I violations would be equal, whether unrelated or identical, and Class II or Class III combinations would be fully considered in this proposed revision.

The Department also proposes to increase the highest value for the "P" factor to 10 rather than 8, which means the base penalty could increase by as much as 100 percent. (Each +1 factor in the formula represents a 10 percent increase of the base penalty amount).

3. **OAR 340-12-047. Compromise or Settlement of Civil Penalty by the Director.** Prior to the adoption of the present rules, the Department's process for assessing civil penalties was highly subjective. The current rules eliminated a great deal of the subjectivity from the process by clarifying the standards by which the penalty determination is to be made. The Department's process for settlement of civil penalties, however, is still subjective and, therefore, time consuming for all involved. The Department believes that setting standards for what the Department will consider in the decision to settle a civil penalty would lessen the subjectivity involved in the process, discourage requests for settlement in inappropriate circumstances, and would streamline the sometimes very lengthy negotiation process which may be involved. Thus, the Department proposes that OAR 340-12-047 be revised to include those factors the Department considers when determining whether to propose settlement of a civil penalty to the Commission. Such factors should include whether a violator had additional information relating to the violation which was unavailable to the Director at the time the penalty was assessed.

4. **OAR 340-12-048. Stipulated Penalties.** The Department proposes that the references to limits on the amount of stipulated penalties be removed as the Department is not legally limited to the statutory maximums established for civil penalties assessed by the Director when negotiating bilateral orders. Stipulated penalties are the result of negotiations between the Department and the responsible party. Stipulated penalty amounts are one subject of the negotiation. The Department should have the ability to exercise its full authority. Removal of the dollar limit from this rule does not lessen the protection from unlimited fines that the statutory maximum provide. Stipulated penalty amounts are the result of negotiations. Negotiations afford a responsible party the opportunity to assure that such penalties are not excessive.
5. **OAR 340-12-050. Air Quality Classification of Violations.** The Department proposes to include classes of field burning and VOC violations under the existing air quality classification and delete the schedule of open field burning civil penalties contained in OAR 340-26-025.
6. **OAR 340-12-067. Underground Storage Tank Classifications of Violations.** The Department believes that this classification applies to both underground and leaking underground storage tanks. However, the Department also believes that it is necessary to include several specific violations relating to leaking tanks. Such classification would help the Department determine its enforcement priorities in this area and inform the regulated community of those priorities.

Right of Entry

Many of the Department's programs have either a statutory right of entry to premises or the right to inspect records, or the statutory imposition of a duty upon the regulated community to allow access to premises or records for the purpose of ascertaining compliance with Oregon's environmental laws. Other programs require right of access as a condition of a Department permit. The ability to access property and records is extremely important to the Department as many of the programs administered by it rely on the regulated community monitoring itself. Thus, right of access is key to the Department's ability to ascertain compliance. Without such an ability, the Department would be unable to determine when violations are occurring and their seriousness.

Because of this, the Department proposes to make failure to provide access or make available records a Class I violation in those areas where the right of access is provided for either by statute or permit. The programs include air, water, hazardous and solid waste, and environmental cleanup.

Conclusion

Based upon our experiences to date, we have identified needed housekeeping, program consistency, and substantive rule revisions. Therefore, it is our intent to return to the Commission at its December 1, 1989 meeting with a request for hearing authorization on the rule revisions identified in Attachment 6.



Fred Hansen

Thomas R. Bispham:b
229-5287
GB8925
September 15, 1989

To: Enforcement Section, DEQ

Enforcement Use Only:

From: _____
(Region or Program)

Date Received: _____

Subject: Enforcement Case Referral

(Case name)

Reviewed by & date _____

Case Assigned to _____

cc: _____
(Program or Region)

Date Assigned _____

Case No. _____

Regional or Program _____ Date _____
Manager approval (Regional Manager approves if Regional referral;
Program Manager approves if Program referral.)

Supervisor approval _____ Date _____

Prepared by _____ Date _____

ENFORCEMENT ACTION REQUESTED (CHECK):

___ Issue a Notice of Violation and Intent to Assess Civil Penalty (NOI).

___ Issue a Notice of Violation and Civil Penalty Assessment (CPA).

___ Issue a Notice of Violation and Compliance Order (NOVCO) (used only for HW).

___ Issue a NOVCO and CPA (used only for HW).

___ Issue a Department Order (primarily used in the HW and animal waste programs).

___ Issue a Stipulation and Final Order (SFO) - (Primarily used in HW and WQ programs. The Region or program should draft the SFO and attach it to this referral; check with Enforcement for sample SFO's.)

___ Amend SFO No. _____
(attach draft amendment).

Comments:

VIOLATOR INFORMATION: (check where appropriate)

___ The violator's name and address is the same as is on a DEQ permit or license (attach copy).

___ The violator is an individual and does not have an assumed business name. List name and address:

___ The violator is a business. (Call Oregon Corporation Division 378-4166 to determine if the business is a corporation, assumed business name, or a partnership. If Corporation Division has no record, treat the violator as an individual).

___ Corporation (list name exactly as given):

___ Oregon Corporation

___ Foreign (out-of-state) Corporation _____
(name of state)

Name and address of registered agent:

___ Assumed Business Name. List the business name exactly as given and list the names and addresses of all of the parties of interest:

___ Partnership. List all partners exactly as given and addresses:

___ Violator's telephone number., if available:

___ There have been previous DEQ formal enforcement actions against this party. List case numbers:

CASE DETAILS: [Note: If you have prepared and attached an inspection report or memo that details any of the following questions, you do not have to repeat the information below. However, you need to specify under each question, by reference, exactly where the information is located in the attachments (eg. See 3rd paragraph of page 4 of the 5/21/89 inspection report.)]

1. What is the problem and how did you find out about it?

2. What did you observe?

3. When did the violation occur?

4. Where did the violation occur? (Street address or tax lot, section, township and range. Please identify property owner if this is an on-site sewage, hazardous waste or solid waste or waste tire disposal, or illegal open burning where the person responsible for the fire is unknown.)

5. Where did the violation occur on the property? (Attach a diagram if it would help in describing this.)

6. Why did the violation occur? (Was it due to accident, equipment breakdown, unusual weather conditions or negligent, intentional or flagrant act or omission of the violator?) Describe.

7. If you believe the cause of the violation was due to negligence, intentional or flagrant conduct of the violator, state why.

8. Describe the evidence/documentation you collected. If appropriate, were samples collected? (Attach a diagram describing sample locations and sample results.) Were photos taken? (Write date and description on the back of each photo, and your initials or do a photo log.)

9. List the statutes, administrative rules (OAR) or 40 CFR's that were violated, the class of each violation, and the evidence supporting each violation (or state where the evidence can be found in the referral or attachments; be specific.)

10. List witnesses (including DEQ or other agency personnel), addresses and phone numbers. What did each witness observe and how was each affected by the violation(s)? (Try to get a signed statement from each witness.) State whether or not the witness is willing to testify and whether or not the witness appears to be credible.

11. What were the impacts of the violation(s) on people, the environment, property, or wildlife. Describe the amounts of the materials involved, toxicity of the materials, duration of the violation(s), opacity, etc.

12. Did you interview the violator? (You should always try to talk with the violator.) What is the violator's story on what happened? Did the violator admit to the violations?

13. Was the violator cooperative in correcting or trying to correct the violation(s)? Explain.

14. Is the problem on-going or has it been corrected?

15. Did the violator gain an economic benefit as a result of the violation(s)? If yes, state how much and how you determined that amount.

16. Do you have any information concerning the economic condition of the violator?

17. Is there any history of noncompliance that has a bearing on this case?

18. Is there any specific compliance request you want to have stated in the cover letter? If this action is an Order, list what you want ordered and by what date?

19. Is there anything else we should be aware of in preparing this case?

20. Are you sure?

ATTACHMENTS

Additional pertinent case information -
please check appropriate items and attach to the referral.

- Notice of Noncompliance
- Correspondence
- Memos regarding the incident
- Property ownership information
- Permit or licenses
- Photographs
- Diagrams
- Inspection reports
- Reports from other agencies such as fire, police, ODA, APD.
- Sample results
- Chain of custody documentation
- Self monitoring reports
- Location maps
- Tax lot maps
- Smoke readers certification number and expiration dates for white and black smoke.
- Complaint forms.
- Witness statements.

SUMMARY OF NOTICES OF NONCOMPLIANCE ISSUED FROM
APRIL THROUGH JULY 1989

	<u>Total</u>
Air Quality	176
Noise	5
Water Quality	102
Solid Waste	51
Industrial Waste	7
Hazardous Waste	29
Oil	0
UST/LUST	93
On-Site Sewage	30
Recycling	<u>16</u>
Total:	509

GB8925.2

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY

Attachment 3

NOTICE OF INVESTIGATION

To: _____
(Person or Company)

You are hereby notified that on _____ at _____ a.m.
(Date) p.m.

at _____ the Department
(Location of Violation(s))

observed the following apparent violation(s): _____
(Description of Violation(s))

You should immediately take action to resolve these apparent violation(s). Violation of any provision of Oregon law or the Department's rules, orders or permits, is subject to enforcement action which may include civil penalties of up to \$10,000/day for air, water, hazardous waste, or underground storage tank violations or \$500/day for on-site sewage disposal, solid waste, or waste tire violations. Further Department enforcement action will follow by mail upon documentation of these or other violations.

Questions or comments about this incident can be directed to the DEQ investigator at the office listed on the back.

Notice issued by _____
(Name (please print), Office, and Phone Number)

on _____ at _____ a.m.
(Date) p.m.

By _____
(DEQ Investigator's Signature)

I acknowledge receipt of this Notice on _____:
(Date)

(Name - please print) (Signature)

Signing for receipt of this Notice is not an admission of guilt of any violation.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Office Addresses

HEADQUARTERS OFFICES

Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, OR 97204
229-5696 Toll-free 1-800-452-4011
Fax 229-6124

Air Quality Div. - 229-5359
Environmental Cleanup Div. - 229-5733
Hazardous & Solid Waste Div. - 229-5913
Regional Operations Div. - 229-5372
Water Quality Div. - 229-5279

Central Region Office

2146 N.E. 4th
Bend, OR 97701
388-6146

Counties served:

Crook	Klamath
Deschutes	Lake
Harney	Sherman
Hood River	Wasco
Jefferson	

Eastern Region Office

700 S.E. Emigrant, Suite 330
Pendleton, OR 97801
276-4063

Counties served:

Baker	Umatilla
Gilliam	Union
Grant	Wallowa
Malheur	Wheeler
Morrow	

Northwest Region Office

811 S.W. Sixth Avenue - 10th Floor
Portland, OR 97204
229-5263

Counties served:

Clackamas	Multnomah
Clatsop	Tillamook
Columbia	Washington

Southwest Region Office

201 W. Main Street
Suite 2-D
Medford, OR 97501
776-6010

Counties served:

Jackson
Josephine

Coos Bay Branch Office

490 N. 2nd
Coos Bay, OR 97420
269-2721

Counties served:

Coos
Curry

Roseburg Branch Office

1937 W. Harvard Boulevard
Roseburg, OR 97470
440-3338

County served:

Douglas

Willamette Valley Region Office

750 Front Street N.E.
Suite 120
Salem, OR 97310
378-8240

Counties served:

Benton	Marion
Lane	Polk
Lincoln	Yamhill
Linn	

ENFORCEMENT ACTIONS COMPLETED

09-15-1989

PAGE: 1

JURCE	LOCATION	PRO- GRAM	DATE OF VIOLATION	DESCRIPTION OF VIOLATION	ENFORCEMENT NUMBER	TYPE OF ACTION	COMPLIANCE SCHEDULE
ort Of Astoria	Astoria	AQ	11-07-1988	Open Burning Prohibited Materials	NWR-89-07	CP	
ammi Sand And Rock Prods	Columbia County	WQ	11-02-1988	Turbidity Violations	NWR-89-08	CP	penalty mitigated, lammi will prevent turbidity violations by recirculating water and land applying excess
JB'S METAL FINISHING	MULTNOMAH CO.	HW	08-01-1989	IMPROPER DISPOSAL OF HW	NWR-89-143	NON	
Smurfit Newsprint Corp	West Linn	AQ	03-08-1989	Odors From Pond	NWR-89-60	CP	12/31/89 (12/89) remove 7000 dry tons of sludge from pond
Louis Masog	36232 Oak Dr, Lebanon	WQ	09-01-1989	Manure Discharged To Creek	WVR-89-167	ORDER	10/15/89 (10/89) construct a temp ditch to carry manure to tank 11/01/89 (11/89) clean out county road ditch 12/01/89 (12/89) submit management plan 02/01/90 (02/90) submit record of BMPs implemented 05/30/92 (03/92) implement all BMPs

4-1

REGIONAL ENFORCEMENT REPORT
NORTHWEST REGION

Date: 09-15-1989

Page: 1

SOURCE LOCATION	ENFORCEMENT NUMBER	ENF ACTN	PROG	DESCRIPTION OF VIOLATION	DATE OF ENF ACTION	DAYS	PERMIT NUMBER	SOURCE CLASS
JACK FISHER CLACKAMAS CO	NWR-89-116	NON	AQ	OPEN BURNING	08-09-1989	8		
MURPHY TIMBER CLACKAMAS CO	NWR-89-117	NON	AQ	VIO. OF OPACITY REGULATIONS	08-09-1989	8		
DAVID SCHULTZE CLACKAMAS CO	NWR-89-120	NON	AQ	OPEN BURNING	08-14-1989	13		
LARSON INC. MULTNOMAH CO	NWR-89-121	NON	AQ	FUGITIVE EMISSIONS	08-14-1989	13		
KOPPERS-OXFORD MULTNOMAH CO.	NWR-89-122	NON	AQ	ODORS	08-15-1989	14		
JACK CANNON MULTNOMAH CO.	NWR-89-125	NON	AQ	OPEN BAURNING	08-18-1989	17		
CHUCK SCHLOSSER MULTNOMAH CO	NWR-89-126	NON	AQ	OPEN BURNING	08-18-1989	17		
HAROLD LORENZO MULTNOMAH CO.	NWR-89-127	NON	AQ	OPEN BURNING	08-18-1989	17		
TIMES LITHO WASHINGTON CO.	NWR-89-129	NON	AQ	VIO. OF OPACITY PERMIT REQUIREMENTS	08-18-1989	17		
L.G. ROCKSTEAD MULTNOMAH CO.	NWR-89-135	NON	AQ	OPEN BURNING	08-21-1989	20		
CLYDE THOMPSON CLATSOP CO.	NWR-89-133	NON	AQ	OPEN BURNING-TIRES	08-22-1989	21		
SUNSHINE DAIRY MULTNOMAH CO.	NWR-89-134	NON	AQ	EXCESSIVE NOISE	08-25-1989	24		
DUANE MUTSCHLER MULTNOMAH CO.	NWR-89-138	NON	AQ	OPEN BURNING	08-28-1989	27		
ROBIN HALL MULTNOMAH CO.	NWR-89-141	NON	AQ	OPEN BURNING	08-31-1989	30		
JOAN BORISCH MULTNOMAH CO.	NWR-89-142	NON	AQ	OPEN BURNING	08-31-1989	30		
WWMETAL FAB MULTNOMAH CO.	NWR-89-124	NON	HW	HW VIOLATION	08-14-1989	13		
GERBER LEGENDARY BLADES WASHINGTON CO.	NWR-89-130	NON	HW	HW VIOLATIONS	08-21-1989	20		
OECO CORP. CLACKAMAS CO.	NWR-89-136	NON	HW	HW VIOLATIONS	08-28-1989	27		

REGIONAL ENFORCEMENT REPORT
NORTHWEST REGION

Date: 09-15-1989

Page: 2

SOURCE LOCATION =====	ENFORCEMENT NUMBER =====	ENF ACTN	PROG	DESCRIPTION OF VIOLATION =====	DATE OF ENF ACTION	DAYS	PERMIT NUMBER	SOURCE CLASS
KATHY ERVI CLATSOP CO.	NWR-89-1113	NON	SS	FAILING SEWERE SYSTEM	08-03-1989	2		
BARBARA WILSON CLATSOP CO	NWR-89-114	NON	SS	FAILING SEWER SYSTEM	08-03-1989	2		
ROLAND HARDY CLATSOP CO	NWR-89-115	NON	SS	GRAY WATER DISCHARGE TO SURFACE	08-08-1989	7		
CHRISTINE PATTERSON CLATSOP CO.	NWR-89-131	NON	SS	FAILING ON SITE SYSTEM	08-21-1989	20		
SKYLER MALONEY MULTNOMAH CO.	NWR-89-137	NON	SS	FAILING ON SITE SYSTEM	08-28-1989	27		
SKYLER MALONEY MULTNOMAH CO.	NWR-89-139	NON	SS	SEWER VIOLATIONS	08-29-1989	28		
PARADISE MOORAGE COLUMBIA CO	NWR-89-118	NON	WQ	PERMIT VIO. & SLOW LEAK IN 2 HOMES	08-11-1989	10		
FLYING J SERVICE STATION CLACKAMAS CO	NWR-89-119	NON	WQ	FAILURE TO SUBMIT REPORT	08-11-1989	10		
PGE-BEAVER COLUMBIA CO.	NWR-89-123	NON	WQ	TSS EXCEEDS PERMIT LIMIT	08-16-1989	15		
THOUSAND TRAILS TILLAMOOK CO.	NWR-89-128	NON	WQ	FAILURE TO MONITOR	08-18-1989	17		
CAPE LOOKOUT STATE PARK TILLAMOOK CO.	NWR-89-132	NON	WQ	FAILURE TO MONITOR	08-21-1989	20		
TILLAMOOK CO. CREAMERY TILLAMOOK CO.	NWR-89-140	NON	WQ	EXCEEDED PERMIT	08-30-1989	29		

COUNT: 30

25

NUMBER OF CIVIL PENALTY NOTICES ISSUED AND DOLLARS ASSESSED -- DEPARTMENT OF ENVIRONMENTAL QUALITY
Jan. 1981 through June 30, 1989

PROGRAM AREA	YR1981	YR1982	YR1983	YR1984	YR1985	YR1986	YR1987	YR1988	YR1989 TO 6/30
Air Quality:									
Permitted Source	(2) 1,500	(1) 2,000	(4) 6,000	(3) 2,000	(4) 10,100	(6) 24,055	(5) 6,225	(1) 1,000	(2) 20,600
Asbestos					(1) 10,000		(1) 5,000	(8) 24,350	(2) 5,400
Volatile Organic Compounds (VOCs)					(1) 75	(3) 425	(3) 450	(1) 500	(1) 500
Wood Stoves							(1) 1,000	(2) 3,000	
Open Burning	(12) 4,900	(21) 3,500	(19) 8,600	(10) 1,300	(8) 3,550	(8) 10,850	(10) 2,500	(17) 7,525	(13) 11,250
Field Burning	(11) 14,800	(13) 11,200	(23) 10,950	(28) 13,150	(17) 5,528	(15) 5,280	(12) 4,450	(8) 5,600	
Noise				(2) 175	(4) 450		(1) 500		(1) 500
Subtotal	(25) 21,200	(35) 16,700	(46) 25,550	(43) 16,625	(35) 29,703	(32) 40,610	(33) 20,125	(37) 41,975	(19) 38,250
Water Quality:									
Ind Sources	(6) 15,250	(3) 2,000	(2) 3,000	(4) 15,450	(5) 23,800	(6) 10,300	(2) 4,300	(5) 6,600	(1) 11,100
Ind Strip Pen								(3) 4,000	(1) 8,000
Animal Waste						(2) 7,500	(2) 6,000	(2) 5,000	
Mun Sources	(1) 500	(2) 4,850	(1) 2,500	(2) 550	(1) 750	(1) 7,500	(1) 100	(3) 7,050	
Mun Strip Pen								(3) 5,410	(2) 3,610
Installer/ Pumper	(7) 2,100	(7) 3,450	(14) 19,550	(4) 1,000	(4) 500	(1) 100	(7) 2,300	(3) 800	(3) 1,380
On-Site Sew	(3) 975	(2) 750				(1) 150	(2) 750		
Oil Spills		(3) 2,500		(1) 1,000	(2) 1,500	(2) 2,550	(1) 3,500		
Subtotal	(17) 18,825	(17) 13,550	(17) 25,050	(11) 18,000	(12) 26,550	(13) 28,100	(15) 16,950	(19) 28,860	(7) 26,090
Hazardous/Solid Waste									
Hazardous Waste				(1) 2,500	(7) 23,500	(4) 25,500	15 22,000	(1) 7,500	(9) 80,300
Solid Waste		(2) 1,350			(3) 1,150				(1) 3,750
Waste Tires									(2) 6,500
Subtotal	0 0	(2) 1,350	0 0	(1) 2,500	(10) 24,650	(4) 25,500	(5) 22,000	(1) 7,500	(12) 90,550
TOTAL	(42) 40,025	(54) 31,600	(63) 50,600	(55) 37,125	(57) 80,903	(49) 94,210	(53) 59,075	(57) 78,335	(38) 152,890

OREGON ADMINISTRATIVE RULES CHAPTER 340 DIVISION 12
ENFORCEMENT PROCEDURE AND CIVIL PENALTIES
INDEX

<u>Rule Number</u>	<u>Page Number</u>
<u>340-12-026 - Policy</u>	<u>1</u>
<u>340-12-030 - Definitions</u>	<u>1</u>
<u>340-12-035 - Consolidation of Proceedings</u>	<u>2</u>
<u>340-12-040 - Prior Notice and Exceptions</u>	<u>3</u>
<u>340-12-041 - Enforcement Actions</u>	<u>3</u>
<u>340-12-042 - Civil Penalty Matrices</u>	<u>4</u>
<u>340-12-045 - Civil Penalty Determination Procedure</u>	<u>7</u>
<u>340-12-046 - Written Notice of Assessment of Civil Penalty:</u> <u> When Penalty Payable</u>	<u>9</u>
<u>340-12-047 - Compromise or Settlement of Civil Penalty by Director</u>	<u>9</u>
<u>340-12-048 - Stipulated Penalties</u>	<u>10</u>
<u>340-12-050 - Air Quality Classification of Violations</u>	<u>10</u>
<u>340-12-052 - Noise Control Classification of Violations</u>	<u>12</u>
<u>340-12-055 - Water Quality Classification of Violations</u>	<u>13</u>
<u>340-12-060 - On-Site Sewage Disposal Classification of Violations</u>	<u>14</u>
<u>340-12-065 - Solid Waste Management Classification of Violations</u>	<u>15</u>
<u>340-12-066 - Solid Waste Tire Management of Classification of</u> <u> Violations</u>	<u>16</u>
<u>340-12-067 - Underground Storage Tank Classification of Violations</u>	<u>17</u>
<u>340-12-068 - Hazardous Waste Management and Disposal</u> <u> Classification of Violations</u>	<u>19</u>
<u>340-12-069 - Oil and Hazardous Material Spill and Release</u> <u> Classification of Violations</u>	<u>21</u>
<u>340-12-071 - PCB Classification of Violations</u>	<u>21</u>
<u>340-12-073 - Environmental Cleanup Classification of Violations</u>	<u>22</u>
<u>340-12-080 - Scope of Applicability</u>	<u>22</u>

Effective Date: March 14, 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) Protect the public health and the environment;
 - (c) Deter future violators and violations; and
 - (d) Ensure an appropriate and consistent statewide enforcement program.
- (2) Except as provided by 340-12-040(3), the Department shall [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 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)

DEFINITIONS

340-12-030

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

- (1) "Class One equivalent" or "equivalent" means two Class Two violations or one Class Two and two Class Three violations or three Class Three violations.
- (2) [(1)] "Commission" means the Environmental Quality Commission.
- (3) [(2)] "Compliance" means meeting the requirements of the Commission's and Department's statutes, rules, permits or orders.
- (4) [(3)] "Director" means the Director of the Department or the Director's authorized deputies or officers.
- (5) [(4)] "Department" means the Department of Environmental Quality.
- (6) [(5)] "Documented Violation" means any violation which the Department or other government agency verifies through observation, investigation or data collection.
- (7) [(6)] "Enforcement" means any documented action taken to address a violation.
- (8) [(7)] "Flagrant" means any documented violation where the respondent had actual knowledge of the law and had consciously set out to commit the violation.
- (9) [(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.

(10) [(9)] "Intentional", means any voluntary act or omission which causes the result [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].

(11) [(10)] "Magnitude of the Violation" means the extent of a violator's deviation from 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.

(12) [(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. (was this to be dropped?)

(13) [(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.

(14) [(13)] "Prior Violation" means any violation proven pursuant to a contested case hearing, or established by payment of a civil penalty, by an order of default, or a stipulated or final order of the Commission or the Department.

(15) [(14)] "Respondent" means the person to whom a formal enforcement action is issued.

(16) [(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.

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

(18) [(17)] "Violation" means a transgression of any statute, rule, order, license, permit, 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)

PRIOR NOTICE AND EXCEPTIONS [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] The above 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.

(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 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

^	-----	Major	Moderate	Minor	-----
C	|				|
l	-----				-----
a	|				|
s	| Class	\$5,000	\$2,500	\$1,000	|
s	| I				|
I	|				|
of	-----				-----
V	|				|
i	| Class	\$2,000	\$1,000	\$500	|
o	| II				|
l	|				|
a	-----				-----
t	| Class	\$500	\$250	\$100	|
i	| III				|
o	|				|
n	|				|

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 environmental cleanup [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 than 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

	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
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 $BP + [(.1 \times BP)(P + H + E + O + R + C)]$ 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, the prior violation described in subsection (ii) is greater than three years old, or insufficient information on which to base a finding;

(ii) 1 if the prior violation is [an unrelated Class Three;] one Class Two or two Class Threes, or the prior violations described in subsection (iii) are greater than three years old;

(iii) 2 if the prior violation(s) is [an unrelated Class Two, two unrelated Class Threes or an identical Class Three;] one Class One or equivalent or the prior violations described in subsection (iv) are greater than three years old;

(iv) 3 if the prior violation(s) is [an unrelated Class One, three unrelated Class Threes or two identical Class Threes;] two Class Ones or equivalents, or the prior violations described in subsection (v) are greater than three years old;

(v) 4 if the prior violations are [two unrelated Class Twos, four unrelated Class Threes, an identical Class Two or three identical Class Threes;] three Class Ones or equivalents, or the prior violations described in subsection (vi) are greater than three years old;

(vi) 5 if the prior violations are [five unrelated Class Threes or four identical Class Threes;] four Class Ones or equivalents, or the prior violations described in subsection (vii) are greater than three years old;

(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;] five Class Ones or equivalents, or the prior violations described in subsection (viii) are greater than three years old;

(viii) 7 if the prior violations are six Class Ones or equivalents, or the prior violations described in subsection (xi) are greater than three years old;

(ix) [(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.] seven Class Ones or equivalents, or the prior violations described in subsection (x) are greater than three years old;
(x) 9 if the prior violations are eight Class Ones or equivalents, or the prior violations described in subsection (xi) are greater than three years old;
(xi) 10 if the prior violations are nine Class Ones or equivalents.

(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) 0 to -4 if economic condition is poor, subject to subsection (4) of this section;
- (ii) 0 if there is insufficient information on which to base a finding, [or] the respondent gained no economic benefit through noncompliance, or the respondent is economically sound;
- (iii) 2 if 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 if negligent;
- (iv) 4 if grossly negligent;
- (v) 6 if intentional;
- (vi) 10 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.

(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. On review, the Commission shall consider the factors contained in subsection (1) of this rule and any other relevant rule of the Commission.

(3) If the Department or Commission finds that the economic benefit of noncompliance exceeds the dollar value of 4 in subsection (1)(c)(C)(iv) [(i)] of this section, it may increase the penalty by the amount of economic gain, as long as the penalty does not exceed the maximum penalty allowed by rule and statute.

(4) In any contested case proceeding or settlement in which Respondent has raised economic condition as an issue, Respondent has the responsibility of providing [written or other] documentary evidence concerning its economic condition. In determining whether to mitigate a penalty based on economic condition, the Commission or Department may consider the causes and circumstances of Respondent's economic condition.
(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

(1) Any time subsequent to service of the written notice of assessment of civil penalty, the Commission or Director may compromise or settle any unpaid civil penalty at any amount that the Commission or Director deems appropriate. Any compromise or settlement executed by the Director shall not be final until approved by the Commission.

(2) In determining whether a penalty should be compromised or settled, the Director may take into account the following:

(a) New information obtained through further investigation or provided by respondent which relates to the penalty determination factors contained in OAR 340-12-045;

(b) The effect of compromise or settlement on the deterrence;

(c) Whether respondent has or is willing to employ extraordinary means to correct the violation or maintain compliance;

(d) Whether respondent has any previous penalties which have been compromised or settled;

(e) Whether the compromise or settlement would be consistent with the Department's goal of protecting the public health and environment;

(f) The relative strength or weakness of the Department's case.

(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, or ORS Chapters 454, 459, 466, 467 or 468, [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

340-12-050

Violations pertaining to air quality shall be classified as follows:

(1) Class One:

(a) [(n)] Violation of a Commission or Department Order, or variance;

(b) [(a)] Exceeding an allowable emission level such that an ambient air quality standard is exceeded.

(c) [(b)] Exceeding an allowable emission level [such that emissions of potentially dangerous amounts] of a [toxic or otherwise] hazardous air pollutant [substance are emitted].

(d) [(c)] Causing emissions that are [potentially] a hazard to public safety;

(e) [(d)] Failure to comply with Emergency Action Plans or allowing excessive emissions during emergency episodes;

(f) [(e)] Constructing or operating a source without an Air Contaminant Discharge Permit;

(g) [(f)] Modifying a source with an Air Contaminant Discharge Permit without first notifying and receiving approval from the Department;

(h) [(g)] Violation of a compliance schedule in a permit;

(i) [(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;

(j) [(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;

(k) [(j)] Visible emissions of asbestos during an asbestos abatement project or during collection, processing, packaging, transportation, or disposal of asbestos-containing waste material;

(l) [(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;

(m) [(1)] Advertising to sell, offering to sell or selling an uncertified wood stove;

(n) [(m)] [Illegal o]Open burning of materials prohibited by OAR 340-23-042(2);

(o) Causes or allows open field burning without first obtaining and readily demonstrating a valid open field burning permit;

(p) Causes or allows open field burning or stack burning where prohibited by OAR 340-26-010(7) or OAR 340-26-055(1)(e);

(q) Causes or allows to maintain any propane flaming which results in visibility impairment on any Interstate Highway or Roadway specified in OAR 837-110-080(1) and (2) or fails to immediately and actively extinguish all flames and smoke sources when visibility impairment occurs;

[(n) Violation of a Commission or Department Order;]

(r) Failure to provide access to premises or records;

(s) [(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 emissions [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, or an emission limit violation;

(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] [a]Alteration of a certified woodstove permanent label;

(o) Failure to use vapor control equipment when transferring fuel;

- (p) Failure to file a Notice of Construction or permit application;
- (q) Failure to submit a report or plan as required by permit;
- (r) Violation of any other requirement of OAR Chapter 340 Division 26 pertaining to open field burning not otherwise classified;
- (s) [(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;]
 - (a) [(c)] [Any] [v]Violation of a hardship permit for open burning of yard debris;
 - (b) [(d)] Improper notification of an asbestos abatement project;
 - (c) [(e)] Failure to comply with asbestos abatement certification, licensing, certification, or accreditation requirements not elsewhere classified;
 - (d) [(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;]
 - (e) [(i)] Any other violation related to air quality which poses a minor risk of harm to public health or the environment.
(Statutory Authority: ORS CH 468)

NOISE CONTROL CLASSIFICATION OF VIOLATIONS

340-12-052

Violations pertaining to noise control shall be classified as follows:

- (1) Class One:
 - (a) Violation of a Commission or Department order or variance;
 - (b) [(a)] Violations that exceed [daytime or night time ambient] noise standards by ten (10) decibels or more;
 - (c) [(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]
 - (d) Failure to submit a compliance schedule required by OAR 340-35-035(2);
 - (e) Operating a motor sports vehicle without a properly installed or well-maintained muffler or exceeding the noise standards set forth in OAR 340-35-040(2);
 - (f) Operating a new permanent motor sports facility without submitting and receiving approval of projected noise impact boundaries;
 - (g) Failure to provide access to premises or records;
 - (h) Violation of motor racing curfews set forth in OAR 340-35-040(6);

(i) [(f)] 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] that exceed noise standards [that are not subject to the Class One category and generally exceeding the standards] by three (3) decibels or more;

(b) Advertising or offering to sell or selling an uncertified racing vehicle without displaying the required notice or obtaining a notarized affidavit of sale [Violations of emission standards and other regulatory requirements;]

(c) Any other violation related to noise control which poses a moderate risk of harm to public health or the environment.

(3) Class Three:

(a) Violations that exceed noise standards by one (1) or two (2) decibels; [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;]

(b) [(d)] Any other violation of related to noise control which poses a minor risk of harm to public health or the environment.
(Statutory Authority: ORS CH 467 & 468)

WATER QUALITY CLASSIFICATION OF VIOLATIONS

340-12-055

Violations pertaining to water quality shall be classified as follows:

(1) Class One:

(a) [Any] [v] Violation of a Commission or Department Order;

(b) [Any] [i] Intentional unauthorized discharges;

(c) [Any] [n] Negligent spills which pose[s] a major risk of of [or] harm to public health or the environment;

(d) [Any] [w] Waste discharge permit limitation violations which pose[s] a major risk of harm to public health or the environment;

(e) [Any] [d] Discharge of waste to surface waters without first obtaining a National Pollutant Discharge Elimination System Permit;

(f) [Any] [f] Failure to immediately notify of spill or upset condition which results in an unpermitted discharge to public waters;

(g) [Any] [v] Violation of a permit compliance schedule [in a permit];

(h) Failure to provide access to premises or records;

(i) [(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] [w] Waste discharge permit limitation violations which pose[s] a moderate risk of harm to public health or the environment;

(b) [Any] [o] Operation of a disposal system without first obtaining a Water Pollution Control Facility Permit;

(c) Negligent spills which pose a moderate risk of harm to public health or the environment;

(d) [(c)] [Any] [f] Failure to submit a report or plan as required by permit or license;

(e) [(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] [f] Failure to submit a discharge monitoring report (DMR) on time;

(b) [Any] [f] Failure to submit a completed DMR;

(c) Negligent spills which pose a minor risk of harm to public health or the environment;

(d) [(c)] [Any] [v] Violation of a waste discharge permit limitation which poses a minor risk of harm to public health or the environment;

(e) [(d)] Any other violation related to water quality which poses a minor risk of harm to public health or the environment.

(Statutory Authority: ORS CH 468)

ON-SITE SEWAGE DISPOSAL CLASSIFICATION OF VIOLATIONS

340-12-060

Violations pertaining to On-Site Sewage Disposal shall be classified as follows:

(1) Class One:

(a) Violation of a Commission or Department order;

(b) [(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;

(c) [(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;

(d) [(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;]

(f) [(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.

(g) Failure to provide access to premises or records;

(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) Installing or causing to be installed a nonwater-carried waste disposal facility without first obtaining written approval from the Agent therefor;

(g) Failing to connect all plumbing fixtures from which sewage is or may be discharged to a Department approved system;

(h)[(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.

(Statutory Authority: ORS CH 468)

SOLID WASTE MANAGEMENT CLASSIFICATION OF VIOLATIONS

340-12-065

Violations pertaining to the management and disposal of solid waste shall be classified as follows:

(1) Class One:

(a) Violation of a Commission or Department Order;

(b)[(a)] Establishing, expanding, maintaining or operating a disposal site without first obtaining a permit;

(c)[(b)] [Any] [v] Violation of the freeboard limit or actual overflow of a sewage sludge or leachate lagoon;

(d)[(c)] [Any] [v] Violation of the landfill methane gas concentration standards;

(e)[(d)] [Any] [i] Impairment of the beneficial use(s) of an aquifer beyond the solid waste boundary or an alternative boundary specified by the Department;

(f)[(e)] [Any] [d] Deviation from the approved facility plans which results in a potential or actual safety hazard, public health hazard or damage to the environment;

(g)[(f)] [Any] [f] Failure to properly maintain gas or leachate control facilities;

(h)[(g)] [Any] [f] Failure to comply with the requirements for immediate and final cover;

[(h) Violation of a Commission or Department Order;]

(i) Violation of a compliance schedule contained in a solid waste disposal or closure permit;

(j) Failure to provide access to premises or records;

(k) [(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] [f] Failure to comply with the required cover schedule;

(b) [Any] [f] Failure to comply with working face size limits;

(c) [Any] [f] Failure to adequately control access;

(d) [Any] [f] Failure to adequately control surface water drainage;

(e) [Any] [f] Failure to adequately protect and maintain monitoring wells;

(f) [Any] [f] Failure to properly collect and analyze required water or gas samples;

[(g) [Any failure to comply with] Violation of a compliance schedule contained in a solid waste disposal or closure permit;]

(g) [(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] [f] Failure to submit self-monitoring reports in a timely manner;

(b) [Any] [f] Failure to submit a permit renewal application in a timely manner;

(c) [Any] [f] Failure to submit required permit fees in a timely manner;

(d) [Any] [f] Failure to post required or adequate signs [or failure to post adequate signs];

(e) [Any] [f] Failure to adequately control litter;

(f) [Any] [f] 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.

(Statutory Authority: ORS CH 459)

SOLID 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) Violation of a Commission or Department order;

(b) [(a)] Establishing, expanding or operating a waste tire storage site without first obtaining a permit;

(c) [(b)] Disposing of waste tires at an unauthorized site;

(d) [(c)] [Any v] Violation of the compliance schedule or fire safety requirements of a waste tire storage site permit;

(e) [(d)] Hauling waste tires [Performing], or advertising or representing one's self as being in the business of [performing services as] a waste tire carrier without first obtaining [and maintaining] a [current] waste tire carrier permit [form] from the Department[, except as provided by statute or rule];

(f)[(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) Failure to provide access to premises or records;

(h) [(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] [~~v~~]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] [~~f~~]Failure to submit required annual reports in a timely manner;

(b) [Any] [~~f~~]Failure to keep required records on use of vehicles;

(c) [Any] [~~f~~]Failure to post required signs;

(d) [Any] [~~f~~]Failure to submit a permit renewal application in a timely manner;

(e) [Any] [~~f~~]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

340-12-067

Violations pertaining to Underground Storage Tanks shall be classified as follows:

(1) Class One:

(a) Violation of a Commission or Department Order;

(b)[(a)] [Any] [~~f~~]Failure to promptly report a release from an underground storage tank which poses a major risk of harm to public health or the environment;

(c)[(b)] [Any] [~~f~~]Failure to initiate the investigation or cleanup of a release from an underground storage tank which poses a major risk of harm to public health or the environment;

(d) Failure to prevent a release which poses a major risk of harm to public health or the environment;

(e)[(c)] Placement of a regulated material into an unpermitted underground storage tank;

(f)[(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;]

(g) [(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;

(h) [(g)] Providing supervision of the installation, retrofitting, decommissioning or testing of an underground storage tank without first obtaining an underground storage tank supervisors license;

(i) Failure to submit required reports from the investigation or

cleanup of a release which poses a major risk of harm to public health or the environment;

(j) Failure to provide access to premises or records;

(k) [(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 promptly report a release from an underground storage tank which poses a moderate risk of harm to public health or the environment;

(b) Failure to initiate investigation or cleanup of a release which poses a moderate risk of harm to public health or the environment.

(c) [(a)] Failure to prevent a release which poses a moderate risk of harm to the environment;

(d) Failure to submit required reports from the investigation or cleanup of a release which poses a moderate risk of harm to public health or the environment;

(e) [(b)] Failure to conduct required underground storage tank monitoring and testing activities;

(f) [(c)] Failure to conform to operational standards for underground storage tanks and leak detection systems;

(g) [(d)] [Any] [f] Failure to obtain a permit prior to the installation or operation of an underground storage tank;

(h) [(e)] Failure to properly decommission an underground storage tank;

(i) [(f)] Providing installation, retrofitting, decommissioning or testing services on an regulated underground storage tank that does not have a permit;

(j) [(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;

(k) [(h)] Allowing the installation, retrofitting, decommissioning or testing by any person not licensed by the department;

(l) [(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 promptly report a release from an underground storage tank which poses a minor risk of harm to public health or the environment;

(b) Failure to initiate investigation or cleanup of a release which poses a minor risk of harm to public health or the environment;

(c) Failure to prevent a release which poses a minor risk of harm to public health or the environment;

(d) Failure to submit required reports from the investigation or cleanup of a release which poses a minor risk or harm to public health or the environment;

(e) [(a)] Failure to submit an application for a new permit when an underground storage tank is acquired by a new owner;

(f) [(b)] Failure of a tank seller or product distributor to notify a tank owner or operator of the Department's permit requirements;

(g) [(c)] Decommissioning an underground storage tank without first providing written notification to the Department;

(h) [(d)] Failure to provide information to the Department regarding the contents of an underground storage tank;

- (i) [(e)] Failure to maintain adequate decommissioning records;
- (j) [(f)] Failure by the tank owner to provide the permit number to persons depositing product into the underground storage tank;
- (k) [(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 than twenty-five dollars (\$25) nor more than one hundred dollars (\$100) for each day the fee is due and owing.

(Statutory Authority: ORS Chapter 466)

HAZARDOUS WASTE MANAGEMENT AND DISPOSAL CLASSIFICATION OF VIOLATIONS

340-12-068

Violations pertaining to the management and disposal of hazardous waste shall be classified as follows:

(1) Class One:

(a) Violation of a Department or Commission order:

(b) [(a)] Failure to carry out waste analysis for a waste stream or to properly apply "knowledge of process";

(c) [(b)] Operating a storage, treatment or disposal facility (TSD) without a permit or without meeting the requirements of OAR 340-105-010(2)(a);

(d) [(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;

(e) [(d)] Shipment of hazardous waste without a manifest;

(f) [(e)] Systematic failure of a generator to comply with the manifest system requirements;

(g) [(f)] Failure to satisfy manifest discrepancy reporting requirements;

(h) [(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;

(i) [(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);

(j) [(i)] Illegal disposal of hazardous waste;

(k) [(j)] Disposal of waste in violation of the land disposal restrictions;

(l) [(k)] Mixing, solidifying, or otherwise diluting waste to circumvent land disposal restrictions;

(m) [(l)] Incorrectly certifying a waste for disposal/treatment in violation of the land disposal restrictions;

(n) [(m)] Failure to submit notifications/certifications as required by land disposal restrictions;

(o) [(n)] Failure to comply with the tank certification requirements;

(p) [(o)] Failure of an owner/operator of a TSD facility to have closure and/or post closure plan and/or cost estimates;

(q) [(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;

(r)(q) Failure to establish or maintain financial assurance for closure and/or post closure care;

(s)(r) Systematic failure to conduct unit specific and general inspections as required or to correct hazardous conditions discovered during those inspections;

(t)(s) Failure to follow emergency procedures contained in response plan when failure could result in serious harm;

(u)(t) Storage of hazardous waste in containers which are leaking or present a threat of release;

(v)(u) Systematic failure to follow container labeling requirements or lack of knowledge of container contents;

(w)(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;

(x)(w) Failure to date containers with accumulation date;

(y)(x) 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 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) Failure to provide access to premises or records;

(hh) [(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.

(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.

(3) 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
340-12-069

Violations pertaining to spills or releases of oil or hazardous materials shall be classified as follows:

- (1) Class One:
 - (a) Violation of a Commission or Department Order;
 - (b)[(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) Failure to provide access to premises or records;
 - (d) [(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.
- (Statutory Authority: ORS CH 466)

PCB CLASSIFICATION OF VIOLATIONS
340-12-071

Violations pertaining to the management and disposal of polychlorinated biphenyls (PCB) shall be classified as follows:

- (1) Class One:
 - (a) Violation of a Commission or Department Order;
 - (b)[(a)] Treating or disposing of PCBs anywhere other than at a permitted PCB disposal facility;
 - (c)[(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) Failure to provide access to premises or records:

(e) [(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] a 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.

(Statutory Authority: ORS Chapter 466)

ENVIRONMENTAL CLEANUP CLASSIFICATION OF VIOLATIONS

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);]

(a) Failure to provide access to premises or records;

(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;

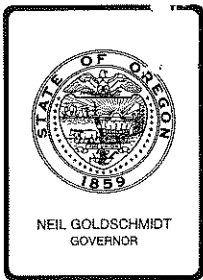
(b) Any other violation related to environmental cleanup which poses a minor risk of harm to public health or the environment.

(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.



Environmental Quality Commission

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

INFORMATIONAL ITEM

Meeting Date: October 19, 1989
Agenda Item: 2
Division: Water Quality
Section: Sewage Disposal

SUBJECT:

The Department's Sludge Management Program.

PURPOSE:

This report describes DEQ's existing sludge program and program needs. It also summarizes existing and proposed federal sludge regulations. These regulations are considered factors affecting future program delegation from EPA.

A 15 to 20 minute slide presentation on Oregon's sludge program will be provided at the work session.

BACKGROUND:

SEWAGE SLUDGE AND SEPTAGE GENERATION

Sewage sludge is a by-product of domestic wastewater treatment processes. As the level of wastewater treatment efficiency increases, the quantity of solids generated increases. For example, tertiary treatment produces more solids than secondary treatment. Domestic sewage sludge typically contains 93 to 99-1/2 percent water, settleable and suspended solids, dissolved substances (including metals), nutrients, bacteria, viruses, and protozoa. Some sludges may also contain parasitic worms or their ova and trace amounts of organic materials including pesticides.

When domestic wastewater is treated in a septic tank, a combination of settleable materials (sludge) and floatable residues (scum) accumulate in the tank. These materials, together with the water which is evacuated with tank pumping, are called septage. Septage from household septic tanks is somewhat similar in composition to domestic sludges produced by wastewater treatment plants (WWTPs), except that it has not undergone additional treatment or stabilization.

Meeting Date: October 19, 1989
Agenda Item: 2
Page 2

Oregon's privately and publicly owned WWTPs produce about 28,100 dry tons stabilized sludge each year. Approximately 4,500 dry tons septage are removed from household septic tanks in Oregon annually. In the future, as WWTP treatment efficiencies are required to improve to further reduce wastewater pollutants prior to discharge or disposal, and as the state's population increases, the amount of sludge and septage produced in Oregon will increase.

SLUDGE PROCESSING

In order to reduce objectionable features, sludges undergo a variety of different physical, chemical, and biological degradation or treatment processes designed to condition and stabilize the sludge. These processes reduce solids volume and make sludge easier to manage.

DEQ'S SLUDGE MANAGEMENT APPROACH - BENEFICIAL SLUDGE UTILIZATION

For several years, DEQ has recognized that properly stabilized, well-managed, sludge and septage are beneficial recyclable resources due to their fertilizer and soil conditioning properties. The advantages of resource recovery accomplished through sludge land application and composting considerably outweigh potential risks associated with this alternative of solids use provided sludge is properly managed. Sludge land spreading is an environmentally preferable alternative to landfilling, dedicated land disposal, surface disposal, or sludge incineration.

In Oregon, a relatively large percentage of forest and pasture lands are available for sludge application. Rising fertilizer costs have provided ample incentive for farmers, ranchers, and foresters to use sludge. Sludge contains macronutrients like nitrogen, phosphorous, and potassium, as well as other plant essential nutrients like calcium, magnesium, zinc, iron, manganese, and copper. Although not considered a high-grade fertilizer, sludge contains \$50 to \$60 per dry ton worth of organic nitrogen and phosphorus. Due to its organic matter content, land applied sludge or sludge derived compost increases soil tilth, improves soil structure, expands the soil's chemical treatment capacity, increases soil water holding capacity, and accelerates the rate of soil drainage and aeration.

Approximately 94 percent (26,500 dry tons) of Oregon's WWTP sludges are beneficially recycled to land annually. Those solids contain about 450 dry tons of plant available nitrogen, 300 tons of phosphorous, 105 dry tons of potassium, 60 dry tons of zinc, and 20 dry tons of copper. If all sludges and septages land applied in Oregon were placed on western Oregon pasture,

Meeting Date: October 19, 1989
Agenda Item: 2
Page 3

approximately 9,540 acres would be required annually to assimilate nitrogen available from the sludge.

OREGON SLUDGE STATUTES, RULES, AND GUIDELINES

Both the Department's Water Quality and Solid and Hazardous Waste Divisions have certain regulatory responsibilities for sludge management. Although sludge is defined as a solid waste under Oregon solid waste regulations (OAR 340 Division 61) and existing federal sludge regulations (40 CFR Part 257), most sludge and septage management operations are regulated under water quality source permits (420) and on-site sewage disposal service business licenses (160). A few septage lagoons and a septage processing facility have been regulated under solid waste disposal permits (18). Facilities for sludge composting operations which are open to the atmosphere are regulated under both solid waste rules and water quality rules and guidelines (1).

Domestic sewage sludges, sludge derived products like compost, and septage have some potentially harmful characteristics that need to be addressed via proper management to assure protection of the environment and the public health. Oregon's current sludge management program is preventative in nature. It takes into account both the advantageous and disadvantageous qualities of sludge and septage.

To protect the environment, promote sludge recycling, and address desired management practices, the Department developed written sludge guidelines based on best management practices in 1981. Guidelines provide technical direction to permitted sources, sewage treatment plant design engineers, DEQ staff, and the public on acceptable sludge stabilization practices, beneficial use sludge application site selection, and appropriate annual and multi-year sludge loading rates.

Guidelines recognize that the degree to which sludge is processed prior to field application is very important to minimize exposure to pathogenic and parasitic organisms. They also recognize inadequately digested or mismanaged sludge can: (1) result in nuisance conditions (e.g., odor, unsightly appearance, attraction of flies and rodents); (2) be a reservoir for disease and parasitic organisms such as bacteria, virus, protozoans, or worm parasites; (3) retard optimum crop production from excessive application of copper, nickel, or zinc; (4) jeopardize the health of people and animals from excess application of nitrogen, lead, and cadmium; and (5) degrade surface and groundwater with nitrates, phosphates, toxic organic compounds and oxygen demanding substances.

Meeting Date: October 19, 1989
Agenda Item: 2
Page 4

Oregon guidelines indicate environmentally safe limits for sludge metals loading. They also require that sludge be applied within agronomic rates (usually based on sludge nitrogen content) on a crop specific basis. Guidelines obviate the necessity of groundwater monitoring where sludge nitrogen and phosphorus additions will not exceed recognized crop fertilizer needs. To help assure environmental problems linked to nitrogen or metal overloading do not occur, sources are required to document annual nitrogen and cumulative metal solids additions at each sludge land application site they operate¹.

To minimize health risks associated with sludge utilization, Oregon guidelines promote sludge applications on crops like turf grass, ornamental plants, seed grass, timber products, pasture, and small grains which are unlikely to transfer pathogens and metals through the food chain. Crops like non- or low-cadmium uptake fresh market vegetables can be cultivated on sludge amended soils. However, to reduce the risk of pathogen exposure, their growth is subject to tight restrictions including lengthy waiting periods between the time the sludge is land applied and crops can be planted or harvested. Restrictions tend to discourage sludge application on land where these types of crops are grown.

To facilitate the enforcement of certain guidelines, in 1983 the Oregon Legislature passed a law which required the Environmental Quality Commission (EQC) to adopt portions of the 1981 guidelines as rules (Attachment A). On August 10, 1984, the Commission implemented the Legislative mandate by adopting sludge rules and guidelines (Attachment B).

To help assure sludges are well-managed and beneficially used in a manner adequate to protect the public health and environment, sludge rules require the state's municipal National Pollutant Discharge Elimination System (NPDES) and Water Pollution Control Facility (WPCF) permitted sources, licensed septage hauling businesses, and septage receiving and processing solid waste disposal facilities to develop and operate their solids handling

¹ Past problems of sewage sludge overapplication have resulted in adverse public image and an exaggeration of the health risks associated with well-managed sludge land spreading operations where high and medium quality sludge is applied within agronomic rates. Sludge nitrogen and metal are required to be monitored to help assure the environment will not be adversely impacted by sludge-borne metal contaminants; increase public acceptance of sludge land application operations; and help protect treatment plants from potential liability resulting from solids mismanagement.

Meeting Date: October 19, 1989
Agenda Item: 2
Page 5

activities under a DEQ approved sludge management plan. Management plans for WWTPs address source sludge stabilization processes; sludge land spreading site characteristics; crop fertilizer and management requirements; annual and long-term loading rates; sludge quality; annual solids production; solids storage capability; and spill contingency options.

Sludge rules (OAR 340-50-025 and OAR 340-50-035) require sources that desire to land apply sludge to obtain advance written DEQ authorization. After DEQ field staff are satisfied documentation submitted by a source is sufficient to indicate a site can be managed in an environmentally sound manner which will protect the public's health, sites can be authorized for beneficial use land spreading.

EXISTING SLUDGE MANAGEMENT PROGRAM NEEDS

Although the Department has a sound, technically based program and has made considerable progress in overseeing the implementation of the sludge management requirements pursuant to sludge statutes, rules, and guidelines, program staffing levels limit the effectiveness of DEQ's program efforts.

Program resources do not allow DEQ to devote sufficient attention to sludge management matters to assure the environment and public health will be satisfactorily protected. Problems have occurred which have required corrective action by permittees. For example, sludge land spreading has occurred in tidal zones and estuarian areas subject to flooding at high tide potentially affecting shellfishing. Solids spreading has also taken place in floodplains where runoff to surface waters is likely. The Department has observed the misapplication of sludge at sites managed by wastewater treatment facilities where solids land spreading resulted in runoff to surface water. A number of western Oregon sources applied sludges during wet winter months on sites with high potential for runoff and/or groundwater contamination (due to seasonally high groundwater tables) because they lacked adequate sludge storage capability. Sludge has been applied at rates up to seven times higher than site vegetation can assimilate, increasing the potential for groundwater contamination and cattle poisoning due to nitrogen toxicity. A number of sources had not stabilized their sludges prior to land application to an extent adequate to protect the public from malodors or exposure to pathogens and parasites.

Meeting Date: October 19, 1989
Agenda Item: 2
Page 6

Several sources failed to monitor sludge quality or they lacked documentation adequate to provide reasonable assurance that their sludges were being applied within DEQ authorized areas at appropriate rates. Other sources were over-applying solids to DEQ authorized sites. Discovered problems have often required corrective action, adding further demands on limited staff time.

Insufficient staff resources delay response time in evaluating sludge management plans and limit the amount of guidance and training offered for field staff and sludge generators to prevent and correct problems².

EXISTING AND FUTURE FEDERAL REGULATORY IMPACTS ON OREGON'S SLUDGE MANAGEMENT PROGRAM

Existing federal regulations for sludge management address certain technical issues differently than DEQ's rules and guidelines. For example, EPA's existing sludge regulations governing the land application of domestic sludges on non-direct food chain croplands (40 CFR Part 257.3-5) and those defining acceptable sludge stabilization (40 CFR Part 257.3-6) are unduly restrictive³ & 4.

² About 420 municipal wastewater facilities and 18 solid waste facilities are required to submit sludge management plans; only 100 plans have been approved. Several sludge management plans from domestic sewage treatment facilities have been reviewed which cannot be approved until beneficial land spreading sites are authorized, sources submit additional information to the Department, or source sludge management practices are modified.

³ EPA's existing sludge regulations (40 CFR Part 257.3-5) governing the land application of domestic sludges on non-direct food chain croplands (e.g., pasture) where acid soils naturally occur are too restrictive, unnecessary, burdensome to regulated sources, and unjustifiably expensive to implement. The Department has alternative solutions for addressing food chain uptake of undesirable metals which EPA's regulations address differently. Similarly, existing federal regulations (40 CFR Part 257.3-6) governing aerobic sludge stabilization are unduly restrictive in some areas and the Department has been coordinating with EPA's Pathogen Equivalency Committee in order to develop some reasonable alternatives for facilitating the land application of sludges in a manner adequate to avert nuisances and protect the public's health.

⁴ Currently EPA has granted DEQ the latitude to use other means (like crop selection and the imposition of conservative annual and cumulative sludge borne cadmium loading limits) to prevent undesirable metal contaminants from entering the food chain. They have also permitted the state to authorize the land

Meeting Date: October 19, 1989
Agenda Item: 2
Page 7

They do not allow reasonable alternatives for facilitating the land application of sludges to avert nuisances and protect the public's health, except on a case-a-case basis as agreed to by EPA.

Recent amendments to the Clean Water Act (CWA) may have considerable bearing on how Oregon regulates domestic sludges and septage in the future. On May 2, 1989, EPA promulgated administrative regulations (40 CFR Parts 122, 123, 124, and 501) for sludge program delegation to states. Regulations require sludge to be managed via NPDES permits (pursuant to amendments to 40 CFR Parts 122, 123, and 124), state permits, or special sludge only permits (pursuant to 40 CFR Part 501). EPA indicates they expect states to assume formal program delegation within one year from the date they promulgate new technical regulations. They expect new technical regulations to be adopted in October 1991. However, litigation initiated by the National Resources Defense Council and the Association of Metropolitan Sewerage Agencies (AMSA) in the Pennsylvania Court may cause the promulgation date to be altered.

Pursuant to Section 405 (CWA), EPA proposes new risk-based technical sludge regulations (40 CFR Part 503). Sludge regulations will apply to both publicly and privately owned wastewater treatment facilities that treat domestic wastewater as well as septage haulers and the users of these products. Future EPA regulations will establish minimum federal standards for the use and disposal of sludge and septage applied to land, distributed and marketed, placed in sludge only landfills (monofills) and on surface disposal sites, or incinerated. They will establish standards for each sludge use or disposal method based on sludge quality (non agricultural lands) or pollutant loading limits (agricultural lands and composted sludge) and management practices. They will also stipulate requirements for monitoring, recordkeeping, and reporting.

The Department (as well as other states and interested groups) has evaluated and identified a number of problems with the proposed regulations⁵. For example, proposed regulations are so inflexible

application of aerobically digested sludges which do not meet all aspects of current federal stabilization requirements at remote sites (those greater than 1/4 mile from habitation) as provided for under existing Department sludge guidelines and Division 61 solid waste rules.

⁵ The Department commented on proposed sludge regulations and suggested EPA repropose regulations to make them more practical, meaningful, flexible and less burdensome (Attachment

that DEQ would no longer be able to use technically sound discretion to determine the most appropriate means for controlling sludge management⁶. They would not allow the Department to establish appropriate requirements for sludge land application based on sludge quality, site, crop, and crop management practices. Proposed pollutant limits (e.g., zinc, nickel, copper, chrome, and PCBs) are so restrictive that they may drive many Oregon sources who beneficially land apply their sludge to costly, less environmentally sound means of sludge disposal like landfilling and incineration. In a number of instances, draft regulations are not based on valid scientific studies involving the actual land spreading of domestic sludges in the field. Instead, they are based on studies involving the addition of metal salt solutions (e.g., copper and zinc) or reagent grade organic solutions to a vegetation grown in pots or greenhouses. Copper and zinc limits derived from these studies would severely and unnecessarily restrict beneficial sludge land application in Oregon by decreasing site life from an average of 75 years to about nine years (based on cadmium). Some sources (e.g., Medford and Silverton) would only be able to land apply sludge to the same site for one year under the draft regulations. The EPA proposals also fail to recognize more than 14 years of research has demonstrated that well-managed, good and medium quality sludges applied to land within agronomic rates pose little threat to the public's health or the environment.

The most exposed individual (MEI) risk assessment model used by EPA to establish proposed pollutant limits for spreading sludges on agricultural land is based on theory rather than on actual demonstrated cases of problems attributable to sludge. In many

C). Several other states with well developed sludge programs (e.g., Wisconsin, Minnesota, Ohio and Michigan) and national scientific workgroups like EPA's W-170 Peer Review Committee (comprised primarily of individuals from land grant universities) and Science Advisory Committee also view draft regulations restrictive, inappropriate, and scientifically unsound.

⁶ Regulations make no provision to recognize good sludge quality, site conditions, crop, crop management, and solids spreading techniques on agricultural lands. They do not allow the Department to exercise the judgement to determine the most appropriate and practical means of sludge management. Some pollutant limits featured in proposed technical regulations are unrealistically conservative and not based on valid scientific studies involving the actual application of municipal sludge on food crop producing lands in the field. Enforcement of such limits would prevent the beneficial land spreading of sludge on Oregon pasture lands in many instances.

Meeting Date: October 19, 1989
Agenda Item: 2
Page 9

instances, the MEI does not even exist. Modeling has led to unjustifiably conservative pollutant values for many regulated constituents. Minimum monitoring, recording, and reporting frequencies established in draft regulations are excessive. They would not only be burdensome to implement, but extremely costly for sources to meet and the Department to oversee. EPA is now in the process of re-evaluating their initial proposals.

Until final Part 503 regulations are issued, sludge management will continue to be governed by EPA or state agencies like DEQ. Pending the promulgation of technical sludge regulations, EPA has established an "interim" program for regulating sludge management practices on a case-by-case basis by including solids management conditions in permits. This "interim" strategy allows the Department to use its existing rules and guidelines to regulate how sludges are managed. In the future (most likely 1991), the Department will evaluate EPA's re-proposed or promulgated regulations, their environmental merits and programmatic impacts with respect to additional Department resource needs to determine if sludge program delegation from EPA should be pursued. The Department will revisit the issue of program delegation with the EQC in the future.

DOMESTIC SLUDGE TECHNICAL ADVISORY COMMITTEE AND ASSOCIATION OF OREGON SEWERAGE AGENCIES (AOSA) RECOMMENDATIONS AND CONSIDERATIONS ON DEQ'S APPROACH TO SLUDGE MANAGEMENT

In July 1988, the Director appointed a Domestic Sludge Technical Advisory Committee to help the Department: (1) examine the adequacy of Oregon's existing sludge rules and guidelines; (2) advise DEQ on suggested changes to existing and proposed federal technical and administrative sludge regulations and guidance resulting from amendments to the Clean Water Act of 1987 (including proposed 40 CFR Part 503 technical sludge regulations and Part 501, 122, 123, and 124 administrative regulations); and (3) determine the adequacy of the technical guidance DEQ has developed on special issues which could impact on Oregon's permitted source sludge programs. In recent meetings, the Domestic Sludge Technical Committee has discussed possible impacts of proposed federal technical sludge regulations on the Department and Oregon sources. They concluded several substantive changes need to be incorporated in proposed EPA sludge regulations before they would be acceptable for implementation in Oregon.

The Committee recently considered the Department's future role in domestic sludge management. They unanimously recommend that the Department remain active in sludge management. The Committee prefers the Department pursue sludge program delegation from EPA and that DEQ continue working with EPA to grant Oregon some flexibility on how sludge is regulated. They emphasize DEQ would

stay more aware of local solids treatment practices, sludge quality, and be in a better position to recognize the specific nature of sludge land spreading sites than EPA. The Committee further believes DEQ is better able to make reasonable, objectively based decisions on how sludge should be managed.

The Committee also expresses concern over growing public sensitivity associated with sludge land spreading activities in the State of Washington⁷. They emphasize the Department needs to be staffed adequately to regulate sludge management from an objective, proactive perspective rather than a reactionary point of view. Otherwise, they fear inordinate public sensitivity could drive many sources to discontinue well-managed beneficial sludge land application programs and cause them to adopt less environmentally responsible, more costly, wasteful, solids disposal options like landfilling and incineration which have considerably greater potential to adversely impact the public's health.

Committee members support an increase in source permit fees as a means of funding an expanded level of program activity. Under a higher level of program staffing (with program delegation and in the interim), sources would have to pay higher permit fees to finance the Department's regulatory operations. Funding derived through increased permit fees to expand current oversight responsibilities will result in Oregon's major municipal sources paying additional fees of approximately \$3500 to \$4000 per year while the state's minor treatment works and solid waste permitted disposal facilities (e.g., septage lagoons) would be expected to pay additional fees around \$500 per year. The Committee emphasizes funding sludge activities at the program level will help assure sufficient staff remained present to provide strong leadership on sludge issues of local and national interest. The Committee stresses staffing be adequate to enable the Department to keep current on important sludge issues and respond to complex federal regulations and policies related to sludge management and provide program guidance and rule guidelines and regulation enforcement.

Aside from Department's regular meetings with its Domestic Sludge Technical Advisory Committee, DEQ has also met with the Association of Oregon Sewerage Agencies' Domestic Sludge

⁷ In Washington, several prospective sludge land spreading operations in Whatcom, Pierce, Mason and Thurston Counties have been stalled or stopped by special interest groups who fear sludge land spreading will lower property values, cause nuisances, damage the environment, and jeopardize the public's health.

Committee⁸ & ⁹. Spokespersons from both committees advocate the Department expanding its sludge management oversight capabilities. They state they will support an increase in source permit fees to facilitate enlarging staff to a level adequate to effectively implement program responsibilities associated with DEQ's assuming sludge program delegation from EPA or an enhanced level of program operation.

INTENDED FOLLOWUP ACTIONS

At an expanded resource level, the Department would be in a more favorable position to oversee source sludge management activities; ensure management plans are being implemented in a fashion adequate to protect the environment and the public's health; provide sources adequate guidance on appropriate sludge management practices; and address problems. A higher level of sludge management oversight would sharply reduce the potential for sludge overapplication, surface and groundwater contamination, nuisances related to odor and aesthetics, vector attraction, and disease risk.

The Department intends to reappear before the EQC in the winter of 1990 to request authorization to hold hearings to modify rules to increase source permit fees. The Department would then conduct hearings and request the EQC adopt a revised permit fee schedule subject to Emergency Board review and approval of increased expenditure limitations and FTE. A comprehensive evaluation of the Department's existing source permit fee structure is necessary to finance sludge program implementation as well as other water quality source related activities.

⁸ The Association of Oregon Sewerage Agencies (AOSA) is comprised of several individuals representing regulated municipal sewage treatment sources throughout Oregon who have consolidated their efforts to better understand and respond to key local, state, and federal issues faced by domestic WWTPs. They have a subcommittee that has kept current on state and federal sludge issues.

⁹ In a May 23, 1989, letter, AOSA advised the Director that the Association was willing to support DEQ's need for increased funding to manage its sludge and pretreatment programs at an expanded level (Attachment D).

Meeting Date: October 19, 1989
Agenda Item: 2
Page 12

Approved:

Section: Mary M. Halliburton
Division: Lydia Taylor
Director: Bill Hansen

Report Prepared By: Mark P. Ronayne

Phone: 229-6442

Date Prepared: September 20, 1989

MPR:kjc
SD\SL\WJ2295
October 6, 1989
Attachments:

- A. ORS 468.778 (statutory authority)
- B. OAR, Division 50, Land Application and Disposal of Sewage Treatment Plant Sludge and Sludge Derived Products Including Septage.
- C. The Director's Response to EPA on Proposed 503 Regulations.
- D. Letter from AOSA Endorsing Increased Funding of the Sludge and Pretreatment Programs.

preparation, cooking and serving of food. [Formerly 449.140]

468.770 Prohibitions relating to garbage or sewage dumping into waters of state. (1) No garbage or sewage shall be discharged into or in any other manner be allowed to enter the waters of the state from any building or structure unless such garbage or sewage has been treated or otherwise disposed of in a manner approved by the department. All plumbing fixtures in buildings or structures, including prior existing plumbing fixtures from which waste water or sewage is or may be discharged, shall be connected to and all waste water or sewage from such fixtures in buildings or structures shall be discharged into a sewerage system, septic tank system or other disposal system approved by the department pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, (1973 Replacement Part), 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter.

(2) The department may extend the time of compliance for any person, class of persons, municipalities or businesses upon such conditions as it may deem necessary to protect the public health and welfare if it is found that strict compliance would be unreasonable, unduly burdensome or impractical due to special physical conditions or cause or because no other alternative facility or method of handling is yet available. [Formerly 449.150]

468.775 Depositing motor vehicles into water prohibited. Subject to ORS 468.750, no person, including a person in the possession or control of any land, shall deposit, discard or place any chassis, body or shell of a motor vehicle as defined by ORS 801.360 or of any vehicle as defined by ORS 801.590, or parts and accessories thereof, including tires, into the waters of the state for any purpose, or deposit, discard or place such materials in a location where they may be likely to escape or be carried into the waters of the state by any means. [Formerly 449.109; 1983 c.338 §937]

468.777 Permit authorized for discharge of shrimp and crab processing by-products; conditions. (1) The department may issue a permit to discharge shrimp and crab processing by-products into the waters of an Oregon estuary under ORS 468.740 for the purpose of enhancing aquatic life production. The permit shall impose the following conditions:

(a) No toxic substances shall be present in the by-products discharged.

(b) The oxygen content of the estuarine waters shall not be reduced.

(c) The discharge shall not create a public nuisance.

(d) Other beneficial uses of the estuary shall not be adversely affected.

(2) The department shall consult the State Department of Fish and Wildlife and obtain its approval before issuing a permit under this section. [1979 c.617 §2]

468.778 Use of sludge on agricultural, horticultural or silvicultural land. The Environmental Quality Commission shall adopt by rule requirements for the use of sludge on agricultural, horticultural or silvicultural land including, but not limited to:

(1) Procedure and criteria for selecting sludge application sites, including providing the opportunity for public comment and public hearing;

(2) Requirements for sludge treatment and processing before sludge is applied;

(3) Methods and minimum frequency for analyzing sludge and soil to which sludge is applied;

(4) Records that a sludge applicator must keep;

(5) Restrictions on public access to and cropping of land on which sludge has been applied; and

(6) Any other requirement necessary to protect surface water, ground water, public health and soil productivity from any adverse effects resulting from sludge application. [1983 c.257 §2]

Note: 468.778 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.

OIL SPILLAGE REGULATION

468.780 Definitions for ORS 468.780 to 468.815. As used in ORS 468.020, 468.095, 468.140 (3) and 468.780 to 468.815, unless the context requires otherwise:

(1) "Oils" or "oil" means oil, including gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse and any other petroleum related product.

(2) "Person having control over oil" includes but is not limited to any person using, storing or transporting oil immediately prior to entry of such oil into the waters of the state, and shall specifically include carriers and bailees of such oil.

(3) "Ship" means any boat, ship, vessel, barge or other floating craft of any kind. [Formerly 449.155]

Approved
Approved with Corrections _____
Corrections Made _____

MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EOC

ENVIRONMENTAL QUALITY COMMISSION

Minutes of the One Hundred Ninety-Seventh Meeting,
September 7 and 8, 1989

Work Session
Thursday, September 7, 1989
12:00 p.m.

The work session began at noon with the Commission viewing a videotape of the presentation "The Willamette: A River Restored". Fred Hansen, Director, announced the appointment of Lydia Taylor as Administrator of the Water Quality Division.

Work Session Item 1: Emission Exceedances--A Discussion on improvement to rules regarding excess emissions of air contaminants, and the benefit in developing uniform regulations within the Department for dealing with all excess emissions.

The Department asked the Commission to provide guidance on proposed upset rule amendments regarding temporary excess emissions of air contaminants.

The Department's current air quality upset rules require industry to promptly report all air contaminant emissions in excess of applicable standards. However, these rules imply that if the owner/operator reports the upset to the Department, the upset is automatically considered not to be a violation of applicable standards.

As a result of federal court actions, State Implementation Plan (SIP) rules deem all excess emissions as potential violations of standards. The burden of proof is placed on the source to demonstrate whether the period of excess emission should be excused from further enforcement action as a result of an unavoidable condition. The source must demonstrate that prompt notification and remedial action occurred, that control equipment was properly maintained and operated and that the excess emissions were not a recurring problem.

The Department will be proposing rule amendments to revise the SIP provisions dealing with excess emissions.

Work Session and
EQC Meeting
Page 2
September 7 and 8, 1989

Nick Nikkila, Air Quality Administrator, and Brian Finneran, Air Quality Division, explained the factors leading the Department to consider amending these rules. Mr. Nikkila explained how the current upset rules automatically excuse industries which cause emission of excess air contaminants, providing the event is reported in a timely manner to the Department. This is contrary to the Environmental Protection Agency's (EPA) policy on excess emissions and also contrary to the approach taken by the Department's Water Quality and Hazardous and Solid Waste Divisions.

Mr. Finneran described how EPA's policy directs states to determine if excess emissions are unavoidable, thereby allowing excess emission violations to be excused from enforcement action. The EPA policy also establishes clear criteria for sources to follow then reporting excess emissions which the Department will consider excess emissions to be unavoidable and not subject to enforcement action.

Commissioner Sage suggested that a price be attached to unavoidability. Commissioner Lorenzen said he believed this would be an additional burden to staff and that a step-up (progressive) approach would be more manageable.

The Commission agreed with EPA's approach to excess emissions and with the Department's recommendation that amendments to current rules should be considered. Staff indicated that it would draft a request for hearing authorization to be submitted at the next regularly scheduled EQC meeting.

Work Session Item 2: Woodstove Certification Program--Proposed modifications to conform to new U. S. Environmental Protection Agency (EPA) requirements.

The Department requested policy direction on how Oregon's woodstove certification program should be amended to mesh with the new and similar EPA program. Staff also asked for policy direction on how Oregon should promote manufacture and sale of the most durable certified stoves.

The Department asked the Commission to indicate the future direction of the woodstove certification program. Considerations included statutory requirements, duplication of efforts with the EPA certification program and need to effectively reduce woodstove emissions in several areas of the state where serious PM₁₀ air quality problems occur.

Work Session and
EQC Meeting
Page 3
September 7 and 8, 1989

The Department recommended that Oregon's emission certification program be deferred to the EPA program as a way of streamlining government administrative requirements. The Department also suggested that they should retain the current program for efficiency testing and labeling to meet statutory requirements and to monitor lowest emission technology. Promotion of the manufacturing of BEST (best existing woodstove technology) should be pursued to effectively address the state's responsibility under federal law to reduce wood smoke so that federal air quality standards can be met.

John Kowalczyk and David Collier, Air Quality Division, gave a presentation of the woodstove certification program. Participating in the discussion were John Charles, representing the Oregon Environmental Council; Joe Weller, representing the American Lung Association; and Jim Herman of Earth Stoves representing the Wood Heating Alliance.

Mr. Weller handed out a copy of his presentation which is made a part of this meeting record. Mr. Weller referred to a recent survey of Oregonians about the air quality problem caused by woodstoves. He said that while he was disappointed by the responses, there was an awareness that some steps must be taken to reduce woodstove emissions. Mr. Weller indicated he believed the people of Oregon are ready to ask woodstove manufacturers to produce stoves with reduced emissions.

Mr. Herman stated that stoves have not been built yet that are durable. After July 1990, a voluntary testing program will begin. He said that most woodstove owners notify the stores when their stoves are not operating correctly. Mr. Kowalczyk responded that research and data show that people do not know when problems are occurring.

By consensus the Commission agreed that Oregon's woodstove emission certification program should be deferred to EPA and that efficiency certification and labelling should be retained. The Commission also agreed that at least as an interim step a voluntary stress test should be pursued as means of promoting durable stoves. The Commission directed staff to develop information on stress test methods and expectations of such a test program and to review this with the Commission before a final implementation decision is made. The Commission also requested that a report be presented by July 1990 on how the latest designed certified stoves are performing in the home. Finally, the Commission directed staff to explore incentive programs that could reduce emissions from existing woodstoves such as weatherization

Work Session and
EQC Meeting
Page 4
September 7 and 8, 1989

subsidies and use of the Department's current tax credit authority
for replacement heating systems.

Work Session and
EQC Meeting
Page 5
September 7 and 8, 1989

REGULAR MEETING

Thursday, September 7, 1989
2:30 p.m.

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

Commission Members Present:

William Hutchison, Chairman
Emery Castle, Vice Chairman
Genevieve Pisarski Sage
Henry Lorenzen
William Wessinger

Department of Environmental Quality Staff Present:

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

NOTE: Staff reports presented at this meeting, which contain the Department's recommendations, are on file in the Office of the Director, Department of Environmental Quality, 811 S. W. Sixth Avenue, Portland, Oregon 97204. Written material submitted at this meeting is made a part of this record and is on file at the above address.

CONSENT ITEMS

Agenda Item A: Minutes of the July 21, 1989, EQC meeting.

Commissioner Sage suggested that page 17, fifth paragraph, be expanded to read as follows:

... too many assumptions were being made, and that there is a lack of a specific remedy in the event of exceedance of a permit condition. (New wording is underlined.)

Action: It was **MOVED** by Commissioner Wessinger, seconded by Commissioner Castle and unanimously passed to approve the

minutes of the July 20 work session and July 21, 1989,
regular meeting as corrected.

Agenda Item B: Civil Penalties Settlements.

The following proposed settlement agreements were presented for
the Commission's consideration and approval:

- 1) WQ-WVR-88-73A & B, Arie Jongeneel dba/A.J. Dairy
- 2) AQOB-CR-89-10, Marvin Mix dba/Marvin Gardens
- 3) HW-WVR-89-02, Safety-Kleen Corp.

Chairman Hutchison asked if the information relative to each of
these items had been enhanced. Tom Bispham, Administrator of
Regional Operations, responded that information had been added so
that the Commission may have a complete picture of the violation
and the basis for each settlement. Director Hansen also clarified
that settlements are generally based on submission of new
information or evidence.

Chairman Hutchison requested clarification of the Safety-Kleen
settlement. Mr. Bispham replied that the penalty was calculated
under the old system, and that the company had provided
information not available at the time of the inspection and
clarified other issues. As a result, the penalty was reduced
although not totally eliminated; the major penalties were
sustained.

Action: It was **MOVED** by Commissioner Castle, seconded by
Commissioner Sage, and passed unanimously that the
settlement agreements be approved as recommended by the
Director.

The settlement agreements were signed by the Commission.

Agenda Item C: Tax Credits for Approval.

The following tax credit applications were presented for
consideration:

- | | |
|--------|--|
| T-2079 | Pennwalt Corporation, Surface condenser and
containment system |
| T-2175 | Boise Cascade Corporation, Gas fume incineration
control system |
| T-2475 | Pacific Coatings, Inc., Odor emission equipment |

- T-2491 Blue Mt. Forest Products, Inc., Wood waste energy recovery facility
- T-2509 Georgia-Pacific Corporation, Smelt dissolving tank vent scrubber
- T-2797 David C. Malpass, Metal clad straw storage shed

Recommendation: The Department recommended approval of all of the applications noted above. Special discussion was included on application T-2491 because of unique issues involved.

The Commission discussed tax credit application T-2491, Blue Mt. Forest Products, Inc. This application involved a request for tax credit of an energy recovery facility which was an eligible facility until September 27, 1987. The applicant initiated the tax credit process in 1984 and would have completed it prior to September 27, 1987, if not for the direction provided by the Department. The Department's action misled the applicant into believing that approval would have been possible at a future time beyond the facility completion date. While there was no intent to mislead the applicant, the Department's conduct appears to have inadvertently had that result.

Due to a conflict of interest, Chairman Hutchison and Commissioner Lorenzen left the room during discussion of Blue Mt. Forest Products' tax credit application since they knew Robert Mautz, the attorney representing the T-2491 applicant, Blue Mountain Forest Products. Vice-Chair Castle assumed the chair.

Roberta Young, Management Services Division, provided the Commission with an overview of the application and Department's position. Ms. Young stated that the application involves a steam boiler which generates electricity from wood wastes. The company had received preliminary certification in 1985 and had completed the facility January 31, 1987. Around the time of facility completion the company notified staff regarding the filing of the final application. Staff directed the company to submit the application after the facility's air pollution equipment met compliance. Compliance was achieved in December, 1988 and a final application was received by the Department in July, 1989.

The 1987 Legislature revised the tax credit law and made energy recovery facilities ineligible for tax credit. The law took effect in September 1987. When the Department received the application, a position was taken that the facility did not

qualify because it was not eligible under the statute. In examining the issue further, staff believed that the Department's conduct may have effected the applicant's right to certification. A decision was then made to seek advice from the Department's legal counsel.

Legal Counsel has advised that the Commission may approve T-2491 if it finds that the company would have applied for final certification if not for the direction of staff, and that staff's direction had misled the applicant into believing a later application would be timely. The Department believes that the applicant was misled such that the company did not file a final application prior to the change in law. The application should have been processed by the Solid Waste Division, but instead was handled within Air Quality. Consequently, staff did not provide guidance that would have allowed the company to file a final application on the solid waste portion of the facility. Had this been done the Commission would have made a determination before the change in law.

The facility would have otherwise qualified for certification if an application had been submitted prior to the change in law. Counsel further advised that if these two findings were made in the affirmative, the Commission must then determine whether to provide an extension of the requirement to file a final application within two years of facility completion.

Action: It was **MOVED** by Commissioner Wessinger, seconded by Commissioner Sage and passed with three "yes" votes and no dissenting votes to approve tax credit application T-2491, Blue Mt. Forest Products. Chairman Hutchison and Commissioner Lorenzen were not present in the meeting room and did not vote on this tax credit application.

It was **MOVED** by Commission Wessinger, seconded by Commissioner Sage and passed with three "yes" votes and no dissenting votes to approve the remaining applications for tax credit as recommended by the Department.

Agenda Item D: Commission Member Reports.

Pacific Northwest Hazardous Waste Advisory Council:
Chairman Hutchison announced that the next meeting will be held on September 29, 1989, in Portland. The Council will meet again in December in Idaho.

Governor's Watershed Enhancement Board: Commissioner Sage

reported that the Board adopted plans for the next biennium, and that there would be another meeting on September 21 and 22, 1989.

Strategic Planning: The Commission and DEQ staff will meet on October 18, 1989, to discuss the Agency's strategic plan. This meeting will be held at Marylhurst College.

PUBLIC FORUM

David Mann, Northwest Environmental Defense Center (NEDC), spoke to the Commission about proposed guidelines for contents of public notices. Mr. Mann distributed a copy of NEDC's proposed guidelines to the Commission.

The Commission asked Department staff to review the proposed guidelines and report their evaluation of NEDC's suggestions at the next EQC meeting scheduled for October 19 and 20, 1989.

John Pointer and Terry Jenkins, Citizens Concerned with Wastewater Management (CCWM), spoke to the Commission about the City of Portland sewage spills and an EPA-issued citation. Messrs. Pointer and Jenkins provided to the EQC copies of documents that support their claim that DEQ has not investigated problems dealing with the City of Portland treatment and application (disposal) of sewage sludge.

Chairman Hutchison asked Director Hansen how these issues are usually resolved. Director Hansen indicated that the Department receives specific information on concerns, investigates, and responds back with an indication of intended department actions. The Department efforts have not been satisfactory to the concerned individuals in this case.

Chairman Hutchison asked CCWM to meet with him to establish a process for responding to their concerns. The Chairman further indicated that a determination will be made later regarding the need for scheduling this as a future agenda item.

Agenda Item E: Industrial PM₁₀ Rules for Medford-Ashland and Grants Pass. (Adoption of Rules)

This purpose of this agenda item was to consider adoption of new industrial rules that were taken to public hearings in January 1989. The proposed industrial rules for control of PM₁₀ (particulate matter ten microns or smaller) would:

1. Require more effective controls for plywood veneer driers and large wood-fired boilers in the Medford-Ashland and Grants Pass areas;
2. Increase the particulate emission offset ratio, requiring 1.3 (instead of 1.0) pounds of reduction in existing emissions for every one pound of new emissions in the Medford-Ashland areas; and
3. Require additional source testing and continuous emissions monitoring in the Medford-Ashland and Grants Pass areas.

The EPA, under the provisions of the Clean Air Act, required the DEQ to submit SIP revisions for the Medford-Ashland and Grants Pass areas. The proposed industrial rules are key components of the PM₁₀ control strategies for these areas. Completion of the overall control strategies have been delayed due to the failure of the Department's woodstove bill to pass the Oregon Legislature.

Merlyn Hough, Air Quality Division, gave a brief overview of the proposed action. Mr. Hough indicated that many persons provided testimony during the January 1989 public hearings and that the Department had outlined responses to the 40 major issues in the attachments to the staff report. Five changes were recommended by the Department to the original rules proposal as a result of the public hearing testimony; the most significant change was the addition of a date-certain requirement for providing lowest achievable emission rate (LAER) on large wood-fired boilers, rather than only upon boiler rebuilding as originally proposed; the most controversial change was the revision of the offset ratio to 1.2:1, rather than the existing 1:1 ratio or the originally proposed 1.3:1 ratio.

Mr. Hough indicated that an offset ratio greater than 1:1 provides a better assurance that a new or expanding industry locating in the Medford-Ashland area (and requiring external offsets) would result in a net air quality benefit. Industry representatives testified in the January 1989 hearings that an increased ratio would interfere with economic development; other persons testified that offsets should not be allowed at all in an area such as Medford with a serious PM₁₀ problem. The staff report recommended the 1.2:1 ratio in order to be consistent with a recent EPA Emission Trading Policy Statement which requires a 20 percent net emissions reduction (essentially a 1.2:1 offset ratio) for existing industries wanting to internally offset (bubble) emissions.

Jeff Golden, Jackson County Commissioner; Dr. Robert Palzer, Coalition to Improve Air Quality; and Paul Wyntergreen, Oregon Environmental Council, Southwest Region, spoke to the Commission about this issue.

Commissioner Golden recommended that the EQC adopt the 1.3:1 ratio as originally proposed; that the Department, together with State Forestry, pursue increased slash utilization or other alternatives to slash burning; and that the Department prepare and distribute a quarterly (preferably) or annual industry report card.

Dr. Palzer recommended the following:

1. That continuous NO_x monitoring be required on large boilers, and that the Medford rules for air conveying systems, fugitive dust plans, and operation and maintenance plans also be implemented in the Grants Pass area;
2. That the opacity from veneer driers and boilers be limited to the actual opacity measured during the source test if lower than the specified 5 or 10 percent rule limit;
3. That the 0.03 grains per standard cubic foot boiler limit should be replaced with a limit that references LAER (such as 167 percent of LAER) so that the boiler limit would automatically be more restrictive as LAER is revised over time.

Mr. Wyntergreen recommended that the schedule for LAER on large boilers be shortened to approximately two years instead of the proposed five years. He also recommended that the Department identify and include fugitive emission limits in the industrial air contaminant discharge permits based on mass balance calculations.

Chairman Hutchison invited two industry representatives to respond to these issues: Garrett Andrew, Boise Cascade Corporation; and Larry Gill, Medford Corporation. Mr. Andrew indicated that industry is very opposed to more restrictive offset requirements, and the proposed opacity limits will be very difficult to achieve. Further, changing the boiler limit to a percentage of LAER would introduce a moving target that would make plant modernization planning extremely difficult. Mr. Gill indicated that a shortened schedule for LAER on boilers would be extremely difficult to achieve unless a plant modernization was already financed and progressing in that direction.

In response to questions from Chairman Hutchison, Merlyn Hough responded as follows:

1. Industrial and other emissions are summarized annually by the Department as part of its annual progress reporting and some type of report card is possible;
2. Continuous NO_x monitoring is a lower priority than opacity or wet scrubber parameters (which are indicators of relative particulate emissions) or carbon monoxide monitoring (which is indicative of combustion efficiency as well as carbon monoxide emissions), but the Department will have more information on the relationship between carbon monoxide and NO_x emissions over the next two years as a result of NO_x monitoring requirements in two industrial permits;
3. The Medford rules for air conveying systems and fugitive dust plans were adopted in 1983 as part of the Medford control strategy for total suspended particulate (TSP) and were primarily for the control of coarse dust particles, not the smaller PM₁₀ particles;
4. The proposed rules for continuous emission monitoring on industries in both Grants Pass and Medford are more sophisticated operation and maintenance requirements than the existing Medford rule requiring operation and maintenance plans;
5. The proposed 5 and 10 percent opacity limits are already pushing the limits of accuracy of monitoring equipment or trained observers;
6. Revising the 0.03 grains per standard cubic foot (gr/scf) boiler limit to a percentage of LAER would have a high "grief-to-gain" ratio since it would complicate industrial modernization but result in a relatively minor emission reduction (e.g., an old industrial boiler that emitted 100 tons per year at 0.2 gr/scf would emit 25 tons per year at the existing Medford limit of 0.05 gr/scf, 15 tons per year at the proposed 0.03 gr/scf, and 12.5 tons per year at 0.025 gr/scf--most of the emission reduction results from dropping the limit to 0.05 or 0.03 gr/scf, very little emission reduction results from going lower than 0.03 gr/scf);
7. The cost per unit of air quality improvement of LAER on large boilers is considerable more expensive than the other industrial or residential control measures, therefore the Department originally tied the LAER requirement to boiler

rebuilding in order to improve the cost-effectiveness and in the revised proposal included the 5-year compliance schedule which is the longest schedule that is consistent with PM₁₀ deadlines under consideration in Congress;

8. Particulate fugitive emissions are extremely difficult to quantify, and mass balance methods frequently used to accurately measure solvent vapor emissions are not applicable to fugitive dust emissions.

Recommendation: The Department recommended the Commission adopt the proposed rules as set forth in Attachment A of the Staff Report. (This recommendation included clarifications and minor revisions recommended in the public hearing and modifications 2c, 2d, 2e, 2f, and 3b as presented in the alternatives listed in the staff report.) The Department further recommended that additional wording clarification as requested by EPA and presented in an addendum staff report be approved.

Action: It was **MOVED** by Commissioner Castle, seconded by Commissioner Wessinger and unanimously passed that the Department's recommendation, including the wording changes in the addendum, be approved.

The Commission directed the Department to evaluate the feasibility of the industrial (and other emissions) report card and discuss it with the Commission at the first or second following EQC meetings, to review NO_x monitoring results over the next two years and evaluate the feasibility and usefulness of NO_x continuous emission monitoring systems (CEMS) on large boilers; and to track PM₁₀ progress in Grants Pass over the next two years to determine if additional control measures (such as the three rules suggested by Dr. Palzer) are necessary to meet PM₁₀ standards.

Agenda Item F: Temporary Rule to Establish Interest Rate for the 89-91 Biennium and Change Method by which Rate is Set for the Sewer Safety Net Program (Assessment Deferral Loan Program).

The purpose of this agenda item was to establish interest rates for safety net loans. Adoption of the proposed temporary rule would establish a fixed interest rate of 5 percent per year for safety net loans until changed by Commission action. When this program was established last biennium, rules were adopted fixing the interest rate at 5 percent per year. The rules also specified that this rate would end as of June 30, 1989, at which time the

Commission would have to reestablish the rate for the next biennium.

The Department requested the Commission to adopt a temporary rule establishing the safety net interest rate so that the DEQ can review applicants' proposed loan programs and prepare a staff report for the October 20, 1989, EQC meeting. The Cities of Portland and Gresham will begin implementation of this biennium's program this fall. They cannot do so until an interest rate has been established and would have to change their programs if the interest rate charged was changed from the current 5 percent rate.

Recommendation: The Department recommended the Commission adopt the rule amendments presented in Attachment A as a temporary rule together with the findings in Attachment D which justify the need for a temporary rule. The Department also recommended that the Commission authorize a public hearing on the rule amendments in Attachment A for the purpose of adoption as a permanent rule.

Action: It was **MOVED** by Commissioner Wessinger, seconded by Commissioner Castle and unanimously passed that the Department's recommendation be approved.

Agenda Item G: Bacona Road Site - Termination of Landfill Siting Process

The purpose of this agenda item was to conclude the DEQ's responsibilities under Chapter 679, Oregon Laws 1985, to study and establish a disposal site serving the Portland metropolitan area. Development of the regional disposal sites in Gilliam and Morrow Counties has accomplished the purposes of Chapter 679 and has made the Bacona Road site unnecessary.

It is the Department's opinion that the Bacona Road site is no longer needed and should be dropped from further consideration by having the EQC rescind its order for the establishment of the Bacona Road landfill. This opinion is based upon the signing of a 20-year contract for the Gilliam County site, the permitting of a separate regional landfill in Morrow County which could potentially serve the Portland metropolitan area, and the decision by Metro to transport waste to eastern Oregon rather than use the Bacona Road site.

Chairman Hutchison asked **Steve Greenwood**, Hazardous and Solid Division, why the Department believed the Bacona site was not needed. Mr. Greenwood responded that Metro has indicated they will not develop or use the Bacona site. Additionally, the

Work Session and
EQC Meeting
Page 15
September 7 and 8, 1989

Department has now issued permits for two regional sites in eastern Oregon which can serve the Portland metropolitan region.

Recommendation: The Department recommended the Commission rescind the June 1987 order and permanently abandon the site.

Action: It was **MOVED** by Commissioner Wessinger, seconded by Commissioner Lorenzen and unanimously approved that the Department's recommendation be approved.

Agenda Item H: Waste Tire Pile Cleanup - Use of Funds for Cleanup of the Larry Waliser Site.

The purpose of this agenda item was to allow use of funds from the Waste Tire Recycling Account to expedite cleanup of approximately 20,000 waste tires at a permitted site. The Waste Tire Recycling Account is funded by a \$1 fee on new replacement tires. The purpose of the account is to enhance the market for waste tires by giving a subsidy for their reuse and to help cleanup waste tire piles. The statute requires the EQC to make a finding before the Department may use funds to assist a permittee in removing tires.

Mr. Larry Waliser requested financial assistance from the DEQ in December 1988 to remove the waste tire tires from his site, saying he does not have sufficient resources to remove these tires as quickly as required by the Department. Although Mr. Waliser could devote a few thousand dollars a year to tire cleanup, it is estimated that the cost of tire removal will be approximately \$30,000 and would take several years to remove the tires at the rate Mr. Waliser can afford.

Recommendation: The Department recommended the Commission approve funding assistance for Mr Waliser from the Waste Tire Recycling Account in order to accomplish removal of tires by June 1, 1989. Funding assistance is to be based on the existing rule and Department guidelines, and conditioned on verification of income through 1988 tax returns or equivalent.

Action: It was **MOVED** by Commissioner Lorenzen, seconded by Commissioner Wessinger and unanimously passed that the Department's recommendation be approved.

Agenda Item I: Waste Tire Pile Storage - Variance from Storage Standards for Molalla Discount Tire.

Work Session and
EQC Meeting
Page 16
September 7 and 8, 1989

The purpose of this agenda item was to grant a variance to the fire lane requirement for this permitted waste tire storage site. Through the waste tire storage site standards in the Oregon Administrative Rules, the Department placed restrictions on tire pile dimensions and required that each tire pile have a 50-foot fire lane around its perimeter. In general, waste tire storage sites have large numbers of tires of no market value stored in one or more piles until they can be processed or disposed.

Tire Disposal Co., Inc. currently stores about 2,500 recappable casings (which have a definite market value) and 500 scrap tires at the site. All of these tires fall under the definition of waste tires. Because the permittee actually has a use for the majority of the waste tires, the storage of these tires cannot be in piles and would be too difficult to retrieve specific casings for sale. Since the tires are spread over a large area, the permittee does not have space along the northern perimeter of the pile for a 50-foot fire lane.

Recommendation: The Department recommended the Commission grant the variance since fire danger would actually be less, and the permittee would be able to continue the sorting operation necessary to the business.

Action: It was **MOVED** by Commissioner Sage, seconded by Commissioner Castle and unanimously passed that the Department's recommendation be approved.

This was the end of the Thursday, July 7, 1989, EQC meeting which recessed for the day at 5:20 p.m. The meeting resumed on Friday, July 8, 1989, to consider agenda items J and K.

FORMAL MEETING (Continued)

Friday, September 8, 1989
8:30 a.m.

Agenda Item J: Approval of a Significant New Waste Discharge to the Columbia River--Proposed WTD Pulp Mill at Clatskanie, Oregon.

The purpose of this agenda item was to provide the Commission with additional information on the proposed new Port Westward Pulp Mill discharge. Additionally, further clarification of the recommended conditions which were part of the July 21 Commission staff report was needed.

Work Session and
EQC Meeting
Page 17
September 7 and 8, 1989

On July 20, 1988, the Commission reviewed pulp mill technology and received information on the Pope & Talbot, Inc., Halsey mill expansion project and the new Port Westward Pulp Company (WTD Industries, Inc.) mill proposed for construction near Clatskanie, Oregon. At their regular meeting on Friday, July 21, 1989, the Commission continued discussion of the proposed Port Westward mill wastewater discharge and reviewed the decision alternatives presented by the staff report. The Commission deferred a decision on approval of the discharge until the September 8, 1989, EQC meeting.

Recommendation: The Department recommended the Commission authorize a new discharge from a bleached kraft pulp mill to the Columbia River subject to the conditions stated in the July 20, 1989, EQC staff report.

Chairman Hutchison noted for the record that all Commission Members had received substantial correspondence on the matter and have reviewed the record. The Chairman advised that the current consideration of the item was not in the nature of a public hearing (public hearings on proposed permits have already been held), however, the Commission would receive brief comments from those who signed up.

Brief statements of concern or opposition to the proposed WTD Industries pulp and paper mill were addressed to the Commission by the following:

- Joe Uris expressed concern about the damage of dioxin and urged that no discharge of dioxin be allowed.
- Al Casebere expressed concern about the impact of the mill on homes in Washington. He also noted that self monitoring doesn't work and that inspectors are never around when night dumping occurs.
- Paul Williams expressed concern about dioxin and noted that EPA increased the allowable dioxin by a factor of 16 times.
- Bob Eaton, representing Salmon for All, expressed concern about the cumulative effects of all of the Columbia River mills and the perception of their impact on fish.
- Chris Soter urged denial of the request until the TCDD overload issue is resolved. He also requested initiation of a full Environmental Impact Statement.

- **Mary O'Brien**, Northwest Coalition for Alternatives to Pesticides, urged postponement of any decision. She also stated that analysis shows that the Commission can't make three of the four findings required by rule. Written testimony was provided for the record.
- **Rick Thompson** lives within one mile of the proposed mill site and opposes construction because of impacts on recreation and tourism.
- **Charlie Rosenzweig** expressed concern about the apparent rush of the permit process when the Corps of Engineers will take a year to process its application and may prepare an Environmental Impact Statement. He also was concerned about the timing relative to potential designation of the Columbia River Estuary.
- **Cindy Mackey/Nina Bell**, Northwest Environmental Advocates and Northwest Environmental Defense Center, urged that a decision be delayed, and that conditions not be substituted for findings.

Doug Morrison, representing Northwest Pulp and Paper Association, and **Brian Crews**, representing James River Corporation, made the following points:

- Dioxin reduction efforts are already underway at all mills. Currently known immediate reduction steps have been taken. Studies are underway to identify additional steps. The only question to the industry is how to reduce dioxin.
- Current constraints faced by the industry are (1) lack of laboratory capacity to measure dioxin; and (2) limits on the availability of process equipment to modify production processes to reduce dioxin production.
- The industry has not identified ways to meet marketplace quality demands without use of some chlorine.
- Industry questions the assumptions used by EPA regarding fish consumption and the fate of dioxin, and therefore questions the validity of the 0.013 parts per quadrillion dioxin standard.
- The draft analysis of the Columbia River (Attachment D of the Staff Report) is inaccurate because incomplete, and outdated information was used.

- The industry questions the legality of any efforts move the point of regulatory limits back into the plant (from the end of the pipe).

Commissioner Lorenzen asked if the industry would cooperate by measuring dioxin back in the plant where greatest concentrations occur rather than relying on measurement after dilution occurs and concentrations may be below the level of detectability but still above standard. Mr. Morrison replied that industry has cooperated in studies but continues to have significant reservations about establishing effluent limits on individual process streams within the plant. Brian Crews stated that James River Corp. will cooperate by monitoring individual process wastestreams in the plant, but will not accept effluent limits on those individual process streams.

Commissioner Lorenzen asked about the fate of dioxin in sediments and the concern that accumulations of sediments may occur at the outfalls of the mills. Mr. Crews noted that sediment studies on the Columbia River done by James River and others have shown that river velocities are too fast and that sediments do not accumulate.

Chairman Hutchison asked about the lawsuits filed on the proposal of DEQ to establish Individual Control Strategies (ICS) for the Oregon mills. Mr. Crews indicated the suits were filed to preserve the legal rights of the mills. He stated that James River is committed to dioxin reduction to meet product demands as well as environmental concerns, will accept study requirements, and will propose a program for control which involves substantial capital investments over a period of time. He noted that the outstanding issues are what is an appropriate dioxin level, and how do you get there.

David Walseth, WTD Industries, presented written testimony which is made a part of the meeting record. In summary, he noted that the Company has done everything possible to address the concerns raised by the Commission at the July meeting. For the record, he indicated they consider the standard to be overly stringent, but will accept it. Further, they don't like the idea of in-plant process wastestream effluent limits, but will accept it in order to move forward.

In response to a question on timing for a decision from the Commission, Mr. Walseth indicated that the industry can't take indefinite or indeterminate delay. They need some certainty in order to make their decisions.

Lydia Taylor, Administrator of the Water Quality Division, noted that in response to an industry request that the Department participate in studies on dioxin in the Columbia River, the industry was advised that the Department would comment on study design, but would remain neutral and not participate since it would be reviewing the work in relation to potential decisions. Ms. Taylor also noted that the Department is comfortable with the current dioxin standard, and will be happy to consider any new or better information and make a recommendation on whether modification of the standard should be considered. (The Commission adopts standards by rule, and may modify a standard through the rulemaking process.)

Lydia Taylor then introduced Kent Ashbaker and Jerry Turnbaugh of the Water Quality Division and EPA staff which were there to answer Commission questions. Representing EPA were Bob Burd, Manager of Water Programs for Region X of EPA, and Danforth Bodine, EPA's national technical expert on pulp and paper.

Bob Burd summarized the role of EPA in the matter as follows:

- EPA has a coordinating role between the states since the Columbia River is shared by two states.
- EPA is providing technical assistance to the states on a preliminary Total Maximum Daily Load (TMDL) analysis.
- EPA reviews NPDES permits proposed by Oregon and Washington and may halt issuance if it objects.
- EPA reviews and approves State proposed TMDL's and Waste Load Allocations (WLA) pursuant to the Clean Water Act.
- EPA reviews water quality standards adopted by the state pursuant to the Clean Water Act. Upon approval by EPA, a state standard becomes a federally enforceable standard.
- EPA develops criteria and technical information that the states use (in conjunction with local site specific information) to develop water body specific standards. Substantial funds were expended in developing the criteria for dioxin. The criteria was reviewed by the experts on the Science Advisory Board. EPA considers the criteria to be good.
- Sediment criteria have not yet been developed by EPA. Work in underway nationally, with a project to develop sediment

criteria for marine waters in Pudget Sound being part of the process.

In response to a question about schedules, Lydia Taylor outlined the following schedule for future actions:

- February 1990 - DEQ will submit final ICS's to EPA for approval
- June 1990 - EPA will approve ICS's and provide the state with a proposed TMDL and WLA for Columbia River
- June 1992 - Federal deadline for compliance.

Regarding state-of-the-art technology, Dan Bodine advised that analytical problems related to dioxin detection are universal; that other countries are focusing on all chloro-organics (dioxin included) whereas the US is focusing on dioxin because that is the only parameter chloro-organic that EPA has adopted criteria for; and that the technology proposed by WTD is comparable to the latest technology being used in other countries to control and minimize total chloro-organics.

Commissioner Lorenzen asked about the potential for dioxin accumulation in sediments in the river. Mr. Bodine stated that outfalls are placed in areas where mixing is good and sediment deposition does not occur. However, downstream, there is a potential for accumulation in backwater areas. EPA is working on sediment issues, but has no policy or guidance yet for the states. He also noted that reduction in the amount of dioxin discharged should result in a reduction in levels in sediment deposits, and be a step in the right direction. Bob Burd indicated that sediment criteria and guidance are several years away. EPA efforts are focusing on aquatic life protection in their sediment criteria development efforts.

Commissioner Lorenzen said he understood that 2 or 3 years ago EPA increased the maximum acceptable daily dosage for TCDD in humans from 0.006 nanograms/kilogram to 0.1 nanograms/kilogram. He asked if the EPA dioxin (TCDD) criteria of 0.013 parts per quadrillion (ppq) was based on the latest maximum dosage figure or the earlier figure. Dan Bodine indicated he thought that the EPA criteria of 0.013 ppq was based on the most recent higher number.

Chairman Hutchison expressed concern that the Commission is constrained by DEQ rules which state that:

In allowing new or increased discharged loads, the Commission or Director shall make the following findings:

- The new or increased discharged load would not cause water quality standards to be violated. ;
- The new or increased discharged load shall not be granted if the receiving stream is classified as being water quality limited, unless the pollutant parameters associated with the proposed discharge are unrelated either directly or indirectly to the parameter(s) causing the receiving stream to be water quality limited;

Ms. Taylor explained that Oregon had not listed the entire river as water quality limited, but only specific river miles of existing mill outfalls, which did not include the proposed WTD pulp mill site.

Fred Hansen requested clarification from EPA regarding timing of ICS implementation actions and EPA's decision to accept or object to state issuance of an NPDES permit for WTD. Bob Burd stated that at the time of startup of a new WTD discharge, EPA would need assurance that the river is in compliance with standards. Director Hansen sought further clarification with the following hypothetical situation: A TMDL for TCDD is established. A waste load allocation (WLA) is made to existing and proposed point sources. Discharge of each source at the level of its WLA will result in compliance with the standard in the river. WTD is ready to start their new mill. At startup, they will be in compliance with their WLA as established in the TMDL/WLA process. However, assume that an existing mill is not in compliance with its waste load allocation as established in the TMDL/WLA/ICS process, and as a result, the river does not meet standards. Is WTD precluded from starting up and discharging, or is the appropriate response to take enforcement action against the mill that is not in compliance. Mr. Burd indicated that WTD would be prevented from starting up and initiating discharge. Director Hansen indicated he did not agree with Mr. Burd; action should be against the mill that is not in compliance with their WLA/ICS rather than the new mill that is in compliance with its WLA and permit. Kent Ashbaker indicated that a condition could be added to the permit to reflect Mr. Burd's interpretation.

David Walseth advised the Commission that a permit with a condition such as Mr. Ashbaker suggested would be the same as no permit at all. He questioned whether it is appropriate to give control to another industry as would be the case if such a

condition were included. He further indicated agreement with Director Hansen's interpretation of the proper regulatory approach.

Commissioner Castle cautioned of the need to keep in mind the difference between the Commission's role in determining the conditions under which the Commission will authorize a new discharge, and the Department's role in determining the conditions under which a permit will be issued (consistent with EPA requirements, EQC rules and standards, and the EQC Discharge authorization conditions).

Chairman Hutchison and Commissioner Sage both questioned whether approval of a discharge could be granted because the existing rule requires findings to be made, and does not allow the findings to be conditional.

Commissioner Lorenzen noted that a substantial amount of information had been provided, and that help was needed in sorting through the issues. He suggested that the Department and other interested participants brief the issues raised in the proceeding.

Action: The Commission by consensus agreed to have the issues raised in the proceeding briefed by the department and other interested participants, and indicated that further action would be deferred until the October meeting.

Agenda Item K: Underground Storage Tanks -- Proposed Adoption of Temporary Rules to Implement Program of Grants, Loan Guarantees and Interest Rate Subsidies to Deal With UST Problems

Due to time limitations, Agenda Item K was not discussed, and the meeting was adjourned. Agenda Item K was to be considered by a conference call to be scheduled as soon as possible.

The meeting was adjourned so that Commission and staff could attend the celebration of the 50 year anniversary of the initiation of Willamette River Cleanup efforts.

DIVISION 50

LAND APPLICATION AND DISPOSAL OF SEWAGE TREATMENT PLANT SLUDGE AND SLUDGE
DERIVED PRODUCTS INCLUDING SEPTAGE

PURPOSE

340-50-005

It is the purpose of these rules to protect the environment and public health in Oregon by prescribing the methods, procedures and restrictions required for the safe handling, use, and disposal of sewage sludge. Industrial sludge, agricultural wastes and sewerage waste water are not included in these rules.

Stat Auth.: ORS Ch. 468

Hist.: DEQ 15-1984, f. & ef. 8-21-84

DEFINITIONS

340-50-010

As used in these rules unless otherwise required by context.

- (1) "Accumulator" crops means swiss chard, lettuce, spinach, carrots and other crops that have been shown to readily accumulate cadmium.
- (2) "Agronomic Application Rate" means a rate of sludge or septage application which matches nutrient requirements for a specific crop on an annual basis.
- (3) "Beneficial Use Site" means any approved site for application of a regulated amount of sludge or septage used for crop or livestock production, sand dune stabilization, or soil improvement. Application rates and site management practices shall assure continued agricultural, horticultural or silvicultural production and shall not lead to a temporary or long-term reduction in site productivity.
- (4) "Cation Exchange Capacity" (CEC) means the sum total of exchangeable cations that a soil can absorb. Expressed in milli-equivalents per 100 grams of soil.
- (5) "Chemical Treatment" means the process of mixing lime or other chemicals with municipal sludge to reduce the number of bacterial pathogens or amount of putrescible matter.

- (6) "Composting" means a process by which dewatered sludge or septage is mixed with carbonaceous material and aerated with controlled high temperatures to promote rapid decomposition and ultimate stabilization as well as pathogen reduction.
- (7) "Controlled Access" means that public entry or traffic is unlikely, for example agricultural land that is privately owned. Parks or other public land may require fencing to insure controlled access.
- (8) "Department" means the Oregon Department of Environmental Quality.
- (9) "Dewatered Sludge" means sludge with a solids concentration between six (6) and twenty (20) percent.
- (10) "Digested Sludge" means sludge resulting from a controlled process which significantly reduces volatile solids and pathogens.
- (11) "Disposal Site" means a Department approved site used for disposal of sludge or septage in excess of agronomic application rates. Beneficial Use Sites do not constitute disposal sites for purposes of this definition.
- (12) "Domestic Waste Water" - See Sewage.
- (13) "Dried Sludge" means sludge with a solids concentration of greater than twenty (20) percent accomplished by mechanical means or air drying that will result in a dry solids content in excess of fifty (50) percent.
- (14) "Heat Drying" means a process of applying heat as a means of removing excess water from sludge as well as destroying pathogens.
- (15) "Heat Treated" means a process of subjecting sludge to high pressure and/or temperature such that all organisms are destroyed.
- (16) "Incinerator Sludge Ash" means sludge ash from a system where over ninety-eight (98) percent of the water is evaporated and the organic material is reduced to less than five (5) percent by combustion at temperatures in excess of 1300°F.
- (17) "Liquid Sludge" means sludge with a solids concentration of less than ten (10) percent.
- (18) "Non-digested Sludge" means sludge that has accumulated in a digester not operating efficiently or a septic tank process whose function is confinement and/or separation of liquids and solids.
- (19) "NPDES Permit" means a waste discharge permit issued in accordance with requirements and procedures of the National

Pollutant Discharge Elimination System authorized by the Federal Clean Water Act and of OAR 340 Division 45.

- (20) "Person" means the United States and agencies thereof, any state, any individual, public or private corporation, political subdivision, governmental agency, municipality, co-partnership, association, firm, trust, estate or any other legal entity whatever.
- (21) "Raw Sewage Sludge" means non-decomposed or non-oxidized sewage sludge.
- (22) "Septage" means the pumpings from septic tanks, cesspools, holding tanks, chemical toilets and other sewage sludges not derived at sewage treatment plants.
- (23) "Sewage" means the water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such groundwater infiltration and surface water as may be present that flow to waste water treatment plants.
- (24) "Sewage Sludge" means the accumulated suspended and settleable solids of sewage or waste water, respectively, deposited in tanks or basins mixed with water to form a semi-liquid mass.
- (25) "Sludge" - See Sewage Sludge.
- (26) "Treatment" means the alteration of the quality of waste waters by physical, chemical or biological means or a combination thereof such that the tendency of said wastes to cause any degradation in water quality or other environmental conditions is reduced.
- (27) "Waste Treatment" - See Treatment.
- (28) "WPCF Permit" means a water pollution control facility permit issued by the Department in accordance with the procedures of OAR 340 Division 14 and which is not an NPDES permit.

Stat Auth.: ORS Ch. 468

Hist.: DEQ 15-1984, f. & ef. 8-21-84

PERMITS

340-50-015

Any person engaged in sewage treatment or collection processes where sludge is produced and subsequently disposed of, must have in their possession either a valid NPDES or WPCF permit obtained pursuant to ORS 468.740 or a solid waste disposal permit obtained for a specific site as provided by ORS 459.205 or a valid sewage disposal service license issued pursuant to ORS 454.695. Permit issuance or renewal will require evaluation of the sludge

management plan which must identify all sites used for sludge application or disposal.

Stat Auth.: ORS Ch. 468

Hist.: DEQ 15-1984, f. & ef. 8-21-84

RESPONSIBILITY

340-50-020

It is the responsibility of the permittee and/or licensee to insure the proper handling, disposal, and application of all sludge generated or pumped. Transportation of the sludge to the disposal or application site shall be made in such a manner as to prevent leaking or spilling the sludge onto highways, streets, roads, waterways, or other land surfaces not approved for sludge application.

Stat Auth.: ORS Ch. 468

Hist.: DEQ 15-1984, f. & ef. 8-21-84

LIMITATIONS & RESTRICTED USES

340-50-025

- (1) Written authorization must first be obtained from the Department prior to burial, containment or direct soil incorporation of raw and/or non-digested sludge or septage. Surface application of septage or non-digested sludge will be permitted *only* on remote sites where there is little likelihood of creating a public nuisance or adverse impact to public waters of the state.
- (2) Sludge shall not be given or sold to the public without their knowledge as to its origin. Sludge analysis shall be available on request from the treatment plant.
- (3) Sludge application to agricultural or forest land shall not exceed the nitrogen loading required for maximum crop yield.
- (4) No sludge or sludge derived product shall be used directly on fruits or vegetables that may be eaten raw.
- (5) Sludge ash applied to farmland shall not exceed the loading rates for heavy metals established for sludge in Table 2.

Stat Auth.: ORS Ch. 468

Hist.: DEQ 15-1984, f. & ef. 8-21-84

SITE SELECTION AND APPROVAL

340-50-030

- (1) Prior approval must be obtained in writing from the Department for the application of sludge or septage on beneficial use sites or disposal sites.
- (2) All persons engaged in sludge disposal or application activity shall submit a sludge management plan to the Department for review and approval. Unless notified of an earlier schedule established by the Department, all plans shall be submitted within one (1) year of enactment of these rules.
- (3) The sludge management plan shall be current and kept on file with the permit or license. The plan must include but not be limited to:
 - (a) Method(s) of sludge removal;
 - (b) Sites identified for land application or disposal;
 - (c) Method(s) for determining degree of sludge stability;
 - (d) Projected use of sludge storage basins if appropriate; and
 - (e) Sludge analysis, application rates and heavy metal limitations.
- (4) New sites for sludge application and the expansion of existing sites must be proposed to the Department in writing and prior to the use of such sites written authorization received. New approved sites shall be made a part of the sludge management plan.
- (5) Prior to approval of any proposed site that may be sensitive with respect to residential housing, runoff potential or threat to groundwater, the Department may require an opportunity for public comment and public hearing.
- (6) Plans for sludge impoundment ponds or reservoirs proposed for temporary storage to facilitate the application of sludge must be submitted to the Department and written approval received prior to the use of such ponds or reservoirs.
- (7) Requests for approval of sludge disposal sites shall be accompanied by a statement of land use compatibility from the responsible planning jurisdiction.

Stat Auth.: ORS Ch. 468

Hist.: DEQ 15-1984, f. & ef. 8-21-84

MONITORING AND REPORTING

340-50-035

(1) The permittee shall provide sludge analyses and maintain a log of sludge applied to approved sites. The agricultural application site log shall become part of the site authorization and must be available for Department review during the life of the application site. Site logs shall be maintained as part of the permittee's permanent records.

(2) (a) Sludge analyses shall be performed on a representative sample and shall include but not be limited to:

- (A) Lead (Pb) mg/kg dry weight
- (B) Zinc (Zn) mg/kg dry weight
- (C) Copper (Cu) mg/kg dry weight
- (D) Nickel (Ni) mg/kg dry weight
- (E) Cadmium (Cd) mg/kg dry weight
- (F) Total Nitrogen (N) % dry weight
- (G) Nitrate Nitrogen (NO₃) % dry weight
- (H) Ammonia Nitrogen (NH₃) % dry weight
- (I) Phosphorous (P) % dry weight
- (J) Potassium (K) % dry weight
- (K) pH standard units
- (L) Total Solids %
- (M) Volatile Solids %

(b) All tests shall be performed using either standard methods¹ or EPA Laboratory methods². Except as otherwise permitted by the Department, minimum frequency of sludge analyses shall be:

<u>Plant Size</u>	<u>Frequency</u>
(A) > 10 MGD	Quarterly
(B) 2-10 MGD	Semi-Annually
(C) 0.5-2 MGD	Annually
(D) <0.5 MGD	As required

¹ Standard Methods for the Examination of Water and Wastewater.
 Published by: American Public Health Association
 American Water Works Association
 Water Pollution Control Federation

² EPA-EP toxicity test procedure as described in Federal Register,
 Vol.45, No. 98.33127, May 19, 1980

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the Department of Environmental Quality, Portland]

Stat. Auth.: ORS Ch. 468

Hist.: DEQ 15-1984, f. & ef. 8-21-84

GUIDELINES FOR THE USE, SITE SELECTION AND APPLICATION OR DISPOSAL OF SLUDGE AND SEPTAGE

PURPOSE

340-50-060

The following guidelines are meant to provide assistance in the development of environmentally acceptable sludge and septage use and/or disposal programs. They convey many of the criteria considered by the Department to be important in the use, site selection and application or disposal of sewage treatment plant sludge, sludge derived products and septage.

Stat Auth.: ORS Ch. 468

Hist.: DEQ 15-1984, f. & ef. 8-21-84

USE LIMITATIONS

340-50-065

- (1) Controlled access to municipal sludge application sites for 12 months following a surface application is required. Access control is assumed on rural private land.
- (2) Where sludge is applied for agricultural use, Nitrogen requirements for particular crops can be obtained from the Oregon Cooperative Extension Service. Surface applications may be doubled on some perennial crops since NH_3 volatilization may account for up to a fifty (50) percent loss of available N.
- (3) As a general rule, crops grown for direct human consumption (fresh market fruits and vegetables) should not be planted until 18 months after municipal sludge application. If the edible parts will not be in contact with the sludge amended soil, or if the crop is to be treated or processed prior to marketing such that pathogen contamination is not a concern, this requirement may be waived.
- (4) Grazing animals should not be allowed on pasture or forage where digested sludge has been applied until thirty (30) days after application. Grazing restrictions may be extended to six (6) months where non-digested sludges are applied. Grazing

restrictions may be reduced to seven (7) days after application of air dried sludge.

- (5) Compost derived from sludge, heat dried sludge, and sludge from other processes equivalent in Pathogen reduction may be used on indoor and outdoor ornamental plants, shrubs, trees and grass without restricting public access.
- (6) Suggested criteria for complete digestion are as follows:
 - (a) Anaerobic digestion: The process is conducted in the absence of air at residence times ranging from 60 days at 20°C to 15 days at 35°C to 55°C, with a volatile solids reduction of 30 to 40 percent, or volatile solids content of 60 percent or less.
 - (b) Aerobic digestion: The process is conducted by agitating sludge with air or oxygen to maintain aerobic conditions at residence times ranging from 60 days at 15°C to 40 days at 20°C with a volatile solids reduction of 30 to 40 percent, or volatile solids content at 60 percent or less.

Stat Auth.: ORS Ch. 468
Hist.: DEQ 15-1984, f. & ef. 8-21-84

CRITERIA FOR SITE SELECTION AND APPROVAL

340-50-070

- (1) Sites should be on a stable geologic formation not subject to flooding or excessive runoff from adjacent land. If periodic flooding cannot be avoided, the period of application should be restricted and soil incorporation is recommended.
- (2) At the time of application the minimum depth to permanent groundwater should be four (4) feet and the minimum depth to temporary groundwater should be one (1) foot. Sites approved for year-round application should be evaluated carefully to insure that groundwater separation distances conform with these requirements.
- (3) Topography of the site should be suitable to allow normal agricultural operations. Where needed, runoff and erosion control measures should be constructed. In general, liquid sludge should not be surface applied on bare soils where the ground slope exceeds twelve (12) percent. Sites with slopes up to twenty (20) percent may be used for dewatered or dried sludge, for direct incorporation of liquid sludge into the soil, or for liquid sludge application with appropriate management to eliminate runoff. In Western Oregon where soil incorporation on sloping ground is not feasible, sludge applications should be restricted to the dry seasons.

- (4) Soil should have a minimum rooting depth of twenty-four (24) inches. The underlying substratum should not be rapidly draining so that leachate will not be short circuited into groundwater.
- (5) Where heavy metal "accumulator" crops are grown, the soil should have a pH of 6.5 to 8.2. If the pH is below 6.5 at sites where sludge is applied above agronomic rates on an annual basis, or where sludges contain unusually high concentrations of heavy metals, the soil should be limed to raise and maintain the pH 6.5 or above. Saline and/or alkali soils should be avoided.
- (6) Discretion should be used in approving application of sludge on land that is in close proximity to residential areas. A buffer strip large enough to prevent nuisance odors or wind drift problems is needed. Size of the buffer strip will depend upon the method of application used and proximity to sensitive areas, for example:
 - (a) Direct injection: no limit required
 - (b) Truck spreading: 0 to 50 feet
 - (c) Spray irrigation: 300 to 500 feet
- (7) Buffer strips should be provided along well traveled highways. The size of the buffer strip will vary with local conditions and should be left to the discretion of the Department field representative. No sludge should be spread at the site closer than fifty (50) feet to any ditch, channel, pond or waterway or within two hundred (200) feet of a domestic water source or well.

Stat Auth.: ORS Ch. 468
Hist.: DEQ 15-1984, f. & ef. 8-21-84

MONITORING AND REPORTING

340-50-075

- (1) Where sludge is applied at or below agronomic rates (based on crop N requirements), no monitoring other than the sludge analyses and cumulative application of sludge to a site will be required. If sludge contains high concentrations of heavy metals (Table 1) or other toxic elements, or if crop N requirements are exceeded on an annual basis, additional monitoring and special management practices may be required.
- (2) Sludge or septage may be applied to approved disposal sites above agronomic rates so long as runoff, nuisance conditions or groundwater contamination do not occur.
- (3) Test wells may be required on any site on a case-by-case basis at the discretion of the Department.

- (4) The quantity and type of sludge from the municipal sewage treatment plant used either for disposal or beneficial use purposes shall be reported on the monthly operational report form and returned to the DEQ. In service areas where industrial processes are likely to create heavy metal concentrations higher than those found in domestic sludge, pretreatment is required to reduce the concentration of heavy metals and extend the useful life of the application site.

Stat Auth.: ORS Ch. 468

Hist.: DEQ 15-1984, f. & ef. 8-21-84

APPLICATION OF MUNICIPAL SLUDGE AND SEPTAGE

340-50-080

- (1) The application of sludge on agricultural land should be managed to utilize the fertilizer value to the maximum extent possible. The recommended rate of sludge application is based on the nitrogen requirement of the crop grown and will vary depending on the nitrogen content of the sludge. Calculations to determine the amount of heavy metals being applied to land in sludge are also necessary to insure long term conformance with loading limits (Table 2).
- (2) Sludge analyses offer a guide to determine the rate of application for a particular crop. Crop nitrogen requirements are used routinely to determine application rates for commercial fertilizer and these figures are readily available from state or county Extension Service offices. Applying sludge within these limits insures that sludge nitrogen will be utilized for plant growth and that excess nitrogen which could leach into groundwater will not be of concern. Exceeding crop nitrogen requirements may occasionally be justified in order to achieve rapid soil improvement or to prolong beneficial effects.
- (3) Municipal sludge contains trace amounts of potentially toxic substances including: zinc (Zn), copper (Cu), nickel (Ni), and cadmium (Cd). Many agricultural chemicals including commercial fertilizers and pesticides are also potentially toxic; however, with safe and appropriate management, these products are used with proven success and cause little if any environmental degradation.
- (4) Zn, Cu, and Ni can be toxic to plants when present in soils in excessive amounts. These metals, however, constitute little hazard to the food chain through plant accumulation. The total amount of these metals which may be applied to soil can be limited to prevent toxicity problems (Table 2). The concentration of metals in Oregon sludges is generally low so sludge may be applied annually to a given site for many years before loading limits would be reached. Where background soil pH is less than 6.5, cumulative Cd application should not exceed 5 kg/ha (4.5 lb/acre).

Cumulative loading rates of other metals should be considered where concentrations exceed those listed in Table 1.

- (5) Soil pH has been shown to affect Cd uptake for leafy green vegetables and some root crops. Lime should be applied to raise soil pH to a 6.5 or greater where these metal "accumulator" crops are grown to minimize Cd uptake. Soil pH adjustment may be warranted on other fruit or vegetable crops grown for processing to satisfy liability concerns.
- (6) For most crops grown in Oregon (grasses, forage crops, grains, and fruits) field studies indicate there is no correlation between soil pH and Cd uptake.
- (7) Sewage sludge and septic tank pumpings contain microorganisms which may be pathogenic to man. Treatment plant digestion processes and septic tank residence times greatly reduce the number of disease causing organisms which will be found in the final product. Those which survive the treatment process die off rapidly when subjected to sunlight, soil incorporation, and competition with other microorganisms.
- (8) Crops grown for direct consumption (fresh market) have the potential of contamination by low numbers of intestinal worm eggs and pathogenic organisms. Root crops and leafy vegetables which are grown in direct contact with sludge amended soil require an 18 month waiting period between sludge application and planting to insure sanitation. When concern exists regarding possible indirect contamination of fresh marketed crops such as green beans, pole crops, sweet corn, fruit and nuts, the same waiting period restriction applies. Management practices such as soil incorporation or injection in advance of planting or fruit set may reduce the hazard of contamination. There is no restriction on planting time for crops not grown for direct human consumption. There is also no restriction on the use of compost for food chain crops which are not grown for direct human consumption and when the portion of the plant to be eaten does not come in direct contact with the compost if the metal content of the compost is below the concentration shown in Table 1.
- (9) Application of digested sludge is of some concern with pasture and forage crops. "Animals whose products are consumed by humans" should be prevented from grazing for at least one month following sludge application. This is particularly true for dairies, where animal contact or direct ingestion of sludge could result in milk contamination. Where non-digested sludges are applied to pasture, restrictions on grazing should be extended to 6 months.

Stat Auth.: ORS Ch. 468

Hist.: DEQ 15-1984, f. & ef. 8-21-84

Table 1
(340-50-075)

Acceptable levels of Metal Content of Sludge
for General Application to Agricultural Land

<u>Element</u>	<u>Concentration (mg/kg)</u>
Zn	2000
Pb	1000
Cu	800
Ni	100
Cd	25

Table 2
(340-50-080)

Maximum Heavy Metal Loading Recommended for Sludge Applications
to Privately Owned Farmland

Maximum Metal Addition (kg/ha) with a
Soil Cation Exchange Capacity (meq/100g)

<u>Metal</u>	<u>Less than 5</u>	<u>5-15</u>	<u>Greater than 15</u>
Pb	500	1,000	2,000
Zn	250	500	1,000
Cu	125	250	500
Ni	50	100	200
Cd	5	10	20

1. The maximum application of Cadmium (Cd) for soils with pH values of 6.5 or less is 4.5 lbs/acre regardless of the CEC.
2. Kg/ha is roughly equivalent to lbs/acre.

Approved by EQC 8/10/84



Department of Environmental Quality

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

August 7, 1989

William R. Diamond
Criteria and Standards Division
U.S. Environmental Protection Agency
401 M Street SW
Washington, D.C 20460

Dear Mr. Diamond:

Thank you for providing the Department of Environmental Quality (DEQ) with the opportunity to comment on proposed 40 CFR Part 503 sludge regulations.

Oregon's municipal sludge program is operated under statewide rules and guidelines which direct sources in the management of their sludge. Rules, in part, require sources to operate under a Department approved solids management plan. Plans address a variety of specific sludge handling features peculiar to each permitted source's sludge processing and utilization activities.

For more than ten years, the Department has encouraged permitted Oregon sources to manage sludge as a beneficial, recyclable, resource. Greater than 94% of the domestic sludge generated by Oregon sources is land applied at DEQ authorized sites. Solids are applied according to specific written conditions which reflect sludge quality, site conditions, the means of sludge application, crop, and crop management. We view our present approach to sludge management well aligned with the spirit of Congress' Clean Water Act amendments and consistent with EPA's National Municipal Sludge Policy.

The Department's primary concern with draft regulations is that they would sharply curtail Oregon's beneficial sludge utilization programs and cause many sources to turn to much less desirable solids incineration or disposal practices.

Proposed regulations do not appear to be based on valid scientific studies involving the actual land application of municipal sludges in the field. Instead, they use data based on studies involving the addition of metal salts (e.g., Zn, Ni, Cu, and Cr) and reagent grade organic solutions (e.g., PCBs) to vegetation grown in pots or greenhouses to derive numeric limits for solids use options recognized under draft Subpart B. The use of inappropriate data like these as a foundation for sludge regulations is inappropriate.

William R. Diamond
U.S. Environmental Protection Agency
August 7, 1989
Page 2

Proposed regulations also contain a number of technical inconsistencies. For example, it appears sludge containing up to 30% lindane is acceptable for land application. In contrast, very conservative quantities of sludge-borne copper and zinc could be land applied to Oregon pasture lands. Inconsistencies like these need to be eliminated.

Rather than use an MEI modeling approach to assess the risks of sludge land application, the Department recommends modeling be based on a "reasonably exposed individual" which really exists in combination with data from actual studies involving the field application of municipal sludge.

The Department is also quite concerned with the absence of flexibility associated with 503 Subpart B. Regulations make no provisions to recognize specific sludge characteristics, site conditions, crop, crop management, and solids spreading techniques. We request EPA adjust regulations to enable permitting authorities who have adequate technical capability to manage sludge practices based on these factors.

Department staff have perused draft comments that the W-170 Peer Review Committee prepared regarding the nature of data and the risk assessment model approach EPA used in drafting sludge regulations. With the exception of the Peer Review Committee's recommending the pH at all sites used for agricultural production be at least 6 at the time of sludge application (no matter what the crop or the sludge quality) staff concur with other Peer Review Committee recommendations. If pH control becomes a requirement of regulations, we recommend: (1) the elimination of pH control for crops not sensitive to trace metal uptake (sludge is not applied to sites used to grow high metal uptake crops like tobacco or lettuce in Oregon); (2) good quality sludges which have trace metals below certain levels be exempted from pH control requirements; (3) DEQ be granted a waiver from the pH requirement where the Department views its application appropriate; and (4) pasture lands and crops not directly consumed by humans be excluded from pH control.

Although the Department recognizes litigation initiated by the National Resources Defense Council has placed EPA under tight constraint to get regulations promulgated, we stress that the public health and the environment will best be protected if EPA is afforded adequate time to modify draft regulations to recognize comments raised by affected sources, state regulatory agencies like DEQ, the W-170 Peer Review Committee, EPA's Science Advisory Board, and the public. Because several substantive modifications need to be made to draft regulations, we believe a second round of public comment essential prior to regulation promulgation.

In July 1988, I appointed a Domestic Sludge Technical Advisory Committee to help broaden the Department's understanding of how DEQ's current sludge program affects permitted sources and assist us in our determination of how

William R. Diamond
U.S. Environmental Protection Agency
August 7, 1989
Page 3

anticipated federal regulations, including proposed 503 regulations, would impact Oregon's sludge management program. Committee comments on draft Part 503 regulations appear in Attachment A. Excerpts from Committee meetings which provide additional detail on Committee concerns and recommendations as well as several regulation related issues can be found in Attachment B.

Attachment C consists of a series of slides which highlight major areas in draft regulations which are of concern to the Department. Included in the Attachment: (1) are data on Oregon source sludge quality; (2) figures which illustrate (a) how Tables 1, 2, and 3 in proposed regulation's would severely restrict the land application of Portland's sludge on agricultural lands; (b) indicate how site life would be significantly reduced where several Oregon cities apply their sludges to agricultural lands; and (c) show how either the detection of organic contaminants or the insensitivity of laboratory detection limits would obviate the beneficial utilization of sludges from some Oregon communities on nonagricultural lands; and (3) an abstract of DEQ concerns related to proposed Part 503 regulations.

Again, I urge EPA not to promulgate technical regulations which will force Oregon's sources to abandon current sludge beneficial utilization programs without reasonable, scientific justification!

If you or your staff desire to discuss comments raised in this letter or its attachments, please contact Mark Ronayne at (503) 229-6462.

Sincerely,

Signed
Fred Hansen
Director

FH:kjc
SD\SL\WJ2095
Attachments(3)
cc: Dick Hetherington, EPA, Region X
Bill Sobolewski, EPA, Oregon Operations Office



ASSOCIATION of OREGON SEWERAGE AGENCIES

PO Box 68592, Portland, OR 97268-0592

Member Agencies

Albany
Arch Cape
Service District
Bandon
Canby
Clackamas County
Dept. of Utilities
Clatskanie
Coos Bay
Corvallis
Culver
Douglas County
Engineer Dep't.
Enterprise
Estacada
Eugene
Gervais
Green Sanitary District
Gresham
Hermiston
Hood River
John Day
Klamath Falls
Lebanon
McMinnville
Medford
Molalla
Mt. Angel
MWMC
Myrtle Creek
Netarts-Oceanside
Sanitary Dist.
Newberg
North Bend
North Tillamook County
Sanitary Authority
Nyssa
Oak Lodge
Sanitary Dist.
Pacific City
Sanitary District
Philomath
Portland Bureau of
Environmental Services
Prineville
Redwood
Sewer Service Dist.
Roseburg Urban
Sanitary Authority
Salem
Sandy
Seaside
Shady Cove
Silverton
South Suburban
Sanitary District
Springfield
St. Helens
Sutherlin
Sweethome
Tillamook
Troutdale
Unified Sewerage Agency
Veneta
Wasco
Waterloo
Wilsonville
Winston
Woodburn

May 23, 1989

Fred Hanson
Director
Dept. of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204

Dear Fred:

The Association of Oregon Sewerage Agencies is concerned about the DEQ's apparent decision to curtail or relinquish its oversight of industrial pretreatment and sludge disposal/utilization programs. Our member agencies are presently responsible for carrying out these programs and the consensus of them is that the DEQ should continue or expand its oversight of these programs.

One AOSA goal is to initiate and participate in the development of sound environmental policy. We believe that DEQ's continued involvement in pretreatment and sludge programs is needed in order to develop sound environmental policy. These programs are changing and evolving. We feel that the State input and perspective are necessary in the State as Federal regulations are developed and administered. Clearly, our members would rather work with DEQ staff who understand the impacts of oversight decisions and are closer to local situations than with EPA regulators. Also, many of our member agencies require program assistance or advice from time to time. DEQ, as a resource, is in a better position to provide sound help to our members than EPA.

Another goal of AOSA is to promote public awareness and education. DEQ is best positioned to work with AOSA and its member agencies to accomplish this goal relative to pretreatment and sludge. DEQ has credibility and has already begun public awareness and public education work for these programs. We are anxious for DEQ to continue these activities.

When you addressed our February, 1989 meetings, you stated that there would be a future need to "do more" to implement industrial pretreatment and to properly handle and manage sludge. We assumed that you were referring to a coordinated

Chair
John M. Lang
742 7160

Vice Chair
Floyd Collins
CRB 1700

D I Secretary/Treasurer
Michael Read
655-2291

May 23, 1989
Page 2

POTW/DEQ approach in these programs. Now it appears that the lack of funding will prevent DEQ's oversight and other participation in the pretreatment and sludge management programs throughout the State.

We are willing to support DEQ's need for funding to manage its State-wide environmental responsibility in these programs. We will appreciate your thoughts and consideration on how AOSA can help with this matter.

Sincerely,

John Lang
Chair

JML:a1
368:L(DEQ)

c: Dick Nichols
Mary Halliburton



Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item B, October 20, 1989, EQC Meeting
Proposed Civil Penalty Settlement Agreements

Background

Oregon Revised Statute 468.130(3) provides that any civil penalty may be remitted or mitigated upon such terms and conditions as the Environmental Quality Commission considers proper and consistent with the public health and safety. The statute further provides that the Commission may by rule delegate to the Department, upon such conditions as deemed necessary, all or part of the authority to remit or mitigate civil penalties. Oregon Administrative Rule 340-12-047 authorizes the Director of the Department to seek to compromise or settle any unpaid civil penalty which the Director deems appropriate. Any compromise or settlement executed by the Director shall not be final until approved by the Commission.

The following proposed settlement agreements are attached for the Commission's consideration and approval:

	Page
Case Numbers WQ-CR-89-51, Holland Dairy, Inc.	A-1
Case Number AQOB-WVR-89-49, Dennis Bevins	B-1
Case Number AQOB-SWR-89-61, John H. and Sylvione A. Kohansby, dba/Rogue Villa Trailer Park	C-1

Fred Hansen

GB8231M



Environmental Quality Commission

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

MEMORANDUM

TO: Environmental Quality Commission **DATE:** October 20, 1989
FROM: Director *Self*
SUBJECT: Request for Approval of Settlement Agreement in Case No. WQ-CR-89-51, Holland Dairy, Inc.

Respondent, Holland Dairy, Inc., an Oregon corporation, owns and operates a dairy in Klamath Falls, Oregon. Respondent was issued a Water Pollution Control Facility General Permit for a Confined Animal Feeding Operation (CAFO) on January 15, 1988. The dairy's facility ID number is 103498/A. An irrigation ditch which drains into the Lost River, waters of the state, runs through or adjacent to Respondent's property.

On March 28, 1989, the Department assessed an \$8,000 civil penalty against Respondent for discharging manure and manure contaminated waste water from Respondent's CAFO facility into the irrigation ditch, in violation of its general permit and Oregon Water Quality law. The Department alleged that Respondent's violation was a Class I major violation because Respondent had discharged over 1.6 million gallons of wastewater to the Lost River continuously for three days. The Department also alleged that Respondent discharged the waste because its animal waste management facilities were inadequate for holding the amount of waste produced, and that Respondent irrigated the manure onto frozen ground. On April 14, 1989, Respondent filed a request for a hearing with the Commission's hearings officer and a request for an informal settlement meeting.

On May 10, 1989, the hearings officer, the Department and Respondent discussed possible settlement of the contested case hearing by telephone conference call. Respondent acknowledged that the farm had animal waste management problems and that discharges of manure from the farm had occurred on the dates alleged. Respondent disagreed with the Department's findings that the discharge was continuous, that the discharge was 1.6 million gallons, and that Respondent intended to cause pollution of the Lost River. Respondent stated that the actual amount of wastewater discharged over the three day period was approximately 462,000 gallons. Respondent agreed to enter into a stipulated order with the Department requiring Respondent to complete necessary repairs and construction of his animal waste management facilities, in exchange for a settlement of the penalty.

Respondent and the Department have reached the following settlement agreement. Respondent admits the violation which resulted in the civil penalty; agrees to repair and/or construct his animal waste management

system in accordance with plans approved by the Department, by October 1, 1989; and agrees to eliminate all discharges from dairy property. The Department agrees to recommend to the Commission to mitigate the civil penalty to \$2,500 as Respondent has furnished the Department with additional information as is stated above, which was not available to the Department at the time the civil penalty assessment was issued.

Respondent has accepted the offer and signed the attached Stipulation and Final Order. I believe the additional information and Respondent's willingness to work with the Department to resolve its pollution control problems justifies the mitigation of the penalty to \$2,500, and that such a mitigation is protective of public health and the environment.

The civil penalty assessment action, settlement correspondence, and the proposed Stipulation and Final Order are attached for your review and consideration.

I believe the settlement is satisfactory and recommend its approval. If you agree, please sign and date Stipulation and Final Order No. WQ-CR-89-51.

Fred Hansen

Attachments
Yone C. McNally
229-5152
August 1, 1989
EQCHOLLA.ND

Date: 9-19-89 1:17pm
From: Van Kollias:RO:DEQ
To: CEPortis:MSD
cc: Van Kollias:RO:DEQ
Subj: Holland Dairy, Case No. WQ-CR-89-51

This is to confirm that yesterday we gave the Business Office a check for \$500 and a copy of a Stipulation and Final Order in the above referenced case. Upon review and approval of the EQC, the order will mitigate the \$8,000 civil penalty to \$2,500. The \$500 check represents a partial payment towards the \$2,500. None of this counts unless and until the EQC approves. Therefore, hold the check in the safe until such time. This settlement proposal will be on the EQC's October 20, 1989 agenda for consideration. Thanks.

815 WASHBURN WAY
KLAMATH FALLS, OR 97603

Richard N. Belcher
ATTORNEY AT LAW

RECEIVED
SEP 15 1989
(503) 882-5
FAX 883-8.

DEPARTMENT OF JUSTICE
PORTLAND, OREGON

September 13, 1989

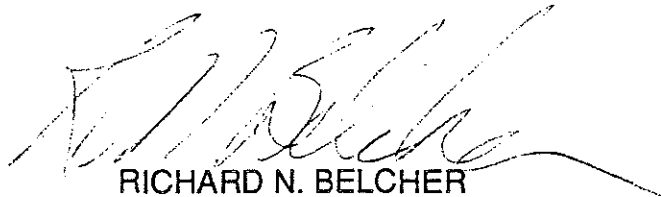
Larry Edelman
Oregon Department of Justice
1515 S.W. 5th Avenue, Suite 410
Portland, Oregon 97201

RE: Holland Dairy, Inc.

Dear Mr. Edelman:

Enclosed is the Stipulation and Final Order with the signature of our client. I am sending the Stipulation along with a \$500 check in the mail for settlement of this case. If you have any questions, please do not hesitate to call.

Sincerely,



RICHARD N. BELCHER

RNB/ymw
Enclosure
Copy: Holland Dairy, Inc.

7. Respondent admits each and every fact and violation contained in Paragraph II of the the Notice of Assessment of Civil Penalty.

Now, THEREFORE, the parties agree to entry of the following Final Order:

A. Mitigating the Eight Thousand Dollar (\$8,000) civil penalty to Twenty-Five Hundred (\$2,500), Five Hundred (\$500) to be paid by Respondent on approval of the Stipulation and Final Order by the Environmental Quality Commission with an additional Five Hundred (\$500) due 30 days from the date of entry of this Order, and a balance of One Thousand Five Hundred (\$1,500) payable sixty (60) days from entry of this Order.

B. By October 1, 1989, Respondent shall complete all necessary repairs to and construction of Respondent's animal waste control facilities according to plans prepared by the Soil Conservation Service or a private consultant, and as approved by DEQ.

C. Respondent shall immediately eliminate all direct and indirect discharges to the irrigation ditch adjacent to Respondent's property.

D. The DEQ reserves the right to enter future orders requiring additional action, or civil penalties against Respondent for any violations of environmental statutes or regulations, including violations of this Stipulation and Final Order, or to seek any available remedy for failure by Respondent, if any, to comply with any requirement of this

2 STIPULATION AND FINAL ORDER (No. WQ-CR-89-51)
(7815/aa/Holland Dairy, Inc.)

Stipulation and Final Order, as necessary to assure compliance with all applicable water quality laws and regulations. Such remedies might include, but are not limited to, injunctive relief. This Order shall, however, relieve Respondent of civil liability for the violations alleged in Case No. WQ-CR-89-51.

E. If any event occurs that is beyond Respondent's reasonable control and that causes or may cause a delay or deviation in performance of the requirements of this Stipulation and Final Order, Respondent shall promptly notify the DEQ verbally of the cause of the delay or deviation and its anticipated duration, the measures that have been or will be taken to prevent or minimize the delay or deviation, and the timetable by which Respondent proposes to carry out such measures. Respondent shall confirm in writing this information within five (5) working days of verbal notification. It is Respondent's responsibility in the written notification to demonstrate to the DEQ's satisfaction that the delay or deviation has been or will be caused by circumstances beyond the control and despite due diligence of Respondent. If Respondent so demonstrated, the DEQ shall extend times of performance of related activities under the Stipulation and Final Order as appropriate. Circumstances or events beyond Respondent's control include but are not limited to acts of Nature, unforeseen strikes, work stoppages, fires, explosion,

///

///

3 STIPULATION AND FINAL ORDER (No. WQ-CR-89-51)
(7815/aa/Holland Dairy, Inc.)

riot, sabotage, or war. Increased cost of performance or changed business or economic circumstances, shall not be considered circumstances beyond Respondent's control.

F. The terms of this Stipulation and Final Order may be amended by the mutual agreement of the DEQ and Respondent.

G. Respondent acknowledges that it has actual notice of the contents and requirements of this Stipulation and Final Order and that failure to fulfill any of the requirements hereof would constitute a violation of this Stipulation and Final Order.

RESPONDENT

Date

Holland's Dairy, Inc. By: Thys deHoops
THYS DeHOOPS, President
Holland Dairy, Inc.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Date

FRED HANSEN, DIRECTOR

FINAL ORDER

IT IS SO ORDERED:

ENVIRONMENTAL QUALITY COMMISSION

Date

William P. Hutchison, Jr.
Chairman

Date

Wallace B. Brill, Member

4 STIPULATION AND FINAL ORDER (No. WQ-CR-89-51)
(7815/aa/Holland Dairy, Inc.)

Date

Emery N. Castle, Member

Date

Genevieve Pisarski Sage, Member

Date

William Wessinger, Member

5 STIPULATION AND FINAL ORDER (No. WQ-CR-89-51)
(7815/aa/Holland Dairy, Inc.)



Environmental Quality Commission

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

May 3, 1989

Richard N. Belcher
Attorney at Law
815 Washburn Way
Klamath Falls, OR 97803

Laurence H. Edelman
Assistant Attorney General
Department of Justice
1515 SW 5th Avenue, Suite 410
Portland, OR 97201

Re: DEQ v Holland Dairy, Inc.
Case No. WQ-CR-89-51

This will confirm our plan to talk by telephone May 10, 1989 at 10:00 a.m. to identify facts and issues in controversy and to attempt to resolve them informally.

Please anticipate your settlement authority.

Sincerely,

Linda K. Zucker
Hearings Officer

LKZ:y
HY8361

cc: ~~Enforcement Section, DEQ~~ ^{LKS} ^{YCM}
Water Quality Division, DEQ
Central Region, DEQ

815 WASHBURN WAY
KLAMATH FALLS, OR 97603

Richard N. Belcher
ATTORNEY AT LAW

(503) 882-5101
FAX 883-8013

April 14, 1989

Mr. Fred Hansen, Director
Department of Environmental Quality
811 S W Sixth Avenue
Portland, OR 97204-1390

Re: Notice of Assessment of Civil Penalty
No. WQ-CR-89-51

Dear Mr. Hansen:

My client, Holland Dairy, Inc., requests an informal hearing on the above matter.

Sincerely,


RICHARD N. BELCHER

RNB:nld
Enc.

REGIONAL OPERATIONS DIVISION
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
APR 17 1989

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
APR 17 1989
OFFICE OF THE DIRECTOR

ANSWER

A-11

Richard N. Belcher

ATTORNEY AT LAW

815 WASHBURN WAY
KLAMATH FALLS, OR 97603

(503) 882-5109
FAX 883-8011

April 14, 1989

Mr. Fred Hansen, Director
Department of Environmental Quality
811 S W Sixth Avenue
Portland, OR 97204-1390

Re: Notice of Assessment of Civil Penalty
No. WQ-CR-89-51

Dear Mr. Hansen:

I have been retained by Holland Dairy, Inc., to represent them in the above matter.

My client wishes to exercise its right to a formal hearing. An Answer is enclosed.

Sincerely,



RICHARD N. BELCHER

RNB:nld
Enc.

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
APR 1

OFFICE OF THE DIRECTOR

ANSWER

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL
QUALITY OF THE STATE OF OREGON,

Department,

vs.

HOLLAND'S DAIRY, INC.,
an Oregon corporation,

Respondent.

No. WQ-CR-89-51
Klamath County

ANSWER

Respondent, by and through its attorney, Richard N. Belcher, alleges:

I.

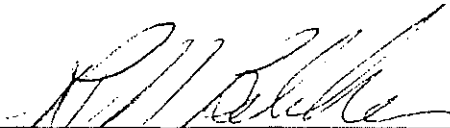
Respondent denies each and every allegation contained in the Department's
Notice of Assessment of Civil Penalty not specifically admitted herein.

II.

Respondent admits paragraphs I and II of Department's Notice of Assessment of
Civil Penalty.

Wherefore, Respondent prays that the Notice of Assessment of Civil Penalty be
dismissed and for other relief as is deemed just and equitable.

Dated this 14th day of April, 1989.

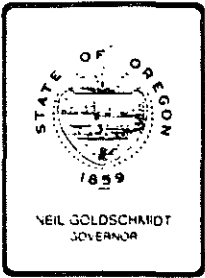

RICHARD N. BELCHER, OSB No. 84165
Attorney for Respondent

DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED

OFFICE OF THE CLERK

ANSWER

RICHARD N. BELCHER
ATTORNEY AT LAW
815 WASHBURN WAY
KLAMATH FALLS, OREGON 97603
(503) 882-5101 — FAX (503) 883-8013



Department of Environmental Quality

811 SW SIXTH AVENUE, PORTLAND, OREGON 97204-1334 PHONE (503) 229-5696

CERTIFIED MAIL NO. P 194 974 162

Holland's Dairy, Inc.
Thys DeHoop,
Registered Agent
Route 2, Box 746
Klamath Falls, OR 97601

MAR 28 1989

Re: Notice of Assessment
of Civil Penalty
WQ-CR-89-51
Klamath County

During an inspection on January 12, 1989, Department representative Don Bramhall confirmed complaints that liquid manure from your dairy farm was flowing into an irrigation ditch and discharging into the Lost River. Art DeHoops informed Mr. Bramhall and Allan Youse of the Oregon Department of Agriculture (ODA) that you had been irrigating liquid manure onto your fields continuously since January 10, 1989. Mr. DeHoop explained that the manure storage lagoons had become full and irrigation was necessary to lower the level in the ponds so that they could accept more waste. However, the irrigation resulted in a direct discharge to the ditch as the ground was frozen and could not assimilate the waste.

Both this Department and the Oregon Department of Agriculture have been advising you since at least 1980 that you need storage facilities adequate to handle the amount of animal waste produced by your operation. While you have expanded and updated your operation and expanded your herd size, you have not adequately expanded your manure storage facilities. This failure has caused you to irrigate at times of the year when it is inappropriate and has resulted in discharges to public waters. These discharges have adversely impacted your neighbors and have resulted in numerous complaints to this Department.

Because of the serious nature of the discharge and your continuing reluctance to construct adequate animal waste storage facilities, I am enclosing a formal notice in which I have assessed an \$8,000 civil penalty against you. The amount of your penalty was determined pursuant to Oregon Administrative Rule 340-12-045.

As owner and operator of this dairy, it is your responsibility to see to it that you comply with state water quality laws and provide adequate storage for your animal waste. Several government agencies, including ODA, are prepared to help you in designing plans to eliminate your storage problem. However, the best plans will not stop the discharges if you do not make the commitment to carry through on them. I understand that you may have already

Holland's Dairy
Thys DeHoop, Registered Agent
Page 2

started to expand your storage facilities. While this is a step in the right direction, you should be aware that any new construction or modification of your waste storage facilities requires the submittal and approval of plans prior to the start of any construction.

The penalty is due and payable. Your rights and duties are explained in Paragraph VI of the Notice. If you do not pay the penalty or appeal the notice within twenty (20) days, a Default Order and Judgment will be filed against you and a lien filed against your property.

I have enclosed a copy of the Department's water quality laws and animal storage regulations relevant to your situation for your reference. If you wish to discuss this or believe there are mitigating factors which the Department may not have considered in assessing the civil penalty, you may request an informal discussion by attaching such a request to your answer. Your request to discuss this matter with the Department will not waive your right to a contested case hearing. If you have any questions, please contact Ms. Yone McNally through the Department's toll-free call-back number 1-800-452-4011. I look forward to your future cooperation.

Sincerely,

Fred Hansen
Director

FH:ymc:b
GB8389L

Enclosure(s)

cc: Central Region, DEQ
Water Quality Division, DEQ
Oregon Department of Justice
U.S. Environmental Protection Agency
Oregon Department of Agriculture

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

3 DEPARTMENT OF ENVIRONMENTAL QUALITY)
4 OF THE STATE OF OREGON,)
)
5 Department,)
)
6 v.)
)
7 HOLLAND'S DAIRY, INC.,)
 an Oregon corporation,)
)
8 Respondent.)

9 I. AUTHORITY

10 This notice is issued to Respondent, Holland's Dairy, Inc., an Oregon
11 corporation, by the Department of Environmental Quality (Department)
12 pursuant to Oregon Revised Statutes (ORS) 468.125 through 468.140, ORS
13 Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 11
14 and 12.

15 II. PRIOR NOTICE

16 A Notice of Violation and Intent to Assess Civil Penalty (No. WQ-CR-80-
17 84) dated May 9, 1980 to Respondent is on file with the Environmental
18 Quality Commission in this case and is incorporated by this reference. The
19 Notice was received by Respondent May 12, 1980. The Notice cited Respondent
20 for one or more violations and informed Respondent that a civil penalty
21 would be assessed if any cited violation continued or any similar violation
22 occurred five (5) or more days after receipt of the Notice.

23 III. VIOLATIONS

24 CLASS I VIOLATIONS:

25 1. Respondent owns or operates a dairy farm on real property
26 described as Tax Lot 13100, Section 29, Township 39 South, Range 11 1/2

1 East, Willamette Meridian, Klamath County, Oregon. On or about January 10,
2 11 and 12, 1989, Respondent violated ORS 468.720(1)(a) and OAR 340-51-020(1)
3 in that Respondent caused pollution of the Lost River, waters of the state,
4 by discharging animal waste into an irrigation ditch which discharged into
5 the Lost River.

6 CLASS II VIOLATIONS:

7 None.

8 CLASS III VIOLATIONS:

9 None.

10 IV. ASSESSMENT OF CIVIL PENALTIES

11 The Director imposes civil penalties for the following violations cited
12 in Section III:

13	<u>Violation</u>	<u>Penalty Amount</u>
14	1	\$8,000

15 Respondent's total civil penalty is \$8,000.

16 The findings and determination of Respondent's civil penalty pursuant
17 to OAR 340-12-045 are attached and incorporated as Exhibit(s) No. 1.

18 V. PAYMENT OF CIVIL PENALTY

19 The total penalty is now due and payable. Respondent's check or money
20 order in the amount of \$8,000 should be made payable to "State Treasurer,
21 State of Oregon" and sent to the Director of the Department of
22 Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.

23 VI. OPPORTUNITY FOR CONTESTED CASE HEARING

24 Respondent has the right, if Respondent so requests, to have a formal
25 contested case hearing before the Environmental Quality Commission or its
26 hearing officer regarding the matters set out above pursuant to ORS Chapter

1 183, ORS 468.135(2) and (3), and OAR Chapter 340, Division 11 at which time
2 Respondent may be represented by an attorney and subpoena and cross-examine
3 witnesses. That request must be made in writing to the Director, must be
4 received by the Director within twenty (20) days from the date of mailing of
5 this Notice (or if not mailed, the date of personal service), and must be
6 accompanied by a written "Answer" to the charges contained in this Notice
7 and in the Notice of Violation and Intent to Assess Civil Penalty (No. WQ-
8 CR-80-84). In the written "Answer," Respondent shall admit or deny each
9 allegation of fact contained in this Notice and in the Notice of Violation
10 and Intent to Assess Civil Penalty (No. WQ-CR-80-84) and Respondent shall
11 affirmatively allege any and all affirmative claims or defenses to the
12 assessment of this civil penalty that Respondent may have and the reasoning
13 in support thereof. Except for good cause shown:

- 14 1. Factual matters not controverted shall be presumed admitted;
- 15 2. Failure to raise a claim or defense shall be presumed to be a
16 waiver of such claim or defense;
- 17 3. New matters alleged in the Answer shall be presumed to be denied
18 unless admitted in subsequent pleading or stipulation by the Department or
19 Commission.

20 Following receipt of a request for hearing and an "Answer," Respondent
21 will be notified of the date, time and place of the hearing.

22 If Respondent fails to file a timely "Answer" or request for hearing or
23 fails to appear at a scheduled hearing, the Director on behalf of the
24 Environmental Quality Commission may issue a default order and judgment,
25 based upon a prima facie case made on the record, for the relief sought in
26 this Notice.

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VII. OPPORTUNITY FOR INFORMAL DISCUSSION

In addition to filing a request for a contested case hearing, Respondent may also request an informal discussion with the Department by attaching a written request to the hearing request and "Answer".

VIII. CONSEQUENCES OF ADDITIONAL VIOLATIONS

If any violation cited in Section III for which a penalty is assessed continues, or if any similar violation occurs, the Director may impose additional civil penalties upon the Respondent.

MAR 28 1989

Date

Fred Hansen, Director

EXHIBIT 1

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-12-045

VIOLATION NO: 1.

CLASSIFICATION: The violation is a class 1 violation pursuant to OAR 340-12-055(1)(b).

MAGNITUDE: The magnitude of the violation is major as Respondent discharged over 1.6 million gallons of animal waste (cow manure) into the Lost River through an irrigation ditch.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(.1 \times BP)(P+H+E+O+R+C)]$.

"BP" is the base penalty which is \$5,000 for a class 1, major magnitude violation in the matrix listed in OAR 340-12-042(1)(c).

"P" is Respondent's prior violation(s) and receives a value of 0 as the Respondent has no prior violations as defined in OAR 340-12-030(13).

"H" is the past history of Respondent in taking all feasible steps or procedures necessary to correct any prior violation and receives a value of 0 as Respondent has no prior violations as defined in OAR 340-12-030(13).

"E" is the economic condition of Respondent and receives a value of 0 as the Department has insufficient information on which to base a finding.

"O" is whether or not the violation was a single occurrence or was repeated or continuous during the period of the violation and receives a value of 2 as the violation continued for up to three days.

"R" is the cause of the violation and receives a value of 6 as Respondent intentionally irrigated animal waste onto the ground near an irrigation ditch even though the ground was frozen and would not be able to assimilate the waste.

"C" is Respondent's cooperativeness in correcting the violation and receives a value of -2 as Respondent has contacted appropriate agencies to assist him in correcting the problem.

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= BP + [(.1 \times BP)(P+H+E+O+R+C)] \\ &= \$5,000 + [(.1 \times 5,000)(0+0+0+2+6+-2)] \\ &= \$5,000 + [(500)(6)] \\ &= \$5,000 + \$3,000 \\ &= \$8,000 \end{aligned}$$



Environmental Quality Commission

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

MEMORANDUM

TO: Environmental Quality Commission DATE: October 20, 1989

FROM: Director *Jul*

SUBJECT: Request for Approval of Settlement Agreement
in Case No. AQOB-WVR-89-49, Dennis Bevins

On April 6, 1989, the Department assessed Respondent a civil penalty of \$320 for open burning a pile of debris including yard trimmings and some asphalt shingles in Salem, Oregon. On April 12, 1989, the Department received a letter from Respondent which expressed his financial hardship. Respondent also apologized for the violation and said he would abide by the open burning rules in the future.

Department offered to recommend that Respondent's penalty be mitigated to \$160, with a \$50 payment due when Respondent signed and returned a Stipulation and Final Order. Respondent replied that he had used his last money for medical purposes, only had a little money to live on, could not afford to pay this penalty, and could not accept this offer.

On June 5, 1989, Department offered to recommend a mitigation of the penalty to \$100. Respondent declined to accept this offer. On August 15, 1989, two days before a scheduled contested case hearing, however, Department again offered to recommend mitigation of the penalty to \$100. Respondent agreed to accept this offer, and signed and returned the attached Stipulation and Final Order. The Stipulation and Final Order requires Respondent to pay a \$100 civil penalty in monthly payments of \$25 and suspends the remaining \$220 of the civil penalty as long as Respondent does not have any air quality violations for a period of one year from the date of the Order.

I believe that Respondent's apparent financial condition justifies a suspension of \$220 of the civil penalty and that such a suspension is protective of public health and the environment. Should Respondent have any further violations in the next year, the suspended portion of the penalty will be automatically reinstated.

The civil penalty assessment action, settlement correspondence, and the proposed Stipulation and Final Order are attached for your review and consideration.

Dennis Bevins
Case No. AQOB-WVR-89-49
Page 2

I recommend Commission approval of this settlement proposal which requires Respondent to pay \$100 of the \$320 civil penalty and suspends \$220 of the civil penalty. If you agree, please sign and date Stipulation and Final Order No. AQOB-WVR-89-49.

Fred Hansen

Attachments
Larry Cwik:b
229-5728
August 30, 1989
GB8624

CC ✓ AQ
✓ WVR
8-28-89

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

3	DEPARTMENT OF ENVIRONMENTAL QUALITY,	)	STIPULATION AND FINAL ORDER
4	OF THE STATE OF OREGON,	)	No. AQOB-WVR-89-49
5		)	MARION COUNTY
6	Department,)	
7	v.)	
8	DENNIS BEVINS,)	
9	Respondent.)	

STIPULATION:

1. On April 6, 1989, the Department of Environmental Quality (Department) filed with the Environmental Quality Commission (Commission) a Notice of Assessment of Civil Penalty in Case No. AQOB-WVR-89-49, against Dennis Bevins (Respondent), assessing a \$320 civil penalty upon Respondent.

2. On April 12, 1989, the Respondent filed with the Department a request to mitigate the amount of the penalty.

3. Representatives of DEQ and Respondent have reached agreement on terms for settlement of this matter.

4. Respondent stipulates that Department and the Commission have jurisdiction over the subject matter and the parties in this action and Respondent waives any right to contest this Stipulation and Final Order.

5. Respondent hereby waives a contested case hearing on case no. AQOB-WVR-89-49.

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

A. Respondent shall pay to Department the sum of one hundred dollars (\$100) in partial satisfaction of the three hundred and twenty dollar (\$320)

1 penalty assessed in the April 6, 1989 Notice of Assessment of Civil
2 Penalty. Respondent shall pay the one hundred dollar (\$100) sum plus nine
3 percent (9%) per annum interest on the unpaid balance through payment of
4 not less than twenty-five dollars (\$25) a month, until paid in full. The
5 first \$25 payment shall be due within thirty (30) days of the date this
6 Stipulation and Final Order is signed by the Commission. If the one hundred
7 dollars (\$100) plus interest is not paid in full within 120 days of the date
8 this Order is final, or if any monthly payment is more than thirty (30) days
9 late, Department shall initiate collection action. Payment of the
10 remaining two hundred and twenty dollars (\$220) of the assessed penalty
11 shall be suspended and waived upon the condition that Respondent not violate
12 any Oregon air quality law or regulation or any provision of this Order for
13 a period of one year from the date of entry of this Order. Should
14 Respondent commit any such violation within the one-year period, the
15 suspended portion of the penalty, and any other unpaid portion of the
16 penalty, shall become due and payable immediately upon Respondent's receipt
17 of a written notice of such violation from the Department.

18 B. Finding that the Department and the Commission have satisfied all
19 the requirements of law, the mitigation herein is consistent with the public
20 health and safety and is in the public interest in accordance with ORS
21 468.130(3).

22 C. Nothing herein shall constitute a waiver of Department or
23 Commission authority to take any action to enforce this Order or in response
24 to future violations as provided by law.

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RESPONDENT

July 23 1989
Date

Dennis Bevins
Dennis Bevins

DEPARTMENT OF ENVIRONMENTAL QUALITY

Date

Fred Hansen
Director

FINAL ORDER

IT IS SO ORDERED:

ENVIRONMENTAL QUALITY COMMISSION

Date

William P. Hutchison, Jr., Chairman

Date

Wallace B. Brill, Member

Date

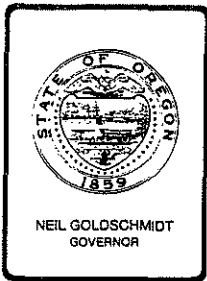
Emery N. Castle, Member

Date

Genevieve Pisarski Sage, Member

Date

William Wessinger, Member



Department of Environmental Quality

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

August 16, 1989

Dennis Bevins
9020 Pueblo Avenue, N.E.
Salem, Oregon 97305

Re: Settlement Offer
Case No. AQOB-WVR-89-49

Dear Mr. Bevins:

In our telephone conference on August 15, 1989 you agreed to accept the Department's earlier offer of a mitigation of your \$320 civil penalty to \$100. The document which will formally settle the case is enclosed. The settlement is contingent upon the review and approval of the Environmental Quality Commission. It will be presented to the Commission at its October 20, 1989 meeting.

The first of four monthly payments of \$25 will be due within 30 days of the Commission's approval of the settlement.

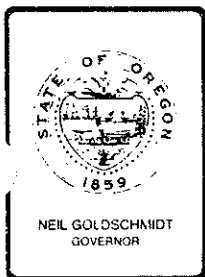
Please immediately sign and return the enclosed document. Thank you for your cooperation.

Sincerely,

Van Kollias
Manager
Enforcement Section

Enclosure

cc: EQC Hearings Officer
Willamette Valley Region
Air Quality Division



Department of Environmental Quality

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

JUN 5 1989

Dennis Bevins
9020 Pueblo Avenue N.E.
Salem, OR 97305

Re: Settlement Offer
Case No. AQOB-WVR-89-49

Dear Mr. Bevins:

I have received your recent response to the civil penalty settlement offer the Department sent you on May 8, 1989. You provided additional information on your economic situation.

After considering your letter, I am willing to go one step further by recommending a mitigation of your civil penalty to \$100, and by allowing you additional time before the first payment is due, as follows:

1. You pay the mitigated \$100 penalty at a rate of not less than \$20 per month, plus 9% interest per annum on the unpaid balance until paid in full, with the first \$20 payment due on or before September 1, 1989;
2. You waive your right to a contested case hearing; and
3. The Department will suspend the remaining \$220 of the \$320 penalty if you have no violations for a year.

I would not be inclined to consider any further reduction of your penalty.

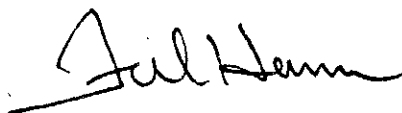
Please sign and return the enclosed Stipulation and Final Order by June 15, 1989, so that it can be presented to the Environmental Quality Commission for approval at its July 14, 1989 meeting. The enclosed Stipulation has been revised to include the terms listed above. If you do not sign and return it by June 15, 1989, the Department will issue a Default Order and Judgment against you for the full amount of the civil penalty.

If you have any questions, please contact Larry Cwik of the Department through our toll-free call-back number, 1-800-452-4011.

Dennis Bevins
Page 2

I look forward to your cooperation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Fred Hansen".

Fred Hansen
Director

FH:lc:b
GB8506L
Enclosure

cc: Air Quality Division, DEQ
Willamette Valley Region, DEQ
~~Enforcement Section, DEQ~~
Oregon Department of Justice

Dear Sir,

I have lived here 10 years and am self employed. My wife left 2 yrs ago with my daughter who is now 4 years old. She financially ruined me in Court. Family Court sent me to be evaluated by the Divorce Court. They said they would suspend ~~my~~ my visitation rights if the Report from the evaluation wasn't in 10 days sent to them, they wouldn't pay him, and he demanded 320⁰⁰ or he wouldn't give them the Evaluation, which I took. I used the money to pay him. My last money I planned on paying Bills. My daughter is OK now and visitation is not been stopped. ~~By~~ But the Psychiatrist had to receive the money or no visitation from Family Court.

I don't know what to do all the Bills are due and I can even have \$10 to eat with?

REGIONAL OPERATIONS DIVISION
 DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
 MAY 27 1989

Dennis Berrino

~~cc: WTR
 AQ Div.~~



Department of Environmental Quality

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

MAY 8 1989

Dennis Bevins
9020 Pueblo Avenue N.E.
Salem, OR 97305

Re: Settlement Offer
Case No. AQOB-WVR-89-49

Dear Mr. Bevins:

On April 11, 1989, you and Larry Cwik of the Department discussed the \$320 civil penalty issued to you on April 6, 1989 for illegal open burning. You then informed the Department of your poor economic condition and that you had mainly burned debris left over from a fire department training fire that had been conducted across the street from your home in 1988. You had believed that it was okay to burn this remaining debris.

After considering the above, and a letter you sent dated April 12th in response to the civil penalty assessment, the Department is prepared to recommend a mitigation of your civil penalty on the following terms:

1. Suspension of \$160 of the \$320 penalty if you have no violations for a year;
2. Payment of \$50 of the penalty when you sign and return the attached document;
3. Payment of the remaining \$110 at a rate of not less than \$20 per month plus 9% interest per annum on the unpaid balance until paid in full; and
4. Waiver of your right to a contested case hearing.

You informed Mr. Cwik on April 23 that this agreement would be acceptable.

Please be informed that any further violations of the Department's open burning regulations could result in the assessment of additional civil penalties in addition to the reinstatement of the suspended penalty.

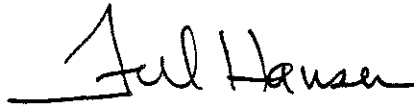
Please sign and return the enclosed Stipulation and Final Order along with the first \$50 payment by May 20, 1989. This settlement offer is subject to the final approval of the Environmental Quality Commission. It will be presented to the Commission at its July 14, 1989 meeting.

Dennis Bevins
Page 2

If you have any questions, please contact Mr. Cwik through our toll-free call-back number 1-800-452-4011.

Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink that reads "Fred Hansen". The signature is written in a cursive style with a horizontal line underneath.

Fred Hansen
Director

FH:lc:b
GB8506L
Enclosure(s)

cc: Air Quality Division, DEQ
Willamette Valley Region, DEQ
Enforcement Section, DEQ
Oregon Department of Justice

Mr Hansen

Im writing because Im having
a tough time with welfare, my wife
divorced me and welfare takes any
money I have. I sorry about that
evening and I will burn by the
rules. Im so close to the fire
station across the street that its
easy to get looked at. Ill be
real careful in the future and Im
sorry this happened.

I dont have any money hardly
at all after the divorce. I need
only to clean up the property.
Please help

Thanks
Dennis
Barnes

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

RECEIVED

APR 1 1969

OFFICE OF THE DIRECTOR

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE MEMORANDUM

DATE: April 11, 1989

TO: File, Dennis Bevins
FROM: Larry Cwik
SUBJECT: Call from Dennis Bevins RE Civil Penalty

Dennis Bevins called this morning. His telephone number is 393-6396.

His open burn only contained 1 or 2 loose asphalt shingles, and maybe some attached to boards, he said. No garbage was being burned in the fire, and a witness that was helping him burn could verify this.

He said he had no money, and his wife was on welfare, and was divorcing him. He said maybe he would have to go to jail instead of pay the penalty. I told him that our penalty was a civil penalty, and that he would not need to go to jail because of our action.

His neighbors burn and are not fined, he said. He mentioned a nearby tree farm that burned, plus neighbors that burned in burn barrels. Plus, the fire department burned down an old house across from where Bevins lives, causing soot to coat the vinyl siding on Bevins' house. When he complained, they did not do anything.

His open burn was to clean up material from the fire department's burn, primarily, and to prevent rats from getting into it. (The fire department had not burned all the debris from the house.) He also added some blackberry bush trimmings to the other material.

His inference was that the fire department staff was strict with him on open burning because he had complained about the soot from the fire department's burn. He said that fire department staff had been over to check on burning on his property at least 10 times.

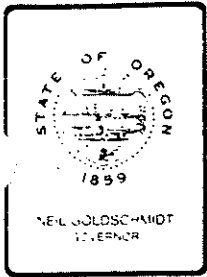
He said he felt like he had been misled by the Department, because the Department had not told him that he would be getting a civil penalty when he talked with Bruce Scherzinger by phone on the day of the burn. I said our information showed that he had been aware of the possibility of a civil penalty assessment.

I explained that the fire caused black smoke, and that prohibited materials were included in the burn, the burning of which is

prohibited state-wide. Also, I noted that this was at least the third fire in less than a year that he had been responsible for. He said that he would not be doing any more open burning.

I explained that he could request a contested case hearing, or informal settlement meeting, or send in a letter explaining mitigating circumstances that the Department did not know of. He said he would be sending something in to the Department.

cc: Bruce Scherzinger, Willamette Valley Region



Department of Environmental Quality

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

APR 6 1989

CERTIFIED MAIL NO. P 194 974 144

Dennis Bevins
9020 Pueblo Avenue N.E.
Salem, OR 97305

Re: Notice of Civil Penalty
Assessment
AQOB-WVR-89-49
Marion County

On January 23, 1989, Marion County Fire District staff responded to a report of open burning on your property at 9020 Pueblo Avenue N.E., Salem. The fire district staff observed a pile of debris burning that included yard trimmings, garbage, and asphalt shingles. The fire had earlier caused a column of black smoke to rise from your property. The open burning of any asphalt or petroleum-treated material, or any other material which normally emits dense smoke or noxious odors, is strictly prohibited anywhere in Oregon. Also, the open burning of yard debris is only permitted on declared burn days from October 1st through December 15 and March 1st through June 15th.

Marion County Fire District staff have informed the Department that they responded to open burning on your property at least twice during 1988. You received a Notice of Violation from the Department for one of these open burning violations. You knew or should have known of the Department's open burning requirements and what was necessary to comply with them.

The open burning of prohibited materials is a Class I violation, and is considered a very serious violation of the Department's rules. A civil penalty of up to \$500 per day for each violation can be assessed for illegal residential open burning. In the enclosed notice, I have assessed you a civil penalty of \$320 for your January 1989 open burning violation.

The penalty is due and payable. Payment should be made to the address on this letterhead. Appeal procedures are outlined within Section VI of the Notice. If you fail to either pay the penalty or appeal this action within 20 days, a Default Order and Judgment will be entered against you.

If you wish to discuss this matter or if you believe there are mitigating factors which the Department might not have considered in assessing the civil penalty, you may request an informal discussion by attaching your request to your answer. Your request to discuss the matter with the Department will not waive your right to a contested case hearing.

Dennis Bevins
Page 2

A copy of the referenced rules is enclosed. I look forward to your cooperation and efforts to comply with the Department's open burning rules in the future. However, if a similar violation does occur, it may well result in the assessment of a larger penalty.

If you have any questions regarding this action, please contact Larry Cwik of the Department's Enforcement Section in Portland at 229-5728 or toll-free in Oregon at 1-800-452-4011.

Sincerely,

Fred Hansen
Director

FH:lc:b
GB8398L

Enclosure(s)

cc: Air Quality Division, DEQ
Willamette Valley Region, DEQ
Department of Justice
Environmental Protection Agency
Marion County Fire District

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

3 DEPARTMENT OF ENVIRONMENTAL QUALITY)
4 OF THE STATE OF OREGON,)
)
5 v.)
)
6 DENNIS BEVINS,)
)
7 Respondent.)

8 I. AUTHORITY

9 This notice is issued to Respondent, Dennis Bevins, by the Department
10 of Environmental Quality (Department) pursuant to Oregon Revised Statutes
11 (ORS) 468.125 through 468.140, ORS Chapters 183 and 466, and Oregon
12 Administrative Rules (OAR) Chapter 340, Divisions 11 and 12.

13 II. VIOLATIONS

14 CLASS I VIOLATIONS:

15 1. On or about January 23, 1989, Respondent caused or allowed the
16 open burning of asphalt shingles, materials which normally emit dense smoke
17 or noxious odors into the air when burned, on property owned or controlled
18 by Respondent at 9020 Pueblo Avenue N.E., Salem, Marion County, Oregon, in
19 violation of OAR 340-23-042(2).

20 CLASS II VIOLATIONS:

21 2. On or about January 23, 1989, Respondent's open burn described
22 above also violated OAR 340-23-060(5)(a) in that Respondent open burned
23 domestic waste, garbage and yard trimmings, within six miles of the
24 corporate city limits of Salem.

25 CLASS III VIOLATIONS:

26 None cited.

1 III. ASSESSMENT OF CIVIL PENALTIES

2 The Director imposes a civil penalty of \$320 for Violation 1 cited in
3 Section II. The findings and determination of Respondent's civil penalty
4 pursuant to OAR 340-12-045 are attached and incorporated as Exhibit No. 1.

5 IV. EXCEPTION TO ADVANCE NOTICE

6 The penalty is being imposed without advance notice pursuant to OAR
7 340-12-040(3)(b)(D) as the air contamination source would not normally be in
8 existence for five days.

9 V. PAYMENT OF CIVIL PENALTY

10 The total penalty is now due and payable. Respondent's check or money
11 order in the amount of \$320 should be made payable to "State Treasurer,
12 State of Oregon" and sent to the Director of the Department of
13 Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.

14 VI. OPPORTUNITY FOR CONTESTED CASE HEARING

15 Respondent has the right, if Respondent so requests, to have a formal
16 contested case hearing before the Environmental Quality Commission or its
17 hearing officer regarding the matters set out above pursuant to ORS Chapter
18 183, ORS 468.135(2) and (3), and OAR Chapter 340, Division 11 at which time
19 Respondent may be represented by an attorney and subpoena and cross-examine
20 witnesses. That request must be made in writing to the Director, must be
21 received by the Director within twenty (20) days from the date of mailing of
22 this Notice (or if not mailed, the date of personal service), and must be
23 accompanied by a written "Answer" to the charges contained in this Notice.
24 In the written "Answer," Respondent shall admit or deny each allegation of
25 fact contained in this Notice and Respondent shall affirmatively allege any
26 and all affirmative claims or defenses to the assessment of this civil

1 penalty that Respondent may have and the reasoning in support thereof.

2 Except for good cause shown:

3 1. Factual matters not controverted shall be presumed admitted;

4 2. Failure to raise a claim or defense shall be presumed to be a
5 waiver of such claim or defense;

6 3. New matters alleged in the Answer shall be presumed to be denied
7 unless admitted in subsequent pleading or stipulation by the Department or
8 Commission.

9 Following receipt of a request for hearing and an "Answer," Respondent
10 will be notified of the date, time and place of the hearing.

11 If Respondent fails to file a timely "Answer" or request for hearing or
12 fails to appear at a scheduled hearing, the Director on behalf of the
13 Environmental Quality Commission may issue a default order and judgment,
14 based upon a prima facie case made on the record, for the relief sought in
15 this Notice.

16 VII. OPPORTUNITY FOR INFORMAL DISCUSSION

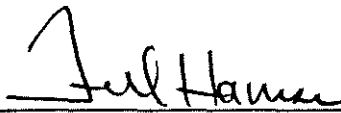
17 In addition to filing a request for a contested case hearing,
18 Respondent may also request an informal discussion with the Department by
19 attaching a written request to the hearing request and "Answer".

20 VIII. CONSEQUENCES OF ADDITIONAL VIOLATIONS

21 If any violation cited in Section II continues, or if any similar
22 violation occurs, the Director may impose additional civil penalties upon
23 the Respondent.

24 APR 6 1989

25 _____
Date

25 

Fred Hansen, Director

EXHIBIT 1

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-12-045

VIOLATION NO: 1

CLASSIFICATION: The violation is a Class I violation pursuant to OAR 340-12-050(1)(m).

MAGNITUDE: The magnitude of the violation is minor as the burning pile was approximately four feet in diameter and two feet high, and there is no evidence that smoke from Respondent's open burning caused an environmental impact.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP)(P+H+E+O+R+C)]$.

"BP" is the base penalty which is \$200 for a class I, minor magnitude violation in the matrix listed in OAR 340-12-042(3).

"P" is Respondent's prior violation(s) and receives a value of 0 as the Respondent has no prior violations as defined in OAR 340-12-030(13).

"H" is the past history of Respondent in taking all feasible steps or procedures necessary to correct any prior violation and receives a value of 0 as Respondent has prior violations as defined in OAR 340-12-030(13).

"E" is the economic condition of Respondent and receives a value of 0 as the Department has insufficient information on which to base a finding.

"O" is whether or not the violation was a single occurrence or was repeated or continuous during the period of the violation and receives a value of 0 as this was a single occurrence.

"R" is the cause of the violation and receives a value of 6 as Respondent's open burning was intentional. Marion County Fire District staff responded to open burning on Respondent's property at least twice during 1988. Respondent received a Notice of Violation from the Department for one of these open burning violations. Respondent knew or should have known of the Department's open burning requirements and what was necessary to comply with them.

"C" is Respondent's cooperativeness in correcting the violation and receives a value of 0, as the Department has insufficient information on which to base a finding.

PENALTY CALCULATION:

Penalty = $BP + [(0.1 \times BP)(P+H+E+O+R+C)]$
= $\$200 + [(0.1 \times 200)(0+0+0+0+6+0)]$
= $\$200 + [(20)(6)]$
= $\$200 + \120
= $\$320$



Environmental Quality Commission

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

MEMORANDUM

TO: Environmental Quality Commission DATE: October 20, 1989

FROM: Director

SUBJECT: Request for Approval of Settlement Agreement in Case No. AQOB-SWR-89-61, John H. and Sylvione A. Kohansby, dba/Rogue Villa Trailer Park

On May 3, 1989, the Department assessed Respondents a civil penalty of \$600 for open burning a pile of yard debris, boards and tree limbs in Gold Hill. On May 23, 1989, Respondent sent the Department a letter requesting an informal settlement discussion.

Mr. Kohansby had also discussed the violation with Larry Cwik of the Department's Enforcement Section by telephone on May 19, 1989. During this conversation, Mr. Kohansby stated that he had only burned yard debris, and not boards or tree limbs. Because the Department's inspector had arrived at the scene when the fire was smoldering, it was difficult to confirm the type and amount of material burned. In light of the small amount of material burned, and the fact that it did not contain noxious types of materials, the Department believed it appropriate to propose mitigation of the penalty.

The Department offered to mitigate the penalty to \$300 on August 10, 1989. In response, Respondent signed and returned the attached Stipulation and Final Order and enclosed a check for \$300, which is being held by the Department pending resolution of this case.

The civil penalty assessment action, settlement correspondence, and the proposed Stipulation and Final Order are attached for your review and consideration.

I believe that the circumstances of Respondents' violation justify a mitigation of the penalty to \$300. I recommend Commission approval of this settlement proposal. If you agree, please sign and date Stipulation and Final Order No. AQOB-SWR-89-61.

Fred Hansen

Attachments
Larry Cwik:b
229-5728
August 24, 1989
GB8859

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY,) STIPULATION AND FINAL ORDER
OF THE STATE OF OREGON,) No. AQOB-SWR-89-61
) JACKSON COUNTY
Department,)
)
v.)
)
)
JOHN H. KOHANSBY AND)
SYLVIONE A. KOHANSBY,)
DBA/ROGUE VILLA TRAILER PARK,)
)
Respondents.)

WHEREAS:

1. On May 3, 1989, the Department of Environmental Quality (Department) filed with the Environmental Quality Commission (Commission) a Notice of Assessment of Civil Penalty in Case No. AQOB-SWR-89-61, against John H. Kohansby and Sylvione A. Kohansby, doing business as Rogue Villa Trailer Park (Respondents), assessing a \$600 civil penalty upon Respondents.

2. On May 25, 1989, the Respondents filed a request for hearing and answer to the Notice referred to in Paragraph 1 above.

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

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

I

Respondents hereby waive any and all objections they may have: to the form, content, manner of service and timeliness of the Notice referred to in Paragraph 1 above; to a contested case hearing thereon and judicial review,

///

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

3 II

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

6 III

7 Subject to approval by the Commission, the parties agree to a
8 mitigation of the \$600 civil penalty to \$300.

9 IV

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

13 V

14 The Commission shall enter a final order:

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

17 B. Imposing upon Respondents a civil penalty of \$300 for the
18 violation cited in the Notice referred to in Paragraph 1 above, plus
19 interest from the date which the order is signed below until paid in full.

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

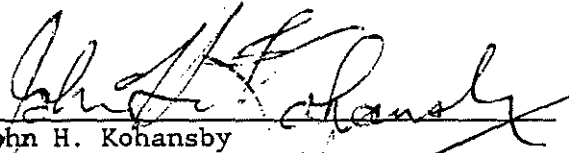
23 VI

24 Respondents acknowledge that they have actual notice of the contents
25 and requirements of this stipulated final order and that failure to fulfill
26 any of the requirements hereof would constitute a violation of this

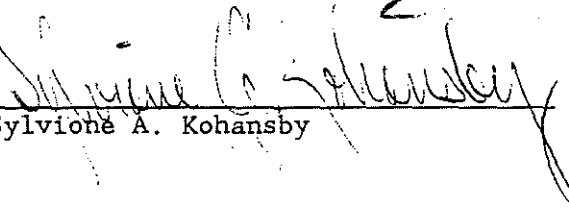
1 stipulated final order and could subject Respondents to liability for
2 additional and independent penalties in amounts as great as the statutory
3 maximum and would not be limited in amount by this stipulated final order.
4 Therefore, should Respondents commit any violation of this stipulated final
5 order, Respondents hereby waive any rights they might then have to any and
6 all ORS 468.125(1) advance notices prior to the assessment of civil
7 penalties for any and all such violations of this stipulated final order.

RESPONDENTS

11 Aug 13/89
12 Date


John H. Kohansby

13 Aug 13/89
14 Date


Sylvione A. Kohansby

DEPARTMENT OF ENVIRONMENTAL QUALITY

19 _____
Date

Fred Hansen
Director

1 FINAL ORDER

2 IT IS SO ORDERED:

3 ENVIRONMENTAL QUALITY COMMISSION

4
5 Date William P. Hutchison, Jr., Chairman

6
7 Date Wallace B. Brill, Member

8
9 Date Emery N. Castle, Member

10
11 Date Genevieve Pisarski Sage, Member

12
13 Date William Wessinger, Member

14
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MAY 23, 1989

CC: File
SWR
AQ Div.

REGIONAL OPERATIONS DIVISION
DEPARTMENT OF ENVIRONMENTAL QUALITY

RECEIVED
MAY 25 1989

Dept of Environmental Quality
811 S.W. Sixth Avenue
Portland, Ore. 97204-1390

Re: Notice of Civil Penalty Assessment
AQOB-SWR-89-61
JACKSON COUNTY

I received your notice of Civil Penalty on May 7, 1989. I believe there are mitigating factors that might affect your decision in this case.

I have been on hyper-tension medication from Department of Veterans Administration, White City, Oregon. I was first approached by a representative of the Gold Hill Fire Department on March 6, 1989. I was threatened with prosecution and possible jail sentence. This caused me to get very agitated. When Mr. Belsky called I was still agitated and made several unacceptable and irresponsible remarks.

I would like to apologize
for my past remarks. I also
would like to make every effort
to settle this matter at your
convenience.

Thank You,
John H. Kohansky

Royne Villa Trailer Park
265 Garden Row
Gold Hill, Ore. 97525
855-7251

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE MEMORANDUM

DATE: May 19, 1989

TO: File, John and Sylvione Kohansby,
dba Rogue Villa Trailer Park

FROM: Larry Cwik

Subject: Telephone Call from John Kohansby

John Kohansby called this morning RE the \$600 civil penalty he received for open burning commercial waste at his trailer park. He said that he burned no commercial waste--no tree limbs, and no wooden boards. He only burned clippings from a few pappas grass plants that separate his property from the highway. He used some paper, about 4 of the type of advertisements that come in the mail, to start the fire. He has a witness who he said saw it all.

He said he called the White City District No. 3 fire station (776-7007) and got approval to burn the yard debris the morning of the day that he burned. He said that the phone recording said that it was "green" for open burning, so he understood he could burn.

He said there was a tree that had been cut up for use in burning, but this was only for use in his fireplace, and not for inclusion in the open burn. The tree had blown down in a storm, and the state or county road department did not want to haul it, so they gave it to him.

He did not know that commercial burning was prohibited in his area. He thinks the law is good, but that we need to make people down there more aware of it.

He said he disposes of all of his commercial waste in a dumpster, which he pays \$70/month for. He used to use burn barrels, but got rid of all of them last year.

cc: Southwest Region, DEQ
Air Quality Division

*5-22-89 Called 776-7007. Recording said "Burning will be permitted today
knows applicable rules. Permits will be needed at the
cities of Ashland and Central Point. If you need further
information contact your local fire district."*



Department of Environmental Quality

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

MAY 3 1989

CERTIFIED MAIL P 194 974 165

John H. Kohansby
Sylvione A. Kohansby
dba/Rogue Villa Trailer Park
205 Garden Row
Gold Hill, OR 97525

Re: Notice of Civil Penalty Assessment
AQOB-SWR-89-61
Jackson County

On March 6, 1989, Dennis Belsky of the Department of Environmental Quality's (DEQ) Southwest Regional office observed the open burning of yard debris, boards, and tree limbs in an area within your trailer park complex at 205 Garden Row, Gold Hill, Oregon. The Department responded to a complaint received from the Gold Hill fire chief who had initially responded to the fire, and who you had asked to leave the property.

Mr. Belsky verified the open burning of commercial waste. The fire was unattended and smoldering. Mr. Belsky called and talked with Mr. Kohansby, who acknowledged that it was his burn pile and stated that he planned to continue burning there.

The Department's open burning rules prohibit the open burning of commercial waste within the Rogue Basin Open Burning Control Area. Your mobile home park is located within this area. Your burning was in violation of these rules and is subject to a civil penalty.

In the enclosed notice, you have been assessed a civil penalty of \$600. In determining the amount of the penalty, the procedures set forth in Oregon Administrative Rules (OAR) 340-12-045 were used. A copy of relevant rules is enclosed for your information.

The penalty is due and payable. Appeal procedures are outlined within Section VI of the Notice. If you fail to either pay or appeal the penalty within twenty (20) days, a Default Order and Judgment will be entered against you.

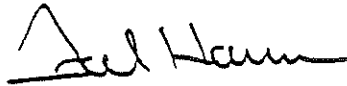
If you wish to discuss this matter, or if you believe there are mitigating factors which the Department might not have considered in assessing the civil penalty, you may request an informal discussion by attaching your request to your appeal. Your request to discuss this matter with the Department will not waive your right to a contested case hearing.

John H. Kohansby
Sylvione A. Kohansby
dba/Rogue Villa Trailer Park
Page 2

I look forward to your cooperation and efforts to comply with the open burning rules in the future. Failure to do so may result in the assessment of a larger penalty.

If you have any questions about this action, please contact Mr. Larry Cwik with the Department's Enforcement Section in Portland at 229-5728 or toll-free at 1-800-425-4011.

Sincerely,



Fred Hansen
Director

FH:lc:b
GB8443L

Enclosures

cc: Southwest Region, DEQ
Air Quality Division, DEQ
Department of Justice
Environmental Protection Agency

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

3 DEPARTMENT OF ENVIRONMENTAL QUALITY) NOTICE OF ASSESSMENT
4 OF THE STATE OF OREGON,) OF CIVIL PENALTY
) No. AQOB-SWR-89-61
5 Department,) JACKSON COUNTY
)
6 v.)
7 JOHN H. KOHANSBY AND)
8 SYLVIONE A. KOHANSBY,)
9 DBA/ROGUE VILLA TRAILER PARK,)
)
)
)
 Respondents.)

9 I. AUTHORITY

10 This notice is issued to Respondents, John H. Kohansby and Sylvione A.
11 Kohansby, doing business as Rogue Villa Trailer Park, by the Department of
12 Environmental Quality (Department) pursuant to Oregon Revised Statutes (ORS)
13 468.125 through 468.140, ORS Chapters 183 and 466, and Oregon Administrative
14 Rules (OAR) Chapter 340, Divisions 11 and 12.

15 II. VIOLATIONS

16 CLASS I VIOLATIONS:

17 None cited.

18 CLASS II VIOLATIONS:

19 1. On or about March 6, 1989, Respondents violated OAR 340-23-090(4)
20 in that Respondents open burned commercial waste consisting of wood boards,
21 yard debris, and tree limbs, at Respondents' mobile home park at 205 Garden
22 Row, Gold Hill, Jackson County, Oregon.

23 CLASS III VIOLATIONS:

24 None cited.

25 ///

26 ///

1 III. ASSESSMENT OF CIVIL PENALTIES

2 The Director imposes a civil penalty of \$600 on Respondents for
3 Violation 1 cited in Section II above. The findings and determination of
4 Respondents' civil penalty pursuant to OAR 340-12-045 are attached and
5 incorporated as Exhibit No. 1.

6 IV. EXCEPTION TO ADVANCE NOTICE

7 The penalties are being imposed without advance notice pursuant to OAR
8 340-12-040(3)(b)(D) as the air pollution source would not normally be in
9 existence for five or more days.

10 V. PAYMENT OF CIVIL PENALTY

11 The total penalty is now due and payable. Respondents' check or money
12 order in the amount of \$600 should be made payable to "State Treasurer,
13 State of Oregon" and sent to the Business Office, Department of
14 Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.

15 VI. OPPORTUNITY FOR CONTESTED CASE HEARING

16 Respondents have the right, if Respondents so request, to have a
17 formal contested case hearing before the Environmental Quality Commission or
18 its hearing officer regarding the matters set out above pursuant to ORS
19 Chapter 183, ORS 468.135(2) and (3), and OAR Chapter 340, Division 11 at
20 which time Respondents may be represented by an attorney and subpoena and
21 cross-examine witnesses. That request must be made in writing and must be
22 received by the Commission's Hearings Officer within twenty (20) days from
23 the date of mailing of this Notice (or if not mailed, the date of personal
24 service), and must be accompanied by a written "Answer" to the charges
25 contained in this Notice. In the written "Answer," Respondents shall admit
26 or deny each allegation of fact contained in this Notice and Respondents

1 shall affirmatively allege any and all affirmative claims or defenses to the
2 assessment of this civil penalty that Respondents may have and the reasoning
3 in support thereof. Except for good cause shown:

4 1. Factual matters not controverted shall be presumed admitted;

5 2. Failure to raise a claim or defense shall be presumed to be a
6 waiver of such claim or defense;

7 3. New matters alleged in the "Answer" shall be presumed to be denied
8 unless admitted in subsequent pleading or stipulation by the Department or
9 Commission.

10 Send the request for hearing and "Answer" to the: Hearings Officer,
11 Environmental Quality Commission, 811 S.W. Sixth Avenue, Portland, Oregon
12 97204. Following receipt of a request for hearing and an "Answer,"
13 Respondents will be notified of the date, time and place of the hearing.

14 If Respondents fail to file a timely "Answer" or request for hearing
15 or fail to appear at a scheduled hearing, the Director on behalf of the
16 Commission may issue a default order and judgment, based upon a prima facie
17 case made on the record, for the relief sought in this Notice.

18 Failure to appear at a scheduled hearing or meet a required deadline,
19 may result in a dismissal of the contested case.

20 VII. OPPORTUNITY FOR INFORMAL DISCUSSION

21 In addition to filing a request for a contested case hearing,
22 Respondents may also request an informal discussion with the Department by
23 attaching a written request to the hearing request and "Answer".

24 ///

25 ///

26 ///

VIII. CONSEQUENCES OF ADDITIONAL VIOLATIONS

If any violation cited in Section II continues, or if any similar violation occurs, the Director may impose additional civil penalties upon the Respondents.

MAY 3 1989

Date


Fred Hansen, Director

EXHIBIT 1

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-12-045

VIOLATION NO: 1 (open burning of commercial debris within the Rogue Basin Open Burning Control Area)

CLASSIFICATION: The violation is a Class II violation pursuant to OAR 340-12-050(2)(e).

MAGNITUDE: The magnitude of the violation is minor as Respondents open burned about three yards of material, and the fire did not generate any citizen complaints.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP)(P+H+E+O+R+C)]$.

"BP" is the base penalty which is \$500 for a Class II, minor magnitude violation in the matrix listed in OAR 340-12-042(1).

"P" is Respondent's prior violation(s) and receives a value of 0 as the Respondents have no prior violations as defined in OAR 340-12-030(13).

"H" is the past history of Respondents in taking all feasible steps or procedures necessary to correct any prior violation and receives a value of 0 as the Respondents have no prior violations as defined in OAR 340-12-030(13).

"E" is the economic condition of Respondents and receives a value of 0 as the Department has insufficient information on which to base a finding.

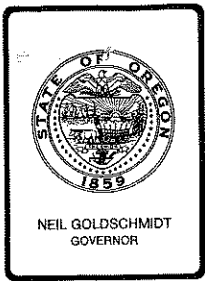
"O" is whether or not the violation was a single occurrence or was repeated or continuous during the period of the violation and receives a value of 0 as this was a single occurrence.

"R" is the cause of the violation and receives a value of 2 as the Respondents were negligent by open burning in violation of the Department's rules.

"C" is Respondent's cooperativeness in correcting the violation and receives a value of 0 as Department has insufficient information on which to base a finding.

PENALTY CALCULATION:

Penalty - $BP + [(0.1 \times BP)(P+H+E+O+R+C)]$
- \$500 + $[(0.1 \times 500)(0+0+0+0+2+0)]$
- \$500 + $[(50)(2)]$
- \$500 + 100
- \$600



Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: October 20, 1989
Agenda Item: C
Division: MSD
Section: Administration

SUBJECT:

Pollution Control Tax Credits.

PURPOSE:

Approve Pollution Control Tax Credit Applications.

ACTION REQUESTED:

- Work Session Discussion
 - General Program Background
 - Potential Strategy, Policy, or Rules
 - Agenda Item ___ for Current Meeting
 - Other: (specify)

- Authorize Rulemaking Hearing
- Adopt Rules
 - Proposed Rules Attachment ___
 - Rulemaking Statements Attachment ___
 - Fiscal and Economic Impact Statement Attachment ___
 - Public Notice Attachment ___

- Issue a Contested Case Order
- Approve a Stipulated Order
- Enter an Order
 - Proposed Order Attachment ___

- Approve Department Recommendation
 - Variance Request Attachment ___
 - Exception to Rule Attachment ___
 - Informational Report Attachment ___
 - Other: (specify) Attachment ___

Tax Credit Application Review Reports:

T-2828, Larry M. Neher, Inc. - Straw Storage Building
T-2860, Lloyd Kropf - Straw Storage Building
T-2914, McLagan Farms, Inc. - Straw Storage Building
T-2969, Far West Fibers - Clark Industrial Forklift

Meeting Date: 10/20/89
Agenda Item: C
Page 2

DESCRIPTION OF REQUESTED ACTION:

Issue Tax Credit Certificate for Pollution Control Facilities.

AUTHORITY/NEED FOR ACTION:

- Required by Statute: ORS 468.150-468.190 Attachment
- Enactment Date: _____
- Statutory Authority: _____ Attachment
- Pursuant to Rule: _____ Attachment
- Pursuant to Federal Law/Rule: _____ Attachment
- Other: Attachment
- Time Constraints: (explain)

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:

None.

PROGRAM CONSIDERATIONS:

None.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

None.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends the Environmental Quality Commission approve T-2828, T-2860, T-2914, and T-2969 in that they comply with the Pollution Control Tax Credit Program requirements and regulations.

Meeting Date: 10/20/89
Agenda Item: C
Page 3

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

Yes.

Note - Pollution Tax Credit Totals:

Proposed October 20, 1989 Totals

Air Quality	\$ 165,901
Water Quality	- 0 -
Hazardous/Solid Waste	19,500
Noise	- 0 -
	<u>\$ 185,401</u>

1989 Calendar Year Totals Through September 8, 1989

Air Quality	\$ 1,815,303
Water Quality	7,029,552
Hazardous/Solid Waste	5,861,981
Noise	62,320
	<u>\$14,769,106</u>

ISSUES FOR COMMISSION TO RESOLVE:

None.

INTENDED FOLLOWUP ACTIONS:

Notify applicants of Environmental Quality Commission actions.

Approved:

Section: Roberta Young

Division: John H. Joery

Director: Jill Hann

Report Prepared By: Roberta Young

Phone: 229-6408

Date Prepared: September 15, 1989

RY:b
J:\IGC\SB8937
September 20, 1989

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Larry M. Neher, President
Larry M. Neher, Inc.
28485 Brownsville Road
Brownsville, OR 97327

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

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

2. Description of Claimed Facility

The facility described in this application is a 20 x 60 x 144' pole construction straw storage shed, located at 28485 Brownsville Road, Brownsville, Oregon. The land and buildings are owned by the applicant.

Claimed facility cost: \$33,381.40
(Accountant's Certification was provided.)

3. Procedural Requirements

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

The facility has met all statutory deadlines in that:

- a. The request for preliminary certification was filed March 30, 1989, more than 30 days before construction commenced on June 7, 1989.
- b. The request for preliminary certification was approved before application for final certification was made.
- c. Construction of the facility was substantially completed on June 22, 1989, and the application for final certification was found to be complete on September 8, 1989, within two years of substantial completion of the facility.

4. Evaluation of Application

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

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

- b. Eligible Cost Findings

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

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

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

2. The estimated annual percent return on the investment in the facility. The grower is unable to secure a contract to sell the straw and is giving it away in exchange for removal from the storage facility.

With no gross annual income, annual operating expenses of \$895 becomes a negative \$895 average annual cash flow. The resulting return on investment factor is a negative integer. Using Table 1 of OAR 340-16-030 for a life of 10 years, the annual percent return on investment is 0.00%.

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

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

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

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

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

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

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the sole purpose of the facility is to reduce a substantial quantity of air pollution and accomplishes this purpose by the reduction of air contaminants, as defined in ORS 468.275.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$33,381.40, with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application Number TC-2828.

J. Britton:ka
(503) 686-7837
September 8, 1989

State of Oregon
Department of Environmental Quality
TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Lloyd Kropf
24495 Powerline Road
Harrisburg, OR 97446

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

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

2. Description of Claimed Facility

The facility described in this application is 24 x 106 x 144' metal pole building for grass seed straw storage, located at Harrisburg, Oregon. The land and buildings are owned by the applicant.

Claimed facility cost: \$55,715.80
(Accountant's Certification was provided.)

3. Procedural Requirements

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

The facility has met all statutory deadlines in that:

- a. The request for preliminary certification was filed April 10, 1989, more than 30 days before construction commenced on June 15, 1989.
- b. The request for preliminary certification was approved before application for final certification was made.
- c. Construction of the facility was substantially completed on August 14, 1989, and the application for final certification was found to be complete on September 5, 1989, within two years of substantial completion of the facility.

4. Evaluation of Application

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

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

- b. Eligible Cost Findings

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

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

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

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

Gross annual income of \$4,000 less annual operating expenses of \$1,900 produced an average annual cash flow of \$2,100. Dividing the average annual cash flow into the facility cost of \$55,715.80, a return on investment factor of 26.53 is generated. Using Table 1 of OAR 340-16-030 for a life of 10 years, the annual percent return on investment is 0.00%.

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

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

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

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

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

There are no other factors to consider in establishing the actual cost.

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the sole purpose of the facility is to reduce a substantial quantity of air pollution and accomplishes this purpose by the reduction of air contaminants, as defined in ORS 468.275.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$55,715.80, with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application Number TC-2860.

J. Britton:ka
(503) 686-7837
September 6, 1989

State of Oregon
Department of Environmental Quality
TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Willard McLagan, President
McLagan Farms, Inc.
P. O. Box 605
Albany, Oregon 97321

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

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

2. Description of Claimed Facility

The facility described in this application is a 22 x 124 x 216' galvanized metal pole building for storage of 1,700 tons of grass seed straw, located 2.5 miles northwest of Shedd, Oregon on Ohling Lane. The land and buildings are owned by the applicant.

Claimed facility cost: \$76,804.13
(Accountant's Certification was provided.)

3. Procedural Requirements

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

The facility has met all statutory deadlines in that:

- a. The request for preliminary certification was filed May 16, 1989, less than 30 days before construction commenced on June 7, 1989.

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

- b. The request for preliminary certification was approved before application for final certification was made.
- c. Construction of the facility was substantially completed on June 29, 1989, and the application for final certification was found to be complete on August 29, 1989, within two years of substantial completion of the facility.

4. Evaluation of Application

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

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

- b. Eligible Cost Findings

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

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

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

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

Gross annual income of \$7,000 less annual operating expenses of \$4,500 produced an average annual cash flow of \$2,500. Dividing the average annual cash flow into the facility cost of \$76,804.13, a return on investment factor of 30.72 is generated. Using Table 1 of OAR 340-16-030 for a life of 10 years, the annual percent return on investment is 0.00%.

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

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

12

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

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

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

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

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the sole purpose of the facility is to reduce a substantial quantity of air pollution and accomplishes this purpose by the reduction of air contaminants, as defined in ORS 468.275.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$76,804.13, with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application Number TC-2914.

J. Britton:ka
(503) 686-7837
August 30, 1989

15

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Far West Fibers
dba/E-Z Recycling
P.O. Box 503
Beaverton, OR 97075

The applicant owns and operates a waste paper recycling facility at Portland, Oregon.

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

2. Description of Facility

The equipment described in the application is a new Clark industrial forklift Model GCS-27. The forklift is utilized to transport baled wastepaper from the baler to either inventory or to trucks for shipment to local mills for recycling. The forklift will handle 14,400,000 pounds of waste paper per year.

Claimed Facility Cost: \$19,500

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed June 2, 1989 more than 30 days before installation commenced on July 21, 1989.
- b. The request for preliminary certification was approved before application for final certification was made.
- c. Installation of the facility was substantially completed on July 21, 1989 and the application for final certification was found to be complete on August 18, 1989 within 2 years of substantial completion of the facility.

4. Evaluation of Application

- a. The facility is eligible because the sole purpose of the facility is to reduce a substantial quantity of solid waste through recycling.
- 11

This reduction is accomplished by the use of a material recovery process.

b. Eligible Cost Findings

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

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

This factor is applicable because the entire purpose of the forklift is to handle waste paper within the plant for the sole purpose of recycling.

The percent allocable determined by using this factor would be 100%.

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

Average annual cash flow is \$500. This results from the value of the recycled material less operating costs. Dividing the average annual cash flow into the cost of the facility gives a return on investment factor of 39% using Table 1 of OAR 340-16-030 for a life of 5 years. The percent return on investment is zero. As a result, the percent allocable is 100%.

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

The purchase of a reconditioned forklift for approximately \$5,000 was considered but deemed inappropriate since it would not be dependable in a high volume situation such as the one that exists at E-Z Recycling.

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

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

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

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

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the sole purpose of the facility is to reduce a substantial quantity of solid waste by recycling.

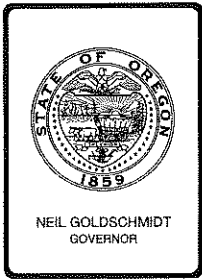
This reduction is accomplished by the use of a material recovery process.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$19,500 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2969.

Lissa Wienholt:b
YB8866
(503) 229-6823
August 28, 1989



Environmental Quality Commission

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

ADDENDUM

Meeting Date: October 20, 1989
Agenda Item: E
Division: Water Quality
Section: Industrial Waste

SUBJECT:

WTD Industries Inc., Port Westward Pulp Mill; Addendum No. 2 to July 21, 1989, EQC Staff Report.

INTRODUCTION:

The Commission has requested further staff analysis on rule interpretations and other issues to assist in its deliberations on WTD Industries, Inc.'s (WTD) proposed new Port Westward Mill wastewater discharge.

What is the responsibility of the Department and/or Commission with regard to an Interstate Stream Such as the Columbia?

The Commission has legal jurisdiction for setting water quality standards and regulations on Oregon's portion of the Columbia River. The Attorney General's Office advises that Oregon's portion extends to the state boundary which is generally about the center of the river.

The Department is responsible for enforcing standards and regulating sources of pollutants on those portions of an interstate water over which it has regulatory authority. It is the Department's responsibility to enforce those standards and regulations which apply to Oregon waters, even though like dischargers on an opposite bank may have a higher (or lower) standard.

The Department is, of course, concerned about the water quality of the entire Columbia. How should we go about seeking to ensure that it is protected? First, we should regulate and protect that portion of the Columbia which is our responsibility through our permit program and if necessary through non-point source strategies. We should implement TMDLs and wasteload allocations developed by EPA. We should attempt to protect the balance

Meeting Date: October 20, 1989
Agenda Item: E
Page 2

through working on a regular basis with the State of Washington and EPA Region 10 to see that permitted sources on the Washington side don't cause the water quality standards of the River to be violated. We should exert pressure, if necessary, on EPA to make Washington work as rapidly as Oregon does toward solution to problems, and make sure that Oregon isn't penalized in any way for being more protective of the River, leaving reserve capacity for Washington to use by being more lenient with their sources.

Establishment of Water Quality Limited Segments

Section 304(1) of the Water Quality Act of 1987 requires the states to assess whether existing control activities for toxic substances are sufficient or whether additional controls are necessary. In order to adequately assess current controls, the states were required to identify waterbodies suspected or known to be impaired by the presence of any Section 307(a) pollutants (one of which is TCDD). The states were required to report the results to EPA on lists, including lists of suspected waters the state does not expect to achieve water quality standards and lists of confirmed waters the state does not expect to achieve water quality standards.

The Department has an established process for determining whether a water body can be confirmed as expected not to achieve water quality standards in relation to toxic substances. The criteria upon which such a decision is based includes analyzing a minimum of ten samples over the past ten years. If 25 percent of the samples violated water quality standards, the water body is confirmed as water quality limited for that pollutant. The Department may use its best professional judgment when fewer than 10 samples in ten years are available or the available samples cover a period greater than 10 years (see Attachment B).

The Department has other criteria which it uses to determine if a water body is suspected of not being able to meet water quality standards for toxic substances. Criteria and methods for determining water quality status for toxics as well as other pollutants are described in detail in Attachment B.

The Department listed specific river mile locations as confirmed for not achieving water quality standards for TCDD. The listing included the receiving streams outside the mixing zones at the discharges of the three Oregon bleached kraft mills; two on the Columbia, at Wauna and St. Helens, and one on the Willamette, at Halsey. The listing was based on best professional judgment, using the analysis of one wastewater discharge sample from each location. TCDD data from fish tissue samples was also considered.

Meeting Date: October 20, 1989
Agenda Item: E
Page 3

Information about TCDD, including its attenuation characteristics, its expected life and the relationship of its accumulation in fish tissue to the amount in the water column is not well enough known for the Department of Environmental Quality (Department) to state with confidence that, in its best professional judgment, the entire receiving stream or even selected stretches should be listed as either confirmed or suspected of exceeding the TCDD standard.

Washington listed the Columbia stream reaches from the mouth to Bonneville Dam and from McNary Dam to the confluence of the Yakima River as being water quality limited with respect to TCDD. Washington made its determination to list portions of the Columbia based on best professional judgment using the TCDD data from effluent samples from three of their four mills located on the Columbia (one Washington mill site had to be retested). The estimated TCDD discharge from these Washington mills is four times that of the three Oregon mills.

The Department is reviewing its assessment of the Willamette and Columbia rivers in preparation for the 1990 305(b) report, which is due April 1, 1990. The Department has also been formally requested to reevaluate the applicability of the 0.013 ppq TCDD standard. Either or both of these evaluations could change the listing as it currently stands.

**FINDINGS REQUIRED BY OREGON'S RULES FOR
APPROVING A NEW DISCHARGE**

Oregon rules, OAR-340-41-026(a), require the Commission to make favorable findings on four requirements in order to approve a new discharge.

- (A) The new or increased discharged load would not cause water quality standards to be violated:

Much discussion and public concern has been focussed on the toxic chlororganic compounds, particularly TCDD (2,3,7,8 Tetrachloro-dibenzo-p-dioxin) that would be discharged by WTD's proposed mill. The existing mills on the Columbia and its tributaries are currently discharging known quantities of TCDD and TCDD has been found in the tissue of fish taken from the Columbia near the mills' outfalls.

Oregon adopted the Environmental Protection Agency's (EPA) human health based water quality criterion for TCDD of 0.013 parts per quadrillion (ppq) as its numerical standard. Washington did not adopt this criterion as a standard.

Meeting Date: October 20, 1989
Agenda Item: E
Page 4

When drafting the permit for WTD, the Department included conditions and limitations to assure that water quality standards outside the mixing zone would not be violated. Since any background of dioxin within the receiving stream is at a level which is not detectable, one cannot assume any specific background concentration. The ultimate fate of the dioxin discharged by other mills is unknown. Some is undoubtedly removed from the water column by sedimentation and some is conveyed to aquatic biota through uptake mechanisms.

Existing Oregon and Washington mills will be implementing their ICSSs (Individual Control Strategies) to reduce their TCDD discharges. The proposed Port Westward mill will be a state of the art model that can demonstrate the feasibility of minimizing TCDD production and discharge.

By the time Port Westward would be ready to discharge (after June, 1992), the amount of TCDD going to the Columbia from Oregon mills will be reduced, as should that from Washington's mills. WTD's discharge would not then cause water quality standards to be violated.

(B) The new or increased discharged load would not threaten or impair any recognized beneficial uses:

It has been generally assumed that treated pulp mill discharges do not have a demonstrated adverse effect on aquatic life, outside their allowed mixing zone. Very little data exist on the acute and chronic toxicity of TCDD to aquatic life. Some studies that have been reported show both acute and chronic toxicity to aquatic life, but at water concentrations that are orders of magnitude above the 0.013 ppq standard.

The Department feels that there is no evidence that wildlife would be significantly threatened or impaired by WTD's new discharge and feels that the findings required by (B) are met.

(C) The new or increased discharged load shall not be granted if the receiving stream is classified as being water quality limited unless the pollutant parameters associated with the proposed discharge are unrelated either directly or indirectly to the parameter(s) causing the receiving stream to be water quality limited;

The Department has not classified the portion of the Columbia River at the proposed Port Westward discharge as being water quality limited, therefore the Department feels that the findings required by (C) are met. On the other hand, some would point out

Meeting Date: October 20, 1989
Agenda Item: E
Page 5

that, with the limited data available, the entire river reach could have been established as water quality limited as determined by Washington and as such the findings required by (C) would not be met. The latter point of view was expressed as an alternative for the Commission's consideration in the Department's staff report of July 21, 1989. The Commission did not select this alternative.

- (D) The activity, expansion, or growth necessitating a new or increased discharge load is consistent with the acknowledged local land use plans as evidenced by a statement of land use compatibility from the appropriate local planning agency.

WTD submitted a Land Use Compatibility Statement by Columbia County acknowledging that the proposed mill would be a permitted use in the Resource Industrial Planned Development Zone so the findings required by (D) are met.

DO THE RULES NEED TO BE REVISITED?

The Department will, if the Commission so directs, return to the Commission with draft rule amendments to OAR 340-41-026 that address the following items. The Department believes that these issues surfaced during consideration of the WTD proposal and although we believe the Commission can make final decisions in regard to that application, rule clarification would be desirable for future proposals and decisions.

Special Provision for Interstate Waters

As noted previously, the Columbia River poses a special case because it is an interstate river. Oregon's rules have been written for waters within Oregon's control and do not make special provision for the Columbia or other interstate waters, which have other users and regulatory jurisdictions.

The rules should be amended to clarify how Oregon's regulatory process should be applied to the Columbia and other interstate waters. This might consist of determining that an interstate water body is considered classified as water quality limited when so designated by the EPA.

Classification Process for Water Quality Limited Streams

The present rules do not contain a definition of "classification" or a process which would result in classifying streams as water

Meeting Date: October 20, 1989
Agenda Item: E
Page 6

quality limited. The Department currently assumes that "classification" as water quality limited means when such waters are listed on the 305(b) report. This means water is classified biannually, with no provision for mid-year determination.

The rules should be amended to define "classification" and describe a process for classification.

Interim Measures for Water Quality Classified Streams

The rules could be amended to give the Commission greater discretionary power in approving temporary overloads to water quality limited streams.

The Department anticipates difficulty in applying OAR 340-4-026(3)(a)(C) which requires the Commission to make a finding that the new or increased load is unrelated to the parameter causing the receiving stream to be water quality limited.

A problem with the rule occurs, for example, when a discharger, in attempting to solve a problem the Department has required them to correct, seeks as a solution holding summer discharges until it can be discharged during the winter when flows are greater. The Department may be able to determine that no water quality standard would be violated, but still be prohibited by this section of the rule from proceeding with an environmentally sound solution to a problem. The Department currently has four minor permit modification requests which may fall into this category.

The rule also does not allow the Commission to consider wasteload increases on water quality limited streams where strategies to correct the problem have been formally adopted. Thus, even if Total Maximum Daily Loads and Waste Load Allocations have been adopted, if they haven't been completely implemented, no wasteload increases could be considered.

The process of setting TMDL's and bringing streams into compliance takes time. It has taken the Department approximately three years to set TMDL's for the Tualatin and Yamhill and will likely take five to six additional years before TMDL's can be set for the rest of the waterbodies currently listed as water quality limited. Thus, the Commission can be severely restricted in applying its judgment to specific cases for a number of years under the rule.

TCDD REDUCTION THROUGH THE 304(L) INDIVIDUAL CONTROL STRATEGIES

The 304(1) listing process required the states to develop individual source control strategies to reduce the discharge of

Meeting Date: October 20, 1989
Agenda Item: E
Page 7

water quality limiting pollutants. Oregon and Washington have both prepared draft ICSSs for TCDD that have been discussed in previous staff reports.

The key task in reducing TCDD flow to the Columbia is to establish the TCDD/TMDL for the appropriate portions of the river and to allocate that load to dischargers by setting their waste load allocations (WLAs). The WLA is the number that tells each discharger how much TCDD they can discharge and is of prime economic importance because it determines in good part whether a new discharge could be allowed and how present dischargers must operate.

Oregon has asked EPA to take responsibility for determining a TCDD TMDL for the Columbia, and EPA has agreed. EPA assumed that once determined, the TMDLs would be adopted by each state. Once the TMDL is determined, Oregon must work closely with EPA and Washington to set WLAs that divide the capacity of the river fairly among present and future dischargers. Oregon must make sure that it is not penalized if its ICSSs are more stringent than Washington's, thereby leaving more capacity available to Washington.

After WLAs have been agreed upon, Oregon must continue working with EPA and Washington to ensure that the ICSSs are being implemented as rapidly as possible and that the WLAs and water quality standards will be met as soon as possible.

Bringing the water quality limited portions of the river into compliance rapidly is especially crucial if the Commission were to amend its rules to approve discharges during the time when a river is being brought into compliance. Mr. Robert Burd, Director, Water Division, EPA has informed the Department in a letter that EPA "...would not object to a permit for a new source if the permit was consistent with agreed-upon control strategies for water quality limited segments, including a waste load allocation which anticipated the new source". This is different from his position as stated before the Commission on September 8, 1989.

RELATIONSHIP OF EQC WASTELOAD CONDITIONS TO PERMIT CONDITIONS

The July 21, 1989 EQC staff report listed several conditions that could be applied to the approval of Port Westward's proposed discharge. Those conditions are addressed in the proposed NPDES permit as follows:

1. **"Highest and best practicable" control technologies for TCDD and other chlororganics**

Both the Department staff and Mr. Danforth Bodien of EPA, who is a nationally recognized environmental expert on pulp mill technology, have reviewed WTD's proposed processing scheme and find that WTD is proposing to use state of the art delignification and bleaching processes to minimize the production of TCDD and other chlororganics.

2. **Substitution of Chlorine Dioxide for Chlorine**

WTD proposes to use the highest substitution of chlorine dioxide possible that will yield acceptable pulp quality. The permit also sets strict discharge limits on TCDD of 2 ppq and AOX (Adsorbable Organic Halides) of a monthly average of 1.2 kg/metric ton and a daily maximum of 1.5 kg/metric ton of air-dried bleached pulp produced. These limits can probably only be met by chlorine dioxide substitutions of 75 percent or more.

3. **Installation of Further Equipment and Modifications**

The permit contains a provision requiring WTD to "...install such further equipment or make such further modifications as may be necessary to meet its wasteload allocation within three years after EPA has established a total maximum daily load (TMDL) for TCDD for the Columbia River and has made the wasteload allocations to the individual sources."

4. **Research and Development on TCDD Reduction**

WTD has agreed in writing to support national dioxin research efforts by the industry.

TCDD in Sediments

Some discussion concerning TCDD and its distribution in the river has centered on the relationship between TCDD and sediments.

TCDD has a strong affinity for adsorbing onto organic material such as is found in pulp and paper mill effluent and river sediments. Measurement of TCDD's octanol/water partition coefficient (a measure of a compound's chemical equilibrium distribution between octanol and water) and its water solubility

Meeting Date: October 20, 1989
Agenda Item: E
Page 9

both confirm that TCDD will preferentially attach to organic matter.

The estimated water solubility is very low which has led some to conclude that it will not be found in the water column. The solubility is admittedly low, but it should be pointed out that it is still several orders of magnitude higher than the 0.013 ppq standard. Even though most of the TCDD may be adsorbed on sediments, there may still be enough dissolved in the water to exceed the standard in some portions of the river.

Sediment may be ingested by fish and other organisms which provides the opportunity for bioaccumulation. TCDD has been found in pulp mill sludges (the 104-mill study) and TCDD and TCDF (2,3,7,8 Tetrachloro-dibenzo-furan) were found in sediment and fish tissue from the vicinity of ten inland pulp mills in British Columbia (May 1989).

EPA is working to establish sediment quality criteria but has not yet published its results. Washington is also pioneering sediment quality criteria as part of the Puget Sound Water Quality Management Plan and has published draft interim sediment criteria for several elements and compounds, but not including TCDD.

The Department has been cooperating with the US Corps of Engineers in developing sediment toxicity criteria for purposes of dredging and filling in the Columbia. The Department is also currently preparing an application to the National Estuary Program to conduct water and sediment quality studies. These studies could include TCDD and other chlororganics, if necessary.

Schedule of Significant Events

- | | | |
|----------------|----|--|
| November, 1989 | -- | Estimated issuance of WTD permit if Commission approves the discharge on October 20, 1989. |
| June 1, 1992 | -- | Deadline set by the Department in the draft TCDD individual control strategies (ICSS) of existing Oregon pulp mills for implementation of their ICSSs. |
| June 4, 1992 | -- | Deadline, for states whose ICSS EPA has approved (Oregon), to bring listed waters and dischargers into compliance. |
| June, 1992 | -- | Estimated earliest date Port Westward mill would be ready to discharge if necessary permit was obtained in November, 1989. |

Meeting Date: October 20, 1989
Agenda Item: E
Page 10

- June 4, 1993 -- Deadline for EPA to bring the listed waters and dischargers of states for which EPA has prepared ICSS (Washington) into compliance.
- June 4, 1993 -- EPA indicated date by which time it will have established a TCDD TMDL/WLA for the Columbia River. (Preliminary wasteload allocations approved with ICSS on each existing permit and would be included in new permits or modifications to existing permits.)

Approved:

Section:

Division:

Director:

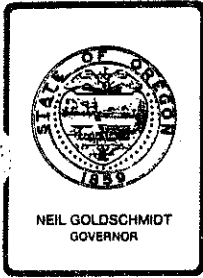
Charles F. [Signature]
Lynette Taylor
Jerry Hansen

Report Prepared By: Jerry E. Turnbaugh

Phone: 229-5374

Date Prepared: October 5, 1989

Jerry E. Turnbaugh:hs
IW\WH3668
October 5, 1989



ATTACHMENT A

Department of Environmental Quality

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

MEMORANDUM

TO: Environmental Quality Commission DATE: August 29, 1989

FROM: Fred Hansen, Director *FH*

SUBJECT: Proposed Port Westward Pulp Mill

The attached report is respectfully submitted to the Commission as an addendum to the July 21 staff report. This is Agenda Item J on the Commission's September 8th meeting.

The report has been prepared in response to the Commission's request for more information and analysis concerning the proposed Port Westward Pulp Company wastewater discharge.

IW\WJ2180

Addendum to July 21, 1989
Environmental Quality Commission Staff Report

Agenda Item L--Proposed WTD Pulp Mill

BACKGROUND

The Commission reviewed pulp mill technology at its work session on Thursday, July 20, 1989, and received information on the Pope & Talbot, Inc. Halsey mill expansion project and the new Port Westward Pulp Company (WTD Industries, Inc.) mill proposed for construction near Clatskanie, Oregon.

At its regular meeting on Friday, July 21, 1989, the Commission continued discussion of the proposed Port Westward mill wastewater discharge and reviewed the decision alternatives presented in the staff report. The Commission deferred a decision on whether or not to approve the discharge until its September 8, 1989 meeting.

A copy of the July 21 staff report is attached (Attachment A).

The Commission requested more information and definition from the Department on the proposed Port Westward discharge, especially regarding the recommended conditions that were part of the Department's Decision Alternative 2 in the July 21 Commission staff report.

This report addresses the Commission's request for more information concerning the conditions under which the proposed Port Westward wastewater discharge might be approved. A revised draft discharge permit is attached (Attachment B).

DECISION ALTERNATIVE 2 CONDITIONS OF JULY 21 STAFF REPORT

Actions Taken on Conditions 2e, 2f

Condition 2e would require development of an approach to require existing bleached kraft pulp mills in Oregon to install state of the art production and pollution control technology to reduce present discharges of TCDD (2,3,7,8-Tetrachloro-dibenzo-p-dioxin) to the greatest extent practicable and eventually, to a level to meet water quality standards.

Condition 2f would require Environmental Protection Agency (EPA) approval of the overall control strategy for the existing mills and the proposed Port Westward mill.

Portions of the Columbia River have been declared water quality limited with respect to TCDD by the Department and Washington's Department of Ecology. TCDD has been found in fish tissue in the river and it has been estimated by dilution calculation that the eight existing bleaching pulp mills on the Columbia and Willamette Rivers are already discharging enough TCDD to exceed

the Oregon water quality standard of 0.013 ppq (parts per quadrillion) in the Columbia River.

The Department has conferred with EPA Region X on the TCDD issue and Lydia Taylor, Acting Water Quality Administrator, has summarized the actions in a letter to Robert Burd, Director, Water Division, EPA Region X. (See Attachment C).

In summary, the Department understands that Region X:

1. Will determine whether the Columbia River would meet the water quality standard for TCDD if the existing mills implemented effective individual dioxin control strategies and whether there would be enough additional capacity for the proposed Port Westward mill.
2. Expects to develop a Columbia River "Total Daily Maximum Load" (TMDL) for TCDD and they will determine wasteload allocations (WLAs) for the proposed Port Westward mill and the existing mills.
3. Expects Oregon and Washington to have their mills use equally effective strategies to reduce TCDD discharge. Oregon will be responsible only for implementation of the TCDD control strategies in Oregon mills.
4. Will develop an estimated time schedule to accomplish items 1 and 2.
5. Would be willing to consider a proposed permit for the Port Westward discharge to the Columbia River if a strategy is developed or in place to bring the stream into compliance. No commitment was made regarding the specific conditions of the permit.

EPA Region X has indicated that they plan to address the above requests in three phases. Phase 1 actions (estimated completion by January, 1990) would consist of a preliminary TCDD wasteload analysis of the Columbia River and an estimated time schedule for the entire TMDL/WLA process. Phase 2 actions (estimated completion by December, 1991) would consist of identification of appropriate chlororganic indicator chemicals to be measured, data collection and completion of final individual control strategies (ICSSs) for the reduction of TCDD by the existing mills. Phase 3 actions (estimated completion by June 4, 1993) would include establishment of TCDD TMDL/WLAs for the Columbia River (which may also be affected by the expected EPA draft Best Available Technology (BAT) technology based dioxin effluent guidelines for pulp mills, due in November, 1992).

The Clean Water Act deadline for bringing water quality limited streams into compliance with water quality standards is June 4, 1992 if EPA approves the states' ICSSs for controlling the limiting pollutant(s) or June 4, 1993 if EPA supervises the ICSSs.

The Department has done a preliminary TCDD analysis with the assistance of EPA Region X to estimate whether there would be enough TCDD capacity in the Columbia River for the proposed Port Westward mill (Attachment D).

The analysis addresses only TCDD (does not include other toxic chlororganics) and assumes the pulp mills discharging to the Columbia River are the only TCDD sources.

Two scenarios are significant:

Scenario I -- Limit Existing Oregon Mills to 10 ppq TCDD Concentration in Their Bleach Plant Flows and Limit Washington Mills and Idaho Mills to 10 ppq TCDD Concentration in Their Total Plant Flows.

The ICSSs submitted by Washington differ from those submitted by Oregon (See Attachment E). Washington proposes "non-detectability" (10 ppq) in their total plant flows while the Department has proposed "non-detectability" in the bleach plant flows for Oregon mills. The Oregon limit would be stricter than the Washington limit because bleach plant flowrates are less than the total plant flowrates (8-63 percent of the total plant flowrate, depending on type of mill). Thus, because of the difference between bleach plant and total plant flowrates, the same discharge concentration of 10 ppq for both Washington and Oregon would result in less TCDD being discharged by the Oregon mills.

The TCDD water quality standard of 0.013 ppq would be exceeded in the Columbia River under this scenario. The total TCDD load discharged to the river from the existing mills would be 10.3 mg/day, or 166 percent of the theoretical river capacity (assuming median flowrate) of 6.2 mg/day.

Scenario III -- Limit All Existing and Proposed Mills to 10 ppq TCDD Concentration in Their Bleach Plant Flows

Limiting the existing and proposed Oregon, Washington and Idaho mills to a TCDD concentration of 10 ppq in their bleach plant flows would provide TCDD river capacity for all the mills including the Pope & Talbot proposed expansion at Halsey and the proposed Port Westward mill at Clatskanie.

The analysis, under the assumptions of this scenario, shows that the total TCDD load to the river would be 3.6 mg/day, or approximately 58 percent of the theoretical river capacity.

Actions Taken on Conditions 2a, 2b

Conditions 2a and 2b require WTD Industries, Inc. (WTD) to use state of the art production and pollution control technology with a goal of 100-percent substitution of chlorine by chlorine dioxide.

Formation of TCDD in pulp mills is thought to result primarily from the use of elemental chlorine in the delignification and bleaching process. Significant processing features that are thought to minimize TCDD formation in a chlorine based bleaching pulp mill include extended cooking and oxygen

delignification, chlorine dioxide substitution for elemental chlorine and oxygen/alkaline extraction.

WTD has provided an engineering analysis (done by their process design consultant) of the proposed Port Westward processing methods to the Department. The report is intended to demonstrate that Port Westward will use "Highest and Best Practicable" control technology to minimize formation of TCDD and other chlororganic compounds.

The report includes a chlorine mass balance showing how much chlorine is used in the mill and where it goes. The amount of chlororganic compounds (measured as "adsorbable organic halides", "AOX") expected to be discharged will also be estimated.

The Department has added a discharge limit to the proposed Port Westward permit for TCDD, based on a total plant effluent concentration of 2 ppq (parts per quadrillion). The limit is expressed as a mass limit (pounds of TCDD discharged per day). A 2 ppq discharge in total plant effluent equates to an approximate 3.2 ppq discharge in the bleach plant effluent.

The 2 ppq TCDD discharge limit is less than the current analytic detectability of TCDD and therefore amounts to a limit of "none detectable". As a point of reference, at a concentration of 2 ppq, enough dilution is available in the allowed mixing zone to meet the 0.013 ppq water quality standard at the mixing zone boundary, assuming there is no background level of TCDD in the river water.

A TCDD limit of "none detectable" at the effluent from the bleach plant, as determined with the EPA/Paper Industry analytical method, is still included in the permit.

In addition to limiting TCDD, a discharge limit has also been included in the permit for adsorbable organic halides (AOX) of 4.0 lb per air dried short ton (2.0 kg per metric ton) of pulp produced. The Department feels that an AOX limit of 4.0 lb per air dried short ton of pulp is achievable and represents "best practices" control of TCDD since it can be expected that the same chemical processes that produce AOX also produce TCDD. The advantage of including AOX as a parameter is that AOX can be measured whereas TCDD, at the concentration level of concern, is below the detectability limit.

Actions Taken on Condition 2c

Condition 2c would require WTD to provide whatever processing features might be required to meet their TCDD wasteload allocation, within three years after the TMDL/WLA is set.

It is recognized that both process control technology and regulatory policy regarding TCDD are changing rapidly. There is a concern that by the time the Port Westward mill is constructed and a TMDL is set for the Columbia River, the installed process control technology may not be adequate to meet

the TMDL without addition of new technology or modification of the existing processes.

WTD has agreed to a permit condition to install such further equipment or make such further modifications as may be necessary to meet its wasteload allocation within three years after EPA has established a TMDL for TCDD for the Columbia River and allocated the load to the individual sources (Attachment F).

Actions Taken on Condition 2d

Condition 2d would require WTD to conduct or support a research and development program aimed at understanding and reducing TCDD and chlororganic compound formation in pulp mills.

Some research on dioxins has been done but much more is required. The pulp and paper industry is keenly aware of the need for basic information to evaluate and understand the dioxin problem and have been conducting research programs applicable to all bleaching mills.

WTD has agreed to support national dioxin research efforts by the industry (Attachment F).

OTHER CONSIDERATIONS

Color Standard

The Commission raised the issue of control over color in Port Westward's (and others') wastewater discharges.

Oregon presently has a "narrative" water quality standard regarding discharge of color:

OAR 340-41-205(2) No wastes shall be discharged and no activities shall be conducted which either alone or in combination with other wastes or activities will cause violation of the following standards in the waters of the North Coast - Lower Columbia River Basin:

OAR 340-41-205(2)(k) Objectionable discoloration, scum, oily sleek or floating solids, or coating of aquatic life with oil films shall not be allowed.

OAR 340-41-205(2)(1) Aesthetic conditions offensive to the human senses of sight, taste, smell, or touch shall not be allowed.

This standard is subjective and therefore difficult to interpret. Tighter regulation of color could probably be achieved by setting a numeric standard for color, perhaps analogous to the present standard for turbidity:

OAR 340-41-205(2) (See above for the preamble to this rule)

OAR 340-41-205(2)(c) Turbidity (Jackson Turbidity Units, JTU):
No more than a 10 percent cumulative increase in natural stream turbidities shall be allowed, as measured relative to a control point immediately upstream of the turbidity causing activity...

The Planning Section of the Water Quality Division is currently reviewing river basin water quality standards. This review is required every three years by the Federal Clean Water Act and will include reconsideration of the color standard. The Department will return to the Commission with a color standard proposal when the review is completed.

Color control can also be achieved on a case by case basis by means of compliance conditions in individual permits. The issue of color was addressed in Port Westward's present proposed permit by limiting the zone of visible color (defined as a color increase of 10 color units above river background) to a 1000 foot circle in the river. This restriction is, in effect, a numeric standard for color discharge, specific to this proposed permit.

The Commission, however, expressed its preference for a general, rather than an individual permit approach to color limitation.

Permit rules adopted by the Commission give the Department the general authority to reopen and modify permits in response to changes in standards or other situations that warrant a permit change. "Reopener" clauses can be included in permits to anticipate or emphasize foreseeable changes. The Port Westward proposed permit includes a reopener for color in anticipation of a change in the standard.

WTD Baseline Study of TCDD in the River

The Department will include a requirement in the permit for WTD to conduct a "baseline" study of TCDD in river sediments and fish tissue taken from the vicinity of its proposed outfall. The object of the study would be to provide a baseline against which to compare future measurements of TCDD to detect potential TCDD buildup in that portion of the Columbia River. WTD has acknowledged the necessity for this study and has proposed a study plan to the Department for approval.

Effect of Other Agency Approvals

The Department has reviewed the means by which it can respond to changes in the Port Westward project caused by other permitting agencies in the course of their approval process. The question is whether the Commission should delay its approval of the proposed discharge until all other approvals and approval processes (e.g. an Environmental Impact Statement) are complete.

Numerous permits and approvals are required for a new source like WTD. Land use and environmental permits are frequently the most significant and are usually pursued early by a new project. The Department has often moved forward with the permit process even though other agency approvals were

pending and has relied upon its plan review authority as a means of avoiding unnecessary delay to applicants. The Department is frequently asked to delay approval of a permit or the making of a decision pending other approvals, but has not usually done so.

Submittal of plans and specifications for construction of wastewater disposal facilities for review by the Department are required by ORS 468.742 and Commission Rules:

OAR 340-52-015 "...all plans and specifications along with other data submitted for a proposed construction, installation or modification project involving disposal systems, treatment works, ...shall first be submitted to the Department for review. No construction, installation or modification shall be commenced until the plans and specifications submitted to the Department are approved..."

If the design features of the Port Westward project were to be changed in response to the requirements of other agencies, WTD is required to inform the Department of the changes and submit updated plans for approval.

The Department is satisfied that it has the authority through its plans and specifications review process to continue to require a high level of environmental protection regardless of any changes that might be required of Port Westward by other agencies subsequent to approval of the discharge by the Commission.

PUBLIC TESTIMONY

The public hearing on Port Westward's proposed permit was held in Clatskanie, Oregon on July 6, 1989. The hearing was well attended by residents and representatives of environmental activist groups, the pulp and paper industry and local governments.

Estimated attendance was approximately 180 persons; 29 people presented oral testimony. The 30 day comment period was extended an additional three weeks to August 1 to allow for added comment. As of August 17, 125 people have submitted oral or written comment on the proposed mill.

Summary of Testimony

An attempt has been made to summarize the main concerns of the testimony relative to the proposed discharge and present sample portions of comment rather than present all the testimony verbatim.

Concern Area 1--Emission of Toxic Substances

Much of the public comment concerned toxic substance emission from the proposed mill.

Many individuals who testified on this issue wanted assurance, if not a guarantee, that they and the environment would be safe from toxic effects of the proposed mill emissions. Some sought detailed assurances regarding the safety of every emitted substance on virtually every living thing (themselves, fish, wildlife, plants, etc.) as a requirement for allowing the mill to be constructed. They felt that unless these assurances could be provided, the appropriate thing to do would be to prevent discharge of toxic substances, especially chlororganics, by not allowing the mill to be constructed or by prohibiting chlorine bleaching. Some also felt that once a mill was constructed, it would be too late to adequately regulate toxic emissions, especially if they exceeded allowable limits.

Several voiced the expectation that the Department should conduct compliance testing of mill emissions rather than trust self-monitoring and reporting by the discharger.

Many, both proponents and opponents of the mill, saw the Department as their ultimate protector from toxic substances. Proponents generally qualified their support of the proposed mill and its assumed economic benefits by calling on the Department to take a firm "watchdog" approach to ensuring that the mill would be safe. Opponents demanded specific assurances of safety by the Department, although they often expressed skepticism as to the Department's ability or willingness to accept or fulfill this responsibility.

A number of people took the position that no additional dioxin discharge should be granted until a comprehensive study of dioxin in the Columbia River has been accomplished and waste load allocations have been made.

The validity of the state's water quality standard for TCDD and the assumptions on which it is based was challenged as was the applicability of a TCDD discharge limit of "non-detectability".

Requests were made for more information on the quantity and toxicity of emitted substances and for further study, specifically in the form of a "full" environmental impact study.

One individual commented on the risk of emergency spill or upset at the mill.

Example comments, quoted as written, are:

- o "...you and you alone were put in office to safe guard our health."
L. Pereira.
- o "In addition, the DEQ should commence work immediately to restrict and ultimately halt all emissions of dioxin from existing mills on the Columbia River. No further pulp mills should be allowed on the Columbia River until the dioxin emission problem is resolved." Ann C. Davis
- o "Parts of the Columbia River have been listed by the DEQ and Dept. of Ecology on the toxic hot spot list -- for excessive quantities of

dioxins....Levels of this poison are already unacceptably high in our area due to the high concentration of mills on the river. It is absurd that the DEQ would even consider such a proposal -- if indeed their job is to protect the environment." Jammie Axon

- o "Until Boise [WTD ?] eliminates the bleaching process use of chlorine and therefore the dioxins, no permit for any toxic-emitting industry should ever be considered." Bonnie Hill.
- o Another mill will endanger Columbia River fish--put the mill somewhere else where they will make unbleached pulp--oral comment by Donald Riswick, Columbia River Fishermans Protective Union
- o "It [the proposal] is a short-sighted plan that will unreasonably burden sensitive fish and wildlife species..." These defects could be substantially cured by permit restrictions requiring non-chlorine based technology..." Audubon Society of Portland.
- o "Cumulative impacts of all these mills on water quality, fish and wildlife, recreation, commercial and sport fishing industries, etc. should be considered before additional wastewater discharges are permitted." State of Washington, Department of Wildlife
- o "This report [permit evaluation report]...is inadequate to be used as a basis for granting a permit for the proposed plant. It is based on far too many unsubstantiated claims by the applicant, vague assumptions, and lack of verifiable information about the environmental characteristics of the local area and the extended areas that would also be affected." Chris Soter
- o "NEDC requests that DEQ develop reliable water quality data before irreversibly committing Oregon to a discharge of 14.4 million gallons per day into the Lower Columbia. An NPDES permit should not be issued...until DEQ has sufficient data available to make affirmative findings that this project will not adversely affect the water quality in the Lower Columbia." "Issuance of an NPDES permit based on the prospect that future technology may bring the Lower Columbia River into compliance is absurd and irresponsible." Northwest Environmental Defense Center
- o "The U.S. Army Corps of Engineers must be required to prepare a complete and comprehensive environmental impact statement which addresses the impact of effluents including dioxin on salmon." Oregon Salmon Commission
- o "...it is appropriate for the DEQ to consider requirements that all new pulp mills use technology that produces and discharges no dioxins." US Fish and Wildlife Service
- o "The proposed permit does not adequately monitor chlorophenolics. As described in the permit, chlorophenolics would be lumped under the category of 'adsorbable' organic halides..." "A modelling study to determine the actual dilution of effluent constituents and

associated impacts to aquatic organisms should be performed using worst case conditions." National Marine Fisheries Service

- o "With this new mill, Oregon has the opportunity, not only to show that non-chlorine pulp manufacturing can be done, but to be an environmental leader by producing a product -- namely unbleached pulp -- that will be a boon to the environment." Northwest Environmental Advocates
- o "Dioxin accumulation, if found in Columbia river fish is not likely to be due to industrial discharges but rather to forest and other wood fire synthesis and contamination thereby of insects, especially flying insects which may then be ingested on the streams and on the ocean...Objections to constructing a modern paper mill having the latest pollution abatement technology cannot be based nor related to poly-chlorinated dioxins in wastewater." Bryant L. Adams, Ph.D.
- o "DEQ's application of the Water Quality Standard for 2,3,7,8-TCDD of 0.013 ppq, corresponding to a risk level of one-in-a-million, is inappropriate without (A) consideration of the flexibility to address this pollutant within an appropriate range of risks, (B) independent review on the scientific merits of such a value and (C) an opportunity for performance of scientific studies to demonstrate a lack of adverse effect." "DEQ's imposition of waste discharge limitations of "none detectable" when read in light of the current level of analytical detectability, raises substantial question whether a facility can document compliance and whether the limitation changes along with the level of analytical detectability." Northwest Pulp & Paper Association
- o "It is inappropriate to base a proposed dioxin discharge limitation on EPA's .013 parts per quadrillion ("ppq") water quality criterion. While we understand the DEQ believes it has adopted this criterion as part of its water quality standards, the latest and best science clearly indicates that the key parameters used in the calculation of the EPA criterion are either outdated or wrong." Boise Cascade Corporation

Concern Area 2--Public Comment Process

A number of people felt that the public had not been properly notified of the comment period, and that the comment process was inadequate. Requests were made for additional hearings, broader advertising and mailings of notices, an extension of the comment period and more question and answer interaction by DEQ with the public.

Washington residents expressed concern that they were not being included in the process even though they would be affected by the proposed mill.

Example comments, quoted as written, are:

- o "The Northwest Coalition for Alternatives to Pesticides requests that the public comment period...be extended until October 15 if the Oregon Department of Environmental Quality (DEQ) rapidly provides sufficient information on which the public may base its comments. A date later than October 15 is requested if such information is not quickly forthcoming." Northwest Coalition for Alternatives to Pesticides
- o "Our principal concern is that there has not been enough time and information available to adequately evaluate the potential environmental impact of the proposed facility." Northwest Environmental Advocates
- o "As Washington residents who would be impacted equally or, more likely, greater than anyone by this proposal, we take issue with the fact that we have been ignored in this decision-making process." Rick Thompson
- o "I...was disappointed when questions and concerns offered by those attending the meeting were not addressed by D.E.Q. or P.W.P staff. I have strong feelings that all concerns expressed by property owners and users of land effected by the proposed pulp mill must be addressed openly." Andrew R. Kiser

Concern Area 3--The Approval Process

Concern was raised that the mill approval process was being rushed through too fast and was being driven by political considerations rather than environmental considerations.

Example comments, quoted as written, are:

- o "The addition of a new chlorine-based pulp mill into Oregon...is not an addition to be rushed through the Oregon permitting process, regardless of the degree of solicitousness paid this proposal by Governor Goldschmidt. (Some governors solicit nuclear waste dumps; others solicit dioxin-producing pulp mills.)" Northwest Coalition for Alternatives to Pesticides
- o "There is no reason to rush this permit unless the DEQ is trying to assist WTD Industries in avoiding compliance with new rules governing the dumping of dioxin and other chlorinated organic compounds into the Columbia River. If that is the case, the DEQ should explain to a trusting public that its job is not to protect environmental quality but to aid in its destruction. I repeat, there is no rush; the Corps of Engineers' permitting process will take at the very least many months. Why is the DEQ in such a hurry?" Northwest Environmental Advocates

Concern Area 4--Economic Development and Environmental Protection

A number of people supported the concept that economic development was necessary and that it could be accomplished without adverse environmental effect.

Example comments, quoted as written, are:

- o "I am a landowner at Port Westward... And we are all for WTD to build there mill. You see we have been here since 1960 and we have see Clatskanie grow as James River has a big factor to that. We do not get a bad smell or do we see bad water up there. We fish Sports and up by James River is a nice whole for Sturgeon which we have caught. We also relize things will need to be done to perfect the waters but we believe it all be done proper." Darlene and Dan Honeycutt
- o "We want development and jobs on the Lower Columbia. But we want clean development respectful of the earth and those who live and work nearby the industries. We want present industry to clean up now rather than paying yearly fines in lieu of action with little consideration of the environment and people's health." Carol Carver
- o "Here on this north coast of Oregon we've become used to our lot and this company holds the promise of letting us continue to live as we always have, but with a little frosting on our cake. Port Westward Pulp can employ many people from our area and its locating here will make a significant contribution to our tax base." M. Lillich
- o "We believe that environmental protection and economic development can occur together." Clatskanie Rural Fire Protection District
- o "The Clatskanie Chief newspaper strongly supports the planned construction of WTD Industries' Port Westward Pulp Mill. We believe it to be a fine example of how modern technology has made it possible for an industry to be both economically beneficial and environmentally safe." The Clatskanie Chief
- o "Exporting wood chips or pulp is only a sophisticated way of exporting our logs. Basically you are still exporting our jobs in either case. Making wood chips or pulp can not be considered labor intensive occupations. On the other hand, a paper mill would be an economic benefit to the community, and yet, with no higher a pollution level." Fred Korhonen
- o The Port of St. Helens supports the mill for its economic benefits and believes that it will not adversely affect the environment-- summary of oral comment by Eric Dahlgren, Port of St. Helens
- o "We encourage DEQ to be a strong regulator and also to enable sensible development." Clatskanie City Council

Concern Area 5--Color Discharge and Algae Growth

The adverse effects of color in the discharge and the possibility of stimulated growth of river algae were commented on.

Example comments, quoted as written, are:

- o "The color stain will certainly make a difference to these recreational users of the river. The sailboarders who use the river just down from the mill site will certainly not like the discolored water." R.P. Griffith
- o "My husband and I carried out an experimental shad trapping program in 1987-1988, and were shocked at the massive amounts of plant growth which took place on our trap in the few weeks of the program." "What I am saying is that the fishermen are usually the first ones to notice when pollution starts to accumulate and affect the Columbia, and I would say that we already have a problem." Irene Martin

Concern Area 6--Groundwater Contamination

Possible groundwater contamination was identified as a concern.

- o "In addition, the proposed aeration lagoon presents a threat of groundwater contamination and eventual discharge into the Columbia. Even if lined, there is little doubt that the pond would leak contaminants into the groundwater, and that the groundwater would in turn migrate and discharge to the Columbia." Northwest Environmental Advocates

Concern Area 7--Contamination from Pilings Placed in the River

Two people were concerned about the effect on aquatic life of toxic wood preservatives leaching from new pilings that are proposed to be placed in the river as part of the project.

STAFF RESPONSE TO THE PUBLIC TESTIMONY

Concern Area 1--Emission of Toxic Substances

As awareness of chemicals in the environment and knowledge of the subtle toxic effects of many of the chemicals grows, public concerns for health and environmental well-being also grow.

This proposed mill would release significant quantities of chemicals into the environment, as does virtually every other basic manufacturing plant. Emission of any chemical into the environment undoubtedly has some effect. Water quality standards have been developed for many chemicals that have

been identified as having predictable, adverse impact. Many chemicals, even though they seem to have minimal known effects, may have subtle effects that are unknown or unquantified. For these chemicals, the risk of adverse impact is generally considered to be low enough to be acceptable, given the present knowledge.

Any industrial discharge probably creates some incremental environmental risk; zero incremental risk could only be achieved by prohibiting the discharge. In other words, if we are going to have industrial processes, we probably are going to have to accept some additional risk.

Prohibiting a particular discharge may not increase the incremental risk associated with that discharge but it also would not reduce the existing risk if the chemical is present in the environment from other sources. Virtually all chemical species are present in the environment already at some level, many produced by natural causes. TCDD, for example, is thought to be produced in significant quantities by forest fires.

Much of the public comment received expresses the opinion that toxics in the environment present too great a risk already and that no emission should be allowed which would increase the risk.

TCDD and other chlororganic compounds have been the focal point of health concerns with this proposed mill. The technology is available to reduce TCDD formation in our existing bleaching pulp mills and to minimize it in new bleaching mills. The technology does not guarantee complete elimination of TCDD, however, so there will presumably always be some TCDD risk as long as we have chlorine based bleaching pulp mills.

The ICSs proposed by the Department, Washington and EPA Region X are intended to reduce TCDD emission by existing mills to a level that will meet the water quality standard in the Columbia River.

Prohibition of chlorine based bleaching in pulp mills in an attempt to eliminate chlororganic compound formation would be a public policy decision of far reaching consequence that could probably only be reached through the political process and judicial review.

The best assurance the Department can provide to the public regarding chlororganic compound emission from Oregon mills is that short of eliminating chlorine based bleaching, the Department has undertaken a program of reducing emissions from existing Oregon mills to meet water quality standards. The method to be used for control of chlororganics from the proposed Port Westward mill would be to require use of the most stringent control technology available today.

Concern Area 2--Public Comment Process

Department rules require a minimum 30 day public notice and comment period on wastewater discharge permits.

The Department mailed out approximately 146 notices of the July 6 NPDES permit hearing to a broad spectrum of recipients, including media representatives, individual citizens, citizen groups, regulatory agencies and private companies from its state and county mailing lists.

The comment period was extended approximately three weeks from July 10 to August 1 and a re-mailing was done to the July 6 mailing list and to those who were subsequently added to the list.

Copies of the public hearing notice, proposed permit and evaluation report were sent to EPA Region X and the Washington Department of Ecology.

Region X has not yet commented on the technical details of the proposed permit. Region X will again review any final draft permit that is submitted, in accordance with the provisions of the DEQ/EPA Memorandum of Agreement.

Technical comment on the proposed permit has been received from the Washington Department of Ecology.

The Department elected not to hold a general open floor question and answer period at the July 6 water quality permit hearing. Instead, members of the staff made themselves available before the meeting to talk to individuals about their particular concerns.

At the July 25 air quality permit hearing, members of the Air and Water Quality Division staff sat as a question and answer panel to respond to questions from the floor.

Concern Area 3--The Approval Process

The Department intends to move the permit process forward to a conclusion in a timely fashion. If the Commission approves the proposed discharge, the Department will grant the permit only after it is satisfied that all issues have been addressed and appropriate information is available.

The Governor has publicly stated that he supports environmentally acceptable growth in the pulp and paper industry. The Governor looks to the regulatory agencies and the permitting process, however, to make the determination of environmental acceptability.

Concern Area 4--Economic Development and Environmental Protection

The primary responsibility of the Department in the permitting process is to assess the adequacy of the environmental protection aspects of a proposed project. Broader questions of public policy such as land use zoning, economic benefit considerations or type of allowable industry are generally left to other appropriate public processes to resolve.

Concern Area 5--Color Discharge and Algae Growth

One person reported significant algae growth on the bottom of the Columbia River. The Department will evaluate this information but this seems to be an isolated report and generally, the river is regarded as acceptably free of the nuisance growths that characterized the days before the existing pulp mills installed secondary wastewater treatment facilities.

The Department is reviewing its water quality rules regarding color as noted previously and will explore the feasibility of establishing a less subjective water quality standard applicable to all dischargers.

Concern Area 6--Groundwater Contamination

The proposed permit requires that the wastewater lagoon (aerated stabilization basin) be lined to a permeability of 10^{-7} cm/sec which is considered adequate to reduce leakage to an acceptable rate. The shallow surface aquifer is not used for critical uses and the Department concludes that any residual leakage from the lagoon would not be a problem.

The permit requires that the spill containment basin be doubly lined with a synthetic liner and that leakage be monitored between the liners. If the liner is found to be leaking, the Department will assess the risk and require appropriate remedial action.

Concern Area 7--Contamination from Pilings Placed in the River

The relatively small amount of wood preservatives used in pilings which have relatively low solubility in water are not considered to be a source of significant chemical release.

STAFF RECOMMENDATIONS

The Department recommends approval of the Port Westward discharge, subject to the Commission's conditions contained in Decision Alternative 2 of the July 21 staff report.

The Department would issue the discharge permit only after it has considered all relevant factors and has evaluated and approved WTD's plan for "highest and best practicable treatment" for prevention of chlororganics and TCDD in the mill and its discharge. WTD's plan would include a chlorine balance for the mill.

The Commission may want to consider expressing its intent to approve the discharge as a policy, and ask the Department to return to the Commission at its regular meetings with updates on the Department's progress toward issuance of the permit.

ATTACHMENTS

- A. Copy of the July 21, 1989 Commission staff report on the proposed Port Westward permit
- B. Revised proposed discharge permit
- C. Letter dated August 16, 1989 from Lydia Taylor to Robert Burd
- D. Columbia River TCDD Analysis
- E. Oregon and Washington proposed Individual Control Strategies
- F. Letter dated August 7, 1989 from WTD Industries, Inc. to Lydia Taylor.

Prepared by:

Jerry E. Turnbaugh
Industrial Waste Section
Water Quality Division
August 24, 1989



Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: July 21, 1989
Agenda Item: L
Division: Water Quality
Section: Industrial Waste

SUBJECT:

Approval of a Significant New Waste Discharge to the Columbia River--Proposed WTD Pulp Mill at Clatskanie, Oregon.

PURPOSE:

To present strategy alternatives to the Commission on allowing discharge to the Columbia River of additional quantities of TCDD (2,3,7,8-tetrachloro-dibenzo-p-dioxin).

ACTION REQUESTED:

- Work Session Discussion
 - General Program Background
 - Potential Strategy, Policy, or Rules
 - Agenda Item ___ for Current Meeting
 - Other: (specify)

- Authorize Rulemaking Hearing
- Adopt Rules
 - Proposed Rules Attachment ___
 - Rulemaking Statements Attachment ___
 - Fiscal and Economic Impact Statement Attachment ___
 - Public Notice Attachment ___

- Issue a Contested Case Order
- Approve a Stipulated Order
- Enter an Order
 - Proposed Order Attachment ___

Meeting Date: July 21, 1989
Agenda Item: L
Page 2

- | | | |
|---|------------|--------------------------|
| <input type="checkbox"/> Approve Department Recommendation | Attachment | <input type="checkbox"/> |
| <input type="checkbox"/> Variance Request | Attachment | <input type="checkbox"/> |
| <input type="checkbox"/> Exception to Rule | Attachment | <input type="checkbox"/> |
| <input type="checkbox"/> Informational Report | Attachment | <input type="checkbox"/> |
| <input checked="" type="checkbox"/> Other: Provide Policy Direction | Attachment | <input type="checkbox"/> |

DESCRIPTION OF REQUESTED ACTION:

The Department of Environmental Quality (Department) has received application for a significant new discharge to the Columbia River. Pursuant to OAR 340-41-026(3), the Environmental Quality Commission (Commission) must approve any significant new discharge.

Upon evaluating the application, the Department finds that the discharge would not violate water quality standards, with the exception of TCDD. However, because of the discharges from pulp mills and other sources on the Columbia River, the TCDD standard may already be violated.

The Department is asking the Commission to provide policy direction on whether to allow new discharges of TCDD to receiving waters that may be water quality limited with respect to TCDD, and if so, under what circumstances.

AUTHORITY/NEED FOR ACTION:

- | | | |
|--|------------|--------------------------|
| <input type="checkbox"/> Required by Statute: _____ | Attachment | <input type="checkbox"/> |
| Enactment Date: _____ | | |
| <input type="checkbox"/> Statutory Authority: _____ | Attachment | <input type="checkbox"/> |
| <input type="checkbox"/> Pursuant to Rule: _____ | Attachment | <input type="checkbox"/> |
| <input type="checkbox"/> Pursuant to Federal Law/Rule: _____ | Attachment | <input type="checkbox"/> |
| <input checked="" type="checkbox"/> Other: OAR 340-41-026(3) (a) | Attachment | <u>A</u> |
| <input type="checkbox"/> Time Constraints: (explain) | | |

DEVELOPMENTAL BACKGROUND:

- | | | |
|---|------------|--------------------------|
| <input type="checkbox"/> Advisory Committee Report/Recommendation | Attachment | <input type="checkbox"/> |
| <input type="checkbox"/> Hearing Officer's Report/Recommendations | Attachment | <input type="checkbox"/> |
| <input type="checkbox"/> Response to Testimony/Comments | Attachment | <input type="checkbox"/> |
| <input type="checkbox"/> Prior EQC Agenda Items: (list) | Attachment | <input type="checkbox"/> |

Meeting Date: July 21, 1989
Agenda Item: L
Page 3

X Other Related Reports/Rules/Statutes:

Permit Evaluation Report

Attachment B

X Supplemental Background Information

Summary of Public Hearing Testimony
Rules Findings

Attachment C
Attachment D

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

This proposed pulp mill has raised considerable interest from industry, economic development and environmental protection groups. The primary environmental water-quality issue is the potential discharge of toxic TCDD and related chlorinated organic compounds.

TCDD was found in the effluent of pulp mills and in fish in their receiving streams during joint EPA/Paper Industry screening studies (the five(5)-mill and 104-mill studies).

The United States Environmental Protection Agency (EPA) issued the "Interim Strategy for the Regulation of Pulp and Paper Mill Discharges to the Waters of the United States" on August 9, 1988. EPA then followed with its "Guidance for Section 304(1) Listing and Permitting of Pulp and Paper Mills" on March 15, 1989, which directed the States to list pulp mills and their receiving streams, to develop numerical water-quality standards for TCDD, to develop individual control strategies for the mills and to include best professional judgement (BPJ) effluent limitations for each mill to meet the 1992 TCDD water-quality compliance deadline.

The Department listed the Columbia River (at the points of discharge of the Oregon pulp mills) as being water-quality limited with respect to TCDD. This proposed mill would discharge some amount of TCDD to a theoretically overloaded stream, although the amount could be expected to be minimal relative to older-technology mills.

Creation of a TCDD minimization/reduction program for the mills discharging to the Columbia River (an interstate waterway) and its tributaries would require the cooperative efforts of Oregon, Washington, and the EPA.

Meeting Date: July 21, 1989
Agenda Item: L
Page 4

PROGRAM CONSIDERATIONS:

This source, if permitted and constructed, will be classed as a major discharger. As such there will be at least annual sampling inspections to verify compliance. The proposed permit is limited to a five-year life and must be renewed every five years. Oregon administrative rules (OAR 340-41-026(4)) provide that the Commission or Director may approve new discharges, subject to the criteria of -026(3).

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Deny approval of the new bleached kraft pulp mill effluent discharge load to the Columbia River at this time.

RATIONALE:

Based on available information from the EPA 104-mill study and best professional judgment in interpreting and applying results with respect to the bleached kraft mills discharging to the Columbia, TCDD levels in the Columbia River probably exceed the EPA Water Quality Criteria/EQC standard for TCDD.

Insufficient information is available to determine what actions and timetable may be necessary to achieve compliance with the standard, or to determine with certainty that the standard can be met with current technology.

Approval of a new bleached kraft pulp mill discharge, even if it will contribute only slightly to increasing the level of TCDD in the river, is not an acceptable public policy decision.

2. Authorize a new discharge from a bleached kraft pulp mill to the Columbia River subject to the following conditions:
 - a. State-of-the-art production and pollution control technology will be installed to minimize the production of TCDD and other chlorinated organic compounds to the greatest degree practicable.
 - b. Chlorine dioxide must be substituted 100 percent for chlorine in the bleaching operation unless the applicant can demonstrate to the Department that a lesser substitution amount is the highest possible.

Meeting Date: July 21, 1989

Agenda Item: L

Page 5

- c. The applicant will agree to install such further equipment or make such further modifications as may be necessary to meet its wasteload allocation within 3 years after EPA has established a TMDL for TCDD for the Columbia River and allocated the load to the individual sources. The timetable for compliance may be subject to modification if the EQC determines that the 3 year time frame is not achievable.
- d. The applicant agrees to implement, or join in implementation, of a research and development program to develop additional means for reducing TCDD in the mill effluent.
- e. An approach is developed to require existing bleached kraft pulp mills in Oregon to proceed to install state-of-the-art production and pollution control technology to reduce present discharges of TCDD to the greatest extent practicable and eventually, to a level to meet water quality standards.
- f. EPA approves this overall approach for Oregon-- both for the existing mills and for a new mill.

The above conditions must be met before the Department can issue the NPDES permit dependent upon this discharge approval.

RATIONALE:

This overall approach should reduce current TCDD levels in the river, even with the small addition from a new state-of-the-art mill. The approach recognizes the lack of agreement on the appropriateness of the existing TCDD standard, that the standard is under review, and that direct determination of compliance with the standard is not possible through scientific measurement. The approach assumes that EPA will be responsible for assuring that the the approaches used for Washington, Idaho, and Oregon (and the rest of the Nation) will be compatible.

This approach fundamentally assumes that the concern for TCDD is shared by all the Columbia Basin states, that a diligent effort is underway to develop technology to reduce TCDD generation to the lowest possible levels, that an effective program will be developed and implemented for the Columbia River as soon as possible to achieve the desired standards, and that Oregon's

Meeting Date: July 21, 1989
Agenda Item: L
Page 6

citizens should not be unreasonably or unfairly deprived of an economic opportunity while an ultimate industry-wide program is being developed.

This approach finally assumes that the Commission can enter a finding that the proposed new mill will not act to cause the standard for TCDD to be exceeded, and further that such approval will most likely enhance the timetable for the changes that are necessary to achieve compliance with the ultimate standard for TCDD.

3. Adopt the conditions as set forth in Alternative 2 as a reasonable basis for allowing a discharge load to the Columbia River from a new bleached kraft mill, and require that the matter be returned to the EQC for a final decision at the September (or October) meeting. At that time, additional information may be available to indicate how the conditions will be met.

RATIONALE:

This delay in the Commission decision could, but is not likely to, delay the overall WTD project. The Air Contaminant Discharge Permit will not be ready for issuance sooner than the September Commission meeting.

Further, if the Commission finds acceptable the protective strategy embodied in the condition of Alternative 2, the Department would have more time to confer with EPA to better develop the details of how the conditions will be met and to have the Commission review that detail.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission choose Alternative 2.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The Department is committed to setting total maximum daily loads (TMDL's) for Oregon's rivers, streams and lakes as a means of protecting and improving beneficial uses (see for example, "Water Quality: Oregon's New Approach, DEQ pamphlet).

Meeting Date: July 21, 1989
Agenda Item: L
Page 7

ISSUES FOR COMMISSION TO RESOLVE:

Should this application be denied until the TCDD "overload" in the Columbia River is removed?

Should additional discharges be approved while a strategy is being developed that would eventually remove the "overload"?

If an additional discharge is approved, would the policy be extended to other streams that may be limited with respect to TCDD or other critical pollutants?

INTENDED FOLLOWUP ACTIONS:

The Department will undertake the actions indicated in the various decision alternatives, depending upon which alternative the Commission chooses.

Approved:

Section:

Division:

Director:

Clark F. [Signature]
Gregory Taylor
Jed Hansen

Report Prepared By: Jerry E. Turnbaugh

Phone: (503) 229-5374

Date Prepared: July 17, 1989

JET:hs
IW/WC5202
6/30/89

Expiration Date:
 Permit Number:
 File Number: 104265
 Page 1 of 7 Pages

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
 WASTE DISCHARGE PERMIT**

Department of Environmental Quality
 811 S.W. Sixth Avenue
 Portland, OR 97204
 Telephone: (503) 229-5696

Issued pursuant to ORS 468.740 and the Federal Clean Water Act

ISSUED TO:

Port Westward Pulp Co.
 PO Box 5805
 Portland, OR 97228-5805

SOURCES COVERED BY THIS PERMIT:

<u>Type of Waste</u>	<u>Outfall Number</u>	<u>Outfall Location</u>
Process Effluent	001	RM 57

PLANT TYPE AND LOCATION:

Market Bleached Kraft Pulp Mill
 Kallunki Rd, Clatskanie, OR
 Columbia County

RECEIVING STREAM INFORMATION:

Basin: North Coast/Lower Columbia
 Sub-Basin: Lower Columbia/Clatskanie
 Stream: Columbia River
 Hydro Code: 10--COLU 57.0 D
 County: Columbia

EPA REFERENCE NO: OR-003267-1

Issued in response to Application No. 998821 received November 23, 1988.
 This permit is issued based on the land use findings in the permit record.

Lydia R. Taylor, Administrator

Date

PERMITTED ACTIVITIES

Until this permit expires or is modified or revoked, the permittee is authorized to construct, install, modify or operate a wastewater collection, treatment, control and disposal system and discharge to public waters adequately treated waste waters only from the authorized discharge point or points established in Schedule A and only in conformance with all the requirements, limitations, and conditions set forth in the attached schedules as follows:

	<u>Page</u>
Schedule A - Waste Discharge Limitations not to be Exceeded..	2-3
Schedule B - Minimum Monitoring and Reporting Requirements...	4-5
Schedule C - Compliance Conditions and Schedules.....	6
Schedule D - Special Conditions.....	7
General Conditions.....	Attached

Each other direct and indirect waste 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 date.

Outfall Number 001 (effluent discharge to the Columbia River).

<u>Parameter</u>	<u>Mass Loadings</u>	
	<u>Monthly Ave.</u> <u>lb/day</u>	<u>Daily Max.</u> <u>lb/day</u>
Phase I		
BOD5	6,000	12,850
TSS	12,000	24,000
2,3,7,8 TCDD ¹	2.4x10 ⁻⁷	2.4x10 ⁻⁷
Phase II		
BOD5	7,800	16,690
TSS	15,850	31,160
2,3,7,8 TCDD ¹	3.1x10 ⁻⁷	3.1x10 ⁻⁷

¹ 2,3,7,8-Tetrachloro-dibenzo-p-dioxin (Measured by the analytical protocol in NCASI Technical Bulletin No. 551, May 1989, "NCASI Procedures for the Preparation and Isomer Specific Analysis of Pulp and Paper Industry Samples for 2,3,7,8-TCDD and 2,3,7,8-TCDF".)

Other Parameters

Color	Color at the color mixing-zone boundary shall not be more than 10-CU greater than the river background color.
Temperature	Shall not exceed 90°F
pH	Shall not be outside the range 5.0-9.0
2,3,7,8-TCDD	None detectable
AOX ¹	4.0 lb per short ton of air-dried pulp produced

¹ Adsorbable Organic Halides (Measured by the analytical protocol in Standard Methods, 16th ed., 1985, "Method 506 Microcolumn Procedure")

Effluent From Bleach Plant Acid and Alkali Sewers Before Dilution.

<u>Parameter</u>	<u>Limits</u>
2,3,7,8-TCDD	None detectable

Effluent From Sanitary Treatment Plant

<u>Parameter</u>	<u>Limits</u>
Fecal Coliform	Shall not exceed a log mean of 200-fc per 100-ml based on a minimum of five samples in a 30-day period, with no more than 10 percent of the samples exceeding 400-fc per 100-ml.
BOD and TSS	Either parameter shall not exceed 20-mg/l from May 1 to October 31 or 30 mg/l from November 1 to April 30.

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 340-41-205 except in the following defined mixing zone:

That portion of the Columbia River defined by circles centered on the Outfall Number 001 diffuser of 1000-ft radius for color and 400-ft radius for all other parameters.

3. Chemical agents containing pentachlorophenol or trichlorophenol shall not be used at the pulp mill.
4. Sanitary wastes shall receive adequate treatment and disinfection (1-ppm residual chlorine following 60-minutes contact) prior to discharge.
5. No toxic or biological growth-inhibiting substances, including zinc, shall be discharged from the mill to the aerated stabilization basin in concentrations that may have an adverse effect upon the efficiency of waste treatment.

Spills of toxic materials within the mill must be routed to the spill basin for subsequent recovery and treatment so there will be no adverse effect on the aerated stabilization basin.

6. No brownstock defoamers which contain recycled oils or dioxin precursors may be used. Defoamers used must have the lowest practical content of dioxin precursors.
7. The mixing-zone boundary for color will be reduced to the boundary for all other parameters when water-quality regulations warrant it or means for color control or removal become practicable.
8. This permit may be modified in accordance with OAR 340-45-055 to include chlororganics effluent limits that are not already included in the permit or that are more restrictive which result from promulgation of new federal BAT effluent guidelines or chlororganics waste load allocations.

SCHEDULE B

Minimum Monitoring and Reporting Requirements (unless otherwise approved in writing by the Department)

Outfall Number 001

<u>Parameter</u>	<u>Minimum Frequency</u>	<u>Sample Type</u>
Flow Rate	Daily	Measurement
BOD5	Three per week	24-hr composite
TSS	Three per week	24-hr composite
Temperature	Three per week	Grab
pH	Three per week	Grab
Color	Weekly	24-hr composite
Acute Toxicity Bioassay	January & July	96-hr static using the agreed-upon test species.
Chronic Toxicity Bioassay (During the first summer of operation.)	Monthly (June to October)	Chronic bioassay using two test species.
Chronic Toxicity Bioassay (After DEQ approval of the test species.)	Monthly (July to September)	Chronic bioassay using most appropriate test species.
2,3,7,8-TCDD	Quarterly during first year, semi-annually in January & July thereafter	24-hr composite

Bioassay monitoring shall be conducted in accordance with procedures approved by the DEQ Laboratory.

Effluent From Bleach Plant Acid and Alkali Sewers Before Dilution

<u>Parameter</u>	<u>Minimum Frequency</u>	<u>Sample Type</u>
2,3,7,8-TCDD	Quarterly during first year, semi-annually in January and July thereafter	24-hr composite
2,3,7,8-TCDF ¹	Quarterly during first year, semi-annually in January and July thereafter	24-hr composite
AOX ²	Weekly	24-hr composite

¹ 2,3,7,8-Tetrachloro-dibenzo-furan (Measured by the analytical protocol in NCASI Technical Bulletin No. 551, May 1989, "NCASI Procedures for the Preparation and Isomer Specific Analysis of Pulp and Paper Industry Samples for 2,3,7,8-TCDD and 2,3,7,8-TCDF".)

² AOX results are to be reported monthly in pounds per short ton of air-dried pulp produced during the month.

Effluent from Sanitary Treatment Plant

<u>Parameter</u>	<u>Minimum Frequency</u>	<u>Sample Type</u>
Fecal Coliform	Five samples per month	Grab
Chlorine	Three per week	Grab
BOD & TSS	Five samples per month	Grab

Aerated Stabilization Basin Influent and Effluent

<u>Parameter</u>	<u>Minimum Frequency</u>	<u>Sample Type</u>
BOD5	Three per week	24-hr composite
TSS	Three per week	24-hr composite
Color	Weekly	24-hr composite
Temperature	Three per week	Grab

Aerated Stabilization Basin Bottom Sludge

<u>Parameter</u>	<u>Minimum Frequency</u>	<u>Sample Type</u>
Sludge Depth	January & July	Measurement
EOX (Extractable Organic Halides)	Annually, in July	Representative sample

Production

<u>Parameter</u>	<u>Minimum Frequency</u>	<u>Sample Type</u>
Pulp Produced	Monthly	Calculated

Average daily production of pulp shall be reported monthly, in air-dried tons. (The average is defined as the total production during the month divided by the number of days operated during the month.)

River Color

<u>Parameter</u>	<u>Minimum Frequency</u>	<u>Sample Type</u>
Background river color	Weekly	Grab-2000-ft upstream
Color at mixing-zone boundary	Quarterly-Jan., Apr., Jul., Oct.	Grab--at least three locations on the mixing-zone boundary.

SCHEDULE C

Compliance Conditions and Schedules

1. **Mixing Zone Confirmation and Outfall Diffuser Design**

The permittee shall submit an engineering study for approval to the Department for outfall diffuser design before starting construction of the diffuser. The study must confirm proposed mixing-zone boundaries based on acute and chronic toxicity, dissolved oxygen, turbidity, temperature and color and must include modelling and calibration of the model to local stream hydrology.

2. The permittee must be granted a Section 404 permit for utilization of the wetlands on the site before beginning construction of the mill.

3. As soon as practicable, but before beginning mill construction, the permittee shall submit a Best Management Practices Plan to the Department for approval for control of stormwater runoff from the mill. The Plan must be designed to prevent the release of toxic and hazardous pollutants from plant site runoff, spillage or leaks, sludge or other waste disposal, and drainage from raw material storage associated with, or ancillary to, the construction, manufacturing or treatment process.

4. The applicant shall install such further equipment or make such further modifications as may be necessary to meet its wasteload allocation within three years after EPA has established a total maximum daily load (TMDL) for TCDD for the Columbia River and has made the wasteload allocations to the individual sources.

SCHEDULE D

Special Conditions

1. The total discharge from Outfall Number 001 shall be controlled to maintain a reasonably constant flow rate throughout each 24-hour operating period unless a temporary or short-term flow variation is necessary to meet other provisions of this permit.
2. An adequate contingency plan for prevention and handling of spills and unplanned discharges shall be in force at all times. A continuing program of employee orientation and education shall be maintained to ensure awareness of the necessity of good inplant control and quick and proper action in the event of a spill or accident.
3. Waste waters discharging to biological secondary treatment facilities shall contain adequate nutrients for optimum biological activity at all times. An automatic flow-regulated mechanical nutrient feeding facility is recommended.
4. The permittee shall, during all times of disposal, provide personnel whose primary responsibilities are to assure the continuous performance of the disposal system within the limitations of this permit.
5. If a spill management basin is installed, it must be double-lined with synthetic-membrane liners and between-the-liner leak detection must be provided.
6. The aerated stabilization basin must be fully lined with an engineered liner providing a minimum permeability of 1×10^{-7} cm/sec.
7. Filter backwash solids, sludges, dirt, sand, silt or other pollutants separated from or resulting from the treatment of intake or supply water shall not be discharged to state waters without first receiving adequate treatment (which has been approved by the Department) for removal of the pollutants.
8. A study, to be approved by the Department, to determine TCDD and TCDF baseline concentrations in river sediments and fish tissue taken in the vicinity of the outfall must be conducted prior to discharge.

P104265W (CRW/kjc)

ATTACHMENT ~~B~~C



Department of Environmental Quality

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

August 16, 1989

Robert S. Burd
Director, Water Division
U. S. Environmental Protection Agency
1200 Sixth Avenue
Seattle, WA 99101

Re: Columbia River (dioxin)

Dear Bob:

I wish to confirm my understanding of the results of the meeting we held on July 24th. I've covered these items with Mr. Sobolewski of your Oregon Operations Office, but want to also do so with you.

It is my understanding from our meeting that:

1. EPA Region X will perform an analysis of the Individual Control Strategies provided by Washington and Oregon on pulp and paper mills to determine if the river will or will not be water quality limited for TCDD once the ICS's are applied.
2. EPA Region X expects to determine the Total Maximum Daily Loads of TCDD for the Columbia including wasteload allocations for the individual dischargers. The TMDLs would then likely be adopted by the individual states rather than by the EPA.
3. EPA Region X expects both the State of Oregon and the State of Washington to have their mills use equally effective strategies to solve the problem. The State of Oregon would only be responsible for implementation on the Oregon side of the Columbia.
4. An estimate of the time schedule of the process needed by EPA to develop TMDLs, proposed wasteload allocations, and a review of ICS's submitted by Oregon and Washington will be developed.
5. EPA Region X would be willing to consider a permit for a new bleaching pulp mill on the Columbia River which is potentially water quality limited with respect to TCDD if a strategy is developed or in place to bring the river under standard. No commitment was made regarding a specific permit.

Robert S. Burd
August 16, 1989
Page 2

Thank you for agreeing to meet with us and State of Washington staff on this issue.

Sincerely,



Lydia R. Taylor
Acting Administrator
Water Quality Division

LRT:kjc
WJ2125

COLUMBIA RIVER TCDD ANALYSIS

August 1989

Table of Contents

Overview

Background

Approach

- Water Quality Standard
- River Flow and Loading Capacity
- Sources
- Attenuation

Existing Loads

Analysis of Individual Control Strategies

Summary

Overview

A major water quality issue in the Pacific Northwest involves discharges of dioxin (2,3,7,8-TCDD) and other chlorinated organic compounds from bleached kraft pulp mills. In response to questions which have been raised regarding current concerns on the Columbia River, a preliminary receiving water evaluation of TCDD has been initiated. The purpose of this preliminary analysis is to begin developing a framework which can be used to address questions on water quality based controls needed for 2,3,7,8-TCDD at bleached kraft pulp mills.

In conducting this preliminary analysis, it is acknowledged that limited information is available to describe concentrations of 2,3,7,8-TCDD in the Columbia River. As a result, several assumptions need to be made. First, this analysis initially assumes that bleached kraft pulp mills located in Idaho, Washington, and Oregon are the only sources of 2,3,7,8-TCDD to the Columbia River. It is recognized that 2,3,7,8-TCDD can originate whenever chlorine reacts with organic precursors and that there are at least two bleached kraft pulp mills in British Columbia. More data is needed to describe levels originating from other sources. However, if the preliminary analysis shows that proposed water quality based controls will not lead to the attainment of water quality standards without accounting for other potential sources, then other options need to be explored.

Secondly, very little information is readily available to describe the attenuation (or losses) of 2,3,7,8-TCDD from the Columbia River system. Losses can occur through sedimentation and through uptake by aquatic organisms. More data is needed to describe attenuation rates. This analysis initially assumes that all 2,3,7,8-TCDD discharged stays intact in the water column. If the preliminary analysis shows that proposed water quality based controls will lead to the attainment of water quality standards, then these controls should also be effective regardless of attenuation rates.

A major objective of this preliminary analysis is to locate additional existing information which is not readily available and which could be important for evaluating 2,3,7,8-TCDD in the Columbia River. Included is data on other sources of TCDD, on wastewater flow rates at existing mills, and on studies of attenuation. The preliminary analysis is also intended to guide future data collection efforts for chlorinated organics in the the Columbia River. A third objective is to assess the effectiveness of draft controls levels proposed by both Oregon and Washington to attain water quality standards for 2,3,7,8-TCDD. Finally, this analysis proposes a framework which can be used to develop and refine a total maximum daily load (TMDL) for 2,3,7,8-TCDD including the waste load allocations (WLA's) and load allocations (LA's) for non-point sources and background.

Background

The Columbia River has been identified as water quality limited for dioxin (2,3,7,8-TCDD). Both the Oregon Department of Environmental Quality and the Washington Department of Ecology included the lower Columbia River on the §304(1) short list because of discharges of 2,3,7,8-TCDD from existing bleached kraft pulp mills. Segments identified on the §304(1) short list are waters which do not meet water quality standards for §307(a) priority pollutants due substantially to point source discharges. The listing of the lower Columbia River is based on data describing concentrations of 2,3,7,8-TCDD in fish tissue below bleached kraft pulp mills as well as 2,3,7,8-TCDD in effluents and treatment plant sludges at these mills.

The Federal Clean Water Act (CWA) requires the development of a total maximum daily load (TMDL) for water quality limited segments. The TMDL describes an implementation plan which allocates loads to point sources, non-point sources, and background in a manner that achieves water quality standards. The CWA also requires the development of individual control strategies (ICS's) for point sources identified on the §304(1) short list. The ICS's need to produce a reduction in the discharge of toxic pollutants from these point sources and must be sufficient to achieve applicable water quality standards.

In order to answer questions regarding the effectiveness of any proposed TMDL or ICS, a receiving water evaluation of TCDD for the Columbia River is needed. To focus efforts towards developing water quality based controls, a

preliminary receiving water analysis is presented. The objectives of this analysis are to:

- o organize existing data so that the effectiveness of draft ICS's towards attaining water quality standards for 2,3,7,8-TCDD can be assessed.
- o identify information needs to guide future data collection efforts for chlorinated organics in the Columbia River.
- o propose a framework to refine the TMDL for 2,3,7,8-TCDD including the waste load allocations (WLA's) for point sources and the load allocations (LA's) for non-point sources and background.

Approach

The primary reason for including the lower Columbia on the §304(1) short list is because of concerns over 2,3,7,8-TCDD from existing bleached kraft pulp mills. Consequently, this preliminary analysis focuses on bleached kraft pulp mills which discharge to the Columbia River drainage system in Region 10. The initial approach calculates loads from each source. The cumulative loads are then compared with the "loading capacity" of the river at key points. The "loading capacity" is the greatest amount of loading that the river can receive without violating water quality standards. The framework used to organize information consists of the following major components:

- o the water quality standard for 2,3,7,8-TCDD applicable to the Columbia River.
- o the river flow used as the basis to define the "loading capacity" of the Columbia River at key locations.
- o the sources of 2,3,7,8-TCDD in the Columbia River.
- o the effect of attenuation (or losses) on 2,3,7,8-TCDD as it is transported through the Columbia River system.

Water Quality Standard:

Table 20 of Oregon Administrative Rules (OAR) Chapter 340, Division 41 summarizes water quality criteria for toxic substances applicable to all basins. The concentration for 2,3,7,8-TCDD listed in Table 20 is based on EPA's Quality Criteria for Water (1986). For 2,3,7,8-TCDD, the criteria identified is 0.000013 ng/L, or 0.013 parts per quadrillion (ppq). This value represents an ambient water concentration needed to protect human health. It considers the consumption of both contaminated water as well as fish or other aquatic organisms. The criteria adopted by the Commission is based on the 10^{-6} risk level which means the probability of one cancer case per one million people at the stated concentration.

River Flow and Loading Capacity:

The "loading capacity" of a stream is determined using the water quality criteria value and a river flow. For conventional pollutants, loads are typically given in pounds per day. In the case of 2,3,7,8-TCDD, loads have been expressed as milligrams (mg) per day which are calculated as follows:

$$\text{Load (mg/day)} = 0.00245 * \text{Concentration (ppq)} * \text{Flow (cfs)}$$

The appropriate river flow used to calculate the loading capacity has not been defined. There has been discussion on the use of the annual average flow. The rationale focuses on the criteria for 2,3,7,8-TCDD. The criteria value is based on a risk level for human exposure over a 70 year life expectancy. The annual median flow is also being considered for use as a design flow. The reason is that annual average flows are often biased towards the high side because of flood flows. The median, on the other hand, represents a middle value where half the flows are above and half below. Moreover, the extremes in flow do not affect the median value. Thus, this flow may be more appropriate when considering exposure mechanisms.

Sources:

In conducting the preliminary analysis, information which describes concentrations 2,3,7,8-TCDD is limited. As a result, it is necessary to make several assumptions. One such assumption involves quantifying sources of 2,3,7,8-TCDD in the Columbia River. For the purposes of this preliminary analysis, it is assumed that the only source of TCDD is from bleached kraft pulp mills. A stated objective of this preliminary analysis is to evaluate the effectiveness of draft ICS's. Existing data led to the identification of bleached kraft pulp mills on the §304(1) short list for 2,3,7,8-TCDD in the Columbia River. If the analysis shows that draft ICS's will not lead to attainment of water quality standards without considering other potential sources, then other options need to be evaluated.

It is recognized that 2,3,7,8-TCDD can originate whenever chlorine reacts with organic precursors and that more data is needed. It is also acknowledged that there are at least two bleached kraft pulp mills in British Columbia and one mill in Montana which discharge in the Columbia River drainage system. A second objective of the preliminary analysis is to identify information needs. Thus, the effect of this assumption in the preliminary evaluation will serve to guide the planning of future data collection efforts.

Attenuation:

Very little data is readily available to describe the attenuation of 2,3,7,8-TCDD from the Columbia River system. Losses can occur through sedimentation and through uptake by aquatic organisms. Again, assumptions need to be made. The Clean Water Act specifically states that TMDL's shall be established with a margin of safety which takes into account any lack of

knowledge. For the purposes of this preliminary analysis, it is assumed that attenuation does not occur. Thus, all 2,3,7,8-TCDD discharged stays intact in the water column. If the analysis shows that draft ICS's will lead to the attainment of water quality standards, then they should also be effective regardless of attenuation rates.

It is acknowledged that attenuation processes may play an important role and should be considered before a final TMDL is set. Again, the second objective of the preliminary analysis is to guide the development of a data collection program.

Existing Loads

In EPA Region 10, eight bleached kraft mills currently discharge to the Columbia River system. These mills, one in Idaho, four in Washington, and three in Oregon, are shown in Figure 1. The eight mills currently produce over 6,000 tons per day of bleached kraft pulp. Production estimates are shown in Figure 2.

Figure 1. Location of Region 10 Columbia River Basin Bleached Kraft Pulp Mills

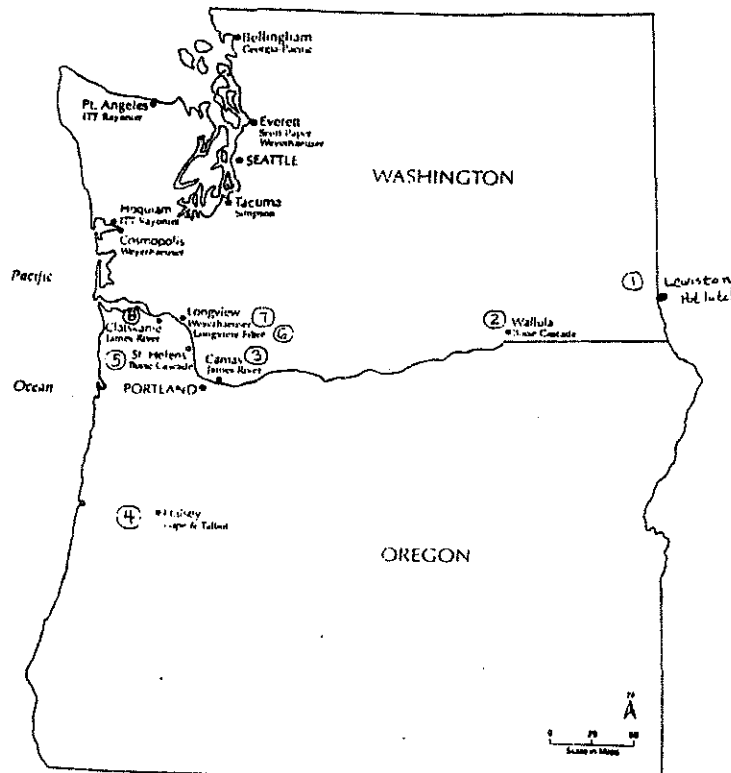
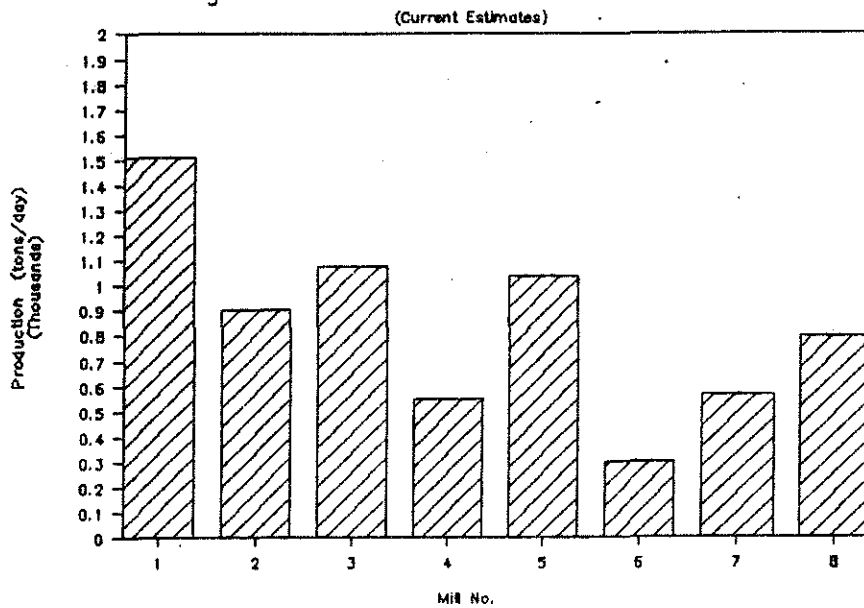


Figure 2. Bleached Kraft Production



In 1987, an EPA / Paper Industry Cooperative Dioxin Screening Study was initiated which looked at 104 bleached kraft pulp mills in the United States. Preliminary results from this study are shown in Table 1. These results can be used to estimate the current cumulative load of 2,3,7,8-TCDD discharged from seven of the eight mills using data from the 104 mill study (Note: the James River Camas mill was resampled due to lab analytical problems, follow-up results are not yet available). Figure 3 depicts this load relative to loading capacities estimated for the annual average and median flows. The calculated load is over 40 mg/day. This is more than five times greater than a loading capacity at 250,000 cfs (an estimated annual average flow) and seven times greater than a loading capacity at 190,000 cfs (an estimated annual median flow). Figure 4 shows the distribution of individual loads for each of the mills.

Table 1. Region X Columbia River Basin Pulp Mills Using Chlorine Bleach Kraft Process

Mill No.	Facility	Location	Bleach Production (tons/day)	Flows			TCDD Concentration		TCDD Effluent Load (mg/day)
				Total (mgd)	Bleach (mgd)	% (BP/TP)	Effluent (ppq)	Sludge (ppt)	
1	Potlatch	(Lewiston)	1509	37	19	50	75.0	78.0	10.6
2	Boise Cascade	(Wallula)	904	17	4	18	360.0	70.0	23.1
3	James River II	(Camas)	1071	59	8	13	**	12.0	**
4	Pope & Talbot	(Halsey)	550	14	7	50	30.0	31.0	1.6
5	Boise Cascade	(St. Helens)	1035	38	17	50	22.0	4.2	3.2
6	Longview Fiber	(Longview)	298	62	8	11	4.3	69.0	1.1
7	Meyerhaeuser	(Longview)	565	50	4	8	9.3	25.0	1.8
8	James River II	(Wauna)	796	38	10	25	15.0	42.0	2.1
Total			6728						43.5

Note: Original sample for James River - Camas failed internal standard recovery criteria. Re-sampled, but results not yet available.

Figure 3. Cumulative 2,3,7,8-TCDD Load
(from 104 mill study)

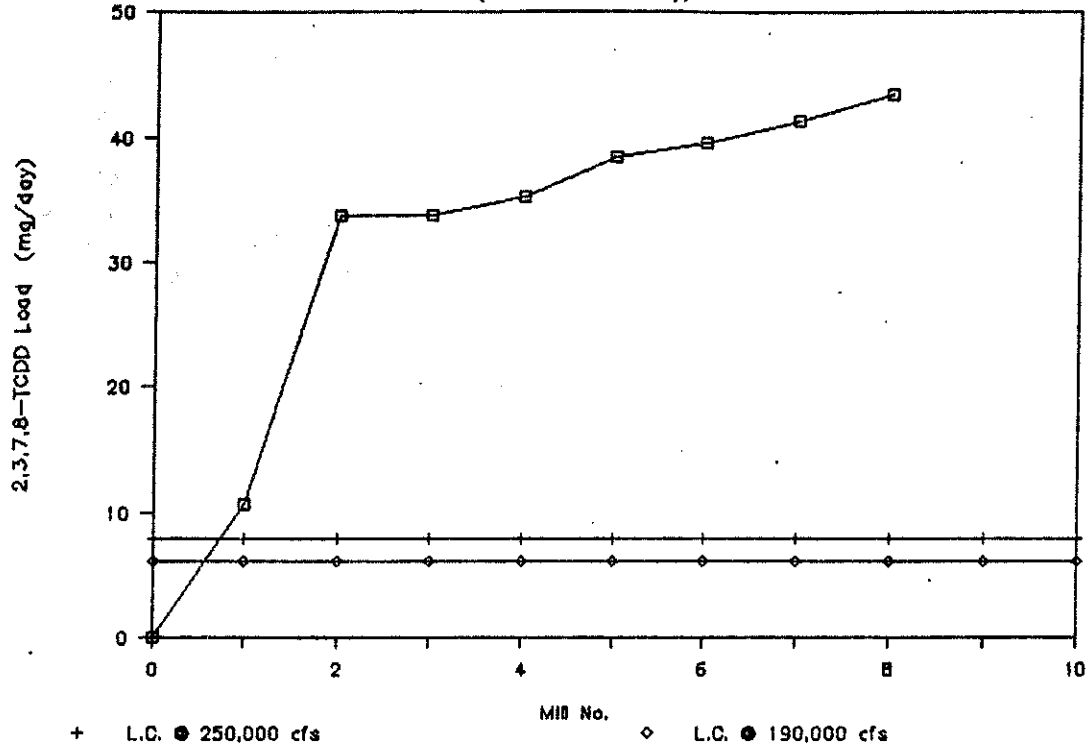
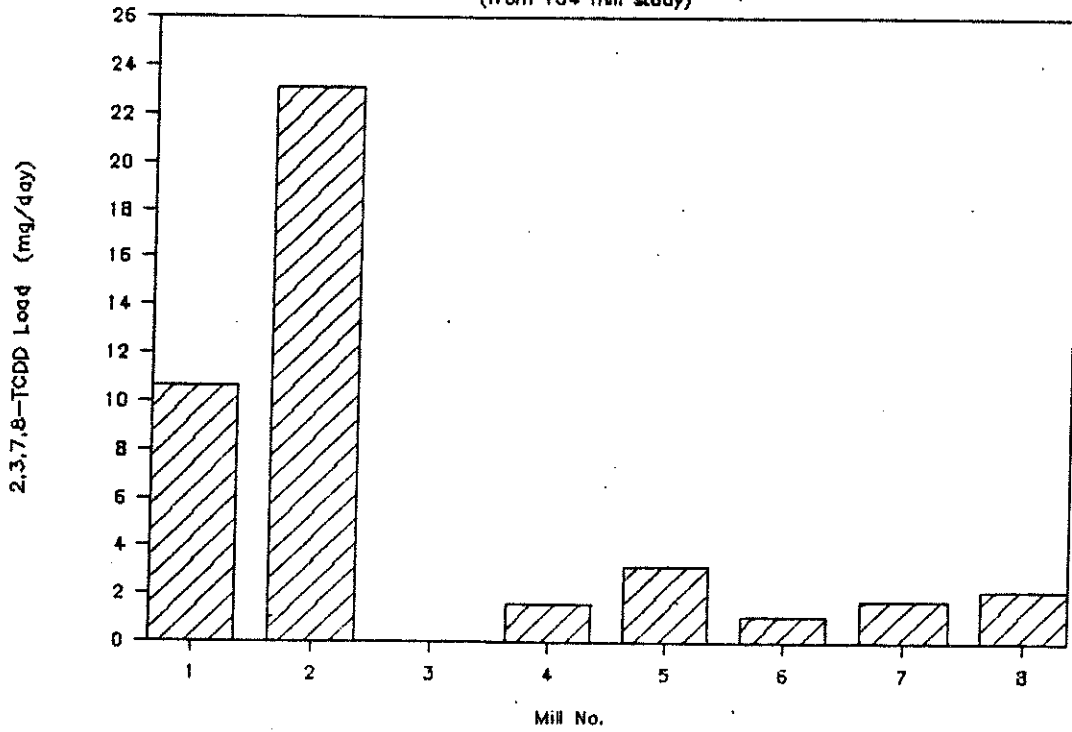


Figure 4. Estimated 2,3,7,8-TCDD Loads
(from 104 mill study)



Analysis of Individual Control Strategies

In June 1989, both Oregon and Washington submitted draft ICS's for the bleached kraft mills identified on the §304(1) short list. Oregon and Washington have taken slightly different approaches towards the ICS's. The current ICS proposed by the Washington Department of Ecology will require compliance with a total effluent limit of "non detectable" for 2,3,7,8-TCDD in each of the NPDES permits for the bleached kraft pulp mills. Oregon's proposed ICS will require compliance with a combined bleach plant effluent limit of "non detectable" for 2,3,7,8-TCDD in each of the NPDES permits for the bleached kraft pulp mills.

Analytical protocols and detection limits for dioxin have been discussed in the EPA / Paper Industry Cooperative Dioxin Screening Study (EPA 440/1-88-025). Detection levels vary depending on individual analyses, but are generally around 10 parts per quadrillion (ppq). Consequently, 10 ppq is used as the detection limit for the purposes of this preliminary analysis. Using assumptions described in the approach and estimates of effluent flow data, three scenarios have been conducted.

Scenario I: Limit Existing Oregon Mills to 10 ppq TCDD in Their Combined Bleach Plant Flows and Limit Washington & Idaho Mills to 10 ppq TCDD in Their Total Plant Flows.

The results of this scenario are summarized in the following table and depicted in Figure 5. Estimates of total plant effluent discharge have been gathered from discharge monitoring reports (DMRs) submitted by each mill.

SCENARIO I. Allocate according to draft ICS's (10 ppq 2,3,7,8-TCDD final effluent for WA/ID mills, 10 ppq 2,3,7,8-TCDD on bleach plant flow for OR mills)

 (Pope & Talbot a existing; No Port Westward)

Mill No.	Facility	Location	Effluent Flows				TMDL Analysis		
			Bleach Production (tons/day)	Total Plant (mgd)	Bleach Plant (mgd)	%	TCDD Effluent Conc.		TCDD Load (mg/day)
							Total (ppq)	Bleach (ppq)	
1	Potlatch	(Lewiston)	1509	37	19	50	10.0	20.0	1.4
2	Boise Cascade	(Wallula)	904	20	4	18	10.0	55.6	0.8
3	James River II	(Camas)	1071	60	8	13	10.0	75.0	2.3
4	Pope & Talbot	(Halsey)	550	14	7	50	5.0	10.0	0.3
5	Boise Cascade	(St. Helens)	1035	34	17	50	5.0	10.0	0.6
6	Longview Fiber	(Longview)	298	70	8	11	10.0	87.5	2.7
7	Weyerhaeuser	(Longview)	565	50	4	8	10.0	119.0	1.9
8	James River II	(Wauna)	796	38	10	25	2.5	10.0	0.4
Total			6728						10.3

Estimates of combined bleach plant flows have been gathered through informal contacts with the mills and may be subject to change. As can be seen, the cumulative load of 10.3 mg/day would exceed the loading capacity defined based on either the annual average or median flow. The cumulative load could go slightly higher with higher estimates of combined bleach plant flows from the Oregon mills. Figure 6 shows the distribution of loads for each of the individual mills.

Figure 5. Cum. Load -- Current ICS's

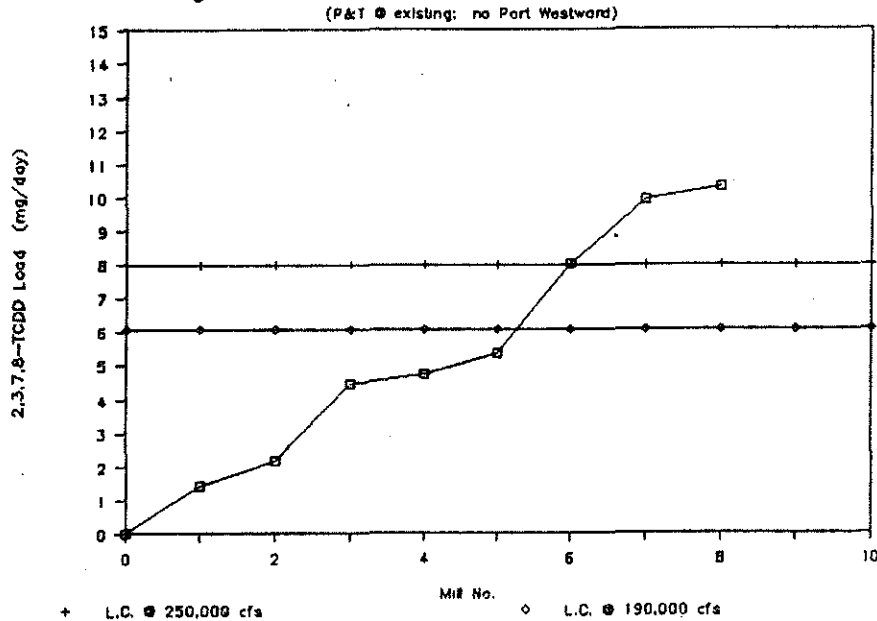
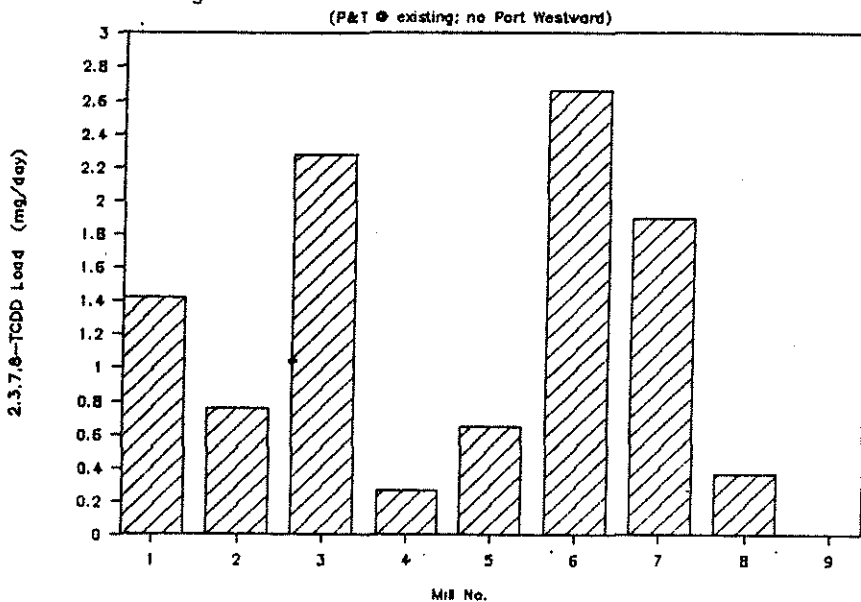


Figure 6. Load Dist. -- Current ICS's



Scenario II: Limit Existing Mills to 10 ppq TCDD in Their Bleach Plant Flows

The results of Scenario I indicate that the loading capacity could be exceeded and that more restrictive controls may be needed. A permit condition set at a level below the analytical detection limit creates a situation where it is difficult, if not impossible, to determine compliance. Because dioxins and other chlorinated organic compounds are produced in the bleach plant, concentrations of 2,3,7,8-TCDD are higher in the combined bleach plant flow than in the total plant effluent. This means that discharge loads based on total plant effluent limits which are below the analytical detection limit could be monitored for compliance using the combined bleach plant waste stream. Scenario II looks at the cumulative load which results from setting limits of 10 ppq in the combined bleach plant flow.

The results of this scenario are summarized in the following table and depicted in Figure 7. As can be seen, the cumulative load of 2.9 mg/day would be below the loading capacity set at either the annual average flow or the median flow. This scenario also indicates that background and non-point source loads, assumed to be zero, could be taken into account. Figure 8 shows the distribution of loads for each of the individual mills.

It should be noted that Scenario II does not account for removal of 2,3,7,8-TCDD from the wastewater treatment system prior to discharge. This type of information should be collected prior to determining waste load allocations. Bleach plant flow information was collected from informal contacts with the mills. Actual bleach plant flows may be higher and could result in a cumulative load which could approach 4 mg/day.

SCENARIO II. Allocate 10ppq 2,3,7,8-TCDD based on Bleach Plant Flow

[Pope & Talbot @ existing; No Port Westward]

Mill No.	Facility	Location	Effluent Flows				TCDD Effluent Conc.		TCDD
			Bleach Production (tons/day)	Total Plant (mgd)	Bleach Plant (mgd)	% (BP/TP)	Total (ppq)	Bleach (ppq)	Load (mg/day)
1	Potlatch	(Lewiston)	1509	37	19	50	5.0	10.0	0.7
2	Boise Cascade	(Wallula)	904	20	4	18	1.8	10.0	0.1
3	James River II	(Camas)	1071	60	8	13	1.3	10.0	0.3
4	Pope & Talbot	(Halsey)	550	14	7	50	5.0	10.0	0.3
5	Boise Cascade	(St. Helens)	1035	34	17	50	5.0	10.0	0.6
6	Longview Fiber	(Longview)	298	70	8	11	1.1	10.0	0.3
7	Weyerhaeuser	(Longview)	565	50	4	8	0.8	10.0	0.2
8	James River II	(Wauna)	796	38	10	25	2.5	10.0	0.4
Total			6728						2.9

Figure 7. Cum. Load -- 10 ppq BP Flow

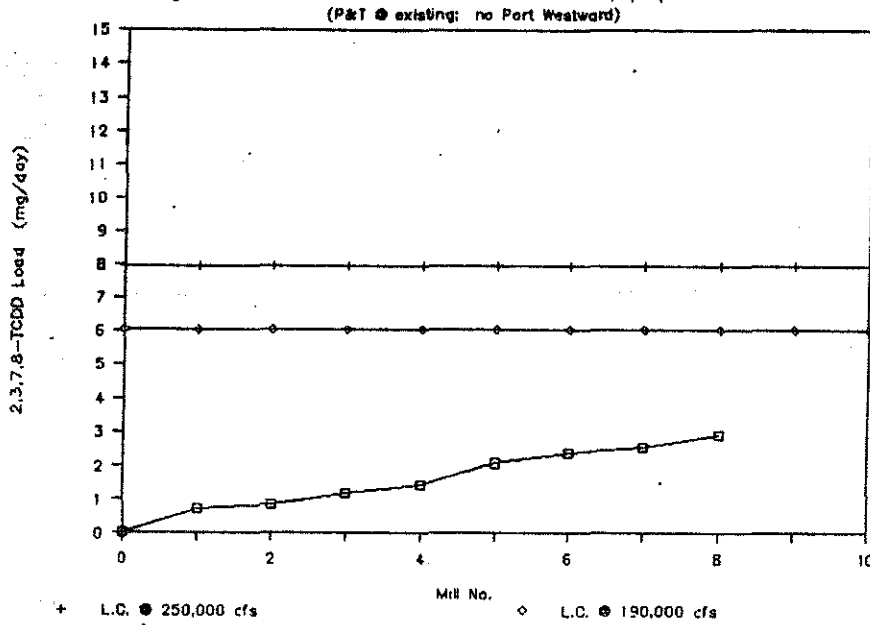
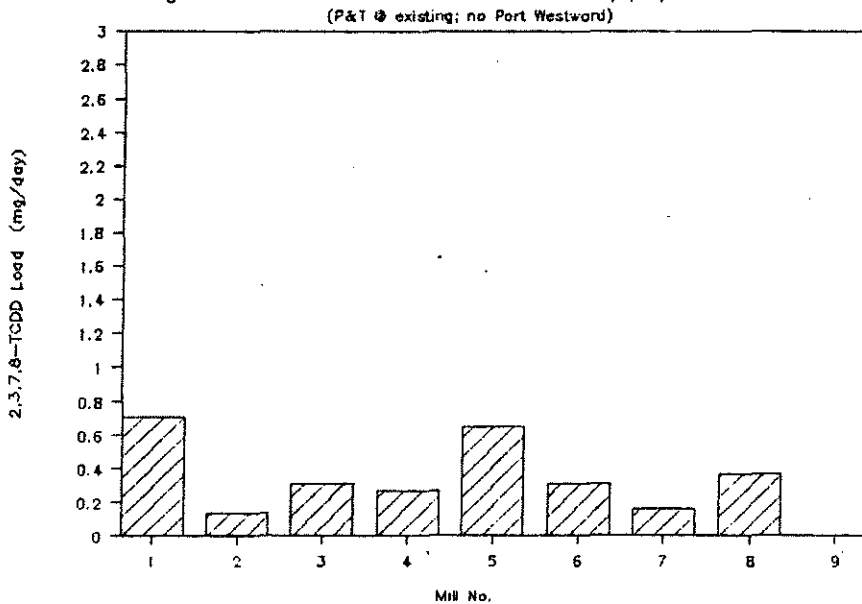


Figure 8. Load Dist. -- 10 ppq BP Flow



Scenario III: Limit Existing Mills to 10 ppq TCDD in Their Bleach Plant Flows, Allow the Proposed Pope & Talbot Expansion and the New Port Westward Mill

Scenario III is basically the same as Scenario II except that increases from the proposed Pope & Talbot expansion and the proposed Port Westward mill have been estimated. The results of this scenario are summarized in the following table and depicted in Figure 9. As can be seen, the cumulative load of 3.6 mg/day would still be below the loading capacity set at either the

annual average flow or the median flow. This scenario also indicates that background and non-point source loads, assumed to be zero, could still be taken into account. Figure 10 shows the distribution of loads for each of the individual mills.

Again, Scenario III does not account for removal of 2,3,7,8-TCDD from the wastewater treatment system prior to discharge. This type of information should be collected prior to determining waste load allocations. Bleach plant flow information was collected from informal contacts with the mills. Actual bleach plant flows may be higher and could result in a cumulative load which could approach 5 mg/day.

SCENARIO III. Allocate 10ppq 2,3,7,8-TCDD based on Bleach Plant Flow

 [Pope & Talbot @ expanded; Port Westward @ Phase 2]

TMDL Analysis

Mill No.	Facility	Location	Effluent Flows				TCDD Effluent Conc.		TCDD Load (mg/day)
			Bleach Production (tons/day)	Total Plant (mgd)	Bleach Plant (mgd)	% (BP/TP)	Total (ppq)	Bleach (ppq)	
1	Potlatch	(Lewiston)	1509	37	19	50	5.0	10.0	0.7
2	Boise Cascade	(Wallula)	904	20	4	18	1.8	10.0	0.1
3	James River II	(Camas)	1071	60	8	13	1.3	10.0	0.3
4	Pope & Talbot	(Halsey)	1500	26	13	50	5.0	10.0	0.5
5	Boise Cascade	(St. Helens)	1035	34	17	50	5.0	10.0	0.6
6	Longview Fiber	(Longview)	298	70	8	11	1.1	10.0	0.3
7	Meyerhaeuser	(Longview)	565	50	4	8	0.8	10.0	0.2
8	James River II	(Wauna)	796	38	10	25	2.5	10.0	0.4
9	Port Westward	(Clatskanie)	1240	19	12	63	6.3	10.0	0.4
Total			7678						3.6

Figure 9. Cum. Load -- 10 ppq BP Flow
 (P&T expanded; Port Westward @ Phase 2)

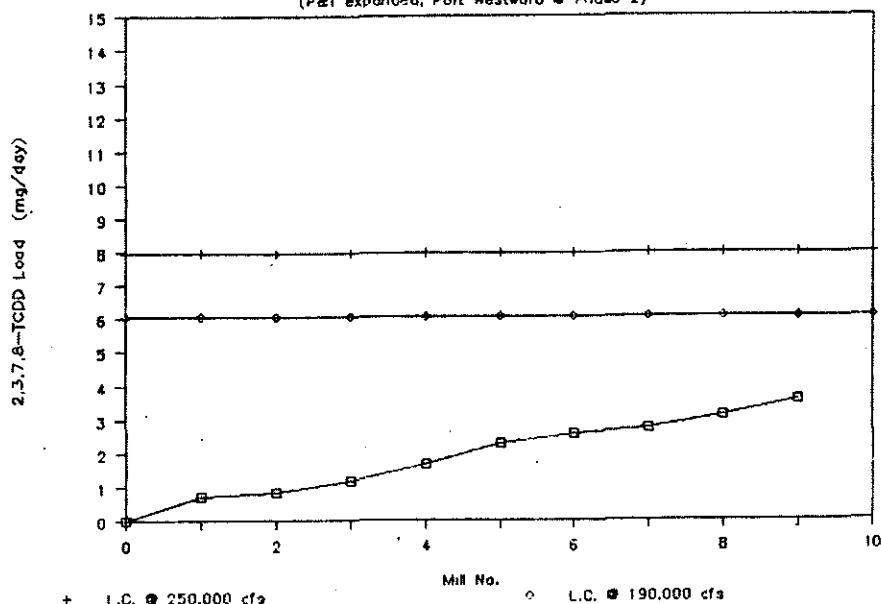
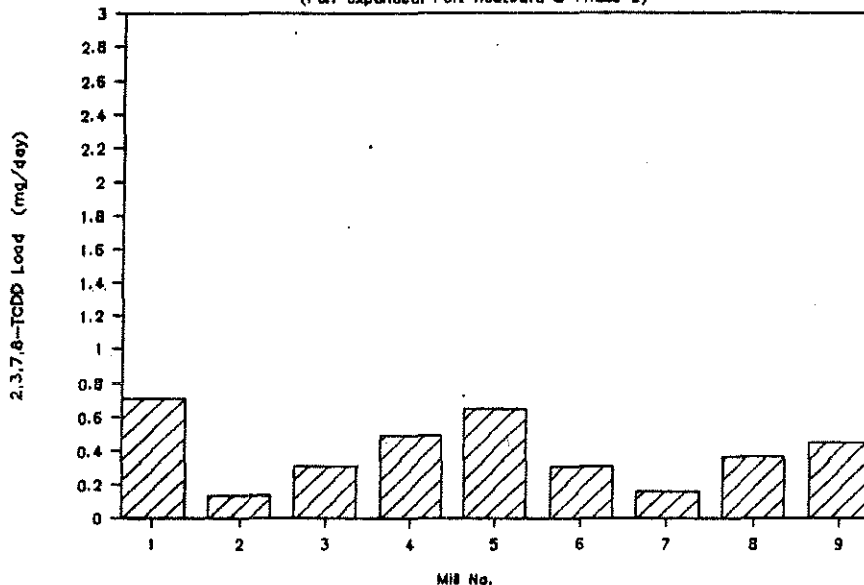


Figure 10. Load Dist. - 10 ppq BP Flow
(P&T expanded: Port Westward @ Phase 2)



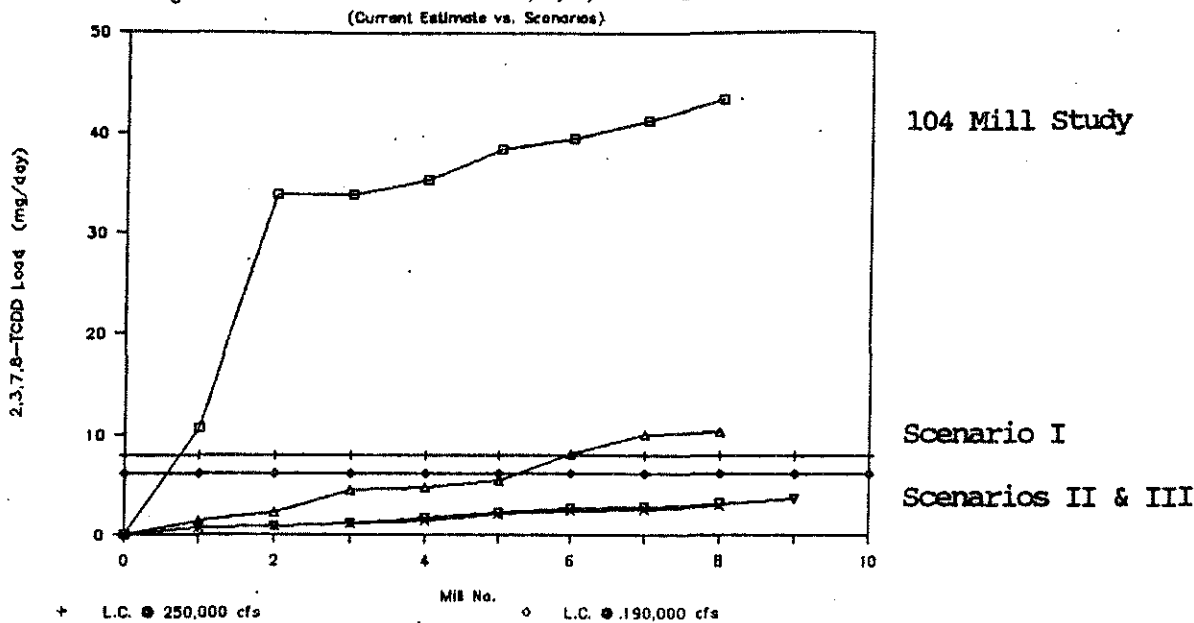
Summary

* Analysis of Individual Control Strategies.

One proposed ICS is to require compliance with a total effluent limit of "non detectable" for 2,3,7,8-TCDD in NPDES permits for bleached kraft pulp mills. The preliminary analysis indicates that if this approach were applied to all bleached kraft mills in Region 10, the Columbia River could remain water quality limited for TCDD.

The current ICS proposed by the Oregon Department of Environmental Quality is to require compliance with a combined bleach plant effluent limit of "non detectable" for 2,3,7,8-TCDD in each of the NPDES permits for the bleached kraft pulp mills. The preliminary analysis indicates that if this approach were applied to all bleached kraft mills in Region 10, it appears that water quality standards would be attained in the Columbia River. This approach is shown for comparison in Figure 11.

Figure 11. Cumulative 2,3,7,8-TCDD Load



* Development of a Total Maximum Daily Load.

EPA Region 10 will work with both Oregon and Washington and coordinate in the development of a TMDL for 2,3,7,8-TCDD for the Columbia River. The TMDL (including the wasteload allocations) will be adopted by the individual states and approved by EPA.

The development of the TMDL will occur in three phases. Phase 1 is to complete the preliminary analysis after receiving input from Oregon, Washington, the pulp and paper industry, environmental groups, and other concerned individuals. This should be finished by late 1989. Phase 2 is to conduct a data collection program designed to fill information gaps and to resolve technical TMDL issues raised during the preliminary analysis. Phase 2 will also begin to address concerns regarding other chlorinated organic compounds. Phase 2 should be completed by the end of 1991. Phase 3 will be the actual allocation of loads. The initial allocation will be the ICS's to be issued by June 1990. Phase 3, which will also refine the initial allocations, should be completed by the end of 1992.

ATTACHMENT E
Final 017



Department of Environmental Quality

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

June 4, 1989

Mr. Robie Russell, Regional Administrator
USEPA Region X
1200 6th Avenue
Seattle, Washington, 98101

Dear Mr. Russell:

The Oregon Department of Environmental Quality is submitting the enclosed tables as final lists to fulfill the requirements of Section 304(1) of the Water Quality Act of 1987.

Attached are the Individual Control Strategies for those point sources identified as contributors of Section 307(a) pollutants to waterbodies identified as water quality limited for those pollutants.

Should you have any questions concerning the lists, please contact Krystyna Wolniakowski or Gene Foster.

Sincerely,

Richard J. Nichols
Administrator
Water Quality Division

cc: Bob Burd: USEPA - Region X
Oregon Operations Office - USEPA
Rick Albright: USEPA - Region X

LIST - Water Quality Limited Waterbodies Due to 307(a)
Pollutants and the Associated Point Source

Columbia River at river mile 41.0

Point Source: James River, Inc.

Parameter: Dioxin

Concentration Detected in the Effluent: 0.0151 ppt

Columbia River at river mile 86.0

Point Source: City of St. Helens / Boise Cascade Corp.

Parameter: Dioxin

Concentration Detected in the Effluent: 0.022 ppt

Willamette River at river mile 148.0

Point Source: Pope & Talbot, Inc.

Parameter: Dioxin

Concentration Detected in the Effluent: 0.030 ppt

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE MEMORANDUM

DATE: June 7, 1989

TO: Bob Burd

FROM: Dick Nichols - DEQ

SUBJECT: Schedule for issuing final ICSs for 304(1)-listed pulp mills

The Department intends to submit final ICSs to Region X, EPA by September 30, 1989. Once these are approved by EPA, DEQ would issue the ICSs within two weeks provided EPA does not request substantial revisions.

DISCUSSION DRAFT
NOT FOR PUBLICATION
DO NOT QUOTE OR CITE

Permit Number: 100413
Expiration Date: 12/31/92
File Number: 36335
Page 1 of 4 Pages

MODIFICATION

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
WASTE DISCHARGE PERMIT
Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, OR 97204
Telephone: (503) 229-5696

Issued pursuant to ORS 468.740 and The Federal Clean Water Act

ISSUED TO:

Pope & Talbot Inc.
P.O. Box 400
Halsey, OR 97348

SOURCES COVERED BY THIS PERMIT:

<u>Type of Waste</u>	<u>Outfall Number</u>	<u>Outfall Location</u>
Bleached Kraft Pulp & Paper Effluent & Domestic Waste	001	RM 148.4

PLANT TYPE AND LOCATION:

Pulp and Paper Mill plus
Aerated Stabilization lagoon
Halsey, OR

RECEIVING SYSTEM INFORMATION:

Basin: Willamette
Sub Basin: ---
Stream: Willamette
Hydro Code: 22 = -WILL 148.4D
County: Linn

EPA REFERENCE NO: OR-000107-4

ISSUED BY DEPARTMENT OF ENVIRONMENTAL QUALITY

Richard J. Nichols, Administrator

Date

ADDENDUM NO. 1

NPDES permit 100413 (OR-000107-4) is modified by adding the following conditions, as attached, in Schedules A, B, C, and D.

SCHEDULE A

4. Waste Discharge Limitations not to be Exceeded-After Permit Issuance Date.

Outfall Number 001 (Process and Domestic Waste Water)

Beginning June 1, 1992

<u>Parameters</u>	<u>Loadings</u>	
	<u>Monthly Ave.</u> <u>lb/day</u>	<u>Daily Max.</u> <u>lb/day</u>
BOD-5		
June 1 to October 31	2500	3700
November 1 to May 31	5000	6250
Total Suspended Solids (TSS)	7000	10500
2,3,7,8 TCDD*	Note (1)	Note (1)

<u>Other Parameters</u>	<u>Limitations</u>
2,3,7,8-TCDD (001)	Non detectable ²
2,3,7,8-TCDD (Combined Bleach Plant Effluent)	Non detectable ²

NOTES:

- 1) 2,3,7,8 TCDD Load Limitations will be established by waste load allocations. The waste load allocations will be determined through a Total Maximum Daily Loads (TMDL) Study to be conducted by EPA for the Columbia River Basin.
- 2) Detectability and analytical protocol for TCDD to be per EPA/Paper Industry Cooperative Dioxin Screening Study (EPA 440/1-88-025) or NCASI analytical method listed in Technical Bulletin NO. 551.

* TCDD - Tetrachlorodibenzo-p-dioxin

DISCUSSION DRAFT
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Expiration Date: 12/31/92
File Number: 36335
Page: 3 of 4 Pages

SCHEDULE B

Minimum Monitoring and Reporting Requirements
(unless otherwise approved in writing by the Department)

Outfall Number 001 (Aerated Stabilization Lagoon)

<u>Item or Parameter</u>	<u>Minimum Frequency</u>	<u>Type of Sample</u>
2,3,7,8-TCDD	Quarterly	24 hr Composite
TOX & AOX ³	Quarterly	24 hr Composite

OTHER MONITORING REQUIREMENTS:

	<u>Minimum Frequency</u>	<u>Type of Sample</u>
Combined Bleach Plant Effluent		
2,3,7,8-TCDD	Quarterly	24 hr Composite
TOX & AOX ³	Quarterly	24 hr Composite

NOTES:

- 3) TOX & AOX are the Total and Adsorbable Organically-bound Chlorine respectively. Analyses to be conducted during the study phase and subsequent to the completion of plant and process modifications.

DISCUSSION DRAFT
NOT FOR PUBLICATION
DO NOT QUOTE OR CITE

Expiration Date: 12/31/92
File Number: 36335
Page: 4 of 4 Pages

SCHEDULE C

Compliance Conditions and Schedules

6. No later than six (6) months from the issuance of this permit modification, the permittee shall conduct and implement an interim dioxin control program for the total pulp and paper mill.
7. By June 1, 1992, the permittee shall provide pollution control facilities and/or in plant modifications as necessary to meet Schedule A Condition 4. Progress reports shall be submitted every six (6) months beginning January 1, 1990.

SCHEDULE D

Special Conditions

8. Once the new Federal BAT effluent limits and 2,3,7,8 TCDD waste load allocations have been finalized, this permit shall in accordance with procedures in OAR 340-45-055, be modified to include all applicable effluent limits not already in the permit or more stringent than those presently in the permit. A time schedule for achieving those limits within the time frames established by the Clean Water Act will also be added to the permit.



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Mail Stop PV-71 • Olympia, Washington 98504-8711 • (206) 459-6000

RECEIVED
JUN 10 1989

June 9, 1989

RECEIVED
EPA - REGION 10
JUN 14 1989
WATER DIVISION

WATER PERMITS & COMPLIANCE BRANCH

EPA-REGION 10
Mr. Robert S. Burd, Director
Water Division
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle Washington 98101

Dear Mr. Burd:

On March 30, 1989 you provided us with Region 10's strategy on listing of waters and pulp mills under Section 304(1). We have reviewed the available data on dioxin levels in plant effluent and sludges and in fish tissue, and are now prepared to make several additions to our lists of waterbodies and dischargers pursuant to Section 304(1).

"Attachment 1" to this letter presents waterbodies which are added to our 304(1)(1)(B) list, as well as our 304(1)(1)(A)(ii) list, and dischargers to these waterbodies which are added to our 304(1)(1)(C) list, because of water quality standard violations for the priority pollutant 2,3,7,8-tetrachlorinated dibenzo-p-dioxin (2378-TCDD). These listings are based on data available to date from EPA's National Bioaccumulation Study and the EPA/Industry 104 Mill Cooperative Study, and such data is incorporated here by reference. The basis for listing, individual control strategies, and public involvement issues are discussed further below.

TABLE FOR LISTING PULP MILLS AND AFFECTED WATERBODIES UNDER SECTION 304(1): WATER QUALITY STANDARD VIOLATIONS FOR DIOXIN

According to 304(1), the short list of waterbodies should contain those waters which are not meeting applicable water quality standards for 307(a) priority pollutants due substantially to point source discharges. This entails considering both numeric and narrative water quality standards, whichever are applicable.

Washington has not adopted numeric criteria for the priority pollutant 2378-TCDD. Our narrative water quality standards state that acceptable

Mr. Robert S. Burd
Page 2
June 9, 1989

levels of toxic substances not specifically assigned a numeric criteria in our standards "shall be determined in consideration of USEPA's Quality Criteria for Water, 1986, and as revised, and other relevant information as appropriate". Our narrative standards prohibit levels of toxic pollutants which "may adversely affect characteristic water uses, cause acute or chronic conditions to the aquatic biota, or adversely affect public health, as determined by the department". Ecology has used EPA's water quality criterion for 2378-TCDD as the basis for determining whether our narrative standards are violated.

EPA's water quality criterion for protection of human health at the theoretical risk level of one additional cancer death per million population is 0.013 parts per quadrillion (ppq). This concentration is orders of magnitude below detectable levels in water. Consequently, most water quality standard violations have been determined based on indirect evidence using limited data on concentrations of 2378-TCDD in fish samples and concentrations of 2378-TCDD in effluents and treatment plant sludges at pulp mills. Additionally, in the case of Grays Harbor, analysis of suspended sediment from large volume water samples revealed calculated 2378-TCDD concentrations of approximately 0.023 ppq to 0.10 ppq.

Pulp mills discharging to waterbodies where water quality standard violations are indicated are listed pursuant to 304(1) where there is evidence that 2378-TCDD occurs in mill effluent. Such evidence includes detection of 2378-TCDD in mill effluent, detection of 2378-TCDD in secondary treatment sludge, and in-plant processes known to result in the formation of 2378-TCDD.

INDIVIDUAL CONTROL STRATEGIES: ECOLOGY'S PROPOSED DIOXIN CONTROL PROGRAM FOR PULP MILLS

Ecology has developed an overall dioxin control program for pulp and paper mills in Washington. An outline of this program is attached. This program will be applied to the mills in question, and constitutes the individual control strategy for each mill, so far as can presently be ascertained:

PUBLIC INVOLVEMENT ISSUES

The lists which Ecology has previously transmitted to you pursuant to 304(1) have undergone considerable public review. The current additions to those lists have not specifically undergone public review. Rather, these waterbodies and dischargers are being listed in response to

Mr. Robert S. Burd
Page 3
June 9, 1989

comments received from EPA during the earlier list development process,
as well as Ecology's consideration of recently available data.

Because of the significant nature of these additions, it may be
appropriate for Ecology and/or EPA to obtain additional comments from the
public. The need to provide EPA with revisions to our previous 304(1)
submissions in a timely manner precludes Ecology from obtaining such
public comments prior to listing.

Please feel free to contact me if you have any questions regarding this
action.

Sincerely,



Stan Springer
Water Quality Program Manager

SS:abr

Attachments

ATTACHMENT 1

WATERBODIES AND PULP MILLS LISTED PURSUANT TO SECTION 304(1)

<u>WATERBODY</u>	<u>WATERBODY ID NO.</u>	<u>PULP MILL</u>
Columbia River	WA-CR-1025	Boise-Cascade @ Wallula
Columbia River	WA-CR-1010	James River @ Camas
Columbia River	WA-CR-1010	Longview Fibre @ Longview
Columbia River	WA-CR-1010	Weyerhaeuser @ Longview
Everett Harbor	WA-07-0010	Weyerhaeuser @ Everett
Grays Harbor	WA-22-0030	Weyerhaeuser @ Cosmopolis
Grays Harbor	WA-22-0030	ITT Rayonier @ Hoquiam
Commencement Bay	WA-10-0020	Simpson Tacoma Kraft @ Tacoma
Snake River	WA-35-1010	*Potlatch Corp. @ Lewiston, ID

* The Idaho mill is not listed by Ecology, but is presented here for information only.

**DIOXIN CONTROL PROGRAM FOR
PULP AND PAPER MILLS**

Purpose of this control strategy is to remove measurable discharges of dioxin and reduce to the extent practicable the discharge of chlorinated organic compounds by minimizing the use of chlorine in the bleaching process.

To achieve this, NPDES permits will be reissued or modified to contain requirements relating to: (1) short term control of 2, 3, 7, 8 - TCDD; (2) long term control of 2, 3, 7, 8 - TCDD; and (3) control of chlorinated organics.

1. Short Term Dioxin Control Program. Limitations requiring the following will be inserted in NPDES permits governing discharges from the subject pulp mills:

Permittee will immediately begin to take the following actions to provide interim reduction of dioxins produced and discharged at its facility to the extent that such actions are consistent with existing product standards and equipment configurations:

- a. Eliminate brownstock defoamers which contain re-cycled oils.
- b. Minimize the use of defoamers and other chemicals which contain dioxin precursors.
- c. Optimize chlorine dioxide substitution to the extent allowed by on-site generation equipment.
- d. Minimize chlorine usage.

Permittee will complete implementation of the above actions and submit a report of the actions taken to Ecology within 120 days after the date of issuance.

2. Long Term Dioxin Control Program. Effluent limitation requiring compliance with an effluent limitation of "nondetectable" for 2, 3, 7, 8 - TCDD will be inserted in each of the subject NPDES permits. The compliance date for this limitation will be three years after issuance. Detectability and analytical protocol for dioxin to be per EPA/Paper Industry Cooperative Dioxin Screening Study (EPA 440/1-88-025).
3. Control of Chlorinated Organics. Ecology plans to develop a study where the industry would provide information on AOX (Absorbable Organic Halogens) achievable under various technologies, mill configurations, products, and costs. Ecology intends to utilize the results of these studies if any, together with other available information to establish effluent limitation for AOX to be inserted within the subject NPDES permits. Compliance is intended to be within five years of issuance.

ATTACHMENT

W T D

INDUSTRIES Inc.

RECEIVED

August 7, 1989

Water Quality Division
Dept. of Environmental Quality

Lydia Taylor, Administrator
Water Quality Division
Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204-1390

Dear Lydia:

In preparation for the September EQC meeting, WTD would like to offer the following comments on conditions 2a through 2e of the July EQC staff report:

Condition 2a:

State-of-the-art production and pollution control technology will be installed to minimize the production of TCDD and other chlorinated organic compounds to the greatest degree practicable.

WTD Response:

At the Department's request, WTD has asked Nystrom, Lee and Kobayashi (NLK) to prepare a study defining "highest and best practicable control" for TCDD and other chlorinated organics minimization. NLK is an internationally respected pulp and paper industry design and engineering consulting firm. NLK designed the Port Westward Pulp Co. mill in late 1988, specifically to eliminate the environmental concerns associated with traditional pulp mills. This report will be available prior to the September 7, 1989 EQC work session. We hope to be able to review a draft of the report with the Department prior to that time.

Condition 2b:

Chlorine dioxide must be substituted 100 percent for chlorine in the bleaching operation unless the applicant can demonstrate to the Department that a lesser substitution amount is the highest possible.

WTD Response:

The NLK report will consider 100% chlorine dioxide substitution. If 100% substitution is not determined to be practicable, the report will establish the highest possible degree of substitution or a procedure by which the mill would establish that level.

A-61

Lydia Taylor
August 3, 1989
Page two

Condition 2c:

The applicant will agree to install such further equipment or make such further modifications as may be necessary to meet its wasteload allocation within 3 years after EPA has established a TMDL for TCDD for the Columbia River and allocated the load to the individual sources. The timetable for compliance may be subject to modification if the EQC determines that the 3-year time frame is not achievable.

WTD Response:

WTD agrees to this reopener which we understand refers to technologies or modifications which are currently unknown or not practicable. As you know, we are confident that current highest and best practicable technology, which is available to the existing mills as well, will allow us all to meet TMDL for TCDD.

Condition 2d:

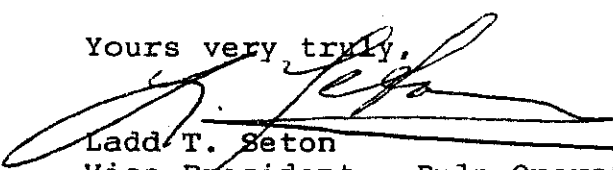
The applicant agrees to implement, or join in implementation, of a research and development program to develop additional means for reducing TCDD in the mill effluent.

WTD Response:

Extensive research and development programs for reducing TCDD are underway throughout the industry. It does not make sense for WTD to implement a new program independent of the current efforts. WTD does agree to help support the national effort of an industry organization such as API or NCASI which are conducting research on dioxin formation and control.

We understand the importance of Conditions 2e and 2f and support the ongoing efforts of the DEQ to satisfy them.
Please call me if you have questions or additional information.

Yours very truly,


Ladd T. Seton
Vice President - Pulp Operations

LTS:gg

APPENDIX C

304(1) NARRATIVE

INTRODUCTION

The control of toxic substances is critically important to maintain water quality and to protect the public and the environment from excessive risk due to exposure to toxic substances. Toxic substances are defined as chemical agents that, when interacting with a biological system, will elicit a deleterious response. A major concern pertaining to toxic substances is the possible impairment of sensitive beneficial uses such as drinking water supplies, recreation, and the support of aquatic life.

Toxic pollutants enter the environment from point sources, nonpoint sources, or both. Point sources are defined as facilities or areas that directly discharge to aquatic environments. Common nonpoint sources include municipal landfills, boatyards, and agricultural areas that indirectly discharge to the aquatic environment via runoff or leachate. In addition, toxic substances can leach into surface and ground waters from hazardous waste sites and naturally occurring deposits of heavy metals.

Section 304(1) of the Water Quality Act of 1987 requires the states to assess whether existing control activities for toxic substances are sufficient or whether additional controls are necessary. In order to adequately assess current controls, the states must identify waterbodies suspected or known to be impaired by the presence of any Section 307(a) pollutants (126 priority pollutants). The end result of this identification is in the form of five lists; one comprehensive list and four subsets of the comprehensive list.

The five lists are briefly described by the following:

1. A comprehensive list of waters being adversely affected by point or nonpoint source discharge of toxic, conventional, and nonconventional pollutants. (Appendix A) (Section 304(1)(A)(ii)).
2. A list of suspected waters the state does not expect to achieve water quality standards due to either point or nonpoint sources of Section 307(a) pollutants (Table C.1). Dilution analysis, water quality, fish tissue, and sediment chemistry data were evaluated using the criteria in Section 3.5.2 of the 305(b) Report to determine which waters should be included in this list.
3. A list of confirmed waters the state does not expect to achieve water quality standards due to either point or nonpoint sources of Section 307(a) pollutants (Table C.2) (Section 304(1)(A)(i)). Criteria for listing was ten representative samples analyzed in the past ten years and 25 percent of those samples violated water quality criteria or best professional judgment when fewer than ten samples in ten years were available.

4. A list of confirmed waters not expected to achieve water quality standards due entirely or mostly to point source discharges of Section 307(a) pollutants after technology-based requirements have been met (Section 304(1)(B)). Criteria for listing a waterbody was ten representative samples analyzed in the past ten years and 25 percent of the samples violated water quality criteria or best professional judgment when fewer than ten samples in ten years were available. (No waters identified -- no waters listed.)
5. A list of point source facilities discharging Section 307(a) pollutants to confirmed waters not expected to achieve water quality standards due entirely or mostly to point source discharge of Section 307(a) pollutants after technology-based requirements have been met. An Individual Control Strategy (ICS) would be developed for any facility listed. Criteria for listing a facility was ten representative samples in the past ten years and 25 percent of the samples violated water quality criteria or best professional judgment when fewer than ten samples in ten years were available. (No facilities identified -- no facilities listed.)

The information provided in Table C.1 will serve as a foundation for the development of a priority sampling program to generate data for areas where there was insufficient information for listing of a waterbody as confirmed waters and to verify suspected sources.

Data generation and source verification for suspected waters will be accomplished through water quality assessment plans developed for waterbodies included in Table C.1. Information generated from the water quality assessment plans will be used for listing of waterbodies as confirmed waters or removal from the suspected waters list. Waterbody prioritization for water quality assessment plans will be assigned through the State Clean Water Strategy.

Water quality assessment plans will be developed through a five phase process.

Phase 1 - **Waterbody Problem Assessment:** Review existing information on the waters suspected of being water quality limited due to Section 307(a) pollutants (Table C.1). Identify information needed for confirming the status of suspected waters. Identify and prioritize potential sources. Internal and public review of information will be required.

Phase 2 - **Monitoring Plan:** A monitoring plan for Section 307(a) pollutants will be designed and implemented if additional information is required after review of existing information. The monitoring plans will be used to generate data required to develop an assessment plan for each suspected waterbody listed.

Phase 3 - **Waterbody Assessment:** Waters will be confirmed as not achieving water quality standards due to Section 307(a) pollutants or delisted based on the information gathered

during Phase 1 & 2. Information will be evaluated as in Categories 4 and 7 (Appendix C, pp. 10 - 12).

Phase 4 - **Permit Modification:** ICSs will be developed for point source facilities discharging Section 307(a) pollutants to confirmed waters not expected to achieve water quality standards due entirely or mostly to point source discharges of Section 307(a) pollutants after technology-based requirements have been met. Confirmed waters not expected to achieve water quality standards due mostly or entirely to nonpoint source discharges of Section 307(a) pollutants will be managed through the Nonpoint Source Assessment Program.

Phase 5 - **Implementation:** The NPDES Program will implement ICS's as water quality-based permit limits for the identified point sources discharging to confirmed waterbodies not achieving water quality standards due to Section 307(a) pollutants discharged by point sources.

Waters included on List #3 (Table C.2) due to nonpoint sources should be addressed as part of the Nonpoint Source Assessment Program and those due to point sources will be included on Lists #4 and #5 and addressed through the NPDES Permit Program. Waters included on Table C.2 were caused by unknown sources or nonpoint sources.

Water quality-based permit limits should be developed for point source facilities that discharge into confirmed waterbodies not achieving water quality standards due mostly or entirely to point sources of Section 307(a) pollutants. There were no waterbodies or facilities included on Lists #4 and #5 because the current data base was insufficient for the identification of waterbodies as confirmed waters due to point sources. The water quality assessment plans will provide additional data for evaluation of waterbodies for future listing and appropriate action.

For each waterbody segment that may be included on List #4, the specific point sources discharging Section 307(a) pollutants will be identified and the amount of pollutant discharged by each source will be confirmed through present NPDES permit limits.

An ICS will be established and implemented through water quality-based permit limits for each facility that may be included on List #5. These actions will be designed to reduce the amount of Section 307(a) pollutants present in the listed waterbody.

METHODOLOGY

Section 304(1) of the Water Quality Act of 1987 requires the identification of all impaired waterbodies. To make the identification of these waterbodies operational as well as consistent with the methods of the other states, EPA developed 16 screening categories of waters. A 17th category was added to include waters with related sediment

contamination. This category was added due to the close association between sediment contamination and the quality of the water surrounding the sediment.

The following paragraphs explain the methodology and assumptions used in determining which waterbodies are included in each of the 17 screening categories.

Category 1: Waters where fishing or shellfish bans and/or advisories are currently in effect or are anticipated.

Two sources were used to identify waters under this category; the Oregon State Health Division and a DEQ Special Investigation on tributyltin (TBT).

The Oregon State Health Division is responsible for listing bans and advisories in sport, commercial, and recreational areas. Two waterbodies were listed under this category; Cottage Grove Reservoir for mercury contamination of fish tissue and South Slough for elevated levels of TBT in shellfish.

Waters included in this category were listed in Table C.1.

Category 2: Waters where there have been repeated pollution-caused fish kills or where abnormalities (cancers, lesions, tumors, etc.) have been observed in fish and other aquatic life during the last ten years.

Fish kill information was compiled from data collected by the Oregon Department of Fish and Wildlife (ODFW) and from EPA files. The majority of fish kills reported were due to one-time events with the exception of two waterbodies listed under this category due to repeated fish kills; Amazon Creek for two fish kills and Johnson Creek for six fish kills. Fish kill information reported by ODFW from 1979 through 1987 can be found in Table 3.15 of the 305(b) report.

Fish abnormality information was compiled from data collected from the Willamette River during a fish assemblage study (Hughes, 1987). The waterbody listed under this category was the Willamette River, River Miles 22 and 51.

Waters in this category were listed in Table C.1.

Category 3: Waters where there are restrictions on water sports or recreational contact.

The Oregon State Health Division is responsible for restrictions of water contact recreation. Since there were no restrictions in effect, no waters were listed in this category.

Category 4: Waters identified by the States in the 1982, 1984, and 1986, or draft 1988 State 305(b) Reports as either "partially achieving" or "not achieving" designated uses.

Oregon's 1988 305(b) report was used as the source for all waters listed under this category. All segments listed in Appendix A of the 305(b) report were entered as candidate 304(1) waterbodies. Waterbodies were listed on Appendix A as either "Use Threatened" or "Use Not Supported" of water quality beneficial uses.

Waterbodies were listed as "Use Threatened" for conventional pollutants when ten samples analyzed in the past five years (ten years for Section 307(a) pollutants) and any of the samples violated water quality standards or best professional judgment when fewer than ten samples had been collected. Waterbodies were listed as "Not Supported" for conventional pollutants when ten samples analyzed in the past five years (ten years for Section 307(a) pollutants) and 25 percent violated water quality standards or best professional judgment when fewer than ten samples had been collected.

Category 5: Waters identified by the States and reported to EPA in the third quarter of FY87 as waters needing water quality-based controls for "toxics" and "nontoxics." (FY87 Office of Water Accounting System measure WQ-32).

The state of Oregon during the third quarter of FY87 had not identified any waters as needing water quality-based controls. No waters were listed under this category.

Category 6: Waters identified by the States as priority waterbodies in FY86 because of impaired or threatened uses. State Water Quality Management Plans include priority waterbody lists which are those waters that most need water pollution control decisions to achieve water quality goals.

Waters listed under this category were those identified as needing a total maximum daily load (TMDL). According to the Clean Water Act, TMDLs are to be developed on those waters where minimum treatment controls for point sources were not sufficient to meet water quality standards. Twelve waterbodies were listed under this category. These waterbodies were included in Appendix A and listed as TMDL.

Category 7: Waters where ambient data indicate the presence of 307(a) toxic pollutants from primary industries.

Waters listed under this category were identified through DEQ's ambient monitoring data base for toxics in STORET, bioassay reports, and mixing zone analyses. The STORET retrieval was limited to stations sampled for at least one priority pollutant in one or more of the following samples types: water, fish/crayfish tissue, and sediment.

Waters listed in this category had either bioassay reports that indicated toxicity or STORET ambient monitoring data/mixing zone analyses that indicated elevated levels of Section 307(a) pollutants.

The criteria used for determining elevated levels of Section 307(a) pollutants in monitoring data were:

- Twenty-five (25) percent of the water samples collected exceeded water quality criteria; or
- The median exceeded the threshold concentration or the upper range exceeded the national median for a parameter from sediment samples collected at a station; or
- The upper range exceeded the Food and Drug Administration (FDA) Action Level for a parameter from fish tissue samples collected at a station.

Water quality criteria were from Oregon Administrative Rule (OAR) Chapter 340, Division 41, Table 20, Water Quality Criteria Summary. Sediment threshold concentrations and national medians were from the "National Perspectives on Sediment Quality" (U.S. EPA, 1985). FDA Action Levels are used to restrict the interstate commerce of contaminated food products.

The waters listed in this category were identified from the ambient monitoring information in STORET. The information was not traceable to a specific point or nonpoint source. Further investigation is necessary to determine if the 307(a) pollutants are due to discharge from primary industries. Waters in this category were listed in Tables C.1 or C.2.

Category 8: Water for which effluent toxicity test results indicate violations of State water quality standards including narrative "free from" criteria or EPA criteria where State standards are not available.

Waters were evaluated based on receiving waters where effluent discharges that exceeded Section 307(a) pollutant permit limits for the last two years and/or where biomonitoring had indicated toxicity.

No waters were listed in this category since Section 307(a) pollutant permit limits had not been exceeded and no toxicity was found through toxicity testing.

Biomonitoring indicated toxicity effects at two facilities discharging to the Willamette River. Implementation of best available technology and management strategies have reduced the toxicity of the effluent discharged from these facilities. No new cases of toxicity have occurred at these facilities since implementation.

Category 9: Waters with primary industrial major dischargers where simple water dilution analyses indicate exceedances of State water quality standards (or EPA criteria where State standards are not available) for 307(a) toxic pollutants, ammonia, or chlorine. These dilution analyses could be based upon estimates of BAT levels from effluent guidelines development documents, NPDES permit application data (e.g., Form 2C), Discharge Monitoring Reports (DRMs), or other available information.

The methodology used to address Categories 9, 10, and 11 involved a simple dilution analysis to be performed on each of the municipal and industrial majors. Dilution analyses were performed by DEQ, Research Triangle Institute (RTI), a contractor to EPA, also performed dilution analysis using national data bases.

The DEQ methodology consisted of a LOTUS program that was set up to calculate the ambient concentration for those 307(a) pollutants for which there were permit limits and monitoring information. The majority of industrial and municipal majors had few, if any, permit limits for 307(a) pollutants. Therefore, most waters were evaluated by calculating (in LOTUS) the maximum amount of BOD the major facilities should discharge to their receiving streams. These calculated values were then compared with the facilities' permit limits for BOD. Based on these conservative estimates, waters where the available dilution was not enough to assimilate the effluent were judged to be water quality limited.

For those industrials having permit limits for Section 307(a) pollutants, the ambient concentration of the particular pollutant of concern was calculated. The calculated concentration was then compared to the state standard/criteria. Where exceedances of the state standards were determined, the receiving water was listed as water quality limited.

No waters were identified as exceeding state standards/criteria through DEQ methodology since dilution analyses indicated that sufficient dilution capability was present in the receiving waters to assimilate the point source discharges.

The RTI methodology consisted of dilution analyses for major and minor NPDES permitted industrial facilities. Dilution analyses were performed using facility and discharge information obtained from USEPA data bases.

Facility information was obtained from Industrial Facility Discharge (IFD) and Permit Compliance System (PCS) data bases. The data bases were used to identify active facilities. These facilities were listed according to US Geological Survey stream reach codes. The Standard Industrial Classification (SIC) code was used to identify facilities that had the potential for discharging Section 307(a) pollutants.

Section 307(a) pollutant discharge information was obtained from two sources: (1) Industry Status Sheets (ISS) data base, which contains industry-wide pollutant concentrations from the ISS Report (February 1986) and the EPA Treatability Manual, Volume II (January 1983); and (2) from the PCS data base. Information from these data bases were estimates of the type and amount of pollutant discharged by a facility. Information from permits or sampling on the type and amount of Section 307(a) pollutants discharged by a specific facility was not used for the dilution analyses.

Simple dilution analysis was calculated for the identified facilities. Facilities identified through dilution analysis as potentially exceeding state water quality standards/criteria were reviewed to verify active facilities. Streams identified were included on the suspected waters list and not on the confirmed waters list due to a lack of specific Section 307(a) pollutant discharge information for identified facilities.

Ten waters were listed in Category 9 using this methodology and were included on the suspected waters list (Table C.1).

Category 10: Waters with municipal major dischargers requiring pretreatment where simple dilution analyses indicate exceedances of State water quality standards (or EPA criteria where State standards are not available) for 307(a) toxic pollutants, ammonia, or chlorine. These dilution analyses could be based upon data from NPDES permit applications (e.g., Form 2C), DMRs, or other available information.

See Category 9. Under the current DEQ pretreatment program, DEQ does not require specific information on effluent compositions discharged to the various pretreatment facilities at wastewater treatment plants. The wastewater treatment plants permit the industries. Section 307(a) pollutant data from the industrial dischargers or the pretreatment plants was not available.

No waters were listed in this category.

Category 11: Waters with known or suspected use impairments where dilution analyses indicate exceedances of State water quality standards (or EPA criteria where State standards are not available) for 307(a) toxic pollutants, ammonia, or chlorine. This category includes waters with facilities not included in the previous two categories such as municipal majors not required to have pretreatment, federal majors, and minor having water quality impacts. These dilution analyses could be based upon estimates of BAT levels from effluent guideline development documents, NPDES permit applications data, DMRs, or other available information.

See Category 9.

Thirteen waters were listed in Category 11 and included on the suspected waters list (Table C.1).

Category 12: Waters classified for uses that will not support the "fishable/swimmable" goal of the Clean Water Act.

All waters are classified as fishable/swimmable in the state of Oregon. Waters that do not meet water quality standards for the fishable/swimmable goal were identified in Category 6 for TMDL development to support beneficial uses and restore waters to meet the fishable/swimmable goal.

Category 13: Waters where ambient toxicity or adverse water quality conditions have been reported by local, State, EPA, or other Federal agencies, the private sector, public interest groups, or universities. These organizations should be actively solicited for research they may be conducting or reporting. For example, State University researchers, USDA Extension Service, and the U.S. Fish and Wildlife Service are good sources of current field research and activities.

Several sources of information contributed to listing waters in this category: (1) the United States Geological Survey; (2) Larry D. Patterson, a consulting wastewater engineer; (3) the response to a nonpoint source pollution questionnaire sent to state agencies and public interest groups; (4) U.S. Fish and Wildlife Service; (5) U.S. EPA National Bioaccumulation Study; (6) the Oregon Department of Fish and Wildlife; and (7) the DEQ Hazardous and Solid Waste Division.

Water quality, fish tissue, and sediment data were evaluated using the same criteria as in Category 7. Six waterbodies' waters were listed in this category and were included in Appendix A of the 305(b) report and Table C.1 and C.2 of the 304(1) report.

Category 14: Waters identified as having impaired or threatened designated uses in the Clean Lakes Assessment under Section 314 of the Clean Water Act.

The most recent information on lakes with Uses Threatened or Uses Not Supported was from the 1988 305(b) report. The criteria for listing lakes in this category was the same as in Category 4.

There were 64 waters identified as "use threatened" or "use not supported" in this category. The waters listed in this category were included in Appendix A.

Category 15: Waters identified as impaired by nonpoint sources in the 1985 ASIWPCA Report, America's Clean Water: States' Nonpoint Source Assessment and waters identified as impaired or threatened in the Nonpoint Source Assessment under Section 319 of the Clean Water Act.

The information used for listing waters in this category were from DEQ water monitoring information and the 1985 ASIWPCA Report, America's Clean Water: States' Nonpoint Source Assessment. Evaluation of information was the approach documented in Category 4.

Preliminary information from the Nonpoint Source Assessment under Section 319 of the Clean Water Act was used since the final was not available at the time of data review for use in listing waters in this category.

Waters listed in this category were included in Appendix A of the 305(b) report.

Category 16: Surface waters impaired by pollutants from hazardous

waste sites listed in the National Priority List prepared under Section 105(8)(a) of CERCLA.

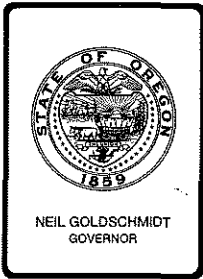
The November 1986 list of proposed and final National Priority List (NPL - Superfund) sites for the state of Oregon currently lists six sites. One of the NPL sites, the Portland General Electric "Station L" site at River Mile 13.8 on the Willamette River, has been documented as adversely impacting surface waters.

Information from the CERCLIS list (possible NPL sites) was used in identifying suspected and confirmed waters included on Lists #2 and #3 of the 304(1) report.

Category 17: Waters where associated sediment contamination has been identified.

The primary sources of information for waters in this category were: (1) DEQ's ambient monitoring data and (2) information in the CERCLA site files. Sediments contaminated with Section 307(a) pollutants were identified using the criteria described in Category 7 for sediment data. Waters with elevated levels of Section 307(a) pollutants were listed in Table C.3.

Waters listed in Table C.3 were included in the suspected waters list (Table C.1) because of insufficient data linking water quality effects or point source discharges to contaminated sediments.



Department of Environmental Quality

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

INTEROFFICE MEMORANDUM

TO: Environmental Quality Commission DATE: October 18, 1989
FROM: Fred Hansen *Fell*
SUBJECT: Supplement to Agenda Item F

Attached is a revised Order Dismissing Contested Case Proceedings, which replaces Attachment A in Department's October 6, 1989 staff report on Agenda Item F for the October 20, 1989 Environmental Quality Commission meeting. The revisions address exceptions to the proposed Order which recipients of the proposed Order submitted to the Department by the October 6, 1989 deadline.

Exceptions:

1. All twelve parties filing exceptions requested the Department to clarify the status of facilities which filed requests for hearings on the Department's November 1988 Orders listing facilities on the Inventory of Confirmed Releases.

In November 1988 the Department of Environmental Quality issued orders listing 325 facilities on an Inventory of Confirmed Releases. A listing order became effective if the recipient of the order did not file an Answer and a Request for Contested Case Hearing within fifteen days of receipt of the order. Answers and Requests for Contested Case Hearings were filed for 214 facilities.

The Order Dismissing Contested Case Proceedings, Attachment A, will dismiss the contested case proceedings for 213 of the facilities for which contested case hearings were requested (one is being handled separately). The revisions in the order (revised Attachment A) clarify that those facilities for which an Answer and Request for Contested Case Hearing was filed were not included in the Inventory of Confirmed Releases pending the requested hearings.

2. Nine of the parties filing exceptions also requested that the Order Dismissing Contested Case Proceedings identify specific orders and persons requesting hearings on the Department's November 1988 orders listing facilities on the Inventory of Confirmed Releases.

The revised Order Dismissing Contested Case Proceedings identifies the specific listing orders for which contested case hearings were requested. The persons requesting hearings will receive a copy of the Order Dismissing Contested Case Proceedings and will be identified in the Certificate of Service.

LP:m

SA\SM2543

Attachment: Exceptions to proposed Order Dismissing Contested Case Proceedings

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:) ORDER DISMISSING
) CONTESTED CASE
SITE INVENTORY ORDERS NUMBERS) PROCEEDINGS
)
)
SA-891-1, SA-891-5, SA-891-6,)
SA-891-8, SA-891-10, SA-891-11,)
SA-891-12, SA-891-13, SA-891-14,)
SA-891-15, SA-891-16, SA-891-18,)
SA-891-20, SA-891-22, SA-891-23,)
SA-891-24, SA-891-25, SA-891-26,)
SA-891-27, SA-891-31, SA-891-32,)
SA-891-37, SA-891-39, SA-891-40,)
SA-891-43, SA-891-46, SA-891-50,)
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 SA-891-677, SA-891-684, SA-891-690,)
 SA-891-691, SA-891-692, SA-891-699,)
 SA-891-701, SA-891-703, SA-891-708,)
 SA-891-713, SA-891-717, SA-891-721,)
 SA-891-722, SA-891-724, SA-891-728.)

1 1. Findings of Fact

2 a. On November 30, 1988, the director of the Department of
 3 Environmental Quality (DEQ) issued orders listing 325 facilities on an
 4 Inventory of Confirmed Releases, pursuant to ORS 466.557 (1987) which orders
 5 became effective unless the recipient filed an Answer and a Request for a
 6 Contested Case Hearing within fifteen (15) days of receipt of the order.

7 b. Two hundred and fourteen (214) requests for a contested case
 8 hearing on the orders were filed with this Commission. The facilities for
 9 which these requests were filed were not listed on the Inventory of

4

1 Confirmed Releases pending the hearings. The 213 orders subject to a
2 contested case hearing and to this order are captioned above.

3 c. ORS 466.557 was amended by the 1989 Legislative Assembly,
4 requiring DEQ to replace the Inventory of Confirmed Releases with a new
5 process for listing sites having a confirmed release of hazardous
6 substances. 1989 OR Law Ch. 485 (HB 3235).

7 d. On August 29, 1989, the Director rescinded the Inventory of
8 Confirmed Releases developed under the 1987 law, dismissed all DEQ orders
9 listing facilities on such Inventory, and dismissed all orders subject to
10 pending contested case hearings. No facilities are currently listed on an
11 Inventory of Confirmed Releases.

12 2. Conclusion of Law

13 HB 3235, the rescission of the Inventory of Confirmed Releases, and the
14 dismissal of all orders as described above render these matters moot.

IT IS THEREFORE ORDERED that the above-referenced contested case
proceedings are dismissed.

DATED this _____ day of _____, 1989.

On behalf of the Environmental Quality Commission

William P. Hutchison, Jr.
Chair

**SCHWABE
WILLIAMSON
& WYATT**

ATTORNEYS AT LAW

JAY T. WALDRON

PACWEST CENTER, SUITES 1600-1950
1211 SOUTHWEST FIFTH AVENUE • PORTLAND, OREGON 97204-3795
TELEPHONE: 503 222-9981 • FAX: 503 796-2900 • TELEX: 4937535 SWK UI

October 6, 1989

Department of Environmental Quality
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Environmental Cleanup Division

VIA HAND-DELIVERY

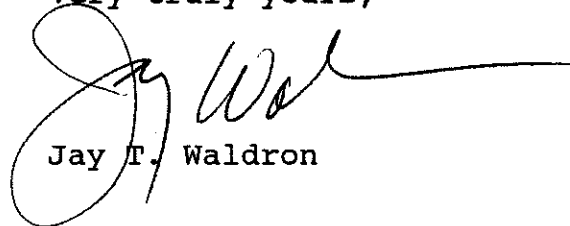
Secretary to the Environmental Quality Commission
Environmental Quality Commission
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204-1390

Re: **Pacific Chloride
Exceptions to Proposed Order Dismissing Contested
Case Proceedings in DEQ No. SA-891-142**

Dear Environmental Quality Commission Members:

Enclosed for filing is Pacific Chloride Exceptions to the Proposed Order in the above matter. The Exceptions address and request corrections of errors in the Proposed Order. The Proposed Order states that the facility in the above matter was included on the DEQ's Inventory of Confirmed Releases. In fact, because Pacific Chloride filed an Answer and a Request for Contested Case Hearing in the above-referenced proceeding, the facility was not listed on the Inventory. The Exceptions provide changes to the Proposed Order to correct these errors. I would very much appreciate your making the change. Thank you for your consideration.

Very truly yours,



Jay T. Waldron

JTW:nk
Enclosure

cc: Fred Hansen, Director, DEQ

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
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OCT 06 1989

OFFICE OF THE DIRECTOR

1 STATE OF OREGON

2 ENVIRONMENTAL QUALITY COMMISSION

3 In the Matter of)
 4 SITE INVENTORY LISTINGS) **PACIFIC CHLORIDE'S**
 5) **EXCEPTIONS TO**
) **PROPOSED ORDER DISMISSING**
) **CONTESTED CASE PROCEEDINGS**

6 Pacific Chloride excepts to the Proposed Order
 7 Dismissing Contested Case Proceedings (Proposed Order) mailed to
 8 Pacific Chloride by certified mail dated August 29, 1989.

9 DISCUSSION

10 By letter dated November 30, 1988, the Director of the
 11 Department provided to Pacific Chloride Order and Notice of
 12 Opportunity for Contested Case Hearing No. SA-891-142 (Listing
 13 Order). The Listing Order stated that the property described in
 14 the Listing Order would be placed on an inventory of facilities
 15 where a release of a hazardous substance is confirmed (Inventory
 16 of Confirmed Releases) 30 days from receipt of the Listing Order
 17 unless Pacific Chloride filed an answer and a request for hearing
 18 within 15 days of receipt of the Listing Order. The Listing Order
 19 also stated that if an answer and a request for hearing were not
 20 filed within the specified time, the order "shall become
 21 effective, based on a prima facie case made on agency files and
 22 records."

23 These aspects of the Listing Order were consistent with
 24 the Oregon law establishing the process for the Inventory of
 25 Confirmed Releases. The law required that the Director of the
 26 Department had to give the owner of all or any part of a facility

1 in bold, deletions by strike throughs):

2 **"1. Findings of Fact**

3 "a. On November 30, 1988, the Director of the
4 Department of Environmental Quality (DEQ)
5 issued orders proposing to listing 325
6 facilities on an Inventory of Confirmed
7 Releases, pursuant to ORS 466.557 (1987). The
8 orders provided that the DEQ ordered that the
9 facilities be placed on the Inventory thirty
10 (30) days from receipt of the order by each
11 owner unless the owner requested a hearing and
12 filed an answer within fifteen (15) days of
13 receipt of the order.

14 "b. Two hundred and ten (210) requests for a
15 contested case hearing on the orders were
16 filed with this Commission. Because of these
17 requests, the facilities for which these
18 hearing requests were filed were not listed on
19 the Inventory of Confirmed Releases. The
20 specific orders and persons requesting
21 hearings are identified in the Certificate of
22 Service attached to this order and
23 incorporated in this order.

24 "c. ORS 466.557 was amended by the 1989
25 Legislative Assembly, requiring DEQ to replace
26 the Inventory of Confirmed Releases with a new
process for listing sites having a confirmed
release of hazardous substances. 1989 OR Law
Ch. 485 (HB 3235).

27 "d. On August 29, 1989, the Director rescinded the
28 Inventory of Confirmed Releases developed
29 under the 1987 law and dismissed: (1) all DEQ
30 orders proposing to list facilities on such
31 Inventory and (2) all DEQ orders listing
32 facilities on such Inventory. No facilities
33 are currently listed on an Inventory of
34 Confirmed Releases. The facilities for which
35 an owner requested a hearing were never listed
36 on an Inventory of Confirmed Releases.

37 **"2. Conclusion of Law**

38 "HB 3235, the rescission of the Inventory of
39 Confirmed Releases, and the dismissal of all orders
40 ~~listing facilities on such Inventory~~ as above-
41 described render these matters moot."

**SCHWABE
WILLIAMSON
& WYATT**

ATTORNEYS AT LAW

PACWEST CENTER, SUITES 1600-1950

1211 SOUTHWEST FIFTH AVENUE • PORTLAND, OREGON 97204-3795

TELEPHONE: 503 222-9981 • FAX: 503 796-2900 • TELEX: 4937535 SWK UI

JAY T. WALDRON

October 6, 1989

VIA HAND-DELIVERY

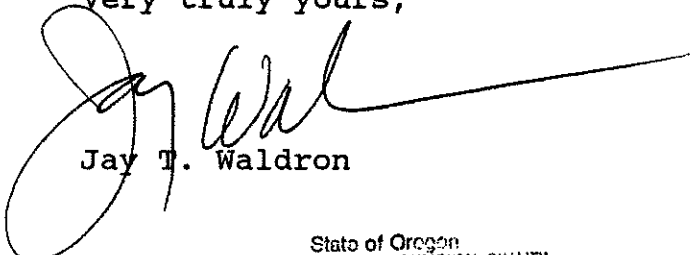
Secretary to the Environmental Quality Commission
Environmental Quality Commission
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204-1390

Re: **GNB Batteries, Inc.**
Exceptions to Proposed Order Dismissing Contested
Case Proceedings in DEQ No. SA-891-358

Dear Environmental Quality Commission Members:

Enclosed for filing is GNB Batteries, Inc. Exceptions to the Proposed Order in the above matter. The Exceptions address and request corrections of errors in the Proposed Order. The Proposed Order states that the facility in the above matter was included on the DEQ's Inventory of Confirmed Releases. In fact, because GNB Batteries, Inc. filed an Answer and a Request for Contested Case Hearing in the above-referenced proceeding, the facility was not listed on the Inventory. The Exceptions provide changes to the Proposed Order to correct these errors. I would very much appreciate your making the change. Thank you for your consideration.

Very truly yours,


Jay T. Waldron

JTW:nk
Enclosure

cc: Fred Hansen, Director, DEQ

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

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OCT 06 1989

OFFICE OF THE DIRECTOR

1 STATE OF OREGON

2 ENVIRONMENTAL QUALITY COMMISSION

3 In the Matter of)
4 SITE INVENTORY LISTINGS) GNB BATTERIES, INC.'S
5) EXCEPTIONS TO
6) PROPOSED ORDER DISMISSING
7) CONTESTED CASE PROCEEDINGS

8 GNB BATTERIES, INC. (GNB) excepts to the Proposed Order
9 Dismissing Contested Case Proceedings (Proposed Order) mailed to *
10 by certified mail dated August 29, 1989.

11 DISCUSSION

12 By letter dated November 30, 1988, the Director of the
13 Department provided to GNB an Order and Notice of Opportunity for
14 Contested Case Hearing No. SA-891-358 (Listing Order). The
15 Listing Order stated that the property described in the Listing
16 Order would be placed on an inventory of facilities where a
17 release of a hazardous substance is confirmed (Inventory of
18 Confirmed Releases) 30 days from receipt of the Listing Order
19 unless GNB filed an answer and a request for hearing within 15
20 days of receipt of the Listing Order. The Listing Order also
21 stated that if an answer and a request for hearing were not filed
22 within the specified time, the order "shall become effective,
23 based on a prima facie case made on agency files and records."

24 These aspects of the Listing Order were consistent with
25 the Oregon law establishing the process for the Inventory of
26 Confirmed Releases. The law required that the Director of the
Department had to give the owner of all or any part of a facility
that the Director intended to include on the Inventory written

1 notice 30 days before the facility was to be added to the
2 Inventory. 1987 Or Laws ch. 735, § 6(4). The law also provided
3 the owner the right to appeal the Director's intended action
4 before the action became effective.

5 As provided in the Listing Order and the Law, GNB timely
6 filed a Request for Contested Case Hearing and Answer. On August
7 29, 1989, the DEQ rescinded the Inventory of Confirmed Releases
8 and provided the Proposed Order to GNB. The Proposed Order
9 proposes to dismiss GNB contested case proceeding as moot.

10 GNB supports dismissal of its contested case proceeding
11 if certain errors in the Proposed Order are corrected. The
12 Proposed Order errs because it states in paragraphs 1.a., 1.d. and
13 2 that all 325 facilities (including the facility in SA-891-358)
14 for which a Listing Order was issued were listed on the Inventory.
15 In fact, GNB timely filed a Request for Hearing and an Answer in
16 proceeding SA-891-358 so that the facility in that proceeding was
17 not placed on the Inventory. The Proposed Order also errs because
18 it does not either state specifically that GNB timely filed a
19 Request for Hearing and an Answer or incorporate specifically the
20 list of all persons doing so (including GNB).

21 GNB excepts to paragraphs 1.a., 1.b., 1.d. and 2 of the
22 Proposed Order and requests that the Environmental Quality
23 Commission make the following changes (additions are shown in
24 bold, deletions by strike throughs):

1 **"1. Findings of Fact**

2 **"a.** On November 30, 1988, the Director of the
3 Department of Environmental Quality (DEQ)
4 issued orders proposing to listing 325
5 facilities on an Inventory of Confirmed
6 Releases, pursuant to ORS 466.557 (1987). The
7 orders provided that the DEQ ordered that the
8 facilities be placed on the Inventory thirty
9 (30) days from receipt of the order by each
10 owner unless the owner requested a hearing and
11 filed an answer within fifteen (15) days of
12 receipt of the order.

13 **"b.** Two hundred and ten (210) requests for a
14 contested case hearing on the orders were
15 filed with this Commission. Because of these
16 requests, the facilities for which these
17 hearing requests were filed were not listed on
18 the Inventory of Confirmed Releases. The
19 specific orders and persons requesting
20 hearings are identified in the Certificate of
21 Service attached to this order and
22 incorporated in this order.

23 **"c.** ORS 466.557 was amended by the 1989
24 Legislative Assembly, requiring DEQ to replace
25 the Inventory of Confirmed Releases with a new
26 process for listing sites having a confirmed
27 release of hazardous substances. 1989 OR Law
28 Ch. 485 (HB 3235).

29 **"d.** On August 29, 1989, the Director rescinded the
30 Inventory of Confirmed Releases developed
31 under the 1987 law and dismissed: (1) all DEQ
32 orders proposing to list facilities on such
33 Inventory and (2) all DEQ orders listing
34 facilities on such Inventory. No facilities
35 are currently listed on an Inventory of
36 Confirmed Releases. The facilities for which
37 an owner requested a hearing were never listed
38 on an Inventory of Confirmed Releases.

39 **"2. Conclusion of Law**

40 **"HB 3235, the rescission of the Inventory of**
41 **Confirmed Releases, and the dismissal of all orders**
42 **listing--facilities--on--such--Inventory as above-**
43 **described render these matters moot."**

1 GNB requests that these changes be made prior to entry
2 of the Order.

3 DATED: October 6, 1989.

4 Respectfully submitted,

5 SCHWABE, WILLIAMSON & WYATT

6
7 By: 

8 Jay T. Waldron, OSB #74331

9 Of Attorneys for
10 GNB Batteries, Inc.

**SCHWABE
WILLIAMSON
& WYATT**

ATTORNEYS AT LAW

PACWEST CENTER, SUITES 1600-1950

1211 SOUTHWEST FIFTH AVENUE • PORTLAND, OREGON 97204-3795

TELEPHONE: 503 222-9981 • FAX: 503 796-2900 • TELEX: 4937535 SWK UI

JAY T. WALDRON

October 6, 1989

VIA HAND-DELIVERY

Secretary to the Environmental Quality Commission
Environmental Quality Commission
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204-1390

Re: **Wayne and Lois Williamson
Sinclair & Valentine
Exceptions to Proposed Order Dismissing Contested
Case Proceedings in DEQ No. SA-891-162**

Dear Environmental Quality Commission Members:

Enclosed for filing is Wayne and Lois Williamson/Sinclair & Valentine Exceptions to the Proposed Order in the above matter. The Exceptions address and request corrections of errors in the Proposed Order. The Proposed Order states that the facility in the above matter was included on the DEQ's Inventory of Confirmed Releases. In fact, because Wayne and Lois Williamson filed an Answer and a Request for Contested Case Hearing in the above-referenced proceeding, the facility was not listed on the Inventory. The Exceptions provide changes to the Proposed Order to correct these errors. I would very much appreciate your making the change. Thank you for your consideration.

Very truly yours,


Jay T. Waldron

JTW:nk
Enclosure

cc: Fred Hansen, Director, DEQ

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
OCT 06 1989

OFFICE OF THE DIRECTOR

1 STATE OF OREGON

2 ENVIRONMENTAL QUALITY COMMISSION

3 In the Matter of)
4 SITE INVENTORY LISTINGS) WAYNE AND LOIS WILLIAMSON'S
5) EXCEPTIONS TO
6) PROPOSED ORDER DISMISSING
7) CONTESTED CASE PROCEEDINGS

8 Wayne and Lois Williamson excepts to the Proposed Order
9 Dismissing Contested Case Proceedings (Proposed Order) mailed to
10 Sinclair & Valentine by certified mail dated August 29, 1989.

11 DISCUSSION

12 By letter dated November 30, 1988, the Director of the
13 Department provided to Wayne and Lois Williamson Order and Notice
14 of Opportunity for Contested Case Hearing No. SA-891-162 (Listing
15 Order). The Listing Order stated that the property described in
16 the Listing Order would be placed on an inventory of facilities
17 where a release of a hazardous substance is confirmed (Inventory
18 of Confirmed Releases) 30 days from receipt of the Listing Order
19 unless Wayne and Lois Williamson filed an answer and a request for
20 hearing within 15 days of receipt of the Listing Order. The
21 Listing Order also stated that if an answer and a request for
22 hearing were not filed within the specified time, the order "shall
23 become effective, based on a prima facie case made on agency files
24 and records."

25 These aspects of the Listing Order were consistent with
26 the Oregon law establishing the process for the Inventory of
Confirmed Releases. The law required that the Director of the
Department had to give the owner of all or any part of a facility

1 that the Director intended to include on the Inventory written
2 notice 30 days before the facility was to be added to the
3 Inventory. 1987 Or Laws ch. 735, § 6(4). The law also provided
4 the owner the right to appeal the Director's intended action
5 before the action became effective.

6 As provided in the Listing Order and the Law, Wayne and
7 Lois Williamson timely filed a Request for Contested Case Hearing
8 and Answer. On August 29, 1989, the DEQ rescinded the Inventory
9 of Confirmed Releases and provided the Proposed Order to Wayne and
10 Lois Williamson. The Proposed Order proposes to dismiss Wayne and
11 Lois Williamson contested case proceeding as moot.

12 Wayne and Lois Williamson supports dismissal of its
13 contested case proceeding if certain errors in the Proposed Order
14 are corrected. The Proposed Order errs because it states in
15 paragraphs 1.a., 1.d. and 2 that all 325 facilities (including the
16 facility in SA-891-162) for which a Listing Order was issued were
17 listed on the Inventory. In fact, Wayne and Lois Williamson
18 timely filed a Request for Hearing and an Answer in proceeding SA-
19 891-162 so that the facility in that proceeding was not placed on
20 the Inventory. The Proposed Order also errs because it does not
21 either state specifically that Wayne and Lois Williamson timely
22 filed a Request for Hearing and an Answer or incorporate
23 specifically the list of all persons doing so (including Wayne and
24 Lois Williamson).

25 Wayne and Lois Williamson excepts to paragraphs 1.a.,
26 1.b., 1.d. and 2 of the Proposed Order and requests that the

1 Environmental Quality Commission make the following changes
2 (additions are shown in bold, deletions by strike throughs):

3 "1. Findings of Fact

4 "a. On November 30, 1988, the Director of the
5 Department of Environmental Quality (DEQ)
6 issued orders proposing to listing 325
7 facilities on an Inventory of Confirmed
8 Releases, pursuant to ORS 466.557 (1987). The
9 orders provided that the DEQ ordered that the
10 facilities be placed on the Inventory thirty
11 (30) days from receipt of the order by each
12 owner unless the owner requested a hearing and
13 filed an answer within fifteen (15) days of
14 receipt of the order.

15 "b. Two hundred and ten (210) requests for a
16 contested case hearing on the orders were
17 filed with this Commission. Because of these
18 requests, the facilities for which these
19 hearing requests were filed were not listed on
20 the Inventory of Confirmed Releases. The
21 specific orders and persons requesting
22 hearings are identified in the Certificate of
23 Service attached to this order and
24 incorporated in this order.

25 "c. ORS 466.557 was amended by the 1989
26 Legislative Assembly, requiring DEQ to replace
the Inventory of Confirmed Releases with a new
process for listing sites having a confirmed
release of hazardous substances. 1989 OR Law
Ch. 485 (HB 3235).

"d. On August 29, 1989, the Director rescinded the
Inventory of Confirmed Releases developed
under the 1987 law and dismissed: (1) all DEQ
orders proposing to list facilities on such
Inventory and (2) all DEQ orders listing
facilities on such Inventory. No facilities
are currently listed on an Inventory of
Confirmed Releases. The facilities for which
an owner requested a hearing were never listed
on an Inventory of Confirmed Releases.

"2. Conclusion of Law

"HB 3235, the rescision of the Inventory of
Confirmed Releases, and the dismissal of all orders

1 ~~listing--facilities--on--such--inventory as above-~~
2 ~~described render these matters moot."~~

3 Wayne and Lois Williamson requests that these changes be
4 made prior to entry of the Order.

5 DATED: October 6, 1989.

6 Respectfully submitted,

7 SCHWABE, WILLIAMSON & WYATT

8 By: 

9 Jay T. Waldron, OSB #74331

10 Of Attorneys for
11 Wayne and Lois Williamson

**SCHWABE
WILLIAMSON
& WYATT**

ATTORNEYS AT LAW

PACWEST CENTER, SUITES 1600-1950
1211 SOUTHWEST FIFTH AVENUE • PORTLAND, OREGON 97204-3795
TELEPHONE: 503 222-9981 • FAX: 503 796-2900 • TELEX: 4937535 SWK UI

DONALD A. HAAGENSEN

October 6, 1989

VIA HAND-DELIVERY

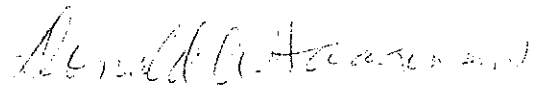
Secretary to the Environmental Quality Commission
Environmental Quality Commission
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204-1390

Re: **Mr. E. J. Clough, III**
Exceptions to Proposed Order Dismissing Contested
Case Proceedings in DEQ No. SA-891-26

Dear Environmental Quality Commission Members:

Enclosed for filing is Mr. E. J. Clough, III Exceptions to the Proposed Order in the above matter. The Exceptions address and request corrections of errors in the Proposed Order. The Proposed Order states that the facility in the above matter was included on the DEQ's Inventory of Confirmed Releases. In fact, because Mr. Clough filed an Answer and a Request for Contested Case Hearing in the above-referenced proceeding, the facility was not listed on the Inventory. The Exceptions provide changes to the Proposed Order to correct these errors.

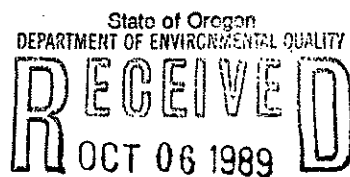
Very truly yours,



Donald A. Haagensen

DAH:dmm
Enclosure

cc: Fred Hansen, Director, DEQ



OFFICE OF THE DIRECTOR

1 STATE OF OREGON

2 ENVIRONMENTAL QUALITY COMMISSION

3 In the Matter of)
 4 SITE INVENTORY LISTINGS) MR. E. J. CLOUGH, III
 5) EXCEPTIONS TO
) PROPOSED ORDER DISMISSING
) CONTESTED CASE PROCEEDINGS

6 Mr. E. J. Clough, III (Mr. Clough) excepts to the
 7 Proposed Order Dismissing Contested Case Proceedings (Proposed
 8 Order) mailed to Mr. Clough by certified mail dated August 29,
 9 1989.

10 DISCUSSION

11 By letter dated November 30, 1988, the Director of the
 12 Department provided to Mr. Clough Order and Notice of Opportunity
 13 for Contested Case Hearing No. SA-891-26 (Listing Order). The
 14 Listing Order stated that the property described in the Listing
 15 Order would be placed on an inventory of facilities where a
 16 release of a hazardous substance is confirmed (Inventory of
 17 Confirmed Releases) 30 days from receipt of the Listing Order
 18 unless Mr. Clough filed an answer and a request for hearing within
 19 15 days of receipt of the Listing Order. The Listing Order also
 20 stated that if an answer and a request for hearing were not filed
 21 within the specified time, the order "shall become effective,
 22 based on a prima facie case made on agency files and records."

23 These aspects of the Listing Order were consistent with
 24 the Oregon law establishing the process for the Inventory of
 25 Confirmed Releases. The law required that the Director of the
 26 Department had to give the owner of all or any part of a facility

SCHWABE, WILLIAMSON & WYATT
 Attorneys at Law
 Suites 1600-1800, Pacwest Center
 1211 S. W. Fifth Avenue
 Portland, Oregon 97204-3795
 Telephone (503) 222-9981

1 that the Director intended to include on the Inventory written
2 notice 30 days before the facility was to be added to the
3 Inventory. 1987 Or Laws ch. 735, § 6(4). The law also provided
4 the owner the right to appeal the Director's intended action
5 before the action became effective.

6 As provided in the Listing Order and the Law, Mr. Clough
7 timely filed a Request for Contested Case Hearing and Answer. On
8 August 29, 1989, the DEQ rescinded the Inventory of Confirmed
9 Releases and provided the Proposed Order to Mr. Clough. The
10 Proposed Order proposes to dismiss Mr. Clough's contested case
11 proceeding as moot.

12 Mr. Clough supports dismissal of its contested case
13 proceeding if certain errors in the Proposed Order are corrected.
14 The Proposed Order errs because it states in paragraphs 1.a., 1.d.
15 and 2 that all 325 facilities (including the facility in SA-891-26)
16 for which a Listing Order was issued were listed on the Inventory.
17 In fact, Mr. Clough timely filed a Request for Hearing and an
18 Answer in proceeding SA-891-26 so that the facility in that
19 proceeding was not placed on the Inventory. The Proposed Order
20 also errs because it does not either state specifically that Mr.
21 Clough timely filed a Request for Hearing and an Answer or
22 incorporate specifically the list of all persons doing so
23 (including Mr. Clough).

24 Mr. Clough excepts to paragraphs 1.a., 1.b., 1.d. and 2
25 of the Proposed Order and requests that the Environmental Quality
26 Commission make the following changes (additions are shown in

1 bold, deletions by strike throughs):

2 "1. Findings of Fact

3 "a. On November 30, 1988, the Director of the
4 Department of Environmental Quality (DEQ)
5 issued orders proposing to listing 325
6 facilities on an Inventory of Confirmed
7 Releases, pursuant to ORS 466.557 (1987). The
8 orders provided that the DEQ ordered that the
9 facilities be placed on the Inventory thirty
10 (30) days from receipt of the order by each
11 owner unless the owner requested a hearing and
12 filed an answer within fifteen (15) days of
13 receipt of the order.

14 "b. Two hundred and ten (210) requests for a
15 contested case hearing on the orders were
16 filed with this Commission. Because of these
17 requests, the facilities for which these
18 hearing requests were filed were not listed on
19 the Inventory of Confirmed Releases. The
20 specific orders and persons requesting
21 hearings are identified in the Certificate of
22 Service attached to this order and
23 incorporated in this order.

24 "c. ORS 466.557 was amended by the 1989
25 Legislative Assembly, requiring DEQ to replace
26 the Inventory of Confirmed Releases with a new
27 process for listing sites having a confirmed
28 release of hazardous substances. 1989 OR Law
29 Ch. 485 (HB 3235).

30 "d. On August 29, 1989, the Director rescinded the
31 Inventory of Confirmed Releases developed
32 under the 1987 law and dismissed: (1) all DEQ
33 orders proposing to list facilities on such
34 Inventory and (2) all DEQ orders listing
35 facilities on such Inventory. No facilities
36 are currently listed on an Inventory of
37 Confirmed Releases. The facilities for which
38 an owner requested a hearing were never listed
39 on an Inventory of Confirmed Releases.

40 "2. Conclusion of Law

41 "HB 3235, the rescision of the Inventory of
42 Confirmed Releases, and the dismissal of all orders
43 ~~listing facilities on such inventory as above-~~
44 ~~described~~ render these matters moot."

1 Mr. Clough requests that these changes be made prior to
2 entry of the Order.

3 DATED: October 6, 1989.

4 Respectfully submitted,

5 SCHWABE, WILLIAMSON & WYATT

6
7 By: *Donald A. Haagen*
8 Donald A. Haagen, OSB #77202

9 Of Attorneys for
10 Mr. E. J. Clough, III

**SCHWABE
WILLIAMSON
& WYATT**

ATTORNEYS AT LAW

PACWEST CENTER, SUITES 1600-1950

1211 SOUTHWEST FIFTH AVENUE • PORTLAND, OREGON 97204-3795

TELEPHONE: 503 222-9981 • FAX: 503 796-2900 • TELEX: 4937535 SWK UI

DONALD A. HAAGENSEN

October 6, 1989

VIA HAND-DELIVERY

Secretary to the Environmental Quality Commission
Environmental Quality Commission
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204-1390

Re: **Mr. Edwin J. Clough**
Exceptions to Proposed Order Dismissing Contested
Case Proceedings in DEQ No. SA-891-612

Dear Environmental Quality Commission Members:

Enclosed for filing is Mr. Edwin J. Clough Exceptions to the Proposed Order in the above matter. The Exceptions address and request corrections of errors in the Proposed Order. The Proposed Order states that the facility in the above matter was included on the DEQ's Inventory of Confirmed Releases. In fact, because Mr. Clough filed an Answer and a Request for Contested Case Hearing in the above-referenced proceeding, the facility was not listed on the Inventory. The Exceptions provide changes to the Proposed Order to correct these errors.

Very truly yours,

Donald A. Haagensen

Donald A. Haagensen

DAH:dmm
Enclosure

cc: Fred Hansen, Director, DEQ

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
OCT 06 1989

OFFICE OF THE DIRECTOR

1 STATE OF OREGON

2 ENVIRONMENTAL QUALITY COMMISSION

3 In the Matter of)
4 SITE INVENTORY LISTINGS) MR. EDWIN J. CLOUGH
5) EXCEPTIONS TO
6) PROPOSED ORDER DISMISSING
7) CONTESTED CASE PROCEEDINGS

8 Mr. Edwin J. Clough (Mr. Clough) excepts to the Proposed
9 Order Dismissing Contested Case Proceedings (Proposed Order)
10 mailed to Mr. Clough by certified mail dated August 29, 1989.

11 DISCUSSION

12 By letter dated November 30, 1988, the Director of the
13 Department provided to Mr. Clough Order and Notice of Opportunity
14 for Contested Case Hearing No. SA-891-612 (Listing Order). The
15 Listing Order stated that the property described in the Listing
16 Order would be placed on an inventory of facilities where a
17 release of a hazardous substance is confirmed (Inventory of
18 Confirmed Releases) 30 days from receipt of the Listing Order
19 unless Mr. Clough filed an answer and a request for hearing within
20 15 days of receipt of the Listing Order. The Listing Order also
21 stated that if an answer and a request for hearing were not filed
22 within the specified time, the order "shall become effective,
23 based on a prima facie case made on agency files and records."

24 These aspects of the Listing Order were consistent with
25 the Oregon law establishing the process for the Inventory of
26 Confirmed Releases. The law required that the Director of the
Department had to give the owner of all or any part of a facility
that the Director intended to include on the Inventory written

1 notice 30 days before the facility was to be added to the
2 Inventory. 1987 Or Laws ch. 735, § 6(4). The law also provided
3 the owner the right to appeal the Director's intended action
4 before the action became effective.

5 As provided in the Listing Order and the Law, Mr. Clough
6 timely filed a Request for Contested Case Hearing and Answer. On
7 August 29, 1989, the DEQ rescinded the Inventory of Confirmed
8 Releases and provided the Proposed Order to Mr. Clough. The
9 Proposed Order proposes to dismiss Mr. Clough's contested case
10 proceeding as moot.

11 Mr. Clough supports dismissal of its contested case
12 proceeding if certain errors in the Proposed Order are corrected.
13 The Proposed Order errs because it states in paragraphs 1.a., 1.d.
14 and 2 that all 325 facilities (including the facility in
15 SA-891-612) for which a Listing Order was issued were listed on the
16 Inventory. In fact, Mr. Clough timely filed a Request for Hearing
17 and an Answer in proceeding SA-891-612 so that the facility in
18 that proceeding was not placed on the Inventory. The Proposed
19 Order also errs because it does not either state specifically that
20 Mr. Clough timely filed a Request for Hearing and an Answer or
21 incorporate specifically the list of all persons doing so
22 (including Mr. Clough).

23 Mr. Clough excepts to paragraphs 1.a., 1.b., 1.d. and 2
24 of the Proposed Order and requests that the Environmental Quality
25 Commission make the following changes (additions are shown in
26 bold, deletions by strike throughs):

1 **"1. Findings of Fact**

2 **"a.** On November 30, 1988, the Director of the
3 Department of Environmental Quality (DEQ)
4 issued orders proposing to listing 325
5 facilities on an Inventory of Confirmed
6 Releases, pursuant to ORS 466.557 (1987). The
7 orders provided that the DEQ ordered that the
8 facilities be placed on the Inventory thirty
9 (30) days from receipt of the order by each
10 owner unless the owner requested a hearing and
11 filed an answer within fifteen (15) days of
12 receipt of the order.

13 **"b.** Two hundred and ten (210) requests for a
14 contested case hearing on the orders were
15 filed with this Commission. Because of these
16 requests, the facilities for which these
17 hearing requests were filed were not listed on
18 the Inventory of Confirmed Releases. The
19 specific orders and persons requesting
20 hearings are identified in the Certificate of
21 Service attached to this order and
22 incorporated in this order.

23 **"c.** ORS 466.557 was amended by the 1989
24 Legislative Assembly, requiring DEQ to replace
25 the Inventory of Confirmed Releases with a new
26 process for listing sites having a confirmed
 release of hazardous substances. 1989 OR Law
 Ch. 485 (HB 3235).

"d. On August 29, 1989, the Director rescinded the
Inventory of Confirmed Releases developed
under the 1987 law and dismissed: (1) all DEQ
orders proposing to list facilities on such
Inventory and (2) all DEQ orders listing
facilities on such Inventory. No facilities
are currently listed on an Inventory of
Confirmed Releases. The facilities for which
an owner requested a hearing were never listed
on an Inventory of Confirmed Releases.

"2. Conclusion of Law

**"HB 3235, the recision of the Inventory of
Confirmed Releases, and the dismissal of all orders
listing--facilities--on--such--Inventory as above-
described render these matters moot."**

1 Mr. Clough requests that these changes be made prior to
2 entry of the Order.

3 DATED: October 6, 1989.

4 Respectfully submitted,

5 SCHWABE, WILLIAMSON & WYATT

6
7 By: Donald A. Haagensen
8 Donald A. Haagensen, OSB #77202

9 Of Attorneys for
10 Mr. Edwin J. Clough

**SCHWABE
WILLIAMSON
& WYATT**

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DONALD A. HAAGENSEN

October 6, 1989

VIA HAND-DELIVERY

Secretary to the Environmental Quality Commission
Environmental Quality Commission
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204-1390

Re: **Mr. Ed Clough**
Exceptions to Proposed Order Dismissing Contested
Case Proceedings in DEQ No. SA-891-27

Dear Environmental Quality Commission Members:

Enclosed for filing is Mr. Ed Clough Exceptions to the Proposed Order in the above matter. The Exceptions address and request corrections of errors in the Proposed Order. The Proposed Order states that the facility in the above matter was included on the DEQ's Inventory of Confirmed Releases. In fact, because Mr. Clough filed an Answer and a Request for Contested Case Hearing in the above-referenced proceeding, the facility was not listed on the Inventory. The Exceptions provide changes to the Proposed Order to correct these errors.

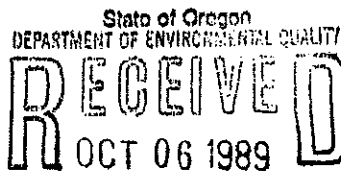
Very truly yours,

Donald A. Haagensen

Donald A. Haagensen

DAH:dmm
Enclosure

cc: Fred Hansen, Director, DEQ



OFFICE OF THE DIRECTOR

1 STATE OF OREGON

2 ENVIRONMENTAL QUALITY COMMISSION

3 In the Matter of)
4 SITE INVENTORY LISTINGS) MR. ED CLOUGH
5) EXCEPTIONS TO
6) PROPOSED ORDER DISMISSING
7) CONTESTED CASE PROCEEDINGS

8 Mr. Ed Clough (Mr. Clough) excepts to the Proposed Order
9 Dismissing Contested Case Proceedings (Proposed Order) mailed to
10 Mr. Clough by certified mail dated August 29, 1989.

11 DISCUSSION

12 By letter dated November 30, 1988, the Director of the
13 Department provided to Mr. Clough Order and Notice of Opportunity
14 for Contested Case Hearing No. SA-891-27 (Listing Order). The
15 Listing Order stated that the property described in the Listing
16 Order would be placed on an inventory of facilities where a
17 release of a hazardous substance is confirmed (Inventory of
18 Confirmed Releases) 30 days from receipt of the Listing Order
19 unless Mr. Clough filed an answer and a request for hearing within
20 15 days of receipt of the Listing Order. The Listing Order also
21 stated that if an answer and a request for hearing were not filed
22 within the specified time, the order "shall become effective,
23 based on a prima facie case made on agency files and records."

24 These aspects of the Listing Order were consistent with
25 the Oregon law establishing the process for the Inventory of
26 Confirmed Releases. The law required that the Director of the
Department had to give the owner of all or any part of a facility
that the Director intended to include on the Inventory written

1 notice 30 days before the facility was to be added to the
2 Inventory. 1987 Or Laws ch. 735, § 6(4). The law also provided
3 the owner the right to appeal the Director's intended action
4 before the action became effective.

5 As provided in the Listing Order and the Law, Mr. Clough
6 timely filed a Request for Contested Case Hearing and Answer. On
7 August 29, 1989, the DEQ rescinded the Inventory of Confirmed
8 Releases and provided the Proposed Order to Mr. Clough. The
9 Proposed Order proposes to dismiss Mr. Clough's contested case
10 proceeding as moot.

11 Mr. Clough supports dismissal of its contested case
12 proceeding if certain errors in the Proposed Order are corrected.
13 The Proposed Order errs because it states in paragraphs 1.a., 1.d.
14 and 2 that all 325 facilities (including the facility in SA-891-27)
15 for which a Listing Order was issued were listed on the Inventory.
16 In fact, Mr. Clough timely filed a Request for Hearing and an
17 Answer in proceeding SA-891-27 so that the facility in that
18 proceeding was not placed on the Inventory. The Proposed Order
19 also errs because it does not either state specifically that Mr.
20 Clough timely filed a Request for Hearing and an Answer or
21 incorporate specifically the list of all persons doing so
22 (including Mr. Clough).

23 Mr. Clough excepts to paragraphs 1.a., 1.b., 1.d. and 2
24 of the Proposed Order and requests that the Environmental Quality
25 Commission make the following changes (additions are shown in
26 bold, deletions by strike throughs):

1 **"1. Findings of Fact**

2 **"a. On November 30, 1988, the Director of the**
3 **Department of Environmental Quality (DEQ)**
4 **issued orders proposing to listing 325**
5 **facilities on an Inventory of Confirmed**
6 **Releases, pursuant to ORS 466.557 (1987). The**
7 **orders provided that the DEQ ordered that the**
8 **facilities be placed on the Inventory thirty**
9 **(30) days from receipt of the order by each**
10 **owner unless the owner requested a hearing and**
11 **filed an answer within fifteen (15) days of**
12 **receipt of the order.**

13 **"b. Two hundred and ten (210) requests for a**
14 **contested case hearing on the orders were**
15 **filed with this Commission. Because of these**
16 **requests, the facilities for which these**
17 **hearing requests were filed were not listed on**
18 **the Inventory of Confirmed Releases. The**
19 **specific orders and persons requesting**
20 **hearings are identified in the Certificate of**
21 **Service attached to this order and**
22 **incorporated in this order.**

23 **"c. ORS 466.557 was amended by the 1989**
24 **Legislative Assembly, requiring DEQ to replace**
25 **the Inventory of Confirmed Releases with a new**
26 **process for listing sites having a confirmed**
 release of hazardous substances. 1989 OR Law
 Ch. 485 (HB 3235).

"d. On August 29, 1989, the Director rescinded the
 Inventory of Confirmed Releases developed
 under the 1987 law and dismissed: (1) all DEQ
 orders proposing to list facilities on such
 Inventory and (2) all DEQ orders listing
 facilities on such Inventory. No facilities
 are currently listed on an Inventory of
 Confirmed Releases. The facilities for which
 an owner requested a hearing were never listed
 on an Inventory of Confirmed Releases.

"2. Conclusion of Law

"HB 3235, the rescission of the Inventory of
 Confirmed Releases, and the dismissal of all orders
 ~~listing facilities on such Inventory as above-~~
 ~~described~~ render these matters moot."

1 Mr. Clough requests that these changes be made prior to
2 entry of the Order.

3 DATED: October 6, 1989.

4 Respectfully submitted,

5 SCHWABE, WILLIAMSON & WYATT

6
7 By: Donald A. Haagensen
8 Donald A. Haagensen, OSB #77202

9 Of Attorneys for
10 Mr. Ed Clough

**SCHWABE
WILLIAMSON
& WYATT**

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DONALD A. HAAGENSEN

October 6, 1989

VIA HAND-DELIVERY

Secretary to the Environmental Quality Commission
Environmental Quality Commission
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204-1390

Re: **Industrial Plastics, Inc.
Exceptions to Proposed Order Dismissing Contested
Case Proceedings in DEQ No. SA-891-159**

Dear Environmental Quality Commission Members:

Enclosed for filing is Industrial Plastics, Inc. Exceptions to the Proposed Order in the above matter. The Exceptions address and request corrections of errors in the Proposed Order. The Proposed Order states that the facility in the above matter was included on the DEQ's Inventory of Confirmed Releases. In fact, because Industrial Plastics filed an Answer and a Request for Contested Case Hearing in the above-referenced proceeding, the facility was not listed on the Inventory. The Exceptions provide changes to the Proposed Order to correct these errors.

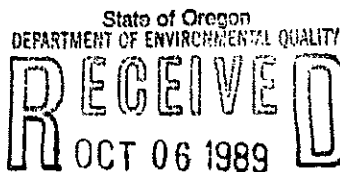
Very truly yours,

Donald A. Haagensen

Donald A. Haagensen

DAH:dmm
Enclosure

cc: Fred Hansen, Director, DEQ



OFFICE OF THE DIRECTOR

1 STATE OF OREGON

2 ENVIRONMENTAL QUALITY COMMISSION

3 In the Matter of)
4 SITE INVENTORY LISTINGS) **INDUSTRIAL PLASTICS, INC.**
5) **EXCEPTIONS TO**
6) **PROPOSED ORDER DISMISSING**
7) **CONTESTED CASE PROCEEDINGS**

8 Industrial Plastics, Inc. (Industrial Plastics) excepts
9 to the Proposed Order Dismissing Contested Case Proceedings
10 (Proposed Order) mailed to Industrial Plastics by certified mail
11 dated August 29, 1989.

12 DISCUSSION

13 By letter dated November 30, 1988, the Director of the
14 Department provided to Industrial Plastics Order and Notice of
15 Opportunity for Contested Case Hearing No. SA-891-159 (Listing
16 Order). The Listing Order stated that the property described in
17 the Listing Order would be placed on an inventory of facilities
18 where a release of a hazardous substance is confirmed (Inventory
19 of Confirmed Releases) 30 days from receipt of the Listing Order
20 unless Industrial Plastics filed an answer and a request for
21 hearing within 15 days of receipt of the Listing Order. The
22 Listing Order also stated that if an answer and a request for
23 hearing were not filed within the specified time, the order "shall
24 become effective, based on a prima facie case made on agency files
25 and records."

26 These aspects of the Listing Order were consistent with
the Oregon law establishing the process for the Inventory of
Confirmed Releases. The law required that the Director of the

1 Department had to give the owner of all or any part of a facility
2 that the Director intended to include on the Inventory written
3 notice 30 days before the facility was to be added to the
4 Inventory. 1987 Or Laws ch. 735, § 6(4). The law also provided
5 the owner the right to appeal the Director's intended action
6 before the action became effective.

7 As provided in the Listing Order and the Law, Industrial
8 Plastics timely filed a Request for Contested Case Hearing and
9 Answer. On August 29, 1989, the DEQ rescinded the Inventory of
10 Confirmed Releases and provided the Proposed Order to Industrial
11 Plastics. The Proposed Order proposes to dismiss Industrial
12 Plastics' contested case proceeding as moot.

13 Industrial Plastics supports dismissal of its contested
14 case proceeding if certain errors in the Proposed Order are
15 corrected. The Proposed Order errs because it states in
16 paragraphs 1.a., 1.d. and 2 that all 325 facilities (including the
17 facility in SA-891-159) for which a Listing Order was issued were
18 listed on the Inventory. In fact, Industrial Plastics timely
19 filed a Request for Hearing and an Answer in proceeding SA-891-159
20 so that the facility in that proceeding was not placed on the
21 Inventory. The Proposed Order also errs because it does not
22 either state specifically that Industrial Plastics timely filed a
23 Request for Hearing and an Answer or incorporate specifically the
24 list of all persons doing so (including Industrial Plastics).

25 Industrial Plastics excepts to paragraphs 1.a., 1.b.,
26 1.d. and 2 of the Proposed Order and requests that the

1 Environmental Quality Commission make the following changes
2 (additions are shown in bold, deletions by strike throughs):

3 **"1. Findings of Fact**

4 "a. On November 30, 1988, the Director of the
5 Department of Environmental Quality (DEQ)
6 issued orders proposing to listing 325
7 facilities on an Inventory of Confirmed
8 Releases, pursuant to ORS 466.557 (1987). The
9 orders provided that the DEQ ordered that the
10 facilities be placed on the Inventory thirty
11 (30) days from receipt of the order by each
12 owner unless the owner requested a hearing and
13 filed an answer within fifteen (15) days of
14 receipt of the order.

15 "b. Two hundred and ten (210) requests for a
16 contested case hearing on the orders were
17 filed with this Commission. Because of these
18 requests, the facilities for which these
19 hearing requests were filed were not listed on
20 the Inventory of Confirmed Releases. The
21 specific orders and persons requesting
22 hearings are identified in the Certificate of
23 Service attached to this order and
24 incorporated in this order.

25 "c. ORS 466.557 was amended by the 1989
26 Legislative Assembly, requiring DEQ to replace
the Inventory of Confirmed Releases with a new
process for listing sites having a confirmed
release of hazardous substances. 1989 OR Law
Ch. 485 (HB 3235).

27 "d. On August 29, 1989, the Director rescinded the
28 Inventory of Confirmed Releases developed
29 under the 1987 law and dismissed: (1) all DEQ
30 orders proposing to list facilities on such
31 Inventory and (2) all DEQ orders listing
32 facilities on such Inventory. No facilities
33 are currently listed on an Inventory of
34 Confirmed Releases. The facilities for which
35 an owner requested a hearing were never listed
36 on an Inventory of Confirmed Releases.

37 **"2. Conclusion of Law**

38 "HB 3235, the recision of the Inventory of
39 Confirmed Releases, and the dismissal of all orders

listing--facilities--on--such--inventory as above-described render these matters moot."

Industrial Plastics requests that these changes be made prior to entry of the Order.

DATED: October 6, 1989.

Respectfully submitted,
SCHWABE, WILLIAMSON & WYATT

By: *Donald A. Haagenen*
Donald A. Haagenen, OSB #77202

Of Attorneys for
Industrial Plastics, Inc.

**SCHWABE
WILLIAMSON
& WYATT**

ATTORNEYS AT LAW

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DONALD A. HAAGENSEN

October 6, 1989

VIA HAND-DELIVERY

Secretary to the Environmental Quality Commission
Environmental Quality Commission
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204-1390

Re: **Fort Hill Lumber Co.
Exceptions to Proposed Order Dismissing Contested
Case Proceedings in DEQ No. SA-891-359**

Dear Environmental Quality Commission Members:

Enclosed for filing is Fort Hill Lumber Co. Exceptions to the Proposed Order in the above matter. The Exceptions address and request corrections of errors in the Proposed Order. The Proposed Order states that the facility in the above matter was included on the DEQ's Inventory of Confirmed Releases. In fact, because Fort Hill filed an Answer and a Request for Contested Case Hearing in the above-referenced proceeding, the facility was not listed on the Inventory. The Exceptions provide changes to the Proposed Order to correct these errors.

Very truly yours,

Donald A. Haagensen

Donald A. Haagensen

DAH:dmm
Enclosure

cc: Fred Hansen, Director, DEQ

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

RECEIVED
OCT 06 1989

OFFICE OF THE DIRECTOR

STATE OF OREGON

ENVIRONMENTAL QUALITY COMMISSION

In the Matter of)
) FORT HILL LUMBER CO.
 SITE INVENTORY LISTINGS) EXCEPTIONS TO
) PROPOSED ORDER DISMISSING
) CONTESTED CASE PROCEEDINGS

Fort Hill Lumber Co. (Fort Hill) excepts to the Proposed Order Dismissing Contested Case Proceedings (Proposed Order) mailed to Fort Hill by certified mail dated August 29, 1989.

DISCUSSION

By letter dated November 30, 1988, the Director of the Department provided to Fort Hill Order and Notice of Opportunity for Contested Case Hearing No. SA-891-359 (Listing Order). The Listing Order stated that the property described in the Listing Order would be placed on an inventory of facilities where a release of a hazardous substance is confirmed (Inventory of Confirmed Releases) 30 days from receipt of the Listing Order unless Fort Hill filed an answer and a request for hearing within 15 days of receipt of the Listing Order. The Listing Order also stated that if an answer and a request for hearing were not filed within the specified time, the order "shall become effective, based on a prima facie case made on agency files and records."

These aspects of the Listing Order were consistent with the Oregon law establishing the process for the Inventory of Confirmed Releases. The law required that the Director of the Department had to give the owner of all or any part of a facility that the Director intended to include on the Inventory written

1 notice 30 days before the facility was to be added to the
2 Inventory. 1987 Or Laws ch. 735, § 6(4). The law also provided
3 the owner the right to appeal the Director's intended action
4 before the action became effective.

5 As provided in the Listing Order and the Law, Fort Hill
6 timely filed a Request for Contested Case Hearing and Answer. On
7 August 29, 1989, the DEQ rescinded the Inventory of Confirmed
8 Releases and provided the Proposed Order to Fort Hill. The
9 Proposed Order proposes to dismiss Fort Hill's contested case
10 proceeding as moot.

11 Fort Hill supports dismissal of its contested case
12 proceeding if certain errors in the Proposed Order are corrected.
13 The Proposed Order errs because it states in paragraphs 1.a., 1.d.
14 and 2 that all 325 facilities (including the facility in
15 SA-891-359) for which a Listing Order was issued were listed on the
16 Inventory. In fact, Fort Hill timely filed a Request for Hearing
17 and an Answer in proceeding SA-891-359 so that the facility in
18 that proceeding was not placed on the Inventory. The Proposed
19 Order also errs because it does not either state specifically that
20 Fort Hill timely filed a Request for Hearing and an Answer or
21 incorporate specifically the list of all persons doing so
22 (including Fort Hill).

23 Fort Hill excepts to paragraphs 1.a., 1.b., 1.d. and 2
24 of the Proposed Order and requests that the Environmental Quality
25 Commission make the following changes (additions are shown in
26 bold, deletions by strike throughs):

1 **"1. Findings of Fact**

2 **"a. On November 30, 1988, the Director of the**
3 **Department of Environmental Quality (DEQ)**
4 **issued orders proposing to listing 325**
5 **facilities on an Inventory of Confirmed**
6 **Releases, pursuant to ORS 466.557 (1987). The**
7 **orders provided that the DEQ ordered that the**
8 **facilities be placed on the Inventory thirty**
9 **(30) days from receipt of the order by each**
10 **owner unless the owner requested a hearing and**
11 **filed an answer within fifteen (15) days of**
12 **receipt of the order.**

13 **"b. Two hundred and ten (210) requests for a**
14 **contested case hearing on the orders were**
15 **filed with this Commission. Because of these**
16 **requests, the facilities for which these**
17 **hearing requests were filed were not listed on**
18 **the Inventory of Confirmed Releases. The**
19 **specific orders and persons requesting**
20 **hearings are identified in the Certificate of**
21 **Service attached to this order and**
22 **incorporated in this order.**

23 **"c. ORS 466.557 was amended by the 1989**
24 **Legislative Assembly, requiring DEQ to replace**
25 **the Inventory of Confirmed Releases with a new**
26 **process for listing sites having a confirmed**
 release of hazardous substances. 1989 OR Law
 Ch. 485 (HB 3235).

"d. On August 29, 1989, the Director rescinded the
 Inventory of Confirmed Releases developed
 under the 1987 law and dismissed: (1) all DEQ
 orders proposing to list facilities on such
 Inventory and (2) all DEQ orders listing
 facilities on such Inventory. No facilities
 are currently listed on an Inventory of
 Confirmed Releases. The facilities for which
 an owner requested a hearing were never listed
 on an Inventory of Confirmed Releases.

"2. Conclusion of Law

"HB 3235, the recision of the Inventory of
 Confirmed Releases, and the dismissal of all orders
 ~~listing facilities on such inventory~~ as above-
 described render these matters moot."

1 Fort Hill requests that these changes be made prior to
2 entry of the Order.

3 DATED: October 6, 1989.

4 Respectfully submitted,

5 SCHWABE, WILLIAMSON & WYATT

6 By: 

7 Donald A. Haagensen, OSB #77202

8 Of Attorneys for

9 Fort Hill Lumber Co.

**SCHWABE
WILLIAMSON
& WYATT**

ATTORNEYS AT LAW

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TELEPHONE: 503 222-9981 • FAX: 503 796-2900 • TELEX: 4937535 SWK UI

DONALD A. HAAGENSEN

October 6, 1989

VIA HAND-DELIVERY

Secretary to the Environmental Quality Commission
Environmental Quality Commission
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204-1390

Re: **Freres Lumber Co., Inc.**
Exceptions to Proposed Order Dismissing Contested
Case Proceedings in DEQ No. SA-891-202

Dear Environmental Quality Commission Members:

Enclosed for filing is Freres Lumber Co., Inc., Exceptions to the Proposed Order in the above matter. The Exceptions address and request corrections of errors in the Proposed Order. The Proposed Order states that the facility in the above matter was included on the DEQ's Inventory of Confirmed Releases. In fact, because Freres filed an Answer and a Request for Contested Case Hearing in the above-referenced proceeding, the facility was not listed on the Inventory. The Exceptions provide changes to the Proposed Order to correct these errors.

Very truly yours,

Donald A. Haagensen

Donald A. Haagensen

DAH:dmm
Enclosure

cc: Fred Hansen, Director, DEQ

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
OCT 06 1989

OFFICE OF THE DIRECTOR

STATE OF OREGON

ENVIRONMENTAL QUALITY COMMISSION

In the Matter of)
) FRERES LUMBER COMPANY, INC.
SITE INVENTORY LISTINGS) EXCEPTIONS TO
) PROPOSED ORDER DISMISSING
) CONTESTED CASE PROCEEDINGS

Freres Lumber Co., Inc. (Freres) excepts to the Proposed Order Dismissing Contested Case Proceedings (Proposed Order) mailed to Freres by certified mail dated August 29, 1989.

DISCUSSION

By letter dated November 30, 1988, the Director of the Department provided to Freres Order and Notice of Opportunity for Contested Case Hearing No. SA-891-202 (Listing Order). The Listing Order stated that the property described in the Listing Order would be placed on an inventory of facilities where a release of a hazardous substance is confirmed (Inventory of Confirmed Releases) 30 days from receipt of the Listing Order unless Freres filed an answer and a request for hearing within 15 days of receipt of the Listing Order. The Listing Order also stated that if an answer and a request for hearing were not filed within the specified time, the order "shall become effective, based on a prima facie case made on agency files and records."

These aspects of the Listing Order were consistent with the Oregon law establishing the process for the Inventory of Confirmed Releases. The law required that the Director of the Department had to give the owner of all or any part of a facility that the Director intended to include on the Inventory written

1 notice 30 days before the facility was to be added to the
2 Inventory. 1987 Or Laws ch. 735, § 6(4). The law also provided
3 the owner the right to appeal the Director's intended action
4 before the action became effective.

5 As provided in the Listing Order and the Law, Freres
6 timely filed a Request for Contested Case Hearing and Answer. On
7 August 29, 1989, the DEQ rescinded the Inventory of Confirmed
8 Releases and provided the Proposed Order to Freres. The Proposed
9 Order proposes to dismiss Freres' contested case proceeding as
10 moot.

11 Freres supports dismissal of its contested case
12 proceeding if certain errors in the Proposed Order are corrected.
13 The Proposed Order errs because it states in paragraphs 1.a., 1.d.
14 and 2 that all 325 facilities (including the facility in
15 SA-891-202) for which a Listing Order was issued were listed on the
16 Inventory. In fact, Freres timely filed a Request for Hearing and
17 an Answer in proceeding SA-891-202 so that the facility in that
18 proceeding was not placed on the Inventory. The Proposed Order
19 also errs because it does not either state specifically that
20 Freres timely filed a Request for Hearing and an Answer or
21 incorporate specifically the list of all persons doing so
22 (including Freres).

23 Freres excepts to paragraphs 1.a., 1.b., 1.d. and 2 of
24 the Proposed Order and requests that the Environmental Quality
25 Commission make the following changes (additions are shown in
26 bold, deletions by strike throughs):

1 Freres requests that these changes be made prior to
2 entry of the Order.

3 DATED: October 6, 1989.

4 Respectfully submitted,

5 SCHWABE, WILLIAMSON & WYATT

6 By: Donald A. Haagensen
7 Donald A. Haagensen, OSB #77202

8 Of Attorneys for
9 Freres Lumber Co., Inc.

1 **"1. Findings of Fact**

2 "a. On November 30, 1988, the Director of the
3 ¶ Department of Environmental Quality (DEQ)
4 ¶ issued orders proposing to listing 325
5 ¶ facilities on an Inventory of Confirmed
6 ¶ Releases, pursuant to ORS 466.557 (1987). The
7 ¶ orders provided that the DEQ ordered that the
8 ¶ facilities be placed on the Inventory thirty
9 ¶ (30) days from receipt of the order by each
10 ¶ owner unless the owner requested a hearing and
11 ¶ filed an answer within fifteen (15) days of
12 ¶ receipt of the order.

13 "b. Two hundred and ten (210) requests for a
14 ¶ contested case hearing on the orders were
15 ¶ filed with this Commission. Because of these
16 ¶ requests, the facilities for which these
17 ¶ hearing requests were filed were not listed on
18 ¶ the Inventory of Confirmed Releases. The
19 ¶ specific orders and persons requesting
20 ¶ hearings are identified in the Certificate of
21 ¶ Service attached to this order and
22 ¶ incorporated in this order.

23 "c. ORS 466.557 was amended by the 1989
24 Legislative Assembly, requiring DEQ to replace
25 the Inventory of Confirmed Releases with a new
26 process for listing sites having a confirmed
27 release of hazardous substances. 1989 OR Law
28 Ch. 485 (HB 3235).

29 "d. On August 29, 1989, the Director rescinded the
30 Inventory of Confirmed Releases developed
31 under the 1987 law and dismissed: (1) all DEQ
32 orders proposing to list facilities on such
33 Inventory and (2) all DEQ orders listing
34 facilities on such Inventory. No facilities
35 are currently listed on an Inventory of
36 Confirmed Releases. The facilities for which
37 an owner requested a hearing were never listed
38 on an Inventory of Confirmed Releases.

39 **"2. Conclusion of Law**

40 "HB 3235, the recision of the Inventory of
41 Confirmed Releases, and the dismissal of all orders
42 ~~listing facilities on such inventory~~ as above-
43 described render these matters moot."

SCHWABE, WILLIAMSON & WYATT
ATTORNEYS AT LAW

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October 3, 1989

William P. Hutchison, Chair
Environmental Quality Commission
Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, OR 97204-1390

Department of Environmental Quality
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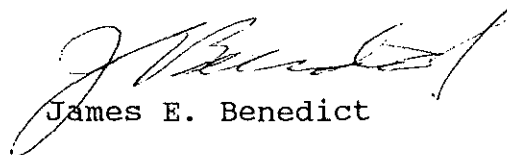
Environmental Cleanup Division

RE: Port of Astoria's Exceptions to
Order Dismissing Contested Case Proceedings

Dear Chairman Hutchison:

Enclosed please find the Exceptions to the Proposed Order in the above-referenced matter filed on behalf of the Port of Astoria. The Exceptions address and propose to correct an error in the Proposed Order. The Proposed Order indicates that all facilities that received a Notice dated November 30, 1988 were included on the Inventory of Confirmed Releases; in fact, those that filed an Answer and a Request for Contested Case Hearing, as did the Port of Astoria, were not listed on the Inventory. The proposed Exceptions suggest changes to the Order to make this necessary correction.

Very truly yours,


James E. Benedict

Enclosure

JEB:hm

c: Fred Hansen, Director, DEQ ✓
Robert Miller, Port of Astoria

1 STATE OF OREGON

2 ENVIRONMENTAL QUALITY COMMISSION

3

4 In the Matter of)
5 SITE INVENTORY LISTINGS) PORT OF ASTORIA'S
6) EXCEPTIONS TO ORDER
7) DISMISSING CONTESTED
8) CASE PROCEEDINGS

9 Port of Astoria ("Port") hereby excepts to the Proposed
10 Order Dismissing Contested Case Proceedings (hereinafter "Order
11 Dismissing") mailed to Port by certified mail dated August 29,
12 1989.

12 BACKGROUND

13 By letter dated November 30, 1988, the Director of the
14 Department issued Orders and Notices of Opportunity for Contested
15 Case Hearing ("Listing Order") to the present owners of 325
16 facilities in the State of Oregon. The Listing Order stated that
17 the Listing Order would be effective unless an Answer and Request
18 for Contested Case Hearing was filed within 15 days of the receipt
19 of the Notice and Listing Order. The November 30, 1988 letter
20 also stated that the facility identified in the Proposed Order
21 would not be placed on the Inventory of Confirmed Releases, if an
22 Answer and Request for Contested Case Hearing was submitted within
23 15 days of receipt of the Notice.

24 By hand delivered letter dated December 14, 1988, Port
25 of Astoria filed timely a Request for Contested Case Hearing and
26 Answer.

1 Port understands that 209 similar Requests were filed
2 with the Commission.

3 The Commission's Order is in error because it indicates
4 that all 325 facilities that received the Listing Order were
5 listed on the Inventory of Confirmed Releases when in fact the 210
6 facilities that requested a contested case hearing were not placed
7 on the Inventory of Confirmed Releases.

8 EXCEPTION

9 Accordingly, Port of Astoria excepts to paragraph 1 a)
10 and d) and to paragraph 2 of the Proposed Order and suggests the
11 following changes:

12
13 1. Findings of Fact

14 a. On November 30, 1988, the Director of the
15 Department of Environmental Quality (DEQ) issued
16 ¶ **conditional orders listing 325 facilities on an**
17 ¶ **Inventory of Confirmed Releases, pursuant to ORS**
18 ¶ **466.557 (1987), which orders were to become**
effective only if the recipient of an Order did not
timely file an Answer and a Request for Contested
Case Hearing within fifteen (15) days of receipt of
the Order.

19 d. On August 29, 1989, the Director rescinded the
20 Inventory of Confirmed Releases developed under the
21 ¶ 1987 law and dismissed all DEQ orders listing
22 ¶ facilities on such Inventory, and dismissed all
23 ¶ **conditional Orders subject to Request for Contested**
Case Hearing that proposed to list facilities on
such Inventory. No facilities are currently listed
on an Inventory of Confirmed Releases.

24 2. Conclusion of Law

25 HB 3235, the rescision of the Inventory of Confirmed
26 ¶ Releases, and the dismissal of all orders listing
27 ¶ facilities on such Inventory, and the dismissal of
28 ¶ **all conditional Orders subject to Request for**

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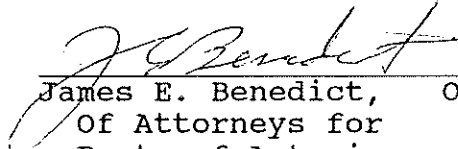
Contested Case Hearing that proposed to list facilities on such Inventory, render these matters moot.

Port of Astoria respectfully requests that changes pursuant to these exceptions be made prior to entry of the Order.

DATED this 3rd day of October, 1989.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT


James E. Benedict, OSB#76059
Of Attorneys for
Port of Astoria

SCHWABE, WILLIAMSON & WYATT
ATTORNEYS AT LAW

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September 29, 1989

Department of Environmental Quality
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William P. Hutchison, Chair
Environmental Quality Commission
Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, OR 97204-1390

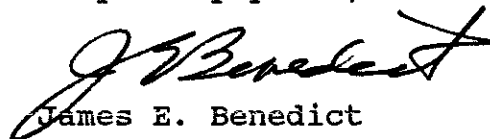
environmental development division

RE: Brazier Forest Products, Inc.'s Exceptions to
Order Dismissing Contested Case Proceedings

Dear Chairman Hutchison:

Enclosed please find the Exceptions to the Proposed Order in the above-referenced matter filed on behalf of Brazier Forest Products, Inc. The Exceptions address and propose to correct an error in the Proposed Order. The Proposed Order indicates that all facilities that received a Notice dated November 30, 1988 were included on the Inventory of Confirmed Releases; in fact, those that filed an Answer and a Request for Contested Case Hearing, as did Brazier Forest Products, Inc., were not listed on the Inventory. The proposed Exceptions suggest changes to the Order to make this necessary correction.

Very truly yours,


James E. Benedict

Enclosure

JEB:hm

c: Fred Hansen, Director, DEQ ✓
Luther Steinhauer, Portland Manager
John M. Brazier, President

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
OCT 03 1989
OFFICE OF THE DIRECTOR

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Washington, D.C. 20007 • Schwabe, Williamson & Wyatt
The Flour Mill, Suite 302 • 1000 Potomac Street N.W. • (202) 965-6300

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STATE OF OREGON
ENVIRONMENTAL QUALITY COMMISSION

In the Matter of)
)
SITE INVENTORY LISTINGS) BRAZIER FOREST PRODUCTS,
) INC.'s
) EXCEPTIONS TO ORDER
) DISMISSING CONTESTED CASE
) PROCEEDINGS

Brazier Forest Products, Inc. ("Brazier") hereby excepts to the Proposed Order Dismissing Contested Case Proceedings (hereinafter "Order Dismissing") mailed to Brazier by certified mail dated August 29, 1989.

BACKGROUND

By letter dated November 30, 1988, the Director of the Department issued Orders and Notices of Opportunity for Contested Case Hearing ("Listing Order") to the present owners of 325 facilities in the State of Oregon. The Listing Order stated that the Listing Order would be effective unless an Answer and Request for Contested Case Hearing was filed within 15 days of the receipt of the Notice and Listing Order. The November 30, 1988 letter also stated that the facility identified in the Proposed Order would not be placed on the Inventory of Confirmed Releases, if an Answer and Request for Contested Case Hearing was submitted within 15 days of receipt of the Notice.

//
//

1 By letter dated December 14, 1989, Brazier Forest
2 Products, Inc. filed timely a Request for Contested Case Hearing
3 and Answer.

4 Brazier understands that 209 similar Requests were filed
5 with the Commission.

6 The Commission's Order is in error because it indicates
7 that all 325 facilities that received the Listing Order were
8 listed on the Inventory of Confirmed Releases when in fact the 210
9 facilities that requested a contested case hearing were not placed
10 on the Inventory of Confirmed Releases.

11 EXCEPTION

12 Accordingly, Brazier Forest Products, Inc. excepts to
13 paragraph 1 a) and d) and to paragraph 2 of the Proposed Order and
14 suggests the following changes:

15 1. Findings of Fact

16 a. On November 30, 1988, the Director of the
17 ¶ Department of Environmental Quality (DEQ) issued
18 ¶ conditional orders listing 325 facilities on an
19 ¶ Inventory of Confirmed Releases, pursuant to ORS
20 466.557 (1987), which orders were to become
effective only if the recipient of an Order did not
timely file an Answer and a Request for Contested
Case Hearing within fifteen (15) days of receipt of
the Order.

21 d. On August 29, 1989, the Director rescinded the
22 Inventory of Confirmed Releases developed under the
23 ¶ 1987 law and dismissed all DEQ orders listing
24 ¶ facilities on such Inventory, and dismissed all
conditional Orders subject to Request for Contested
Case Hearing that proposed to list facilities on
such Inventory. No facilities are currently listed
on an Inventory of Confirmed Releases.

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2. Conclusion of Law

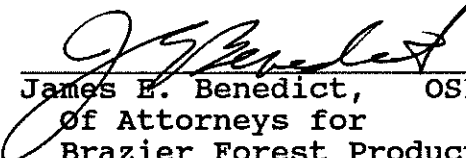
HB 3235, the rescission of the Inventory of Confirmed Releases, and the dismissal of all orders listing facilities on such Inventory, and the dismissal of all conditional Orders subject to Request for Contested Case Hearing that proposed to list facilities on such Inventory, render these matters moot.

Brazier Forest Products, Inc. respectfully requests that changes pursuant to these exceptions be made prior to entry of the Order.

DATED this 29th day of September, 1989.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT


James E. Benedict, OSB#76059
Of Attorneys for
Brazier Forest Products, Inc.

SCHWABE, WILLIAMSON & WYATT
ATTORNEYS AT LAW

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October 2, 1989

Department of Environmental Quality
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OCT 04 1989

William P. Hutchison, Chair
Environmental Quality Commission
Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, OR 97204-1390

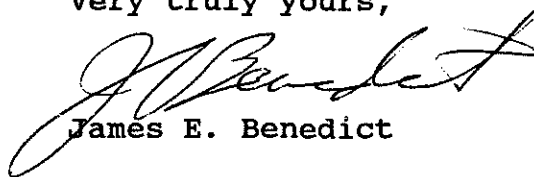
Environmental Cleanup Division

RE: Stauffer Chemical Company's Exceptions to
Order Dismissing Contested Case Proceedings

Dear Chairman Hutchison:

Enclosed please find the Exceptions to the Proposed Order in the above-referenced matter filed on behalf of Stauffer Chemical Company. The Exceptions address and propose to correct an error in the Proposed Order. The Proposed Order indicates that all facilities that received a Notice dated November 30, 1988 were included on the Inventory of Confirmed Releases; in fact, those that filed an Answer and a Request for Contested Case Hearing, as did Stauffer Chemical Company, were not listed on the Inventory. The proposed Exceptions suggest changes to the Order to make this necessary correction.

Very truly yours,


James E. Benedict

Enclosure

JEB:hm

c: Fred Hansen, Director, DEQ ✓
Teddl Ahlberg, Plant Manager
Gary Ford, Esq.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
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OCT 03 1989

OFFICE OF THE DIRECTOR

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Washington, D.C. 20007 • Schwabe, Williamson & Wyatt
The Flour Mill, Suite 302 • 1000 Potomac Street N.W. • (202) 965-6300

1 STATE OF OREGON

2 ENVIRONMENTAL QUALITY COMMISSION

3

4 In the Matter of)

5 SITE INVENTORY LISTINGS) STAUFFER CHEMICAL

6) COMPANY'S

7) EXCEPTIONS TO ORDER

8) DISMISSING CONTESTED CASE

9) PROCEEDINGS

10 Stauffer Chemical Company ("Stauffer") hereby excepts to

11 the Proposed Order Dismissing Contested Case Proceedings

12 (hereinafter "Order Dismissing") mailed to Stauffer by certified

13 mail dated August 29, 1989.

14 BACKGROUND

15 By letter dated November 30, 1988, the Director of the

16 Department issued Orders and Notices of Opportunity for Contested

17 Case Hearing ("Listing Order") to the present owners of 325

18 facilities in the State of Oregon. The Listing Order stated that

19 the Listing Order would be effective unless an Answer and Request

20 for Contested Case Hearing was filed within 15 days of the receipt

21 of the Notice and Listing Order. The November 30, 1988 letter

22 also stated that the facility identified in the Proposed Order

23 would not be placed on the Inventory of Confirmed Releases, if an

24 Answer and Request for Contested Case Hearing was submitted within

25 15 days of receipt of the Notice.

26 //

//

1 By hand delivered letter dated December 16, 1988,
2 Stauffer filed timely a Request for Contested Case Hearing and
3 Answer.

4 Stauffer understands that 209 similar Requests were
5 filed with the Commission.

6 The Commission's Order is in error because it indicates
7 that all 325 facilities that received the Listing Order were
8 listed on the Inventory of Confirmed Releases when in fact the 210
9 facilities that requested a contested case hearing were not placed
10 on the Inventory of Confirmed Releases.

11 EXCEPTION

12 Accordingly, Stauffer Chemical Company excepts to
13 paragraph 1 a) and d) and to paragraph 2 of the Proposed Order and
14 suggests the following changes:

15 1. Findings of Fact

16 a. On November 30, 1988, the Director of the
17 Department of Environmental Quality (DEQ) issued
18 conditional orders listing 325 facilities on an
19 Inventory of Confirmed Releases, pursuant to ORS
20 466.557 (1987), which orders were to become
21 effective only if the recipient of an Order did not
22 timely file an Answer and a Request for Contested
23 Case Hearing within fifteen (15) days of receipt of
24 the Order.

25 d. On August 29, 1989, the Director rescinded the
26 Inventory of Confirmed Releases developed under the
1987 law and dismissed all DEQ orders listing
facilities on such Inventory, and dismissed all
conditional Orders subject to Request for Contested
Case Hearing that proposed to list facilities on
such Inventory. No facilities are currently listed
on an Inventory of Confirmed Releases.

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2. Conclusion of Law

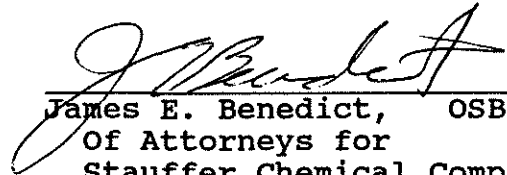
HB 3235, the rescission of the Inventory of Confirmed Releases, and the dismissal of all orders listing facilities on such Inventory, and the dismissal of all conditional Orders subject to Request for Contested Case Hearing that proposed to list facilities on such Inventory, render these matters moot.

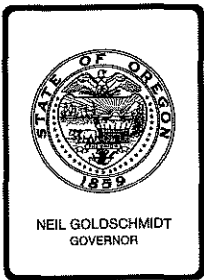
Stauffer Chemical Company respectfully requests that changes pursuant to these exceptions be made prior to entry of the Order.

DATED this 2nd day of October, 1989.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT


James E. Benedict, OSB#76059
Of Attorneys for
Stauffer Chemical Company



Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: October 20, 1989
Agenda Item: F
Division: Environmental Cleanup
Section: Site Assessment

SUBJECT:

Site Inventory Listing - Proposed Environmental Quality Commission Order Dismissing Contested Case Proceedings

PURPOSE:

Resolve the issue of 209 outstanding contested case hearing requests that resulted from the 1988 Proposed Inventory of Hazardous Substance Release Sites.

ACTION REQUESTED:

- Work Session Discussion
 - General Program Background
 - Potential Strategy, Policy, or Rules
 - Agenda Item for Current Meeting
 - Other: (specify)

- Authorize Rulemaking Hearing
- Adopt Rules
 - Proposed Rules Attachment
 - Rulemaking Statements Attachment
 - Fiscal and Economic Impact Statement Attachment
 - Public Notice Attachment

- Issue a Contested Case Order
- Approve a Stipulated Order
- Enter an Order
 - Proposed Order Attachment A

- Approve Department Recommendation
 - Variance Request Attachment
 - Exception to Rule Attachment
 - Informational Report Attachment
 - Other: (specify) Attachment

Meeting Date: October 20, 1989
Agenda Item: F
Page 2

DESCRIPTION OF REQUESTED ACTION:

Senate Bill 122, passed by the 1987 Legislature, directed the Department of Environmental Quality (DEQ or Department) to develop an Inventory of all facilities where a release of oil or hazardous substances had been confirmed. The only purpose of the Inventory was to provide public information. It did not address liability or responsibility for investigation, remedial action or damages.

On November 30, 1988, in accordance with ORS 466.557, the Director issued Department Orders to the owners of 325 facilities, placing their facilities on the Inventory subject to appeal. Owners of 210 of the facilities appealed the Director's decision to the Environmental Quality Commission (EQC). Those appeals were to be conducted in accordance with the provisions of ORS 183.310 to 183.550 (Attachment B) governing contested cases.

The large number of appeals represented a staggering workload for both the Department and site owners. As a result, the Department, in conjunction with the Oregon State Public Interest Research Group (OSPIRG) and Associated Oregon Industries, brought about major changes to the Inventory Law.

The revised Inventory Law, House Bill 3235, passed by the 1989 Legislature, directs the Commission to adopt rules defining "confirmed release" and "preliminary assessment" within nine months of the effective date of the law, and to develop two lists following rule adoption. One of the lists is a Confirmed Release List, similar to the old Inventory. The other list is an Inventory of Facilities where a release has been confirmed and the Department has determined through a preliminary assessment that additional investigation, removal, remedial action, long-term environmental controls or institutional controls are needed to protect present and future public health, safety, welfare and the environment.

Owners are to be given at least 60 days notice of the intent to list them on either the Confirmed Release List or the Inventory, and they have an opportunity to submit information for review. The Director's decision to list a facility, however, is by law under HB 3235 not appealable to the Commission or subject to judicial review under ORS 183.310 to 183.550.

Meeting Date: October 20, 1989
Agenda Item: F
Page 3

Since House Bill 3235 prescribed a new process for establishing an Inventory, the old Inventory needs to be abolished and the pending contested cases dismissed.

On August 29, 1989, the Director mailed certified letters (Attachment E) to the owners of 209 facilities (Attachment F) giving them formal notice that:

1. The Department had rescinded the Inventory of Confirmed Releases applicable to all facilities and a new Listing and Inventory process had been established by the Legislature.
2. The Department was dismissing the orders applicable to all facilities proposed to be listed on the Inventory.
3. A proposed Commission order dismissing the outstanding contested cases would be considered at the October 20, 1989 meeting and they would have until October 6, 1989 to submit written exceptions to the draft order.

The Department is now asking the Commission to enter a blanket order dismissing the contested case proceedings on 209 facilities for which a hearing was requested. The 210th facility, the City of Milwaukie, is being addressed as a separate Commission Agenda Item at the October 20, 1989 meeting.

AUTHORITY/NEED FOR ACTION:

<input type="checkbox"/> Required by Statute: _____	Attachment _____
Enactment Date: _____	
<input checked="" type="checkbox"/> Statutory Authority: <u>ORS 183.310 to 183.550</u>	Attachment <u>B</u>
<u>ORS 466.540 to 466.590</u>	Attachment <u>C</u>
<u>House Bill 3235</u>	Attachment <u>D</u>
<input type="checkbox"/> Pursuant to Rule: _____	Attachment _____
<input type="checkbox"/> Pursuant to Federal Law/Rule: _____	Attachment _____
<input type="checkbox"/> Other: _____	Attachment _____
<input type="checkbox"/> Time Constraints: (explain)	

DEVELOPMENTAL BACKGROUND:

<input type="checkbox"/> Advisory Committee Report/Recommendation	Attachment _____
<input type="checkbox"/> Hearing Officer's Report/Recommendations	Attachment _____
<input type="checkbox"/> Response to Testimony/Comments	Attachment _____

Meeting Date: October 20, 1989
Agenda Item: F
Page 4

DEVELOPMENTAL BACKGROUND:

<u> </u> Prior EQC Agenda Items: (list)	Attachment	<u> </u>
<u> </u> Other Related Reports/Rules/Statutes:	Attachment	<u> </u>
<u> X</u> Supplemental Background Information	Attachment	<u> </u>
August 29, 1989 Notification Letter	Attachment	<u> E</u>
List of Facilities/Owners Notified	Attachment	<u> F</u>
Flowchart of Environmental Cleanup Process	Attachment	<u> G</u>

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

As of the date of preparation of this staff report (October 5) one facility owner has notified the Commission of an exception to the draft Commission Order dismissing the contested case proceedings.

A supplement to this staff report will be prepared following the October 6, 1989 deadline for submittal of written exceptions to the proposed contested case dismissal order to address all exceptions received. Any exceptions to the order should be considered by the Commission at the October 20 meeting.

It is the Department's position that with the rescission of the old Inventory and the August 29, 1989 dismissal of the original Department Orders placing facilities on the Inventory, there is no need for, or residual right to, a contested case hearing.

This Commission action, combined with the actions already taken by the Department, would put to rest the issue of the contested case requests except for the City of Milwaukie.

PROGRAM CONSIDERATIONS:

Resolution of the contested cases is needed so the Department can move beyond the issue and on to the new Listing and Inventory processes dictated by House Bill 3235.

If final action is not taken on the contested case requests, the Department could potentially face hundreds of contested cases and be required to divert resources away from the discovery, assessment, investigation and cleanup of contaminated sites.

Meeting Date: October 20, 1989
Agenda Item: F
Page 5

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Issue the blanket Commission Order dismissing the outstanding requests for contested case hearings for any owners who did not file a specific, written objection to the dismissal by October 6, 1989. For those filing specific, written objections, consider the merits of each and determine whether the owner is entitled to a hearing.
2. Not dismiss by order any of the 209 requests for contested case hearing.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends Alternative 1: Issue the blanket order for owners who have not filed exceptions to the contested case dismissal order and consider the merits of each case where exceptions were received to determine whether the owner is entitled to a hearing.

This alternative will put to rest the issue of the contested case requests and will allow the Department to begin the new Listing and Inventory Process required by House Bill 3235 and to focus resources on the discovery, assessment, investigation and cleanup of sites.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The recommended action is consistent with Legislative Policy. The Legislature has made major changes to the Inventory Law, including involvement of facility owners before any listing decision is made and removing the right to appeal listing decisions before the Commission or in accordance with ORS 183.310 to 183.550.

ISSUES FOR COMMISSION TO RESOLVE:

1. None identified.

Meeting Date: October 20, 1989
Agenda Item: F
Page 6

INTENDED FOLLOWUP ACTIONS:

Should the Commission determine that owners who objected to the dismissal order do have a right to a contested case proceeding, hearings would have to be scheduled and held. If no right, those owners will be so notified.

Approved:

Section: Michael Downs
Loretta Pickerell, Manager
Site Assessment Section

Division: Michael Downs
Michael J. Downs, Administrator
Environmental Cleanup Division

Director: Fred Hansen
Fred Hansen, Director
Department of Environmental Quality

Report Prepared By: Loretta Pickerell

Phone: 229-6790

Date Prepared: October 5, 1989

DSL:m
SA\SM2529
October 5, 1989

(PROPOSED)

STATE OF OREGON

ENVIRONMENTAL QUALITY COMMISSION

In the Matter of	)	ORDER DISMISSING
	)	CONTESTED CASE
SITE INVENTORY LISTINGS	)	PROCEEDINGS
)	
)	

1 1. Findings of Fact

2 a. On November 30, 1988, the Director of the Department of
3 Environmental Quality (DEQ) issued orders listing 325 facilities
4 on an Inventory of Confirmed Releases, pursuant to ORS 466.557
5 (1987).

6 b. Two hundred and ten (210) requests for a contested case hearing
7 on the orders were filed with this Commission. The specific
8 orders and persons requesting hearings are identified in the
9 Certificate of Service attached to this order.

10 c. ORS 466.557 was amended by the 1989 Legislative Assembly,
11 requiring DEQ to replace the Inventory of Confirmed Releases with
12 a new process for listing sites having a confirmed release of
13 hazardous substances. 1989 OR Law Ch. 485 (HB 3235).

14 d. On August 29, 1989, the Director rescinded the Inventory of
15 Confirmed Releases developed under the 1987 law and dismissed all
16 DEQ orders listing facilities on such Inventory. No facilities
17 are currently listed on an Inventory of Confirmed Releases.

18 ///

19 2. Conclusion of Law

20 HB 3235, the rescission of the Inventory of Confirmed Releases, and the
21 dismissal of all orders listing facilities on such Inventory render these
22 matters moot.

IT IS THEREFORE ORDERED that the above-referenced contested case
proceedings are dismissed.

DATED this _____ day of _____, 1989.

On behalf of the Environmental Quality Commission

William P. Hutchison
Chair

Chapter 183

1987 REPLACEMENT PART

Administrative Procedures and Rules of State Agencies

- COMMISSION ON ADMINISTRATIVE HEARINGS**
(Temporary provisions relating to Commission on Administrative Hearings are compiled as notes preceding ORS 183.025.)
- READABILITY OF PUBLIC WRITINGS**
- 183.025 State agency required to prepare public writings in readable form; definitions
- GENERAL PROVISIONS**
- 183.310 Definitions for ORS 183.310 to 183.550
- 183.315 Application of ORS 183.310 to 183.550 to certain agencies
- ADOPTION OF RULES**
- 183.325 Delegation of rulemaking authority to officer or employe
- 183.330 Description of organization; service of order; effect of not putting order in writing
- 183.335 Notice; content; temporary rule adoption, amendment or suspension; substantial compliance required
- 183.337 Procedure for agency adoption of federal rules
- 183.341 Model rules of procedure; establishment; compilation; publication; agencies required to adopt procedural rules
- 183.355 Filing and taking effect of rules; filing of executive orders; copies
- 183.360 Publication of rules and orders; exceptions; requirements; bulletin; judicial notice; citation
- 183.370 Distribution of published rules
- 183.390 Petitions requesting adoption of rules
- 183.400 Judicial determination of validity of rule
- 183.410 Agency determination of applicability of rule or statute to petitioner; effect; judicial review
- CONTESTED CASES**
- 183.413 Notice to party before hearing of rights and procedures; failure to provide notice
- 183.415 Notice, hearing and record in contested case; informal disposition; hearings officer; ex parte communications
- 183.418 Interpreter for handicapped person in contested case
- 183.425 Depositions or subpoena of material witness; discovery
- 183.430 Hearing on refusal to renew license; exceptions
- 183.435 Period allowed to request hearing for license refusal on grounds other than test or inspection results
- 183.440 Subpenas in contested cases
- 183.445 Subpena by attorney of record of party when agency not subject to ORS 183.440
- 183.450 Evidence; representation of state agency; representation when public assistance involved
- 183.455 Appearance of person or authorized representative
- 183.460 Examination of evidence by agency
- 183.462 Agency statement of ex parte communications; notice
- 183.464 Proposed order by hearings officer; amendment by agency; exemptions
- 183.470 Orders in contested cases
- JUDICIAL REVIEW**
- 183.480 Judicial review of agency orders
- 183.482 Jurisdiction for review of contested cases; procedure; scope of court authority
- 183.484 Jurisdiction for review of orders other than contested cases; procedure; scope of court authority
- 183.485 Decision of court on review of contested case
- 183.486 Form and scope of reviewing court's decision
- 183.490 Agency may be compelled to act
- 183.497 Awarding costs and attorney fees when finding for petitioner
- APPEALS FROM CIRCUIT COURTS**
- 183.500 Appeals
- RULES EFFECTS ON BUSINESS**
- 183.540 Reduction of economic impact on small businesses
- 183.545 Review of rules to minimize economic effect on businesses
- 183.550 Public comment; factors to be considered in review
- REVIEW OF STATE AGENCY RULES**
- 183.710 Definitions for ORS 183.710 to 183.725
- 183.715 Subfission of adopted rule to Legislative Counsel required
- 183.720 Procedure for review of agency rule

STATE EXECUTIVE DEPARTMENT AND ORGANIZATION

183.725 Report of Legislative Counsel Committee to agencies and Legislative Assembly

Media persons as witnesses at administrative proceedings, 44.510 to 44.540

CROSS REFERENCES

Consolidated permit hearings, 284.800 to 284.865
Land Use Board of Appeals, 197.805 to 197.855
Military rules and regulations, issuance by Governor, 396.125
Open meeting law not applicable to state agencies conducting hearings on contested cases, 192.690
Racing Commission, hearings pursuant to ORS 183.310 to 183.550, Ch. 462
Rules of State Board of Barbers and Hairdressers; approval of Health Division, 690.205
Tax Court, review of order or determination, 305.425
Teachers and school personnel, certain provisions not subject to administrative procedure laws, 342.190
Work release program, ORS 183.310 to 183.550 not applicable, 144.450

183.310 to 183.550

Certain standards and guidelines of Mental Health Division to be adopted as rules, 430.357
Citizen's Utility Board, law inapplicable, 774.190

183.310

Workers' Compensation Law, when ORS 183.310 to 183.550 applicable, 656.704

183.315

Exemption for rules of the Board of Higher Education, 351.072

183.335

State agency report on business to Legislative Committee on Trade and Economic Development, 171.850

183.480

Applicability to public contract appeals determinations, 279.045

183.497

State agency to pay attorney fees and expenses of petitioner, 182.090

183.540

State agency report on business to Legislative Committee on Trade and Economic Development, 171.850

183.710 to 183.725

Review of rules by Legislative Counsel, 171.572

183.010 [Repealed by 1971 c.734 §21]

183.020 [Repealed by 1971 c.734 §21]

COMMISSION ON ADMINISTRATIVE HEARINGS

Note: Chapter 465 and section 6, chapter 833, Oregon Laws 1987, provide:

Sec. 1. (1) There is hereby created a Commission on Administrative Hearings consisting of 13 members.

(2) The President of the Senate shall appoint two Senators as members, one from the Joint Committee on Ways and Means and one from the Senate Committee on Judiciary.

(3) The Speaker of the House of Representatives shall appoint two Representatives as members, one from the Joint Committee on Ways and Means and one from the House Committee on Judiciary.

(4) The Governor shall appoint eight members, including at least one nonlawyer, two persons with substantial experience representing nongovernmental clients in state administrative hearings, two full-time hearing officers employed by different state agencies and two administrative heads of state agencies.

(5) The Attorney General shall appoint one lawyer employed by the Department of Justice as a member.

(6) The appointing authority shall fill vacancies which occur from any cause in the course of a member's term. [1987 c.465 §1]

Sec. 2. (1) The Commission on Administrative Hearings shall study the structures and procedures by which agencies conduct contested case proceedings, including matters related to centralization.

(2) The commission shall study the structures and procedures by which the decisions of hearing officers are reviewed by agencies, intermediate appellate bodies and the courts.

(3) The commission shall study the recruitment, training, supervision, discipline, retention and retirement of hearing officers and support personnel.

(4) The commission shall study the workload and capacity of the system.

(5) The commission shall consider in its studies the practical experiences of comparable systems in the several states in dealing with these matters.

(6) The commission shall report to the Sixty-fifth Legislative Assembly, the Chief Justice and to the Governor the conclusions it draws from its studies and its recommendations for statutory and administrative changes, if any. In addition to its substantive reports, the commission shall report annually a summary of its activities in the preceding year. [1987 c.465 §2]

Sec. 3. (1) The Commission on Administrative Hearings shall elect one of its members as chairperson and one as vice-chairperson.

(2) Eight members shall constitute a quorum for the transaction of business.

(3) The commission shall meet at a time and place determined by the chairperson or on call of any five members. [1987 c.465 §3]

Sec. 4. The Commission on Administrative Hearings shall have all powers reasonable and necessary to carry out the tasks assigned to it, including the power to issue subpoenas and compel the testimony of witnesses. [1987 c.465 §4]

Sec. 5. (1) It is an unlawful employment practice for an employer to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment for the reason that the employee has testified before the Commission on Administrative Hearings or otherwise communicated with the commission, a commission member, employee, staff or agent.

(2) Complaints may be filed by employees, and this section shall be enforced by the Commissioner of the Bureau of Labor and Industries in the same manner as provided in ORS 659.040 to 659.110 and 659.121 for the enforcement of an unlawful employment practice. Violation of subsection (1) of this section subjects the violator to the same civil and criminal remedies and penalties as provided in ORS 659.010 to 659.110 and 659.121. [1987 c.465 §5]

Sec. 6. (1) Members of the Commission on Administrative Hearings who are members of the Legislative Assembly shall be entitled to receive per diem and expenses under ORS 171.072, payable from funds appropriated to the Legislative Assembly. Other members shall receive no per diem or expense reimbursements.

(2) The commission shall be funded through the Legislative Counsel Committee, and expenses incurred by the commission shall be deemed expenses of the committee. Such expenses shall not exceed \$1,000. The commission shall have available to it such advice, assistance and secretarial and administrative support as it shall require through the Legislative Counsel's Office, subject to the approval of Legislative Counsel. The commission shall also have available to it the advice and assistance of the Legislative Fiscal Officer. [1987 c.465 §6]

Sec. 7. The Governor shall call the first meeting of the Commission on Administrative Hearings on or before January 15, 1988. [1987 c.465 §7]

Sec. 8. Unless renewed by the Legislative Assembly, the Commission on Administrative Hearings shall terminate its activities and cease to exist on June 30, 1989. [1987 c.465 §8]

Sec. 6. The Commission on Administrative Hearings created by that law [chapter 465, Oregon Laws 1987] shall study lay representation before administrative bodies as authorized by section 3 of this Act [ORS 183.455]. [1987 c.853 §6]

READABILITY OF PUBLIC WRITINGS

183.025 State agency required to prepare public writings in readable form; definitions. (1) Every state agency shall when reasonable prepare its public writings in simple language with short, precise, affirmative, active-voice sentences.

(2) As used in this section:

(a) "Public writing" means any rule, form, license or notice prepared by a state agency.

(b) "State agency" means any officer, board, commission, department, division or institution in the executive or administrative branch of state government. [Formerly 182.065]

183.030 [Repealed by 1971 c.734 §21]

183.040 [Repealed by 1971 c.734 §21]

183.050 [Repealed by 1971 c.734 §21]

183.060 [1957 c.147 §1; repealed by 1969 c.292 §3]

GENERAL PROVISIONS

183.310 Definitions for ORS 183.310 to 183.550. As used in ORS 183.310 to 183.550:

(1) "Agency" means any state board, commission, department, or division thereof, or officer authorized by law to make rules or to issue orders, except those in the legislative and judicial branches.

(2)(a) "Contested case" means a proceeding before an agency:

(A) In which the individual legal rights, duties or privileges of specific parties are required by statute or Constitution to be determined only after an agency hearing at which such specific parties are entitled to appear and be heard;

(B) Where the agency has discretion to suspend or revoke a right or privilege of a person;

(C) For the suspension, revocation or refusal to renew or issue a license where the licensee or applicant for a license demands such hearing; or

(D) Where the agency by rule or order provides for hearings substantially of the character required by ORS 183.415, 183.425, 183.450, 183.460 and 183.470.

(b) "Contested case" does not include proceedings in which an agency decision rests solely on the result of a test.

(3) "Economic effect" means the economic impact on affected businesses by and the costs of compliance, if any, with a rule for businesses, including but not limited to the costs of equipment, supplies, labor and administration.

(4) "License" includes the whole or part of any agency permit, certificate, approval, registration or similar form of permission required by law to pursue any commercial activity, trade, occupation or profession.

(5)(a) "Order" means any agency action expressed orally or in writing directed to a named person or named persons, other than employes, officers or members of an agency. "Order" includes any agency determination or decision issued in connection with a contested case proceeding. "Order" includes:

(A) Agency action under ORS chapter 657 making determination for purposes of unemployment compensation of employes of the state; and

(B) Agency action under ORS chapter 240 which grants, denies, modifies, suspends or revokes any right or privilege of an employe of the state.

(b) "Final order" means final agency action expressed in writing. "Final order" does not include any tentative or preliminary agency declaration or statement that:

(A) Precedes final agency action; or

(B) Does not preclude further agency consideration of the subject matter of the statement or declaration.

(6) "Party" means:

(a) Each person or agency entitled as of right to a hearing before the agency;

(b) Each person or agency named by the agency to be a party; or

(c) Any person requesting to participate before the agency as a party or in a limited party status which the agency determines either has an interest in the outcome of the agency's proceeding or represents a public interest in such result. The agency's determination is subject to judicial review in the manner provided by ORS 183.482 after the agency has issued its final order in the proceedings.

(7) "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than an agency.

(8) "Rule" means any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include:

(a) Unless a hearing is required by statute, internal management directives, regulations or statements which do not substantially affect the interests of the public:

(A) Between agencies, or their officers or their employes; or

(B) Within an agency, between its officers or between employes.

(b) Action by agencies directed to other agencies or other units of government which do not substantially affect the interests of the public.

(c) Declaratory rulings issued pursuant to ORS 183.410 or 305.105.

- (d) Intra-agency memoranda.
- (e) Executive orders of the Governor.

(f) Rules of conduct for persons committed to the physical and legal custody of the Department of Corrections, the violation of which will not result in:

(A) Placement in segregation or isolation status in excess of seven days.

(B) Institutional transfer or other transfer to secure confinement status for disciplinary reasons.

(C) Disciplinary procedures adopted pursuant to ORS 421.180.

(9) "Small business" means a corporation, partnership, sole proprietorship or other legal entity formed for the purpose of making a profit, which is independently owned and operated from all other businesses and which has 50 or fewer employees. [1957 c.717 §1; 1965 c.285 §78a; 1967 c.419 §32; 1969 c.80 §37a; 1971 c.734 §1; 1973 c.386 §4; 1973 c.621 §1a; 1977 c.374 §1; 1977 c.798 §1; 1979 c.593 §6; 1981 c.755 §1; 1987 c.320 §141; 1987 c.861 §1]

183.315 Application of ORS 183.310 to 183.550 to certain agencies. (1) The provisions of ORS 183.410, 183.415, 183.425, 183.440, 183.450, 183.460, 183.470 and 183.480 do not apply to local government boundary commissions created pursuant to ORS 199.425 or 199.430, the Department of Revenue, State Accident Insurance Fund Corporation, Public Utility Commission, Department of Insurance and Finance with respect to its functions under ORS chapters 654 and 656, Psychiatric Security Review Board or State Board of Parole.

(2) ORS 183.310 to 183.550 do not apply with respect to actions of the Governor authorized under ORS chapter 240.

(3) The provisions of ORS 183.410, 183.415, 183.425, 183.440, 183.450 and 183.460 do not apply to the Employment Appeals Board or the Employment Division.

(4) The Employment Division shall be exempt from the provisions of ORS 183.310 to 183.550 to the extent that a formal finding of the United States Secretary of Labor is made that such provision conflicts with the terms of the federal law, acceptance of which by the state is a condition precedent to continued certification by the United States Secretary of Labor of the state's law.

(5) The provisions of ORS 183.415 to 183.430, 183.440 to 183.460, 183.470 to 183.485 and 183.490 to 183.500 do not apply to orders issued to persons who have been committed pur-

suant to ORS 137.124 to the custody of the Department of Corrections. [1971 c.734 §19; 1973 c.612 §3; 1973 c.621 §2; 1973 c.694 §1; 1975 c.759 §1; 1977 c.804 §45; 1979 c.593 §7; 1981 c.711 §16; 1987 c.320 §142; 1987 c.373 §21]

183.317 [1971 c.734 §187; repealed by 1979 c.593 §34]

183.320 [1957 c.717 §15; repealed by 1971 c.734 §21]

ADOPTION OF RULES

183.325 Delegation of rulemaking authority to officer or employee. Unless otherwise provided by law, an agency may delegate its rulemaking authority to an officer or employee within the agency. A delegation of authority under this section must be made in writing. Any officer or employee to whom rulemaking authority is delegated under this section is an "agency" for the purposes of the rulemaking requirements of ORS 183.310 to 183.550. [1979 c.593 §10]

183.330 Description of organization; service of order; effect of not putting order in writing. (1) In addition to other rulemaking requirements imposed by law, each agency shall publish a description of its organization and the methods whereby the public may obtain information or make submissions or requests.

(2) An order shall not be effective as to any person or party unless it is served upon the person or party either personally or by mail. This subsection is not applicable in favor of any person or party who has actual knowledge of the order.

(3) An order is not final until it is reduced to writing. [1957 c.717 §2; 1971 c.734 §4; 1975 c.759 §3; 1979 c.593 §8]

183.335 Notice; content; temporary rule adoption, amendment or suspension; substantial compliance required. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice of its intended action:

(a) In the manner established by rule adopted by the agency under ORS 183.341 (4), which provides a reasonable opportunity for interested persons to be notified of the agency's proposed action;

(b) In the bulletin referred to in ORS 183.360 at least 15 days prior to the effective date; and

(c) To persons who have requested notice pursuant to subsection (7) of this section.

(2)(a) The notice required by subsection (1) of this section shall state the subject matter and purpose of the intended action in sufficient detail to inform a person that the person's interests may be affected, and the time, place and manner in which interested persons may present their views on the intended action.

(b) The agency shall include with the notice of intended action given under subsection (1) of this section:

(A) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(B) A statement of the need for the rule and a statement of how the rule is intended to meet the need;

(C) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the agency in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection. The list may be abbreviated if necessary, and if so abbreviated there shall be identified the location of a complete list; and

(D) A statement of fiscal impact identifying state agencies, units of local government and the public which may be economically affected by the adoption, amendment or repeal of the rule and an estimate of that economic impact on state agencies, units of local government and the public. In considering the economic effect of the proposed action on the public, the agency shall utilize available information to project any significant economic effect of that action on businesses which shall include a cost of compliance effect on small businesses affected.

(c) The Secretary of State may omit the information submitted under paragraph (b) of this subsection from publication in the bulletin referred to in ORS 183.360.

(3) When an agency proposes to adopt, amend or repeal a rule, it shall give interested persons reasonable opportunity to submit data or views. Opportunity for oral hearing shall be granted upon request received from 10 persons or from an association having not less than 10 members within 15 days after agency notice. An agency holding a hearing upon a request made under this subsection is not required to give additional notice of the hearing in the bulletin referred to in ORS 183.360 if the agency gives notice in compliance with its rules of practice and procedure other than a requirement that notice be given in the bulletin. The agency shall consider fully any written or oral submission.

(4) Upon request of an interested person received within 15 days after agency notice pursuant to subsection (1) of this section, the agency shall postpone the date of its intended action no less than 10 nor more than 90 days in order to allow the requesting person an opportunity to submit data, views or arguments concerning the

proposed action. Nothing in this subsection shall preclude an agency from adopting a temporary rule pursuant to subsection (5) of this section.

(5) Notwithstanding subsections (1) to (4) of this section, an agency may adopt, amend or suspend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, if the agency prepares:

(a) A statement of its findings that its failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned and the specific reasons for its findings of prejudice;

(b) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(c) A statement of the need for the rule and a statement of how the rule is intended to meet the need; and

(d) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the agency in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection.

(6)(a) A rule adopted, amended or suspended under subsection (5) of this section is temporary and may be effective for a period of not longer than 180 days. The adoption of a rule under this subsection does not preclude the subsequent adoption of an identical rule under subsections (1) to (4) of this section.

(b) A rule temporarily suspended shall regain effectiveness upon expiration of the temporary period of suspension unless the rule is repealed under subsections (1) to (4) of this section.

(7) Any person may request in writing that an agency mail to the person copies of its notices of intended action given pursuant to subsection (1) of this section. Upon receipt of any request the agency shall acknowledge the request, establish a mailing list and maintain a record of all mailings made pursuant to the request. Agencies may establish procedures for establishing and maintaining the mailing lists current and, by rule, establish fees necessary to defray the costs of mailings and maintenance of the lists.

(8) This section does not apply to rules establishing an effective date for a previously effective rule or establishing a period during which a provision of a previously effective rule will apply.

(9) This section does not apply to ORS 279.025 to 279.031 and 279.310 to 279.990 relating to public contracts and purchasing.

(10)(a) No rule is valid unless adopted in substantial compliance with the provisions of this section in effect on the date the rule is adopted.

(b) In addition to all other requirements with which rule adoptions must comply, no rule adopted after October 3, 1979, is valid unless submitted to the Legislative Counsel under ORS 183.715.

(11) Notwithstanding the provisions of subsection (10) of this section, an agency may correct its failure to substantially comply with the requirements of subsections (2) and (5) of this section in adoption of a rule by an amended filing, so long as the noncompliance did not substantially prejudice the interests of persons to be affected by the rule. However, this subsection does not authorize correction of a failure to comply with subparagraph (D) of paragraph (b) of subsection (2) of this section requiring inclusion of a fiscal impact statement with the notice required by subsection (1) of this section.

(12) Unless otherwise provided by statute, the adoption, amendment or repeal of a rule by an agency need not be based upon or supported by an evidentiary record. [1971 c.734 §3; 1973 c.612 §1; 1975 c.136 §11; 1975 c.759 §4; 1977 c.161 §1; 1977 c.344 §6; 1977 c.394 §1a; 1977 c.798 §2; 1979 c.593 §11; 1981 c.755 §2; 1987 c.861 §2]

183.337 Procedure for agency adoption of federal rules. (1) Notwithstanding ORS 183.335, when an agency is required to adopt rules or regulations promulgated by an agency of the Federal Government and the agency has no authority to alter or amend the content or language of those rules or regulations prior to their adoption, the agency may adopt those rules or regulations under the procedure prescribed in this section.

(2) Prior to the adoption of a federal rule or regulation under subsection (1) of this section, the agency shall give notice of the adoption of the rule or regulation, the effective date of the rule or regulation in this state and the subject matter of the rule or regulation in the manner established in ORS 183.335 (1).

(3) After giving notice the agency may adopt the rule or regulation by filing a copy with the Secretary of State in compliance with ORS 183.355. The agency is not required to conduct a public hearing concerning the adoption of the rule or regulation.

(4) Nothing in this section authorizes an agency to amend federal rules or regulations or adopt rules in accordance with federal require-

ments without giving an opportunity for hearing as required by ORS 183.335. [1979 c.593 §15]

183.340 [1957 c.717 §3 (3); 1971 c.734 §6; repealed by 1975 c.759 §5 (183.341 enacted in lieu of 183.340)]

183.341 Model rules of procedure; establishment; compilation; publication; agencies required to adopt procedural rules. (1) The Attorney General shall prepare model rules of procedure appropriate for use by as many agencies as possible. Any agency may adopt all or part of the model rules by reference without complying with the rulemaking procedures under ORS 183.335. Notice of such adoption shall be filed with the Secretary of State in the manner provided by ORS 183.355 for the filing of rules. The model rules may be amended from time to time by an adopting agency or the Attorney General after notice and opportunity for hearing as required by rulemaking procedures under ORS 183.310 to 183.550.

(2) All agencies shall adopt rules of procedure to be utilized in the adoption of rules and conduct of proceedings in contested cases or, if exempt from the contested case provisions of ORS 183.310 to 183.550, for the conduct of proceedings.

(3) The Secretary of State shall publish in the Oregon Administrative Rules:

(a) The Attorney General's model rules adopted under subsection (1) of this section;

(b) The procedural rules of all agencies that have not adopted the Attorney General's model rules; and

(c) The notice procedures required by ORS 183.335 (1).

(4) Agencies shall adopt rules of procedure which will provide a reasonable opportunity for interested persons to be notified of the agency's intention to adopt, amend or repeal a rule. Rules adopted or amended under this subsection shall be approved by the Attorney General.

(5) No rule adopted after September 13, 1975, is valid unless adopted in substantial compliance with the rules adopted pursuant to subsection (4) of this section. [1975 c.759 §6 (enacted in lieu of 183.340); 1979 c.593 §12]

183.350 [1957 c.717 §3 (1), (2); repealed by 1971 c.734 §21]

183.355 Filing and taking effect of rules; filing of executive orders; copies. (1)(a) Each agency shall file in the office of the Secretary of State a certified copy of each rule adopted by it.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, an agency adopting a

183.360 STATE EXECUTIVE DEPARTMENT AND ORGANIZATION

rule incorporating published standards by reference is not required to file a copy of those standards with the Secretary of State if:

(A) The standards adopted are unusually voluminous and costly to reproduce; and

(B) The rule filed with the Secretary of State identifies the location of the standards so incorporated and the conditions of their availability to the public.

(2) Each rule is effective upon filing as required by subsection (1) of this section, except that:

(a) If a later effective date is required by statute or specified in the rule, the later date is the effective date.

(b) A temporary rule becomes effective upon filing with the Secretary of State, or at a designated later date, only if the statement required by ORS 183.335 (5) is filed with the rule. The agency shall take appropriate measures to make temporary rules known to the persons who may be affected by them.

(3) When a rule is amended or repealed by an agency, the agency shall file a certified copy of the amendment or notice of repeal with the Secretary of State who shall appropriately amend the compilation required by ORS 183.360 (1).

(4) A certified copy of each executive order issued, prescribed or promulgated by the Governor shall be filed in the office of the Secretary of State.

(5) No rule of which a certified copy is required to be filed shall be valid or effective against any person or party until a certified copy is filed in accordance with this section. However, if an agency, in disposing of a contested case, announces in its decision the adoption of a general policy applicable to such case and subsequent cases of like nature the agency may rely upon such decision in disposition of later cases.

(6) The Secretary of State shall, upon request, supply copies of rules, or orders or designated parts of rules or orders, making and collecting therefor fees prescribed by ORS 177.130. All receipts from the sale of copies shall be deposited in the State Treasury to the credit of the General Fund. [1971 c.734 §5; 1973 c.612 §2; 1975 c.759 §7; 1977 c.798 §2b; 1979 c.593 §13]

183.360 Publication of rules and orders; exceptions; requirements; bulletin; judicial notice; citation. (1) The Secretary of State shall compile, index and publish all rules adopted by each agency. The compilation shall be supplemented or revised as often as necessary and

at least once every six months. Such compilation supersedes any other rules. The Secretary of State may make such compilations of other material published in the bulletin as is desirable.

(2)(a) The Secretary of State has discretion to omit from the compilation rules the publication of which would be unduly cumbersome or expensive if the rule in printed or processed form is made available on application to the adopting agency, and if the compilation contains a notice summarizing the omitted rule and stating how a copy thereof may be obtained. In preparing the compilation the Secretary of State shall not alter the sense, meaning, effect or substance of any rule, but may renumber sections and parts of sections of the rules, change the wording of headnotes, rearrange sections, change reference numbers to agree with renumbered chapters, sections or other parts, substitute the proper subsection, section or chapter or other division numbers, change capitalization for the purpose of uniformity, and correct manifest clerical or typographical errors.

(b) The Secretary of State may by rule prescribe requirements, not inconsistent with law, for the manner and form for filing of rules adopted or amended by agencies. The Secretary of State may refuse to accept for filing any rules which do not comply with those requirements.

(3) The Secretary of State shall publish at least at monthly intervals a bulletin which:

(a) Briefly indicates the agencies that are proposing to adopt, amend or repeal a rule, the subject matter of the rule and the name, address and telephone number of an agency officer or employe from whom information and a copy of any proposed rule may be obtained;

(b) Contains the text or a brief description of all rules filed under ORS 183.355 since the last bulletin indicating the effective date of the rule; and

(c) Contains executive orders of the Governor.

(4) Courts shall take judicial notice of rules and executive orders filed with the Secretary of State.

(5) The compilation required by subsection (1) of this section shall be titled Oregon Administrative Rules and may be cited as "O.A.R." with appropriate numerical indications. [1957 c.717 §4 (1), (2), (3); 1961 c.464 §1; 1971 c.734 §7; 1973 c.612 §4; 1975 c.759 §7a; 1977 c.394 §2; 1979 c.593 §16]

183.370 Distribution of published rules. The bulletins and compilations may be distributed by the Secretary of State free of

charge as provided for the distribution of legislative materials referred to in ORS 171.236. Other copies of the bulletins and compilations shall be distributed by the Secretary of State at a cost determined by the Secretary of State. Any agency may compile and publish its rules or all or part of its rules for purpose of distribution outside of the agency only after it proves to the satisfaction of the Secretary of State that agency publication is necessary. [1957 c.717 §4 (4); 1959 c.260 §1; 1969 c.174 §4; 1975 c.759 §8; 1977 c.394 §3]

183.380 [1957 c.717 §4 (5); repealed by 1971 c.734 §21]

183.390 Petitions requesting adoption of rules. An interested person may petition an agency requesting the promulgation, amendment or repeal of a rule. The Attorney General shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition. Not later than 30 days after the date of submission of a petition, the agency either shall deny the petition in writing or shall initiate rulemaking proceedings in accordance with ORS 183.335. [1957 c.717 §5; 1971 c.734 §8]

183.400 Judicial determination of validity of rule. (1) The validity of any rule may be determined upon a petition by any person to the Court of Appeals in the manner provided for review of orders in contested cases. The court shall have jurisdiction to review the validity of the rule whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question, but not when the petitioner is a party to an order or a contested case in which the validity of the rule may be determined by a court.

(2) The validity of any applicable rule may also be determined by a court, upon review of an order in any manner provided by law or pursuant to ORS 183.480 or upon enforcement of such rule or order in the manner provided by law.

(3) Judicial review of a rule shall be limited to an examination of:

- (a) The rule under review;
- (b) The statutory provisions authorizing the rule; and

(c) Copies of all documents necessary to demonstrate compliance with applicable rulemaking procedures.

(4) The court shall declare the rule invalid only if it finds that the rule:

- (a) Violates constitutional provisions;
- (b) Exceeds the statutory authority of the agency; or

(c) Was adopted without compliance with applicable rulemaking procedures.

(5) In the case of disputed allegations of irregularities in procedure which, if proved, would warrant reversal or remand, the Court of Appeals may refer the allegations to a Master appointed by the court to take evidence and make findings of fact. The court's review of the Master's findings of fact shall be de novo on the evidence.

(6) The court shall not declare a rule invalid solely because it was adopted without compliance with applicable rulemaking procedures after a period of two years after the date the rule was filed in the office of the Secretary of State, if the agency attempted to comply with those procedures and its failure to do so did not substantially prejudice the interests of the parties. [1957 c.717 §6; 1971 c.734 §9; 1975 c.759 §9; 1979 c.593 §17; 1987 c.861 §3]

183.410 Agency determination of applicability of rule or statute to petitioner; effect; judicial review. On petition of any interested person, any agency may in its discretion issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by it. A declaratory ruling is binding between the agency and the petitioner on the state of facts alleged, unless it is altered or set aside by a court. However, the agency may, where the ruling is adverse to the petitioner, review the ruling and alter it if requested by the petitioner. Binding rulings provided by this section are subject to review in the Court of Appeals in the manner provided in ORS 183.480 for the review of orders in contested cases. The Attorney General shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition. The petitioner shall have the right to submit briefs and present oral argument at any declaratory ruling proceeding held pursuant to this section. [1957 c.717 §7; 1971 c.734 §10; 1973 c.612 §5]

CONTESTED CASES

183.413 Notice to party before hearing of rights and procedure; failure to provide notice. (1) The Legislative Assembly finds that the citizens of this state have a right to be informed as to the procedures by which contested cases are heard by state agencies, their rights in hearings before state agencies, the import and effect of hearings before state agencies and their rights and remedies with respect to actions taken by state agencies. Accordingly, it is the purpose of subsections (2) to (4) of this section to set forth certain requirements of state agencies so that

citizens shall be fully informed as to these matters when exercising their rights before state agencies.

(2) Prior to the commencement of a contested case hearing before any agency including those agencies identified in ORS 183.315, the agency shall inform each party to the hearing of the following matters:

(a) If a party is not represented by an attorney, a general description of the hearing procedure including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence and what kind of objections may be made and an explanation of the burdens of proof or burdens of going forward with the evidence.

(b) Whether a record will be made of the proceedings and the manner of making the record and its availability to the parties.

(c) The function of the record-making with respect to the perpetuation of the testimony and evidence and with respect to any appeal from the determination or order of the agency.

(d) Whether an attorney will represent the agency in the matters to be heard and whether the parties ordinarily and customarily are represented by an attorney.

(e) The title and function of the person presiding at the hearing with respect to the decision process, including, but not limited to, the manner in which the testimony and evidence taken by the person presiding at the hearing are reviewed, the effect of that person's determination, who makes the final determination on behalf of the agency, whether the person presiding at the hearing is or is not an employe, officer or other representative of the agency and whether that person has the authority to make a final independent determination.

(f) In the event a party is not represented by an attorney, whether the party may during the course of proceedings request a recess if at that point the party determines that representation by an attorney is necessary to the protection of the party's rights.

(g) Whether there exists an opportunity for an adjournment at the end of the hearing if the party then determines that additional evidence should be brought to the attention of the agency and the hearing reopened.

(h) Whether there exists an opportunity after the hearing and prior to the final determination or order of the agency to review and object to any proposed findings of fact, conclusions of law, summary of evidence or recommendations of the officer presiding at the hearing.

(i) A description of the appeal process from the determination or order of the agency.

(3) The information required to be given to a party to a hearing under subsections (2) and (3) of this section may be given in writing or orally before commencement of the hearing.

(4) The failure of an agency to give notice of any item specified in subsections (2) and (3) of this section, shall not invalidate any determination or order of the agency unless upon an appeal from or review of the determination or order a court finds that the failure affects the substantial rights of the complaining party. In the event of such a finding, the court shall remand the matter to the agency for a reopening of the hearing and shall direct the agency as to what steps it shall take to remedy the prejudice to the rights of the complaining party. [1979 c.593 §§37, 38, 39]

183.415 Notice, hearing and record in contested case; informal disposition; hearings officer; ex parte communications. (1) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice, served personally or by registered or certified mail.

(2) The notice shall include:

(a) A statement of the party's right to hearing, or a statement of the time and place of the hearing;

(b) A statement of the authority and jurisdiction under which the hearing is to be held;

(c) A reference to the particular sections of the statutes and rules involved; and

(d) A short and plain statement of the matters asserted or charged.

(3) Parties may elect to be represented by counsel and to respond and present evidence and argument on all issues involved.

(4) Agencies may adopt rules of procedure governing participation in contested cases by persons appearing as limited parties.

(5) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. Informal settlement may be made in license revocation proceedings by written agreement of the parties and the agency consenting to a suspension, fine or other form of intermediate sanction.

(6) An order adverse to a party may be issued upon default only upon prima facie case made on the record of the agency. When an order is effective only if a request for hearing is not made by the party, the record may be made at the time of

issuance of the order, and if the order is based only on material included in the application or other submissions of the party, the agency may so certify and so notify the party, and such material shall constitute the evidentiary record of the proceeding if hearing is not requested.

(7) At the commencement of the hearing, the officer presiding shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove.

(8) Testimony shall be taken upon oath or affirmation of the witness from whom received. The officer presiding at the hearing shall administer oaths or affirmations to witnesses.

(9) The officer presiding at the hearing shall place on the record a statement of the substance of any written or oral ex parte communications on a fact in issue made to the officer during the pendency of the proceeding and notify the parties of the communication and of their right to rebut such communications.

(10) The officer presiding at the hearing shall insure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the presiding officer in the case.

(11) The record in a contested case shall include:

(a) All pleadings, motions and intermediate rulings.

(b) Evidence received or considered.

(c) Stipulations.

(d) A statement of matters officially noticed.

(e) Questions and offers of proof, objections and rulings thereon.

(f) A statement of any ex parte communications on a fact in issue made to the officer presiding at the hearing.

(g) Proposed findings and exceptions.

(h) Any proposed, intermediate or final order prepared by the agency or a hearings officer.

(12) A verbatim oral, written or mechanical record shall be made of all motions, rulings and testimony. The record need not be transcribed unless requested for purposes of rehearing or court review. The agency may charge the party requesting transcription the cost of a copy of transcription, unless the party files an appropriate affidavit of indigency. However, upon petition, a court having jurisdiction to review under ORS 183.480 may reduce or eliminate the charge upon finding that it is equitable to do so, or that matters of general interest would be determined

by review of the order of the agency. [1971 c.734 §13; 1979 c.593 §18; 1985 c.757 §1]

183.418 Interpreter for handicapped person in contested case. (1) When a handicapped person is a party to a contested case, the handicapped person is entitled to a qualified interpreter to interpret the proceedings to the handicapped person and to interpret the testimony of the handicapped person to the agency.

(2)(a) Except as provided in paragraph (b) of this subsection, the agency shall appoint the qualified interpreter for the handicapped person; and the agency shall fix and pay the fees and expenses of the qualified interpreter if:

(A) The handicapped person makes a verified statement and provides other information in writing under oath showing the inability of the handicapped person to obtain a qualified interpreter, and provides any other information required by the agency concerning the inability of the handicapped person to obtain such an interpreter; and

(B) It appears to the agency that the handicapped person is without means and is unable to obtain a qualified interpreter.

(b) If the handicapped person knowingly and voluntarily files with the agency a written statement that the handicapped person does not desire a qualified interpreter to be appointed for the handicapped person, the agency shall not appoint such an interpreter for the handicapped person.

(3) As used in this section:

(a) "Handicapped person" means a person who cannot readily understand or communicate the English language, or cannot understand the proceedings or a charge made against the handicapped person, or is incapable of presenting or assisting in the presentation of the defense of the handicapped person, because the handicapped person is deaf, or because the handicapped person has a physical hearing impairment or physical speaking impairment.

(b) "Qualified interpreter" means a person who is readily able to communicate with the handicapped person, translate the proceedings for the handicapped person, and accurately repeat and translate the statements of the handicapped person to the agency. [1973 c.386 §6]

183.420 [1957 c.717 §8 (1); repealed by 1971 c.734 §21]

183.425 Depositions or subpoena of material witness; discovery. (1) On petition of any party to a contested case, the agency may order that the testimony of any material witness may be taken by deposition in the manner pre-

scribed by law for depositions in civil actions. Depositions may also be taken by the use of audio or audio-visual recordings. The petition shall set forth the name and address of the witness whose testimony is desired, a showing of the materiality of the testimony of the witness, and a request for an order that the testimony of such witness be taken before an officer named in the petition for that purpose. If the witness resides in this state and is unwilling to appear, the agency may issue a subpoena as provided in ORS 183.440, requiring the appearance of the witness before such officer.

(2) An agency may, by rule, prescribe other methods of discovery which may be used in proceedings before the agency. [1971 c.734 §14; 1975 c.759 §11; 1979 c.593 §19]

183.430 Hearing on refusal to renew license; exceptions. (1) In the case of any license which must be periodically renewed, where the licensee has made timely application for renewal in accordance with the rules of the agency, such license shall not be deemed to expire, despite any stated expiration date thereon, until the agency concerned has issued a formal order of grant or denial of such renewal. In case an agency proposes to refuse to renew such license, upon demand of the licensee, the agency must grant hearing as provided by ORS 183.310 to 183.550 before issuance of order of refusal to renew. This subsection does not apply to any emergency or temporary permit or license.

(2) In any case where the agency finds a serious danger to the public health or safety and sets forth specific reasons for such findings, the agency may suspend or refuse to renew a license without hearing, but if the licensee demands a hearing within 90 days after the date of notice to the licensee of such suspension or refusal to renew, then a hearing must be granted to the licensee as soon as practicable after such demand, and the agency shall issue an order pursuant to such hearing as required by ORS 183.310 to 183.550 confirming, altering or revoking its earlier order. Such a hearing need not be held where the order of suspension or refusal to renew is accompanied by or is pursuant to, a citation for violation which is subject to judicial determination in any court of this state, and the order by its terms will terminate in case of final judgment in favor of the licensee. [1957 c.717 §8 (3), (4); 1965 c.212 §1; 1971 c.734 §11]

183.435 Period allowed to request hearing for license refusal on grounds other than test or inspection results. When an agency refuses to issue a license required to pursue any commercial activity, trade, occupa-

tion or profession if the refusal is based on grounds other than the results of a test or inspection that agency shall grant the person requesting the license 60 days from notification of the refusal to request a hearing. [Formerly 670.285]

183.440 Subpenas in contested cases.

(1) The agency shall issue subpoenas to any party to a contested case upon request upon a showing of general relevance and reasonable scope of the evidence sought. A party, other than the agency, entitled to have witnesses on behalf of the party may have subpoenas issued by an attorney of record of the party, subscribed by the signature of the attorney. Witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the agency, shall receive fees and mileage as prescribed by law for witnesses in civil actions.

(2) If any person fails to comply with any subpoena so issued or any party or witness refuses to testify on any matters on which the party or witness may be lawfully interrogated, the judge of the circuit court of any county, on the application of the agency or of a designated representative of the agency or of the party requesting the issuance of or issuing the subpoena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. [1957 c.717 §8 (2); 1971 c.734 §12; 1979 c.593 §20; 1981 c.174 §4]

183.445 Subpena by attorney of record of party when agency not subject to ORS 183.440. In any proceeding before an agency not subject to ORS 183.440 in which a party, other than the agency, is entitled to have subpoenas issued by the agency for the appearance of witnesses on behalf of the party, a subpoena may be issued by an attorney of record of the party, subscribed by the signature of the attorney. A subpoena issued by an attorney of record may be enforced in the same manner as a subpoena issued by the agency. [1981 c.174 §6]

183.450 Evidence; representation of state agency; representation when public assistance involved. In contested cases:

(1) Irrelevant, immaterial or unduly repetitious evidence shall be excluded but erroneous rulings on evidence shall not preclude agency action on the record unless shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made

and shall be noted in the record. Any part of the evidence may be received in written form.

(2) All evidence shall be offered and made a part of the record in the case, and except for matters stipulated to and except as provided in subsection (4) of this section no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position.

(3) Every party shall have the right of cross examination of witnesses who testify and shall have the right to submit rebuttal evidence. Persons appearing in a limited party status shall participate in the manner and to the extent prescribed by rule of the agency.

(4) Agencies may take notice of judicially cognizable facts, and they may take official notice of general, technical or scientific facts within their specialized knowledge. Parties shall be notified at any time during the proceeding but in any event prior to the final decision of material officially noticed and they shall be afforded an opportunity to contest the facts so noticed. Agencies may utilize their experience, technical competence and specialized knowledge in the evaluation of the evidence presented to them.

(5) No sanction shall be imposed or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party, and as supported by, and in accordance with, reliable, probative and substantial evidence.

(6) Agencies may, at their discretion, be represented at hearings by the Attorney General.

(7) Notwithstanding ORS 9.160, 9.320 and ORS chapter 180, and unless otherwise authorized by another law, an agency may be represented at contested case hearings by an officer or employe of the agency if:

(a) The Attorney General has consented to the representation of the agency by an officer or employe in the particular hearing or in the class of hearings that includes the particular hearing; and

(b) The agency, by rule, has authorized an officer or employe to appear on its behalf in the particular type of hearing being conducted.

(8) The agency representative shall not present legal argument in contested case hearings or give legal advice to an agency.

(9) Upon judicial review, no limitation imposed pursuant to subsection (7) of this section

on the participation of an officer or employe representing an agency shall be the basis for reversal or remand of agency action unless the limitation resulted in substantial prejudice to a person entitled to judicial review of the agency action.

(10) Notwithstanding any other provision of law, in any contested case hearing before a state agency involving public assistance as defined in ORS 411.010 an applicant or recipient may be represented by an authorized representative who is an employe of a nonprofit legal services program which receives fees pursuant to ORS 21.480 to 21.490 and who is supervised by an attorney also employed by a legal services program. Such representation may include presenting evidence, cross-examining witnesses and presenting factual and legal argument. [1957 c.717 §9; 1971 c.734 §15; 1975 c.759 §12; 1977 c.798 §3; 1979 c.593 §21; 1987 c.833 §1]

183.455 Appearance of person or authorized representative. (1)(a) Notwithstanding ORS 8.690, 9.160, 9.320 and 183.450, and unless otherwise authorized by law, a person participating in a contested case hearing may appear in person, by an attorney, or by an authorized representative subject to the provisions of subsections (2) to (4) of this section.

(b) For the purposes of this section, "authorized representative" means a member of a participating partnership, an authorized officer or employe of a participating corporation, association or organized group, or an authorized officer or employe of a participating governmental authority other than a state agency.

(2) A person participating in a contested case hearing may appear by an authorized representative if:

(a) The State Fire Marshal has determined that appearance of such a person by an authorized representative will not hinder the orderly and timely development of the record in the type of contested case hearing being conducted;

(b) The State Fire Marshal allows, by rule, authorized representatives to appear on behalf of such participants in the type of contested case hearing conducted; and

(c) The officer presiding at the contested case hearing may exercise discretion to limit an authorized representative's presentation of evidence, examination and cross-examination of witnesses, or presentation of factual arguments to insure the orderly and timely development of the hearing record, and shall not allow an authorized representative to present legal arguments.

(3) No provision of this section is intended to require the agency to allow appearance of a per-

son by an authorized representative in a contested case proceeding.

(4) Upon judicial review, no agency denial of permission to appear by an authorized representative, nor any limitation imposed by an agency presiding officer on the participation of an authorized representative, shall be the basis for reversal or remand of agency action unless the denial or limitation clearly resulted in substantial prejudice to development of a complete record at an agency hearing. [1987 c.259 §3]

Note: 183.455 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Sections 3 and 5, chapter 833, Oregon Laws 1987, provide:

Sec. 3. (1) Notwithstanding ORS 8.690, 9.160 and 9.320, and unless otherwise authorized by another law, a person participating in a contested case hearing conducted by an agency described in this subsection may be represented by an attorney or by an authorized representative subject to the provisions of subsection (2) of this section. The Attorney General shall prepare model rules for proceedings with lay representation that do not have the effect of precluding lay representation. No rule adopted by a state agency shall have the effect of precluding lay representation. The agencies before which an authorized representative may appear are:

- (a) The Department of Commerce in the administration of the Landscape Contractors Law.
- (b) The Department of Energy and the Energy Facility Siting Council.
- (c) The Environmental Quality Commission and the Department of Environmental Quality.
- (d) The Department of Insurance and Finance for proceedings in which an insured appears pursuant to ORS 737.505.
- (e) The Fire Marshal Division of the Department of Commerce.
- (f) The Division of State Lands for proceedings regarding the issuance or denial of fill or removal permits under ORS 541.605 to 541.685.
- (g) The Public Utility Commission.
- (h) The Water Resources Commission and the Water Resources Department.

(2) A person participating in a contested case hearing as provided in subsection (1) of this section may appear by an authorized representative if:

- (a) The agency conducting the contested case hearing has determined that appearance of such a person by an authorized representative will not hinder the orderly and timely development of the record in the type of contested case hearing being conducted;
- (b) The agency conducting the contested case hearing allows, by rule, authorized representatives to appear on behalf of such participants in the type of contested case hearing being conducted; and

(c) The officer presiding at the contested case hearing may exercise discretion to limit an authorized representative's presentation of evidence, examination and cross-examination of witnesses, or presentation of factual arguments to insure the orderly and timely development of the hearing record, and shall not allow an authorized representative to present legal arguments.

(3) Upon judicial review, no limitation imposed by an agency presiding officer on the participation of an authorized representative shall be the basis for reversal or remand of agency action unless the limitation resulted in substantial prejudice to a person entitled to judicial review of the agency action.

(4) For the purposes of this section, "authorized representative" means a member of a participating partnership, an authorized officer or regular employe of a participating corporation, association or organized group, or an authorized officer or employe of a participating governmental authority other than a state agency. [1987 c.833 §3]

Sec. 5. Section 3 of this Act is repealed October 1, 1989. [1987 c.833 §5]

183.460 Examination of evidence by agency. Whenever in a contested case a majority of the officials of the agency who are to render the final order have not heard the case or considered the record, the order, if adverse to a party other than the agency itself, shall not be made until a proposed order, including findings of fact and conclusions of law, has been served upon the parties and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the officials who are to render the decision. [1957 c.717 §10; 1971 c.734 §16; 1975 c.759 §13]

183.462 Agency statement of ex parte communications; notice. The agency shall place on the record a statement of the substance of any written or oral ex parte communications on a fact in issue made to the agency during its review of a contested case. The agency shall notify all parties of such communications and of their right to rebut the substance of the ex parte communications on the record. [1979 c.593 §36c]

183.464 Proposed order by hearings officer; amendment by agency; exemptions. (1) Except as otherwise provided in subsections (1) to (4) of this section, unless a hearings officer is authorized or required by law or agency rule to issue a final order, the hearings officer shall prepare and serve on the agency and all parties to a contested case hearing a proposed order, including recommended findings of fact and conclusions of law. The proposed order shall become final after the 30th day following the date of service of the proposed order, unless the agency within that period issues an amended order.

(2) An agency may by rule specify a period of time after which a proposed order will become

B-14

final that is different from that specified in subsection (1) of this section.

(3) If an agency determines that additional time will be necessary to allow the agency adequately to review a proposed order in a contested case, the agency may extend the time after which the proposed order will become final by a specified period of time. The agency shall notify the parties to the hearing of the period of extension.

(4) Subsections (1) to (4) of this section do not apply to the Public Utility Commission or the Energy Facility Siting Council.

(5) The Governor may exempt any agency or any class of contested case hearings before an agency from the requirements in whole or part of subsections (1) to (4) of this section by executive order. The executive order shall contain a statement of the reasons for the exemption.

(6) The Governor shall report to the Sixty-first Legislative Assembly identifying those agencies and classes of contested cases that have received exemptions under subsections (5) and (6) of this section and stating the reasons for granting those exemptions. [1979 c.593 §§36, 36b]

183.470 Orders in contested cases. In a contested case:

(1) Every order adverse to a party to the proceeding shall be in writing or stated in the record and may be accompanied by an opinion.

(2) A final order shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the agency's order.

(3) The agency shall notify the parties to a proceeding of a final order by delivering or mailing a copy of the order and any accompanying findings and conclusions to each party or, if applicable, the party's attorney of record.

(4) Every final order shall include a citation of the statutes under which the order may be appealed. [1957 c.717 §11; 1971 c.734 §17; 1979 c.593 §22]

JUDICIAL REVIEW

183.480 Judicial review of agency orders. (1) Any person adversely affected or aggrieved by an order or any party to an agency proceeding is entitled to judicial review of a final order, whether such order is affirmative or negative in form. A petition for rehearing or reconsideration need not be filed as a condition of judicial review unless specifically otherwise provided by statute or agency rule.

(2) Judicial review of final orders of agencies shall be solely as provided by ORS 183.482, 183.484, 183.490 and 183.500.

(3) No action or suit shall be maintained as to the validity of any agency order except a final order as provided in this section and ORS 183.482, 183.484, 183.490 and 183.500 or except upon showing that the agency is proceeding without probable cause, or that the party will suffer substantial and irreparable harm if interlocutory relief is not granted.

(4) Judicial review of orders issued pursuant to ORS 813.410 shall be as provided by ORS 813.410. [1957 c.717 §12; 1963 c.449 §1; 1971 c.734 §18; 1975 c.759 §14; 1979 c.593 §23; 1983 c.338 §901; 1985 c.757 §4]

183.482 Jurisdiction for review of contested cases; procedure; scope of court authority. (1) Jurisdiction for judicial review of contested cases is conferred upon the Court of Appeals. Proceedings for review shall be instituted by filing a petition in the Court of Appeals. The petition shall be filed within 60 days only following the date the order upon which the petition is based is served unless otherwise provided by statute. If a petition for rehearing has been filed, then the petition for review shall be filed within 60 days only following the date the order denying the petition for rehearing is served. If the agency does not otherwise act, a petition for rehearing or reconsideration shall be deemed denied the 60th day following the date the petition was filed, and in such cases, petition for judicial review shall be filed within 60 days only following such date. Date of service shall be the date on which the agency delivered or mailed its order in accordance with ORS 183.470.

(2) The petition shall state the nature of the order the petitioner desires reviewed, and shall state whether the petitioner was a party to the administrative proceeding, was denied status as a party or is seeking judicial review as a person adversely affected or aggrieved by the agency order. In the latter case, the petitioner shall, by supporting affidavit, state the facts showing how the petitioner is adversely affected or aggrieved by the agency order. Before deciding the issues raised by the petition for review, the Court of Appeals shall decide, from facts set forth in the affidavit, whether or not the petitioner is entitled to petition as an adversely affected or an aggrieved person. Copies of the petition shall be served by registered or certified mail upon the agency, and all other parties of record in the agency proceeding.

(3)(a) The filing of the petition shall not stay enforcement of the agency order, but the agency may do so upon a showing of:

- (A) Irreparable injury to the petitioner; and
- (B) A colorable claim of error in the order.

(b) When a petitioner makes the showing required by paragraph (a) of this subsection, the agency shall grant the stay unless the agency determines that substantial public harm will result if the order is stayed. If the agency denies the stay, the denial shall be in writing and shall specifically state the substantial public harm that would result from the granting of the stay.

(c) When the agency grants a stay it may impose such reasonable conditions as the giving of a bond or other undertaking and that the petitioner file all documents necessary to bring the matter to issue before the Court of Appeals within specified reasonable periods of time.

(d) Agency denial of a motion for stay is subject to review by the Court of Appeals under such rules as the court may establish.

(4) Within 30 days after service of the petition, or within such further time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review, but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable. Except as specifically provided in this subsection, the cost of the record shall not be taxed to the petitioner or any intervening party. However, the court may tax such costs and the cost of agency transcription of record to a party filing a frivolous petition for review.

(5) If, on review of a contested case, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good and substantial reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon such conditions as the court deems proper. The agency may modify its findings and order by reason of the additional evidence and shall, within a time to be fixed by the court, file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or orders, or its certificate that it elects to stand on its original findings and order, as the case may be.

(6) At any time subsequent to the filing of the petition for review and prior to the date set for

hearing the agency may withdraw its order for purposes of reconsideration. If an agency withdraws an order for purposes of reconsideration, it shall, within such time as the court may allow, affirm, modify or reverse its order. If the petitioner is dissatisfied with the agency action after withdrawal for purposes of reconsideration, the petitioner may file an amended petition for review and the review shall proceed upon the revised order. If an agency withdraws an order for purposes of reconsideration and modifies or reverses the order in favor of the petitioner, the court shall allow the petitioner costs, but not attorney fees, to be paid from funds available to the agency.

(7) Review of a contested case shall be confined to the record, the court shall not substitute its judgment for that of the agency as to any issue of fact or agency discretion. In the case of disputed allegations of irregularities in procedure before the agency not shown in the record which, if proved, would warrant reversal or remand, the Court of Appeals may refer the allegations to a Master appointed by the court to take evidence and make findings of fact upon them. The court shall remand the order for further agency action if it finds that either the fairness of the proceedings or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure.

(8)(a) The court may affirm, reverse or remand the order. If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, it shall:

(A) Set aside or modify the order; or

(B) Remand the case to the agency for further action under a correct interpretation of the provision of law.

(b) The court shall remand the order to the agency if it finds the agency's exercise of discretion to be:

(A) Outside the range of discretion delegated to the agency by law;

(B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained by the agency; or

(C) Otherwise in violation of a constitutional or statutory provision.

(c) The court shall set aside or remand the order if it finds that the order is not supported by substantial evidence in the record. Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a

reasonable person to make that finding. [1975 c.759 §15; 1977 c.798 §4; 1979 c.593 §24; 1985 c.757 §2]

183.484 Jurisdiction for review of orders other than contested cases; procedure; scope of court authority. (1) Jurisdiction for judicial review of orders other than contested cases is conferred upon the Circuit Court for Marion County and upon the circuit court for the county in which the petitioner resides or has a principal business office. Proceedings for review under this section shall be instituted by filing a petition in the Circuit Court for Marion County or the circuit court for the county in which the petitioner resides or has a principal business office.

(2) Petitions for review shall be filed within 60 days only following the date the order is served, or if a petition for reconsideration or rehearing has been filed, then within 60 days only following the date the order denying such petition is served. If the agency does not otherwise act, a petition for rehearing or reconsideration shall be deemed denied the 60th day following the date the petition was filed, and in such case petition for judicial review shall be filed within 60 days only following such date. Date of service shall be the date on which the agency delivered or mailed its order in accordance with ORS 183.470.

(3) The petition shall state the nature of the petitioner's interest, the facts showing how the petitioner is adversely affected or aggrieved by the agency order and the ground or grounds upon which the petitioner contends the order should be reversed or remanded. The review shall proceed and be conducted by the court without a jury.

(4)(a) The court may affirm, reverse or remand the order. If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, it shall:

(A) Set aside or modify the order; or

(B) Remand the case to the agency for further action under a correct interpretation of the provision of law.

(b) The court shall remand the order to the agency if it finds the agency's exercise of discretion to be:

(A) Outside the range of discretion delegated to the agency by law;

(B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained by the agency; or

(C) Otherwise in violation of a constitutional or statutory provision.

(c) The court shall set aside or remand the order if it finds that the order is not supported by substantial evidence in the record. Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding.

(5) In the case of reversal the court shall make special findings of fact based upon the evidence in the record and conclusions of law indicating clearly all aspects in which the agency's order is erroneous. [1975 c.759 §16; 1979 c.284 §121; 1979 c.593 §25a; 1985 c.757 §3]

183.485 Decision of court on review of contested case. (1) The court having jurisdiction for judicial review of contested cases shall direct its decision, including its judgment, to the agency issuing the order being reviewed and may direct that its judgment be delivered to the circuit court for any county designated by the prevailing party for entry in the circuit court's judgment docket.

(2) Upon receipt of the court's decision, including the judgment, the clerk of the circuit court shall enter a judgment or decree in the register and docket it pursuant to the direction of the court to which the appeal is made. [1973 c.612 §7; 1981 c.178 §11; 1985 c.540 §39]

183.486 Form and scope of reviewing court's decision. (1) The reviewing court's decision under ORS 183.482 or 183.484 may be mandatory, prohibitory, or declaratory in form, and it shall provide whatever relief is appropriate irrespective of the original form of the petition. The court may:

(a) Order agency action required by law, order agency exercise of discretion when required by law, set aside agency action, remand the case for further agency proceedings or decide the rights, privileges, obligations, requirements or procedures at issue between the parties; and

(b) Order such ancillary relief as the court finds necessary to redress the effects of official action wrongfully taken or withheld.

(2) If the court sets aside agency action or remands the case to the agency for further proceedings, it may make such interlocutory order as the court finds necessary to preserve the interests of any party and the public pending further proceedings or agency action.

(3) Unless the court finds a ground for setting aside, modifying, remanding, or ordering agency action or ancillary relief under a specified provision of this section, it shall affirm the agency action. [1979 c.593 §27]

183.490 Agency may be compelled to act. The court may, upon petition as described in

ORS 183.484, compel an agency to act where it has unlawfully refused to act or make a decision or unreasonably delayed taking action or making a decision. [1957 c.717 §13; 1979 c.593 §28]

183.495 [1975 c.759 §16a; repealed by 1985 c.757 §7]

183.497 Awarding costs and attorney fees when finding for petitioner. (1) In a judicial proceeding designated under subsection (2) of this section the court:

(a) May, in its discretion, allow a petitioner reasonable attorney fees and costs if the court finds in favor of the petitioner.

(b) Shall allow a petitioner reasonable attorney fees and costs if the court finds in favor of the petitioner and determines that the state agency acted without a reasonable basis in fact or in law; but the court may withhold all or part of the attorney fees from any allowance to a petitioner if the court finds that the state agency has proved that its action was substantially justified or that special circumstances exist that make the allowance of all or part of the attorney fees unjust.

(2) The provisions of subsection (1) of this section apply to an administrative or judicial proceeding brought by a petitioner against a state agency, as defined in ORS 291.002, for:

(a) Judicial review of a final order as provided in ORS 183.480 to 183.484;

(b) Judicial review of a declaratory ruling provided in ORS 183.410; or

(c) A judicial determination of the validity of a rule as provided in ORS 183.400.

(3) Amounts allowed under this section for reasonable attorney fees and costs shall be paid from funds available to the state agency whose final order, declaratory ruling or rule was reviewed by the court. [1981 c.871 §1; 1985 c.757 §5]

Note: 183.497 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

APPEALS FROM CIRCUIT COURTS

183.500 Appeals. Any party to the proceedings before the circuit court may appeal from the decree of that court to the Court of Appeals. Such appeal shall be taken in the manner provided by law for appeals from the circuit court in suits in equity. [1957 c.717 §14; 1969 c.198 §76]

183.510 [1957 c.717 §16; repealed by 1971 c.734 §21]

RULES EFFECTS ON BUSINESS

183.540 Reduction of economic impact on small businesses. When the economic effect

analysis shows that the rule has a significant adverse effect upon small business and, to the extent consistent with the public health and safety purpose of the rule, the agency shall reduce the economic impact of the rule on small business by:

(1) Establishing differing compliance or reporting requirements or time tables for small business;

(2) Clarifying, consolidating or simplifying the compliance and reporting requirements under the rule for small business;

(3) Utilizing objective criteria for standards; or

(4) Exempting small businesses from any or all requirements of the rule. [1981 c.755 §4]

183.545 Review of rules to minimize economic effect on businesses. Each agency periodically, but not less than every three years, shall review all rules that have been issued by the agency. The review shall include an analysis to determine whether such rules should be continued without change or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize the economic effect on businesses and the effect due to size and type of business. [1981 c.755 §5]

183.550 Public comment; factors to be considered in review. (1) As part of the review required by ORS 183.545, the agency shall invite public comment upon the rules.

(2) In reviewing the rules described in subsection (1) of this section, the agency shall consider:

(a) The continued need for the rule;

(b) The nature of complaints or comments received concerning the rule from the public;

(c) The complexity of the rule;

(d) The extent to which the rule overlaps, duplicates or conflicts with other state rules or federal regulations and, to the extent feasible, with local governmental regulations;

(e) The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule; and

(f) The statutory citation or legal basis for each rule. [1981 c.755 §6]

REVIEW OF STATE AGENCY RULES

183.710 Definitions for ORS 183.710 to 183.725. As used in ORS 183.710 to 183.725, unless the context requires otherwise:

(1) "Committee" means the Legislative Counsel Committee.

B-18

(2) "Rule" has the meaning given in ORS 183.310.

(3) "State agency" has the meaning given to "agency" in ORS 183.310. [Formerly 171.705]

183.715 Submission of adopted rule to Legislative Council required. A state agency that adopts a rule shall submit a copy of the adopted rule to the Legislative Council within 10 days after the agency files a certified copy of the rule in the office of the Secretary of State as provided in ORS 183.355 (1). [Formerly 171.707]

183.720 Procedure for review of agency rule. (1) The Legislative Council may review, or shall review at the direction of the committee, a proposed rule or an adopted rule of a state agency.

(2) The Legislative Council may review an adopted rule of a state agency upon the written request of any member of the Legislative Assembly or of any person affected by the rule.

(3) When reviewing a rule of a state agency pursuant to subsection (1) or (2) of this section, the Legislative Council shall:

(a) Determine whether the rule appears to be within the intent and scope of the enabling legislation purporting to authorize its adoption; and

(b) Determine whether the rule raises any constitutional issue other than described in paragraph (a) of this subsection, and if so, the nature of the issue.

(4) In making a determination under paragraph (a) of subsection (3) of this section, the Legislative Council shall, wherever possible, follow generally accepted principles of statutory construction.

(5) The Legislative Council shall prepare written findings on a rule reviewed, setting forth the determinations made under subsection (3) of this section.

(6) When a review of a rule is made by the Legislative Council, the Legislative Council shall send a copy of the determinations made under subsection (3) of this section to the committee, to the state agency concerned, and if the review was requested by a member of the Legislative Assembly or by a person affected by the rule, to the person requesting the review. The committee may direct the Legislative Council to send a copy of the determinations to the presiding officer of a house of the Legislative Assembly, who may refer the determinations to any legislative committee concerned. [Formerly 171.709]

183.725 Report of Legislative Council Committee to agencies and Legislative Assembly. (1) The committee, at any time, may review any proposed or adopted rule of a state agency, and may report its recommendations in respect to the rule to the agency.

(2) The committee shall report to the Legislative Assembly at each regular session on the review of state agency rules by the Legislative Council and the committee. The report shall include:

(a) The determinations made by the Legislative Council under ORS 183.720 (3);

(b) The recommendations made by the committee to state agencies under subsection (1) of this section; and

(c) Any recommendations by the committee for legislation. [Formerly 171.713]

Chapter 466

1987 REPLACEMENT PART

Hazardous Waste and Hazardous Materials

STORAGE, TREATMENT AND DISPOSAL OF HAZARDOUS WASTE AND PCB		466.145	Review of treatment applications; issuance
(General Provisions)		466.150	Permit requirements
466.005	Definitions for ORS 453.835 and 466.005 to 466.385	466.155	Acquisition by condemnation
466.010	Purpose	466.160	Site permit fees; disposition; withdrawal by permittee
(Administration)		466.165	Annual fees; use
466.015	Powers and duties of department	466.170	Revocation of permit; judicial review
466.020	Rules and orders	466.175	Disposition of site or facility after revocation; acquisition of site by department
466.025	Duties of commission	466.180	Department authority to limit storage, disposal or treatment
466.030	Designation of classes of facilities subject to certain provisions	466.185	Investigation upon complaint; hearings; orders
466.035	Commission authority to impose standards for hazardous waste or PCB at Oregon facility	466.190	Investigation upon motion of department; findings and orders
466.040	Application period for PCB or hazardous waste permit	466.195	Monitoring and surveillance program; inspection
466.045	Application form; contents; fees; renewal application	466.200	Procedure for emergencies
466.050	Citizen advisory committees	466.205	Liability for improper disposal of waste; costs; lien for department expenditures
466.055	Criteria for new facility	466.210	Actions or proceedings to enforce compliance
466.060	Criteria to be met by owner and operator before issuance of permit	466.215	Post-closure permit for disposal site; fee
466.065	Applicant for renewal to comply with ORS 466.055	466.225	Monitoring site; access
(Hazardous Waste)		(PCB Disposal Facilities)	
466.070	Standards for rules	466.250	Definition of "PCB disposal facility"
466.075	Rules for generators of hazardous waste	466.255	Disposal of PCB restricted; permit required for PCB disposal facility
466.080	Rules for transportation of hazardous waste	466.260	Duties of department
466.085	Gaining federal authorization	466.265	Rules for regulation of PCB disposal
466.090	Inspection and copying of records authorized; exceptions	466.270	Criteria for rules; study of disposal methods
466.095	Hazardous waste to be stored, disposed of or treated at permitted site; exemptions	466.275	Permit application for PCB disposal facility
466.100	Disposal of waste restricted; permit required	466.280	Copies of application to be sent to affected state agencies
466.105	Duties of permittee	466.285	Notice of hearings on application
466.107	Action under ORS 466.105 against guarantor	466.290	Public hearing in area of proposed facility required
466.110	Application; form	466.295	Examination of applications; recommendation to commission; decision as to issuance; notice to applicant
466.115	Required application information	466.300	Restrictions on commission authority to issue permit
466.120	Required application information to operate site	466.305	Investigation of complaints; hearing; order
466.125	Notice of hearings on applications	466.310	Monitoring, inspection and surveillance program; access to facility and records
466.130	Public hearing in areas of proposed site required	466.315	Procedure for emergency
466.135	Recommendations by state agencies on applications; effect	466.320	Conditions for holding permit
466.140	Review of applications; issuance	466.325	Annual fee
		466.330	Acquisition by state of real property for disposal of PCB
		466.335	Consequences of revocation

PUBLIC HEALTH AND SAFETY

- 466.340 Restrictions on treatment or disposal of PCB at facility
- 466.345 PCB facility permit; fee
- 466.350 Post-closure permit; fee

NOTICE OF ENVIRONMENTAL HAZARDS

- 466.360 Policy
- 466.365 Commission authority to establish sites for which notice is required; rulemaking; report to Legislative Assembly
- 466.370 Notice to owner; hearing; filing of notice if no objection
- 466.375 Filing of notice; content of notice
- 466.380 Interagency agreement for notices for radioactive waste disposal sites
- 466.385 Amendment of comprehensive plan and land use regulations; model language; appeal of land use decision related to site requiring notice

PACIFIC STATES AGREEMENT ON RADIOACTIVE MATERIALS TRANSPORTATION MANAGEMENT

- 466.450 Pacific States Agreement on Radioactive Materials Transportation Management
- 466.455 Governor to designate member
- 466.460 Confederated Tribes of the Umatilla Indian Reservation to be consulted

USE OF PCB

- 466.505 Definitions for ORS 466.505 to 466.530
- 466.510 Sale of items containing concentrations of PCB prohibited; exceptions
- 466.515 Electric transformers or capacitors exempted
- 466.520 Exemption certificates; applications; conditions
- 466.525 Additional PCB compounds may be prohibited
- 466.530 Prohibited disposal of waste containing PCB

REMOVAL OR REMEDIAL ACTION TO ABATE HEALTH HAZARDS

- 466.540 Definitions for ORS 466.540 to 466.590
- 466.547 Legislative findings
- 466.550 Authority of department for removal or remedial action
- 466.553 Rules; designation of hazardous substance
- 466.555 Remedial Action Advisory Committee
- 466.557 Inventory of facilities where release confirmed
- 466.560 Comprehensive state-wide identification program; notice
- 466.563 Preliminary assessment of potential facility
- 466.565 Accessibility of information about hazardous substances
- 466.567 Strict liability for remedial action costs for injury or destruction of natural resource; limited exclusions

- 466.570 Removal or remedial action; reimbursement of costs
- 466.573 Standards for degree of cleanup required; exemption
- 466.575 Notice of cleanup action; receipt and consideration of comment; notice of approval
- 466.577 Agreement to perform removal or remedial action; reimbursement; agreement as order and consent decree; effect on liability
- 466.580 State costs; payment; effect of failure to pay
- 466.583 Costs as lien; enforcement of lien
- 466.585 Contractor liability
- 466.587 Monthly fee of operators
- 466.590 Hazardous Substance Remedial Action Fund; sources; uses

SPILL RESPONSE AND CLEANUP OF HAZARDOUS MATERIALS

- 466.605 Definitions for ORS 466.605 to 466.680
- 466.610 Department authority relating to cleanup of oil or hazardous material
- 466.615 Limit on commission and department authority over radioactive substances
- 466.620 Emergency response plan; training programs
- 466.625 Rulemaking
- 466.630 Commission designation of substance as hazardous material
- 466.635 Report of spill or release of reportable quantity of hazardous material
- 466.640 Strict liability for spill or release; exceptions
- 466.645 Cleanup; failure to complete cleanup
- 466.653 Grants to local governments
- 466.660 Required information relating to oil or hazardous material; departmental access to records; inspection
- 466.665 Local access to records and information; inspection
- 466.670 Oil and Hazardous Material Emergency Response and Remedial Action Fund
- 466.675 Use of moneys in Oil and Hazardous Material Emergency Response and Remedial Action Fund
- 466.680 Responsibility for expenses of cleanup; record; damages; order; appeal

UNDERGROUND STORAGE TANKS

(General Provisions)

- 466.705 Definitions for ORS 466.705 to 466.835 and 466.895
- 466.710 Application of ORS 466.705 to 466.835
- 466.715 Legislative findings

(Administration)

- 466.720 State-wide underground storage tank program; federal authorization
- 466.725 Limitation on local government regulation

HAZARDOUS WASTE AND HAZARDOUS MATERIALS

- 466.730 Delegation of program administration to state agency or local government by agreement
- 466.735 Cooperation with Building Codes Agency and State Fire Marshal
- 466.740 Noncomplying installation prohibited
- 466.745 Commission rules; considerations

(Licenses; Permits)

- 466.750 License procedure for persons servicing underground tanks
- 466.760 When permit required; who required to sign application
- 466.765 Duty of owner or permittee of underground storage tank
- 466.770 Corrective action required on contaminated site
- 466.775 Grounds for refusal, modification, suspension or revocation of permit
- 466.780 Variance upon petition

(Finance)

- 466.785 Fees
- 466.790 Leaking Underground Storage Tank Cleanup Fund; sources; uses
- 466.795 Underground Storage Tank Insurance Fund
- 466.800 Records as public records; exceptions

(Enforcement)

- 466.805 Site inspection; subpoena or warrant
- 466.810 Investigation on noncompliance; findings and orders; decommissioning tank; hearings; other remedies
- 466.815 Financial responsibility of owner or permittee
- 466.820 Reimbursement to department; procedure for collection; treble damages
- 466.825 Strict liability of owner or permittee
- 466.830 Halting tank operation upon clear and immediate danger
- 466.835 Compliance and correction costs as lien; enforcement

OREGON HANFORD WASTE BOARD

(Temporary provisions relating to Oregon Hanford Waste Board are compiled as notes following ORS 466.835.)

FEDERAL SITE SELECTION

(Temporary provisions relating to federal site selection are compiled as notes following ORS 466.835.)

CIVIL PENALTIES

- 466.880 Civil penalties generally
- 466.890 Civil penalties for damage to wildlife resulting from contamination of food or water supply
- 466.895 Civil penalties for violations of underground storage tank regulations
- 466.900 Civil penalties for violation of removal or remedial actions

CRIMINAL PENALTIES

- 466.995 Criminal penalties

CROSS REFERENCES

- Environmental Quality Commission, duties and powers, 468.010 to 468.075
- Pollution control, Ch. 468
- Public health measures, toxic substances, 433.216
- Radioactive waste, 469.530 to 469.559
- Solid waste, Ch. 459
- Transport of hazardous materials, regulation, 761.370 to 761.421
- Volunteering assistance or advice related to clean up of hazardous material, liability limitation, 30.490 to 39.497
- 466.005 to 466.385
- Penalty for transporting or disposing of hazardous waste unlawfully, 761.994
- Standards for safe transportation of hazardous waste, 767.457
- 466.080
- Impoundment of vehicles unlawfully transporting hazardous waste, 767.458
- Standards for safe transport of hazardous wastes and PCBs, Public Utility Commission, 467.457

insure the public health. However, upon adequate documentation of the availability of reasonable substitutes which meet performance standards and environmental acceptability, the commission after public hearing by rule may modify these exclusions in whole or in part by requiring the phasing in of the substitute or substitutes.

(2) An item, product or material containing PCB may be manufactured for sale, sold for use or used in this state pursuant to an exemption certificate issued by the department under ORS 466.520. [Formerly 468.908]

466.520 Exemption certificates; applications; conditions. (1) A person may make written application to the department for an exemption certificate on forms provided by the department. The department may require additional information or materials to accompany the application as it considers necessary for an accurate evaluation of the application.

(2) The department shall grant an exemption for residual amounts of PCB remaining in electric transformer cores after the PCB in a transformer is drained and the transformer is filled with a substitute approved under ORS 466.515.

(3) The department may grant an exemption for an item, product or material manufactured for sale, sold for use, or used by the person if the item, product or material contains incidental concentrations of PCB.

(4) In granting a certificate of exemption, the department shall impose conditions on the exemption in order that the exemption covers only incidental concentrations of PCB.

(5) As used in this section, "incidental concentrations of PCB" means concentrations of PCB which are beyond the control of the person and which are not the result of the person having:

(a) Exposed the item, product or material to concentrations of PCB.

(b) Failed to take reasonable measures to rid the item, product or material of concentrations of PCB.

(c) Failed to use a reasonable substitute for the item, product or material for which the exemption is sought. [Formerly 468.909]

466.525 Additional PCB compounds may be prohibited. The commission after hearing by rule may include as a PCB and regulate accordingly any chlorinated biphenyls, terphenyls, higher polyphenyls, or mixtures of these compounds that have functional groups attached other than chlorine if that functional group on the chlorinated biphenyls, terphenyls, higher

polyphenyls, or mixtures of these compounds is found to constitute a danger to public health. [Formerly 468.912]

466.530 Prohibited disposal of waste containing PCB. After October 4, 1977, a person shall not dispose of solid or liquid waste resulting from the use of PCB or an item, product or material containing or which has contained a concentration equal to or greater than 100 ppm of PCB except in conformity with rules of the commission adopted pursuant to ORS 466.005 to 466.385 and 466.890. [Formerly 468.921]

REMOVAL ON REMEDIAL ACTION TO ABATE HEALTH HAZARDS

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

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

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

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

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

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

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

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

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

(9) "Hazardous substance" means:

(a) Hazardous waste as defined in ORS 466.005.

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

(c) Oil.

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

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

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

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

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

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

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

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

(c) Any release of source, by-product or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, as amended, if such release is subject to requirements with respect to financial protection

established by the Nuclear Regulatory Commission under section 170 of the Atomic Energy Act of 1954, as amended, or, for the purposes of ORS 466.570 or any other removal or remedial action, any release of source by-product or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978; and

(d) The normal application of fertilizer.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Therefore, the Legislative Assembly declares that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) Long-term maintenance costs;

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

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

(H) The cost effectiveness.

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

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

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

- (1) Citizens;
- (2) Local governments;
- (3) Environmental organizations; and
- (4) Industry. [1987 c.735 §5]

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

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

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

- (a) A general description of the facility;
- (b) Address or location;

(c) Time period during which a release occurred;

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

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

(f) Manner of release of the hazardous substance;

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

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

(i) Other items the director determines necessary.

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

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

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

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

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

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

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

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

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

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

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

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

- (a) Sample, inspect, examine and investigate;
- (b) Examine and copy records and other information; or
- (c) Carry out removal or remedial action or any other action authorized by ORS 466.540 to 466.590 and 466.900.

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

(4)(a) Except as provided in paragraphs (b) and (c) of this subsection, the department or its authorized representative shall, upon request by the current owner or operator of the facility or property, provide a portion of any sample obtained from the property or facility to the owner or operator.

(b) The department may decline to give a portion of any sample to the owner or operator if, in the judgment of the department or its authorized representative, apportioning a sample:

(A) May alter the physical or chemical properties of the sample such that the portion of the sample retained by the department would not be representative of the material sampled; or

(B) Would not provide adequate volume to perform the laboratory analysis.

(c) Nothing in this subsection shall prevent or unreasonably hinder or delay the department or its authorized representative in obtaining a sample at any facility or property.

(5) Persons subject to the requirements of this section may make a claim of confidentiality regarding any information, documents or records, in accordance with ORS 466.090. [1987 c.735 §9]

466.567 Strict liability for remedial action costs for injury or destruction of natural resource; limited exclusions. (1) The following persons shall be strictly liable for those remedial action costs incurred by the state or any other person that are attributable to or associated with a facility and for damages for injury to or destruction of any natural resources caused by a release:

(a) Any owner or operator at or during the time of the acts or omissions that resulted in the release.

(b) Any owner or operator who became the owner or operator after the time of the acts or omissions that resulted in the release, and who knew or reasonably should have known of the release when the person first became the owner or operator.

(c) Any owner or operator who obtained actual knowledge of the release at the facility during the time the person was the owner or operator of the facility and then subsequently transferred ownership or operation of the facility to another person without disclosing such knowledge.

(d) Any person who, by any acts or omissions, caused, contributed to or exacerbated the release, unless the acts or omissions were in material compliance with applicable laws, standards, regulations, licenses or permits.

(e) Any person who unlawfully hinders or delays entry to, investigation of or removal or remedial action at a facility.

(2) Except as provided in paragraphs (b) to (e) of subsection (1) of this section and subsection (4) of this section, the following persons shall not be liable for remedial action costs incurred by the state or any other person that are attributable to or associated with a facility, or for damages for injury to or destruction of any natural resources caused by a release:

(a) Any owner or operator who became the owner or operator after the time of the acts or omissions that resulted in a release, and who did not know and reasonably should not have known of the release when the person first became the owner or operator.

(b) Any owner or operator if the facility was contaminated by the migration of a hazardous substance from real property not owned or operated by the person.

(c) Any owner or operator at or during the time of the acts or omissions that resulted in the release, if the release at the facility was caused solely by one or a combination of the following:

(A) An act of God. "Act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(B) An act of war.

(C) Acts or omissions of a third party, other than an employe or agent of the person asserting this defense, or other than a person whose acts or omissions occur in connection with a contractual relationship, existing directly or indirectly, with the person asserting this defense. As used in this subparagraph, "contractual relationship" includes but is not limited to land contracts, deeds or other instruments transferring title or possession.

(3) Except as provided in paragraphs (c) to (e) of subsection (1) of this section or subsection (4) of this section, the following persons shall not be liable for remedial action costs incurred by the state or any other person that are attributable to or associated with a facility, or for damages for injury to or destruction of any natural resources caused by a release:

(a) A unit of state or local government that acquired ownership or control of a facility in the following ways:

(A) Involuntarily by virtue of its function as sovereign, including but not limited to escheat, bankruptcy, tax delinquency or abandonment; or

(B) Through the exercise of eminent domain authority by purchase or condemnation.

(b) A person who acquired a facility by inheritance or bequest.

(4) Notwithstanding the exclusions from liability provided for specified persons in subsections (2) and (3) of this section such persons shall be liable for remedial action costs incurred by the state or any other person that are attributable to or associated with a facility, and for damages for injury to or destruction of any natural resources caused by a release, to the extent that the person's acts or omissions contribute to such costs or damages, if the person:

(a) Obtained actual knowledge of the release and then failed to promptly notify the department and exercise due care with respect to the hazardous substance concerned, taking into consideration the characteristics of the hazardous substance in light of all relevant facts and circumstances; or

(b) Failed to take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the reasonably foreseeable consequences of such acts or omissions.

(5)(a) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from any person who may be liable under this section, to any other person, the liability imposed under this section. Nothing in this section shall bar any agreement to insure, hold harmless or indemnify a party to such agreement for any liability under this section.

(b) A person who is liable under this section shall not be barred from seeking contribution from any other person for liability under ORS 466.540 to 466.590 and 466.900.

(c) Nothing in ORS 466.540 to 466.590 and 466.900 shall bar a cause of action that a person liable under this section or a guarantor has or would have by reason of subrogation or otherwise against any person.

(d) Nothing in this section shall restrict any right that the state or any person might have under federal statute, common law or other state statute to recover remedial action costs or to seek any other relief related to a release.

(6) To establish, for purposes of paragraph (b) of subsection (1) of this section or paragraph (a) of subsection (2) of this section, that the person did or did not have reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability.

(7)(a) Except as provided in paragraph (b) of this subsection, no person shall be liable under ORS 466.540 to 466.590 and 466.900 for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance or advice in accordance with rules adopted under ORS 466.553 or at the direction of the department or its authorized representative, with respect to an incident creating a danger to public health, safety, welfare or the environment as a result of any release of a hazardous substance. This paragraph shall not preclude liability for costs or damages as the result of negligence on the part of such person.

(b) No state or local government shall be liable under ORS 466.540 to 466.590 and 466.900 for costs or damages as a result of actions taken in response to an emergency created by the release of a hazardous substance generated by or from a facility owned by another person. This paragraph shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the state or local government. For the purpose of this paragraph, reckless, wilful or wanton misconduct shall constitute gross negligence.

(c) This subsection shall not alter the liability of any person covered by subsection (1) of this section. [1987 c.735 §10]

466.570 Removal or remedial action; reimbursement of costs. (1) The director may undertake any removal or remedial action necessary to protect the public health, safety, welfare and the environment.

(2) The director may authorize any person to carry out any removal or remedial action in accordance with any requirements of or directions from the director, if the director determines that the person will commence and complete removal or remedial action properly and in a timely manner.

(3) Nothing in ORS 466.540 to 466.590 and 466.900 shall prevent the director from taking any emergency removal or remedial action necessary to protect public health, safety, welfare or the environment.

(4) The director may require a person liable under ORS 466.567 to conduct any removal or remedial action or related actions necessary to protect the public health, safety, welfare and the environment. The director's action under this subsection may include but need not be limited to issuing an order specifying the removal or remedial action the person must take.

(5) The director may request the Attorney General to bring an action or proceeding for legal

or equitable relief, in the circuit court of the county in which the facility is located or in Marion County, as may be necessary:

(a) To enforce an order issued under subsection (4) of this section; or

(b) To abate any imminent and substantial danger to the public health, safety, welfare or the environment related to a release.

(6) Notwithstanding any provision of ORS 183.310 to 183.550, and except as provided in subsection (7) of this section, any order issued by the director under subsection (4) of this section shall not be appealable to the commission or subject to judicial review.

(7)(a) Any person who receives and complies with the terms of an order issued under subsection (4) of this section may, within 60 days after completion of the required action, petition the director for reimbursement from the fund for the reasonable costs of such action.

(b) If the director refuses to grant all or part of the reimbursement, the petitioner may, within 30 days of receipt of the director's refusal, file an action against the director seeking reimbursement from the fund in the circuit court of the county in which the facility is located or in the Circuit Court of Marion County. To obtain reimbursement, the petitioner must establish by a preponderance of the evidence that the petitioner is not liable under ORS 466.567 and that costs for which the petitioner seeks reimbursement are reasonable in light of the action required by the relevant order. A petitioner who is liable under ORS 466.567 may also recover reasonable remedial action costs to the extent that the petitioner can demonstrate that the director's decision in selecting the removal or remedial action ordered was arbitrary and capricious or otherwise not in accordance with law.

(8) If any person who is liable under ORS 466.567 fails without sufficient cause to conduct a removal or remedial action as required by an order of the director, the person shall be liable to the department for the state's remedial action costs and for punitive damages not to exceed three times the amount of the state's remedial action costs.

(9) Nothing in this section is intended to interfere with, limit or abridge the authority of the State Fire Marshal or any other state agency or local unit of government relating to an emergency that presents a combustion or explosion hazard. [1987 c.735 §11]

466.573 Standards for degree of cleanup required; exemption. (1)(a) Any

removal or remedial action performed under the provisions of ORS 466.540 to 466.590 and 466.900 shall attain a degree of cleanup of the hazardous substance and control of further release of the hazardous substance that assure protection of present and future public health, safety, welfare and of the environment.

(b) To the maximum extent practicable, the director shall select a remedial action that is protective of human health and the environment, that is cost effective, and that uses permanent solutions and alternative treatment technologies or resource recovery technologies.

(2) Except as provided in subsection (3) of this section, the director may exempt the onsite portion of any removal or remedial action conducted under ORS 466.540 to 466.590 and 466.900 from any requirement of ORS 466.005 to 466.385 and ORS chapter 459 or 468.

(3) Notwithstanding any provision of subsection (2) of this section, any onsite treatment, storage or disposal of a hazardous substance shall comply with the standard established under subsection (1) of this section. [1987 c.735 §12]

466.575 Notice of cleanup action; receipt and consideration of comment; notice of approval. Except as provided in ORS 466.570 (3), before approval of any remedial action to be undertaken by the department or any other person, or adoption of a certification decision under ORS 466.577, the department shall:

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

(2) Provide at least 30 days for submission of written comments regarding the proposed action, and, upon written request by 10 or more persons or by a group having 10 or more members, conduct a public meeting at or near the facility for the purpose of receiving verbal comment regarding the proposed action.

(3) Consider any written or verbal comments before approving the removal or remedial action.

(4) Upon final approval of the remedial action, publish notice, as provided under subsection (1) of this section, and make copies of the approved action available to the public. [1987 c.735 §13]

466.577 Agreement to perform removal or remedial action; reimbursement; agreement as order and consent decree; effect on liability. (1) The director, in the director's discretion, may enter into an agree-

ment with any person including the owner or operator of the facility from which a release emanates, or any other potentially responsible person to perform any removal or remedial action if the director determines that the actions will be properly done by the person. Whenever practicable and in the public interest, as determined by the director, the director, in order to expedite effective removal or remedial actions and minimize litigation, shall act to facilitate agreements under this section that are in the public interest and consistent with the rules adopted under ORS 466.553. If the director decides not to use the procedures in this section, the director shall notify in writing potentially responsible parties at the facility of such decision. Notwithstanding ORS 183.310 to 183.550, a decision of the director to use or not to use the procedures described in this section shall not be appealable to the commission or subject to judicial review.

(2)(a) An agreement under this section may provide that the director will reimburse the parties to the agreement from the fund, with interest, for certain costs of actions under the agreement that the parties have agreed to perform and the director has agreed to finance. In any case in which the director provides such reimbursement and, in the judgment of the director, cost recovery is in the public interest, the director shall make reasonable efforts to recover the amount of such reimbursement under ORS 466.540 to 466.590 and 466.900 or under other relevant authority.

(b) Notwithstanding ORS 183.310 to 183.550, the director's decision regarding fund financing under this subsection shall not be appealable to the commission or subject to judicial review.

(c) When a remedial action is completed under an agreement described in paragraph (a) of this subsection, the fund shall be subject to an obligation for any subsequent remedial action at the same facility but only to the extent that such subsequent remedial action is necessary, by reason of the failure of the original remedial action. Such obligation shall be in a proportion equal to, but not exceeding, the proportion contributed by the fund for the original remedial action. The fund's obligation for such future remedial action may be met through fund expenditures or through payment, following settlement or enforcement action, by persons who were not signatories to the original agreement.

(3) If an agreement has been entered into under this section, the director may take any action under ORS 466.570 against any person who is not a party to the agreement, once the

period for submitting a proposal under paragraph (c) of subsection (5) of this section has expired. Nothing in this section shall be construed to affect either of the following:

(a) The liability of any person under ORS 466.567 or 466.570 with respect to any costs or damages which are not included in the agreement.

(b) The authority of the director to maintain an action under ORS 466.540 to 466.590 and 466.900 against any person who is not a party to the agreement.

(4)(a) Whenever the director enters into an agreement under this section with any potentially responsible person with respect to remedial action, following approval of the agreement by the Attorney General and except as otherwise provided in the case of certain administrative settlements referred to in subsection (8) of this section, the agreement shall be entered in the appropriate circuit court as a consent decree. The director need not make any finding regarding an imminent and substantial endangerment to the public health, safety, welfare or the environment in connection with any such agreement or consent decree.

(b) The entry of any consent decree under this subsection shall not be construed to be an acknowledgment by the parties that the release concerned constitutes an imminent and substantial endangerment to the public health, safety, welfare or the environment. Except as otherwise provided in the Oregon Evidence Code, the participation by any party in the process under this section shall not be considered an admission of liability for any purpose, and the fact of such participation shall not be admissible in any judicial or administrative proceeding, including a subsequent proceeding under this section.

(c) The director may fashion a consent decree so that the entering of the decree and compliance with the decree or with any determination or agreement made under this section shall not be considered an admission of liability for any purpose.

(d) The director shall provide notice and opportunity to the public and to persons not named as parties to the agreement to comment on the proposed agreement before its submittal to the court as a proposed consent decree, as provided under ORS 466.575. The director shall consider any written comments, views or allegations relating to the proposed agreement. The director or any party may withdraw, withhold or modify its consent to the proposed agreement if the comments, views and allegations concerning

the agreement disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper or inadequate.

(5)(a) If the director determines that a period of negotiation under this subsection would facilitate an agreement with potentially responsible persons for taking removal or remedial action and would expedite removal or remedial action, the director shall so notify all such parties and shall provide them with the following information to the extent the information is available:

(A) The names and addresses of potentially responsible persons including owners and operators and other persons referred to in ORS 466.567.

(B) The volume and nature of substances contributed by each potentially responsible person identified at the facility.

(C) A ranking by volume of the substances at the facility.

(b) The director shall make the information referred to in paragraph (a) of this subsection available in advance of notice under this subsection upon the request of a potentially responsible person in accordance with procedures provided by the director. The provisions of ORS 466.565 (5) regarding confidential information apply to information provided under paragraph (a) of this subsection.

(c) Any person receiving notice under paragraph (a) of this subsection shall have 60 days from the date of receipt of the notice to submit to the director a proposal for undertaking or financing the action under ORS 466.570. The director may grant extensions for up to an additional 60 days.

(6)(a) Any person may seek contribution from any other person who is liable or potentially liable under ORS 466.567. In resolving contribution claims, the court may allocate remedial action costs among liable parties using such equitable factors as the court determines are appropriate.

(b) A person who has resolved its liability to the state in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially responsible persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(c)(A) If the state has obtained less than complete relief from a person who has resolved its liability to the state in an administrative or

judicially approved settlement, the director may bring an action against any person who has not so resolved its liability.

(B) A person who has resolved its liability to the state for some or all of a removal or remedial action or for some or all of the costs of such action in an administrative or judicially approved settlement may seek contribution from any person who is not party to a settlement referred to in paragraph (b) of this subsection.

(C) In any action under this paragraph, the rights of any person who has resolved its liability to the state shall be subordinate to the rights of the state.

(7)(a) In entering an agreement under this section, the director may provide any person subject to the agreement with a covenant not to sue concerning any liability to the State of Oregon under ORS 466.540 to 466.590 and 466.900, including future liability, resulting from a release of a hazardous substance addressed by the agreement if each of the following conditions is met:

(A) The covenant not to sue is in the public interest.

(B) The covenant not to sue would expedite removal or remedial action consistent with rules adopted by the commission under ORS 466.553 (2).

(C) The person is in full compliance with a consent decree under paragraph (a) of subsection (4) of this section for response to the release concerned.

(D) The removal or remedial action has been approved by the director.

(b) The director shall provide a person with a covenant not to sue with respect to future liability to the State of Oregon under ORS 466.540 to 466.590 and 466.900 for a future release of a hazardous substance from a facility, and a person provided such covenant not to sue shall not be liable to the State of Oregon under ORS 466.567 with respect to such release at a future time, for the portion of the remedial action:

(A) That involves the transport and secure disposition offsite of a hazardous substance in a treatment, storage or disposal facility meeting the requirements of section 3004(c) to (g), (m), (o), (p), (u) and (v) and 3005(c) of the federal Solid Waste Disposal Act, as amended, P.L. 96-482 and P.L. 98-616, if the director has rejected a proposed remedial action that is consistent with rules adopted by the commission under ORS 466.553 that does not include such offsite disposition and has thereafter required offsite disposition; or

(B) That involves the treatment of a hazardous substance so as to destroy, eliminate or permanently immobilize the hazardous constituents of the substance, so that, in the judgment of the director, the substance no longer presents a current or currently foreseeable future significant risk to public health, safety, welfare or the environment, no by-product of the treatment or destruction process presents any significant hazard to public health, safety, welfare or the environment, and all by-products are themselves treated, destroyed or contained in a manner that assures that the by-products do not present a current or currently foreseeable future significant risk to public health, safety, welfare or the environment.

(c) A covenant not to sue concerning future liability to the State of Oregon shall not take effect until the director certifies that the removal or remedial action has been completed in accordance with the requirements of subsection (10) of this section at the facility that is the subject of the covenant.

(d) In assessing the appropriateness of a covenant not to sue under paragraph (a) of this subsection and any condition to be included in a covenant not to sue under paragraph (a) or (b) of this subsection, the director shall consider whether the covenant or conditions are in the public interest on the basis of factors such as the following:

(A) The effectiveness and reliability of the remedial action, in light of the other alternative remedial actions considered for the facility concerned.

(B) The nature of the risks remaining at the facility.

(C) The extent to which performance standards are included in the order or decree.

(D) The extent to which the removal or remedial action provides a complete remedy at the facility, including a reduction in the hazardous nature of the substances at the facility.

(E) The extent to which the technology used in the removal or remedial action is demonstrated to be effective.

(F) Whether the fund or other sources of funding would be available for any additional removal or remedial action that might eventually be necessary at the facility.

(G) Whether the removal or remedial action will be carried out, in whole or in significant part, by the responsible parties themselves.

(e) Any covenant not to sue under this section shall be subject to the satisfactory p

formance by such party of its obligations under the agreement concerned.

(f)(A) Except for the portion of the removal or remedial action that is subject to a covenant not to sue under paragraph (b) of this subsection or de minimis settlement under subsection (8) of this section, a covenant not to sue a person concerning future liability to the State of Oregon:

(i) Shall include an exception to the covenant that allows the director to sue the person concerning future liability resulting from the release or threatened release that is the subject of the covenant if the liability arises out of conditions unknown at the time the director certifies under subsection (10) of this section that the removal or remedial action has been completed at the facility concerned; and

(ii) May include an exception to the covenant that allows the director to sue the person concerning future liability resulting from failure of the remedial action.

(B) In extraordinary circumstances, the director may determine, after assessment of relevant factors such as those referred to in paragraph (d) of this subsection and volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value and the inequities and aggravating factors, not to include the exception referred to in subparagraph (A) of paragraph (f) of this subsection if other terms, conditions or requirements of the agreement containing the covenant not to sue are sufficient to provide all reasonable assurances that public health, safety, welfare and the environment will be protected from any future release at or from the facility.

(C) The director may include any provisions allowing future enforcement action under ORS 466.570 that in the discretion of the director are necessary and appropriate to assure protection of public health, safety, welfare and the environment.

(8)(a) Whenever practicable and in the public interest, as determined by the director, the director shall as promptly as possible reach a final settlement with a potentially responsible person in an administrative or civil action under ORS 466.567 if such settlement involves only a minor portion of the remedial action costs at the facility concerned and, in the judgment of the director, both of the following are minimal in comparison to any other hazardous substance at the facility:

(A) The amount of the hazardous substance contributed by that person to the facility; and

(B) The toxic or other hazardous effects of the substance contributed by that person to the facility.

(b) The director may provide a covenant not to sue with respect to the facility concerned to any party who has entered into a settlement under this subsection unless such a covenant would be inconsistent with the public interest as determined under subsection (7) of this section.

(c) The director shall reach any such settlement or grant a covenant not to sue as soon as possible after the director has available the information necessary to reach a settlement or grant a covenant not to sue.

(d) A settlement under this subsection shall be entered as a consent decree or embodied in an administrative order setting forth the terms of the settlement. The circuit court for the county in which the release or threatened release occurs or the Circuit Court of Marion County may enforce any such administrative order.

(e) A party who has resolved its liability to the state under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other potentially responsible persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(f) Nothing in this subsection shall be construed to affect the authority of the director to reach settlements with other potentially responsible persons under ORS 466.540 to 466.590 and 466.900.

(9)(a) Notwithstanding ORS 183.310 to 183.550, except for those covenants required under subparagraphs (A) and (B) of paragraph (b) of subsection (7) of this section, a decision by the director to agree or not to agree to inclusion of any covenant not to sue in an agreement under this section shall not be appealable to the commission or subject to judicial review.

(b) Nothing in this section shall limit or otherwise affect the authority of any court to review, in the consent decree process under subsection (4) of this section, any covenant not to sue contained in an agreement under this section.

(10)(a) Upon completion of any removal or remedial action under an agreement under this section, or pursuant to an order under ORS 466.570, the party undertaking the removal or remedial action shall notify the department and request certification of completion. Within 90 days after receiving notice, the director shall determine by certification whether the removal or remedial action is completed in accordance with the applicable agreement or order.

(b) Before submitting a final certification decision to the court that approved the consent

decree, or before entering a final administrative order, the director shall provide to the public and to persons not named as parties to the agreement or order notice and opportunity to comment on the director's proposed certification decision, as provided under ORS 466.575.

(c) Any person aggrieved by the director's certification decision may seek judicial review of the certification decision by the court that approved the relevant consent decree or, in the case of an administrative order, in the circuit court for the county in which the facility is located or in Marion County. The decision of the director shall be upheld unless the person challenging the certification decision demonstrates that the decision was arbitrary and capricious, contrary to the provisions of ORS 466.540 to 466.590 and 466.900 or not supported by substantial evidence. The court shall apply a presumption in favor of the director's decision. The court may award attorney fees and costs to the prevailing party if the court finds the challenge or defense of the director's decision to have been frivolous. The court may assess against a party and award to the state, in addition to attorney fees and costs, an amount equal to the economic gain realized by the party if the court finds the only purpose of the party's challenge to the director's decision was delay for economic gain. [1987 c.735 §14]

466.580 State costs; payment; effect of failure to pay. (1) The department shall keep a record of the state's remedial action costs.

(2) Based on the record compiled by the department under subsection (1) of this section, the department shall require any person liable under ORS 466.567 or 466.570 to pay the amount of the state's remedial action costs and, if applicable, punitive damages.

(3) If the state's remedial action costs and punitive damages are not paid by the liable person to the department within 45 days after receipt of notice that such costs and damages are due and owing, the Attorney General, at the request of the director, shall bring an action in the name of the State of Oregon in a court of competent jurisdiction to recover the amount owed, plus reasonable legal expenses.

(4) All moneys received by the department under this section shall be deposited in the Hazardous Substance Remedial Action Fund established under ORS 466.590 if the moneys received pertain to a removal or remedial action taken at any facility. [1987 c.735 §15]

466.583 Costs as lien; enforcement of lien. (1) All of the state's remedial action costs,

penalties and punitive damages for which a person is liable to the state under ORS 466.567, 466.570 or 466.900 shall constitute a lien upon any real and personal property owned by the person.

(2) At the department's discretion, the department may file a claim of lien on real property or a claim of lien on personal property. The department shall file a claim of lien on real property to be charged with a lien under this section with the recording officer of each county in which the real property is located and shall file a claim of lien on personal property to be charged with a lien under this section with the Secretary of State. The lien shall attach and become enforceable on the day of such filing. The lien claim shall contain:

(a) A statement of the demand;

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

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

(d) A statement of the failure of the person to conduct removal or remedial action and pay penalties and damages as required.

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

(4) Nothing in this section shall affect the right of the state to bring an action against any person to recover all costs and damages for which the person is liable under ORS 466.567, 466.570 or 466.900. [1987 c.735 §16]

466.585 Contractor liability. (1)(a) A person who is a contractor with respect to any release of a hazardous substance from a facility shall not be liable under ORS 466.540 to 466.590 and 466.900 or under any other state law to any person for injuries, costs, damages, expenses or other liability including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness or loss of or damage to property or economic loss that result from such release.

(b) Paragraph (a) of this subsection shall not apply if the release is caused by conduct of the contractor that is negligent, reckless, wilful or wanton misconduct or that constitutes intentional misconduct.

(c) Nothing in this subsection shall affect the liability of any other person under any warranty under federal, state or common law. Nothing in this subsection shall affect the liability of an

employer who is a contractor to any employe of such employer under any provision of law, including any provision of any law relating to workers' compensation.

(d) A state employe or an employe of a political subdivision who provides services relating to a removal or remedial action while acting within the scope of the person's authority as a governmental employe shall have the same exemption from liability subject to the other provisions of this section, as is provided to the contractor under this section.

(2)(a) The exclusion provided by ORS 466.567 (2)(c)(C) shall not be available to any potentially responsible party with respect to any costs or damages caused by any act or omission of a contractor.

(b) Except as provided in paragraph (d) of subsection (1) of this section and paragraph (a) of this subsection, nothing in this section shall affect the liability under ORS 466.540 to 466.590 and 466.900 or under any other federal or state law of any person, other than a contractor.

(c) Nothing in this section shall affect the plaintiff's burden of establishing liability under ORS 466.540 to 466.590 and 466.900.

(3)(a) The director may agree to hold harmless and indemnify any contractor meeting the requirements of this subsection against any liability, including the expenses of litigation or settlement, for negligence arising out of the contractor's performance in carrying out removal or remedial action activities under ORS 466.540 to 466.590 and 466.900, unless such liability was caused by conduct of the contractor which was grossly negligent, reckless, wilful or wanton misconduct, or which constituted intentional misconduct.

(b) This subsection shall apply only to a removal or remedial action carried out under written agreement with:

(A) The director;

(B) Any state agency; or

(C) Any potentially responsible party carrying out any agreement under ORS 466.570 or 466.577.

(c) For purposes of ORS 466.540 to 466.590 and 466.900, amounts expended from the fund for indemnification of any contractor shall be considered remedial action costs.

(d) An indemnification agreement may be provided under this subsection only if the director determines that each of the following requirements are met:

(A) The liability covered by the indemnification agreement exceeds or is not covered by insurance available, at a fair and reasonable price, to the contractor at the time the contractor enters into the contract to provide removal or remedial action, and adequate insurance to cover such liability is not generally available at the time the contract is entered into.

(B) The contractor has made diligent efforts to obtain insurance coverage.

(C) In the case of a contract covering more than one facility, the contractor agrees to continue to make diligent efforts to obtain insurance coverage each time the contractor begins work under the contract at a new facility.

(4)(a) Indemnification under this subsection shall apply only to a contractor liability which results from a release of any hazardous substance if the release arises out of removal or remedial action activities.

(b) An indemnification agreement under this subsection shall include deductibles and shall place limits on the amount of indemnification to be made available.

(c)(A) In deciding whether to enter into an indemnification agreement with a contractor carrying out a written contract or agreement with any potentially responsible party, the director shall determine an amount which the potentially responsible party is able to indemnify the contractor. The director may enter into an indemnification agreement only if the director determines that the amount of indemnification available from the potentially responsible party is inadequate to cover any reasonable potential liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with the party. In making the determinations required under this subparagraph related to the amount and the adequacy of the amount, the director shall take into account the total net assets and resources of the potentially responsible party with respect to the facility at the time the director makes the determinations.

(B) The director may pay a claim under an indemnification agreement referred to in subparagraph (A) of this paragraph for the amount determined under subparagraph (A) of this paragraph only if the contractor has exhausted all administrative, judicial and common law claims for indemnification against all potentially responsible parties participating in the cleanup of the facility with respect to the liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with the parties. The indemnification agreement

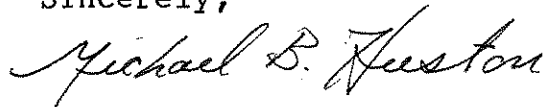
Lucinda Bidleman
October 5, 1989
Page 4

the 1989 legislation purports to override the existing regulatory responsibilities of the DEQ and EQC with respect to point sources. E.g., ORS 468.740 - 468.742.

Conclusion

For these reasons, we conclude that the 1989 groundwater legislation does not generally supplant the DEQ's and EQC's authority under the existing water quality statutes. The DEQ and EQC, however, cannot take actions that directly conflict with the terms of the 1989 legislation.

Sincerely,



Michael B. Huston
Assistant Attorney General

pb
8617H

cc: Stephen Sanders, DOJ
Walter Perry, DOJ

shall require the contractor to pay any deductible established under paragraph (b) of this subsection before the contractor may recover any amount from the potentially responsible party or under the indemnification agreement.

(d) No owner or operator of a facility regulated under the federal Solid Waste Disposal Act, as amended, P.L. 96-482 and P.L. 98-616, may be indemnified under this subsection with respect to such facility.

(e) For the purposes of ORS 466.567, any amounts expended under this section for indemnification of any person who is a contractor with respect to any release shall be considered a remedial action cost incurred by the state with respect to the release.

(5) The exemption provided under subsection (1) of this section and the authority of the director to offer indemnification under subsection (3) of this section shall not apply to any person liable under ORS 466.567 with respect to the release or threatened release concerned if the person would be covered by the provisions even if the person had not carried out any actions referred to in subsection (6) of this section.

(6) As used in this section:

(a) "Contract" means any written contract or agreement to provide any removal or remedial action under ORS 466.540 to 466.590 and 466.900 at a facility, or any removal under ORS 466.540 to 466.590 and 466.900, with respect to any release of a hazardous substance from the facility or to provide any evaluation, planning, engineering, surveying and mapping, design, construction, equipment or any ancillary services thereto for such facility, that is entered into by a contractor as defined in subparagraph (A) of paragraph (b) of this subsection with:

(A) The director,

(B) Any state agency; or

(C) Any potentially responsible party carrying out an agreement under ORS 466.570 or 466.577.

(b) "Contractor" means:

(A) Any person who enters into a removal or remedial action contract with respect to any release of a hazardous substance from a facility and is carrying out such contract; and

(B) Any person who is retained or hired by a person described in subparagraph (A) of this paragraph to provide any services relating to a removal or remedial action.

(c) "Insurance" means liability insurance that is fair and reasonably priced, as determined by

the director, and that is made available at the time the contractor enters into the removal or remedial action contract to provide removal or remedial action. [1987 c.735 §17]

466.587 Monthly fee of operators. Beginning on July 1, 1987, every person who operates a facility for the purpose of disposing of hazardous waste or PCB that is subject to interim status or a license issued under ORS 466.005 to 466.385 and 466.890 shall pay a monthly hazardous waste management fee by the 45th day after the last day of each month in the amount of \$20 per ton of hazardous waste or PCB brought into the facility for treatment by incinerator or for disposal by landfill at the facility. [1987 c.735 §18]

466.590 Hazardous Substance Remedial Action Fund; sources; uses. (1) The Hazardous Substance Remedial Action Fund is established separate and distinct from the General Fund in the State Treasury.

(2) The following shall be deposited into the State Treasury and credited to the Hazardous Substance Remedial Action Fund:

(a) Fees received by the department under ORS 466.587.

(b) Moneys recovered or otherwise received from responsible parties for remedial action costs.

(c) Any penalty, fine or punitive damages recovered under ORS 466.567, 466.570, 466.585 or 466.900.

(3) The State Treasurer may invest and reinvest moneys in the Hazardous Substance Remedial Action Fund in the manner provided by law.

(4) The moneys in the Hazardous Substance Remedial Action Fund are appropriated continuously to the department to be used as provided in subsection (5) of this section.

(5) Moneys in the Hazardous Substance Remedial Action Fund may be used for the following purposes:

(a) Payment of the state's remedial action costs;

(b) Funding any action or activity authorized by ORS 466.540 to 466.590 and 466.900; and

(c) Providing the state cost share for a removal or remedial action, as required by section 104(c)(3) of the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510 and as amended by P.L. 99-499. [1987 c.735 §19]

HOUSE BILL 3235

TABLE OF CONTENTS

SECTION	HEADING	PAGE
Section 1.	List of Confirmed Releases.....	1
Section 2.	Conforming Amendment.....	2
Section 3.	Inventory of Facilities Needing Action.....	2
Section 4.	Removal from the List or Inventory.....	3
Section 5.	Inventory Access and Contents; Legislative Report...	3
Section 6.	Preservation of Authority.....	4
Section 7.	Rulemaking - Definitions, Criteria and Exclusions...	4
Section 8.	Hazard Ranking Procedure.....	4
Section 9.	Site Discovery Program, Conforming Amendment.....	4
Section 10.	Preliminary Assessments.....	5
Section 11.	Monthly Fee of Operators.....	5
Section 12.	Rule Adoption Deadline.....	5
Section 13.	Inventory and Report Submittal Date.....	5
Section 14.	Declaration of Emergency.....	5

B-Engrossed
House Bill 3235

Ordered by the Senate June 9
Including House Amendments dated March 29 and Senate Amendments
dated June 9

Sponsored by COMMITTEE ON ENVIRONMENT AND ENERGY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Requires Department of Environmental Quality to create list of facilities with confirmed release of hazardous substance that additional investigation, removal, remedial action, long-term environmental controls or institutional controls may be needed to assure protection of present and future public health, safety, welfare or environment. Provides for removal of facility from list if cleanup and control assures protection. Provides time schedule for adoption of rules by Environmental Quality Commission. Requires department to inform public of cleanup program. Provides additional time for notice to owners and operators of such facility before inclusion on list and for owners' comments. Specifies that decision to add facility to list is not appealable to commission or courts. Specifies requirements of department's annual reports. **Subjects all waste to monthly management fee for disposal and treatment facilities regulated under provisions regarding hazardous waste.** Requires department to report to Governor, Legislative Assembly and commission on or before January 15, 1990.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to hazardous substances; creating new provisions; amending ORS 466.557, 466.560, 466.563
3 and 466.587; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 466.557 is amended to read:

6 466.557. (1) For the purposes of providing public information, the director shall develop and
7 maintain [*an inventory*] a list of all facilities [*where a release is confirmed by the department*] **with**
8 **a confirmed release as defined by the Environmental Quality Commission under section 7 of**
9 **this 1989 Act.**

10 (2) The director shall make the [*inventory*] list available for the public at the department's of-
11 fices.

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

13 (a) A general description of the facility;

14 (b) Address or location;

15 (c) Time period during which a release occurred;

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

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

19 (f) Manner of release of the hazardous substance;

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

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

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

1 (i) Other items the director determines necessary.

2 (4) [Thirty] At least 60 days before a facility is added to the [inventory] list the director shall
3 notify by certified mail or personal service the owner and operator, if known, of all or any part
4 of the facility that is to be included in the [inventory] list. The notice shall inform the owner and
5 operator that the owner and operator may comment on the decision of the director to add
6 the facility to the list within 45 days of receiving the notice. The decision of the director to add
7 a facility [may be appealed in writing to the commission within 15 days after the owner receives notice.
8 The appeal shall be conducted in accordance with provisions of ORS 183.310 to 183.550 governing
9 contested cases] to the list is not appealable to the Environmental Quality Commission or
10 subject to judicial review under ORS 183.310 to 183.550.

11 [(5) The department shall, on or before January 15, 1989, and annually thereafter, submit the in-
12 ventory and a report to the Governor, the Legislative Assembly and the Environmental Quality Com-
13 mission.]

14 [(6) Nothing in this section, including listing of a facility in the inventory or commission review
15 of the listing shall be construed to be a prerequisite to or otherwise affect the authority of the director
16 to undertake, order or authorize a removal or remedial action under ORS 466.540 to 466.590 and
17 466.900.]

18 **SECTION 2.** Sections 3 to 8 of this Act are added to and made a part of ORS 466.540 to 466.590.

19 **SECTION 3.** (1) For the purpose of providing public information, the director shall develop and
20 maintain an inventory of all facilities for which:

21 (a) A confirmed release is documented by the department; and

22 (b) The director determines that additional investigation, removal, remedial action, long-term
23 environmental controls or institutional controls are needed to assure protection of present and fu-
24 ture public health, safety, welfare or the environment.

25 (2) The determination that additional investigation, removal, remedial action, long-term envi-
26 ronmental controls or institutional controls are needed under subsection (1) of this section shall be
27 based upon a preliminary assessment approved or conducted by the department.

28 (3) Before the department conducts a preliminary assessment, the director shall notify the owner
29 and operator, if known, that the department is proceeding with a preliminary assessment and that
30 the owner or operator may submit information to the department that would assist the department
31 in conducting a complete and accurate preliminary assessment.

32 (4) At least 60 days before the director adds a facility to the inventory, the director shall notify
33 by certified mail or personal service the owner and operator, if known, of all or any part of the fa-
34 cility that is to be included in the inventory. The decision of the director to add a facility to the
35 inventory is not appealable to the Environmental Quality Commission or subject to judicial review
36 under ORS 183.310 to 183.550.

37 (5) The notice provided under subsection (4) of this section shall include the preliminary as-
38 sessment and shall inform the owner or operator that the owner or operator may comment on the
39 information contained in the preliminary assessment within 45 days after receiving the notice. For
40 good cause shown, the department may grant an extension of time to comment. The extension shall
41 not exceed 45 additional days.

42 (6) The director shall consider relevant and appropriate information submitted by the owner or
43 operator in making the final decision about whether to add a facility to the inventory.

44 (7) The director shall review the information submitted and add the facility to inventory if the

1 director determines that a confirmed release has occurred and that additional investigation, re-
2 moval, remedial action, long-term environmental controls or institutional controls are needed to as-
3 sure protection of present and future public health, safety, welfare or the environment.

4 **SECTION 4.** (1) According to rules adopted by the Environmental Quality Commission, the di-
5 rector shall remove a facility from the list or inventory, or both, if the director determines:

6 (a) Actions taken at the facility have attained a degree of clean up and control of further release
7 that assures protection of present and future public health, safety, welfare and the environment;

8 (b) No further action is needed to assure protection of present and future public health, safety,
9 welfare and the environment; or

10 (c) The facility satisfies other appropriate criteria for assuring protection of present and future
11 public health, safety, welfare and the environment.

12 (2) The director shall not remove a facility if continuing environmental controls or institutional
13 controls are needed to assure protection of present and future public health, safety, welfare and the
14 environment, so long as such controls are related to removal or remedial action.

15 **SECTION 5.** (1) The director shall make the inventory available to the public at the office of
16 the Department of Environmental Quality.

17 (2) The inventory shall include but need not be limited to:

18 (a) The following information, if known:

19 (A) A general description of the facility;

20 (B) Address or location;

21 (C) Time period during which a release occurred;

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

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

25 (F) Manner of release of the hazardous substance;

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

28 (H) Hazard ranking and narrative information regarding threats to the environment and public
29 health;

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

31 (J) Other items the director determines necessary; and

32 (b) Information that indicates whether the remedial action at the facility will be funded prima-
33 rily by:

34 (A) The department through the use of moneys in the Hazardous Substance Remedial Action
35 Fund;

36 (B) An owner or operator or other person under an agreement, order or consent decree under
37 ORS 466.540 to 466.590; or

38 (C) An owner or operator or other person under other state or federal authority.

39 (3) The department may organize the inventory into categories of facilities, including but not
40 limited to the types of facilities listed in subsection (2) of this section.

41 (4) On or before January 15 of each year, the department shall submit the inventory and a re-
42 port to the Governor, the Legislative Assembly and the Environmental Quality Commission. The
43 annual report shall include a quantitative and narrative summary of the department's accomplish-
44 ments during the previous fiscal year and the department's goals for the current fiscal year, in-

1 cluding but not limited to each of the following areas:

- 2 (a) Facilities with a suspected release added to the department's data base;
- 3 (b) Facilities with a confirmed release added to the department's list;
- 4 (c) Facilities added to and removed from the inventory;
- 5 (d) Removals initiated and completed;
- 6 (e) Preliminary assessments initiated and completed;
- 7 (f) Remedial investigations initiated and completed;
- 8 (g) Feasibility studies initiated and completed; and
- 9 (h) Remedial actions, including long-term environmental controls and institutional controls, ini-
- 10 tiated and completed.

11 (5) Beginning in 1991, and every fourth year thereafter, the report required under subsection (4)
12 of this section shall include a four-year plan of action for those items under paragraphs (e) to (h)
13 of subsection (4) of this section. The four-year plan shall include projections of funding and staffing
14 levels necessary to implement the four-year plan.

15 **SECTION 6.** Nothing in sections 3 to 8 of this 1989 Act or placement of a facility on the list
16 under ORS 466.557 shall be construed to be a prerequisite to or otherwise affect the authority of the
17 director to undertake, order or authorize a removal or remedial action under ORS 466.540 to 466.590
18 and 466.900.

19 **SECTION 7.** (1) The Environmental Quality Commission shall adopt by rule:

- 20 (a) A definition of "confirmed release" and "preliminary assessment"; and
- 21 (b) Criteria to be applied by the director in determining whether to remove a facility from the
22 list and inventory under section 4 of this 1989 Act.

23 (2) In adopting rules under this section, the commission shall exclude from the list and inventory
24 the following categories of releases to the extent the commission determines the release poses no
25 significant threat to present or future public health, safety, welfare or the environment:

- 26 (a) De minimis releases;
- 27 (b) Releases that by their nature rapidly dissipate to undetectable or insignificant levels;
- 28 (c) Releases specifically authorized by and in compliance with a current and legally enforceable
29 permit issued by the department or the United States Environmental Protection Agency; or
- 30 (d) Other releases that the commission finds pose no significant threat to present and future
31 public health, safety, welfare or the environment.

32 (3) The director shall exclude from the list and inventory releases the director determines have
33 been cleaned up to a level that:

- 34 (a) Is consistent with rules adopted by the commission under ORS 466.553; or
- 35 (b) Poses no significant threat to present or future public health, safety, welfare or the envi-
36 ronment.

37 **SECTION 8.** In addition to the rules adopted under section 7 of this 1989 Act, the Environ-
38 mental Quality Commission shall adopt by rule a procedure for ranking facilities on the inventory
39 based on the short-term and long-term risks they pose to present and future public health, safety,
40 welfare or the environment.

41 **SECTION 9.** ORS 466.560 is amended to read:

42 466.560. (1) The department shall develop and implement a comprehensive state-wide program
43 to identify any release or threat of release from a facility that may require remedial action.

44 (2) The department shall notify all daily and weekly newspapers of general circulation in the

1 state and all broadcast media of the program developed under subsection (1) of this section. The
2 notice shall include information about how the public may provide information on a release or threat
3 of release from a facility.

4 (3) In developing the program under subsection (1) of this section, the department shall examine,
5 at a minimum, any industrial or commercial activity that historically has been a major source in this
6 state of releases of hazardous substances.

7 (4) The department shall include information about the implementation and progress of the pro-
8 gram developed under subsection (1) of this section in the report required under [ORS 466.557 (5)]
9 section 5 of this 1989 Act.

10 SECTION 10. ORS 466.563 is amended to read:

11 466.563. *[(1) If] When* the department receives information about a release or a threat of release
12 from a potential facility, the department shall *[conduct a preliminary assessment of the potential fa-*
13 *ility] evaluate the information and document its conclusions and may approve or conduct a*
14 *preliminary assessment. However, if the department determines there is a significant threat*
15 *to present or future public health, safety, welfare or the environment, the department shall*
16 *approve or conduct a preliminary assessment according to rules of the commission. The pre-*
17 *liminary assessment shall be conducted as expeditiously as possible within the budgetary constraints*
18 *of the department.*

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

22 SECTION 11. ORS 466.587 is amended to read:

23 466.587. *[Beginning on July 1, 1987,]* Every person who operates a facility for the purpose of
24 disposing of hazardous waste or PCB that is subject to interim status or a *[[license] permit* issued
25 under ORS 466.005 to 466.385 and 466.890 shall pay a monthly hazardous waste management fee by
26 the 45th day after the last day of each month in the amount of \$20 per ton of *[hazardous] all* waste
27 *[or PCB]* brought into the facility for treatment by incinerator or for disposal by landfill at the fa-
28 cility.

29 SECTION 12. The Environmental Quality Commission shall adopt the rules under sections 7
30 and 8 of this Act within nine months after the effective date of this Act.

31 SECTION 13. The Department of Environmental Quality shall submit the first report and the
32 inventory, as completed to date, to the Governor, the Legislative Assembly and the Environmental
33 Quality Commission on or before January 15, 1990.

34 SECTION 14. This Act being necessary for the immediate preservation of the public peace,
35 health and safety, an emergency is declared to exist, and this Act takes effect on its passage.

36

Section by Section Analysis
House Bill 3235

Section 1. List of Confirmed Releases

This section amends the current Inventory law, ORS 466.557. The amendments require the Director to develop and maintain a "list", rather than an "inventory", of facilities that the Department determines had a confirmed release of hazardous substances. This section adds the requirement that the Environmental Quality Commission (EQC) adopt a definition of "confirmed release" for the Department to use in determining whether a release should be added to this list.

At least 60 days before a facility is added to the list, the Department must notify the owner and operator, if known, of the Director's decision to list the facility. The owner or operator then has 45 days to provide comments to the Department.

The decision of the Director to add a facility to the list is final, and is not appealable to the EQC or subject to judicial review.

Section 2. Conforming Amendment

Adds Sections 3 to 8 to ORS 466.540 to 466.590.

Section 3. Inventory of Facilities Needing Action

This section requires the Director to develop and maintain an inventory of all facilities that meet two criteria. First, the Department must have a documented confirmed release of hazardous substances at the facility. This is the same criteria used for the list under Section 1. Second, the Director must determine, based on a preliminary assessment, that additional investigation, removal, remedial action, long-term environmental controls or institutional control are needed to assure protection of present and future public health, safety, welfare or the environment. The elements of a preliminary assessment needed to make this second determination will be defined by EQC rules.

The preliminary assessment must be conducted or approved by the Department. Prior to conducting, authorizing or requiring the preliminary assessment, the Director must notify the facility owner and operator, if known, that the preliminary assessment is proceeding and that the owner or operator may submit information to the Department that would assure a complete and accurate preliminary assessment.

After the preliminary assessment is completed, and at least 60 days before the Director adds a facility to the inventory, the Director must notify the owner and operator, if known, of the decision to add the facility to the inventory and provide a copy of the preliminary assessment conducted on the facility. The owner or operator then has 45 days to comment on the information in the preliminary assessment, or provide the Department additional information about the facility. If the owner or operator can show good cause, the Department, at its discretion, can grant an extension of time to comment not to exceed an additional 45 days.

After the close of the 45 day comment period, or any extension granted, the Director must review the information submitted and add the facility to the inventory if the Director determines that a confirmed release has occurred and that additional investigation, removal, remedial action, long-term environmental controls or institutional control is needed to assure protection of present and future public health, safety, welfare or the environment. The Director's decision is final and is not appealable to the EQC or subject to judicial review. In making the final decision about whether to add a facility to the inventory, the Director must consider relevant and appropriate information submitted by the owner or operator in a timely manner.

Section 4. Removal from the List or Inventory

This section requires the EQC to adopt rules providing a procedure to remove facilities from the list or inventory or both when the Director determines that the facility has attained a degree of clean up that is protective, that no further action is necessary to assure protection of present and future public health, safety, welfare and the environment, or that the facility satisfies other appropriate criteria to assure protection of public health, safety, welfare and the environment.

The Director shall not remove a facility if continuing environmental controls or institutional controls are needed to assure protection of present and future public health, safety, welfare and the environment.

Section 5. Inventory Access and Contents; Legislative Report

The inventory must be made available to the public at the Department's offices. The inventory must include at least the same facility information that is required for the list of confirmed releases, if known. The inventory shall also include hazard ranking and narrative information regarding threats to the environment and public health, if known. It must also include the following information, if known:

After the preliminary assessment is completed, and at least 60 days before the Director adds a facility to the inventory, the Director must notify the owner and operator, if known, of the decision to add the facility to the inventory and provide a copy of the preliminary assessment conducted on the facility. The owner or operator then has 45 days to comment on the information in the preliminary assessment, or provide the Department additional information about the facility. If the owner or operator can show good cause, the Department, at its discretion, can grant an extension of time to comment not to exceed an additional 45 days.

After the close of the 45 day comment period, or any extension granted, the Director must review the information submitted and add the facility to the inventory if the Director determines that a confirmed release has occurred and that additional investigation, removal, remedial action, long-term environmental controls or institutional control is needed to assure protection of present and future public health, safety, welfare or the environment. The Director's decision is final and is not appealable to the EQC or subject to judicial review. In making the final decision about whether to add a facility to the inventory, the Director must consider relevant and appropriate information submitted by the owner or operator in a timely manner.

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Section 5. Inventory Access and Contents; Legislative Report

The inventory must be made available to the public at the Department's offices. The inventory must include at least the same facility information that is required for the list of confirmed releases, if known. The inventory shall also include hazard ranking and narrative information regarding threats to the environment and public health, if known. It must also include the following information, if known:

1. Whether the facility is being investigated and cleaned up primarily using state resources from the state superfund (Hazardous Substance Remedial Action Fund); or
2. Whether the facility is being investigated and cleaned up primarily by a responsible party under an agreement with the Department pursuant to the state superfund law (ORS 466.540 to 466.590); or
3. Whether the facility is being investigated and cleaned up by a responsible party, the Department or another agency pursuant to another state or federal authority.

The Department is also given the authority to arrange the inventory into categories of facilities, including but not limited to, the three categories listed in the previous paragraph.

Beginning January 15, 1990 the Department must annually submit the inventory and a report to the Governor, the Legislative Assembly and the Environmental Quality Commission.

The report must include information about the comprehensive state-wide program the Department is required to implement under ORS 466.560 to identify any release or threat of release from a facility that may require remedial action.

In addition, the report must also include quantitative and narrative summaries of Department accomplishments during the previous fiscal year, as well as Department goals for the current fiscal year in at least the following areas:

1. Facilities with a suspected release added to the Department's site assessment database;
2. Facilities with a confirmed release added to the Department's list of confirmed releases;
3. Facilities added to and removed from the inventory;
4. Removals initiated and completed;
5. Preliminary assessments initiated and completed;
6. Remedial investigation initiated and completed;
7. Feasibility studies initiated and completed; and

8. Remedial actions, including long-term environmental and institutional controls, initiated and completed.

Finally, beginning in 1991 and each four years thereafter the report must also include a four year plan of action, with respect to items 5 through 8 above, with projections of funding and staffing levels necessary to implement the plan.

Section 6. Preservation of Authority

Provides that nothing in these requirements relating to the list of confirmed releases or the inventory shall be construed to be a prerequisite to or otherwise affect the authority of the Department to undertake, order or authorize a removal or remedial action under ORS 466.540 to 466.590 and 466.900.

Section 7. Rulemaking - Definitions, Criteria and Exclusions

This section requires the EQC to adopt rules defining "confirmed release" and "preliminary assessment" and providing criteria for removing a facility from the list or inventory.

In adopting rules regarding confirmed releases, the EQC must exclude from the list and inventory the following releases to the extent the EQC determines they pose no significant threat to present or future public health, safety, welfare or the environment:

1. De minimis releases;
2. Releases that by their nature rapidly dissipate to undetectable or insignificant levels;
3. Releases specifically authorized by and in compliance with a current and legally enforceable permit issued by the Department or EPA; and
4. Other releases the EQC finds pose no significant threat.

Additionally, the Director must exclude from the list and inventory releases that the Director determines have been cleaned up to a level consistent with the state superfund rules, or that otherwise pose no significant threat.

Section 8. Hazard Ranking Procedure

This section requires the EQC to adopt rules providing a procedure for ranking facilities on the inventory based on the short-term and long-term risks they pose to present and future public health, safety, welfare and the environment.

8. Remedial actions, including long-term environmental and institutional controls, initiated and completed.

Finally, beginning in 1991 and each four years thereafter the report must also include a four year plan of action, with respect to items 5 through 8 above, with projections of funding and staffing levels necessary to implement the plan.

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Additionally, the Director must exclude from the list and inventory releases that the Director determines have been cleaned up to a level consistent with the state superfund rules, or that otherwise pose no significant threat.

Section 8. Hazard Ranking Procedure

This section requires the EQC to adopt rules providing a procedure for ranking facilities on the inventory based on the short-term and long-term risks they pose to present and future public health, safety, welfare and the environment.

Section 9. Site Discovery Program, Conforming Amendment

This section contains a conforming amendment to ORS 466.560 to retain the requirement that the annual report to the Governor, Legislature and EQC includes information about the implementation and progress of the comprehensive state-wide discovery program.

Section 10. Preliminary Assessments

This section amends ORS 466.563 to require the Department to evaluate information it receives about a release or threat of release to determine if it presents a significant threat to present or future public health, safety, welfare or the environment. The Department must document its conclusions, and if it determines the threat to be significant, a preliminary assessment must be conducted as expeditiously as possible within the budgetary constraints of the Department. The contents of the preliminary assessment will be defined by rule by the EQC.

Section 11. Monthly Fee of Operators

This section amends ORS 466.587 to clarify that the hazardous waste management fee is to be assessed on all waste received by the hazardous waste facility for incineration or disposal regardless of its regulatory classification.

Section 12. Rule Adoption Deadline

This section requires the EQC to adopt rules required under this Act within nine months of enactment.

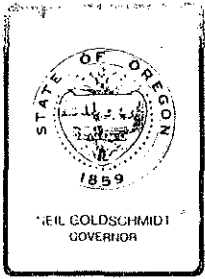
Section 13. Inventory and Report Submittal Date

This section requires the Department to submit the first report and inventory, as completed to date, to the Governor, the Legislature and EQC on or before January 15, 1990.

Section 14. Declaration of Emergency

This section declares an emergency and makes the Act effective upon its passage.

June 22, 1989



SAMPLE

ATTACHMENT E

Department of Environmental Quality

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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

August 29, 1989

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX, XX 99999-9999

ATTN: Manager of Environmental Affairs

RE: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
Recision of Inventory of Confirmed Releases
Notice of Dismissal of DEQ Order Number SA-891-9999
Notice of Proposed EQC Order

The facility referenced above was listed, subject to appeal, on an Inventory of Confirmed Releases by an order of the Department of Environmental Quality (DEQ) dated November 30, 1988. That order was issued under authority set forth in ORS 466.557 (1987). The 1989 Legislature amended ORS 466.557 to require DEQ to replace the Inventory of Confirmed Releases with a new process for identifying facilities where a release of hazardous substances is confirmed. 1989 OR Laws Ch. 485 (HB 3235).

In accordance with HB 3235, DEQ rescinds the Inventory of Confirmed Releases established by the orders dated November 30, 1988. The facility referenced above therefore is no longer listed on an Inventory of Confirmed Releases under ORS 466.557.

Future listings will be handled through a three-step process now required by HB 3235. First, the Environmental Quality Commission (EQC) will adopt rules, which will define "confirmed release", establish exemptions from listing, and establish criteria for delisting. Second, a list of facilities having a confirmed release will be developed. Third, an inventory of facilities having both a confirmed release and a need for further investigation or cleanup will be developed.

Owners and operators of facilities will have opportunities to comment and provide information regarding this process during the EQC rulemaking and at the time any facility is proposed to be placed on the List or Inventory. A citizens advisory committee will be consulted in the development of the EQC rules. No facility will be placed on the List or Inventory until after the EQC rulemaking, which should be completed in approximately nine months. DEQ will contact the current owner and operator, if known, in writing if the above-referenced site is again proposed for the listing.

After such consultation, a decision to add a facility to the List or Inventory will not be appealable. As with the original inventory, the purpose of any listing will be to inform the public of the presence and extent of sites in the state that are contaminated by hazardous substances. Listing will not involve or constitute a determination of liability for the contamination.

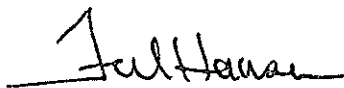
In accordance with HB 3235 and the rescission of the Inventory of Confirmed Releases, PLEASE TAKE NOTICE that the above-referenced order is dismissed.

If you did not request a contested case hearing on the above-referenced order, the process generally described above will govern future listing consideration, if any, of the referenced site. The notice set forth below will not apply.

If you requested a contested case hearing on the above-referenced order, both the process described above and the notice set forth below will apply.

If you requested a contested case hearing on the above-referenced order, PLEASE TAKE NOTICE that DEQ will submit a proposed order to the EQC dismissing all contested case hearings to be considered at the EQC meeting scheduled for October 20, 1989, at the 4th Floor Conference Room, Department of Environmental Quality, 811 S. W. 6th Avenue, Portland, Oregon 97204. A copy of the proposed order is attached. Written exceptions to the proposed order must be filed at the above address, c/o Secretary to the EQC, no later than October 6, 1989.

Sincerely,



Fred Hansen
Director

DSL:m

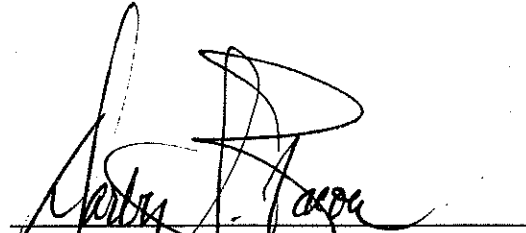
SM2400

Attachment

cc: Members, Environmental Quality Commission
Linda Zucker, EQC Hearings Officer
Southwest Region, DEQ
Oregon Department of Justice

CERTIFICATE OF SERVICE

I certify that I served by Certified Mail a true copy of the foregoing document upon each person designated on the attached mailing list:



Darby J. Bacon

Date 8/30/89

DEPARTMENT OF ENVIRONMENTAL
QUALITY

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-1	Apollo Metal Finishing, Inc. 7525 S.E. Johnson Creek Blvd. Portland	Dorothy Hartman	6400 S.E. Plumb Drive Milwaukie OR 97222	C. David Hall Burnside Trolley Building 2705 E. Burnside, Suite 104 Portland OR 97214
SA-891-5	All-American Plating Service, Inc. 495 Seneca Road Eugene	McKay Investment Co.	McKay Investment Co. 2300 Oakmont Way Eugene OR 97401	Dean S. Kaufman Kaufman & Stewart 50 Oakway Center, Suite F Eugene OR 97401
SA-891-6	Allied Plating 8135 N.E. Union Avenue Portland	Stanley Hodes	Allied Plating 4209 S.W. 51st Place Portland OR 97221	
SA-891-8	Arnav Systems Inc. 4740 Ridge Drive N.E. Salem	Joan Baker Achilles	P.O. Box 17129 Salem OR 97035	
SA-891-8	Arnav Systems Inc. 4740 Ridge Drive N.E. Salem	Alexander Art Corporation	Alexander Art Corporation P.O. Box 17129 Salem OR 97035	Lois J. Portnoy 135 S.W. Ash Street, Suite 325 Portland OR 97204

F-2

FACILITIES AND ATTORNEYS NOTIFIED OF
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ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-10	Beall Trans-Liner 9200 N. Ramsey Blvd. Portland	St. Johns Corp.	St. Johns Corp. 9200 N. Ramsey Blvd. Portland OR 97203	
SA-891-11	Beaver Creek Auto Salvage 22675 S. Beaver Creek Road Beaver Creek	Beaver Creek Auto Salvage	Beaver Creek Auto Salvage 2427 N.E. Skidmore Portland OR 97211	
SA-891-11	Beaver Creek Auto Salvage 22675 S. Beaver Creek Road Beaver Creek	Thomas A. Holeman	13035 S.E. Rusk Road Milwaukie OR 97222	
SA-891-11	Beaver Creek Auto Salvage 22675 S. Beaver Creek Road Beaver Creek	Ralph P. Lungo	Beaver Creek Auto Salvage 2427 N.E. Skidmore Portland OR 97211	
SA-891-11	Beaver Creek Auto Salvage 22675 S. Beaver Creek Road Beaver Creek	Wesley G. Jennings	16872 S. Howards Mill Beaver Creek OR 97004	
SA-891-12	Bergsoe Metal Corporation 444 Port Avenue St. Helens	U.S. Bank (trustee)	c/o Bergsoe Metal Corp. 444 Port Ave. St. Helens OR 97051	Mary E. Egan Ransom, Blackman & Simson 900 American Bank Building 621 S.W. Morrison Portland OR 97205

1-3

FACILITIES AND ATTORNEYS NOTIFIED OF
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NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-12	Bergsoe Metal Corporation 444 Port Avenue St. Helens	Port of St. Helens	Port of St. Helens c/o Bergsoe Metal Corp. 444 Port Avenue St. Helens OR 97051	
SA-891-12	Bergsoe Metal Corporation 444 Port Avenue St. Helens	Port of St. Helens	Port of St. Helens P.O. Box 598 St. Helens OR 97051	Robert E. Maloney, Jr. Spears, Lubersky, Bledsoe, et al 520 S.W. Yamhill, Suite 800 Portland OR 97204-1383
SA-891-13	East Multnomah County/Ptld. Well Field 19000 N.E. Sandy Blvd. Portland	The Boeing Company - Seattle	The Boeing Company P.O. Box 3707 Mail Stop 9A-43 Seattle WA 98124	Craig Johnston Perkins Cole U.S. Bancorp Tower, Suite 2500 111 S.W. Fifth Avenue Portland OR 97204
SA-891-14	Boise Cascade Corporation-St.Helens Mill South First Street St. Helens	Boise Cascade Corp.	Boise Cascade Corp. c/o Property Tax Dept. P.O. Box 50 Boise ID 83728	Brian J. King Boise Cascade Corporation One Jefferson Square P.O. Box 50 Boise ID 83728
SA-891-15	Boise Cascade Corporation Valsetz Lake Valsetz	Boise Cascade Corp.	Boise Cascade Corp. P.O. Box 290 Monmouth OR 97361	Brian J. King Boise Cascade Corporation One Jefferson Square P.O. Box 50 Boise ID 83728

F-4

12

FACILITIES AND ATTORNEYS NOTIFIED OF
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ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-16	Borden Chemical Company Hwy 82 - 4 mi NE of LaGrande LaGrande	The Borden Chemical Company	The Borden Chemical Company Tax Department 180 E. Broad Street Columbus OH 43215	Martha E. Horwitz Borden, Inc. Law Department - 27th Floor 180 E. Broad Street Columbus OH 43215
SA-891-17	Capital Chrome/Salem Plating Works 1520 Hickory N.E. Salem	Clarence E. and Diattia M. Pyatt	Capital Chrome/Salem Plating Works 2735 Portland Road N.E. Salem OR 97303	
SA-891-18	Caron Chemical Inc. 8600 Suver Road. Monmouth	Willamette Seed Co.	Willamette Seed Co. P.O. Box 791 Albany OR 97321	
SA-891-18	Caron Chemical Inc. 8600 Suver Road Monmouth	Polk County Farmers Co-op	Polk County Farmers Co-op P.O. Box 47 Rickreall OR 97371	
SA-891-20	Cascade Wood Products 8399 14th Street White City	Cascade Wood Products	Cascade Wood Products P.O. Box 2429 White City OR 97503	

f-5

17

FACILITIES AND ATTORNEYS NOTIFIED OF
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ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-20	Cascade Wood Products 8399 14th Street White City	Millwork Properties	Millwork Properties c/o Cascade Wood Products P.O. Box 2429 White City OR 97503	
SA-891-20	Cascade Wood Products 8399 14th Street White City	Donald Whipp	Cascade Wood Products P.O. Box 2429 White City OR 97503	James C. Brown Bogle & Gates 1400 KOIN Center 220 S.W. Columbia Portland OR 97201
SA-891-20	Cascade Wood Products 8399 14th Street White City	Millwork Properties	Millwork Properties c/o Michael J. Williams 8399 14th Street White City OR 97503	
SA-891-22	Chambers Oil Corporation 400 California Ave. North Bend	Robert W Chambers	Chambers Fuel Oil, Inc. 990 N. 10th Coos Bay OR 97420	
SA-891-22	Chambers Oil Corporation 400 California Ave. North Bend	Chambers Fuel Oil, Inc.	Chambers Fuel Oil, Inc. c/o Alan C. Routh 6363 Christie Avenue Emeryville CA 94608	
SA-891-23	Chapman Chemical Company 10505 N. Marcum Avenue Portland	Chapman Chemical Company	Chapman Chemical Company 416 East Brooks Road Memphis TN 38019	

F-6

76

FACILITIES AND ATTORNEYS NOTIFIED OF
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ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-24	Harbor Oil, Inc. 11535 N. Force Street Portland	Harbor Oil, Inc.	Harbor Oil, Inc. 2416 N. Marine Drive Suite 200 Portland OR 97217	
SA-891-24	Harbor Oil, Inc. 11535 N. Force Street Portland	UST Corp.	UST Corp. c/o Portland Union Stockyard 2416 N. Marine Drive Portland OR 97217	David H. Couch Bogle & Gates 1400 KOIN Center 220 S.W. Columbia Portland OR 97201
SA-891-24	Harbor Oil, Inc. 11535 N. Force Street Portland	Canal Capital Corporation	Canal Capital Corporation 717 Fifth Avenue New York NY 10022	
SA-891-25	Chevron USA, Inc. - Willbridge Dist Termin 5531 N.W. Doane Avenue Portland	Chevron USA, Inc. - San Francisco	Chevron U.S.A. P.O. Box 220 Seattle WA 98111	Daniel E. Vineyard Chevron Corporation 555 Market Street P.O. Box 7141 San Francisco CA 94120-7141
SA-891-26	City Oil 3303 Washburn Way Klamath Falls	Edwin J. Clough	P.O. Box 338 Klamath Falls OR 97601	Donald A. Haagensen Schwabe, Williamson, et al Pacwest Center Suite 1600-1800 1211 S.W. Fifth Avenue Portland OR 97204-3795

F-7

FACILITIES AND ATTORNEYS NOTIFIED OF
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ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-27	Clough Fuel Company TS38S, R9E, Sec 33CB, TL400 Klamath Falls	Edwin J. Clough	Clough Fuel Company 3303 Washburn Way Klamath Falls OR 97601	Donald A. Haagenen Schwabe, Williamson, et al Pacwest Center Suite 1600-1800 1211 S.W. Fifth Avenue Portland OR 97204-3795
SA-891-27	Clough Fuel Company TS38S, R9E, Sec 33CB, TL400 Klamath Falls	Clough Oil Company	Clough Oil Company 3303 Washburn Way Klamath Falls OR 97061	
SA-891-29	Columbia American Plating Company 3003 N.W. 35th Portland	Lakea Corp.	Lakea Corp. 15114 N.W. Oakmont Loop Beaverton OR 97006	
SA-891-30	Columbia Helicopters 14452 Arndt Road N.E. Aurora	Columbia Helicopters	Columbia Helicopters P.O. Box 3500 Portland OR 97208	
SA-891-31	Condon Grain Growers 105 S Main St Condon	Union Pacific Land Resources	Union Pacific Land Resources P.O. Box 2500 Broomfield CO 80020	
SA-891-31	Condon Grain Growers 105 S Main St Condon	Union Pacific Railroad Company	Union Pacific Railroad Company 406 West 100 South Salt Lake City UT 84101	Barry L. Groce Union Pacific Railroad Co. Law Department 1515 S.W. Fifth Ave., Suite 40 Portland OR 97201

F-8

FACILITIES AND ATTORNEYS NOTIFIED OF
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NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-32	Consolidated Freightways, Inc. 2244 N.W. Savier Street Portland	Consolidated Freightways Inc.	Consolidated Freightways Inc. 175 Linfield Drive Menlo Park CA 94025	Frank Parisi Spears, Lubersky, Bledsoe, et al 520 S.W. Yamhill, Suite 800 Portland OR 97204-1383
SA-891-37	United Medical Laboratory/Drum Recovery 11104 N.E. Holman Portland	Oregon Fir Supply Co., Inc.	Oregon Fir Supply Co., Inc. P.O. Box 37 Lyons OR 97358	
SA-891-37	United Medical Laboratory/Drum Recovery 11104 N.E. Holman Portland	Michel, R.S. TR et al	Oregon Dept. of Transportation Environmental Section 324 Capitol Street N.E. Salem OR 97310	
SA-891-37	United Medical Laboratory/Drum Recovery 11104 N.E. Holman Portland	I.C.N. Pharmaceuticals, Inc.	I.C.N. Pharmaceuticals, Inc. c/o M'Liss Kane Asst. VP 3300 Hyland Avenue Costa Mesa CA 92626	K. Randall Pearson Rivkin, Radler, Dunne & Bayh 1575 Eye Street, N.W. Washington DC 20005-1105
SA-891-37	United Medical Laboratory/Drum Recovery 11104 N.E. Holman Portland	C. M. Armstrong Co.	C. M. Armstrong Co. P.O. Box 02097 5525 S.E. 28th Street Portland OR 97202	

F-9

FACILITIES AND ATTORNEYS NOTIFIED OF
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SA-891-32	Consolidated Freightways, Inc. 2244 N.W. Savier Street Portland	Consolidated Freightways Inc.	Consolidated Freightways Inc. 175 Linfield Drive Menlo Park CA 94025	
SA-891-37	United Medical Laboratory/Drum Recovery 11104 N.E. Holman Portland	Oregon Fir Supply Co., Inc.	Oregon Fir Supply Co., Inc. P.O. Box 37 Lyons OR 97358	
SA-891-37	United Medical Laboratory/Drum Recovery 11104 N.E. Holman Portland	Michel, R.S. TR et al	Oregon Dept. of Transportation Environmental Section 324 Capitol Street N.E. Salem OR 97310	
SA-891-37	United Medical Laboratory/Drum Recovery 11104 N.E. Holman Portland	I.C.N. Pharmaceuticals, Inc.	I.C.N. Pharmaceuticals, Inc. c/o M'Liss Kane Asst. VP 3300 Hyland Avenue Costa Mesa CA 92626	K. Randall Pearson Rivkin, Radler, Dunne & Bayh 1575 Eye Street, N.W. Washington DC 20005-1105
SA-891-37	United Medical Laboratory/Drum Recovery 11104 N.E. Holman Portland	C. M. Armstrong Co.	C. M. Armstrong Co. P.O. Box 02097 5525 S.E. 28th Street Portland OR 97202	
SA-891-39	Eugene Stud & Veneer 3300 Cross Street Eugene	"1210" Company	"1210" Company 1210 Yeon Building 522 S.W. 5th Portland OR 97204	

F-10

FACILITIES AND ATTORNEYS NOTIFIED OF
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ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-40	Evans Fiber Corporation 1115 Crystal Lake Drive Corvallis	Evanite Fiber Corporation	Evanite Fiber Corporation P.O. Box "E" Corvallis OR 97339-0598	F. Scott Farleigh Waggoner, Farleigh, Wada, et al One Financial Center 121 S.W. Morrison, Suite 1000 Portland OR 97204-3192
SA-891-41	Ezell Tire and Oil Company T41S, R11E, Sec15, TL1000 Hatfield	Brad Staub, et al	Ezell Oil Company P.O. Box 506 Tulelake CA 96134	
SA-891-43	Fred Meyer - Hyster 2902 N.E. Clackamas Street Portland	Fred Meyer Real Estate Properties, Ltd.	Fred Meyer Real Estate Properties, Ltd. 3800 S.E. 22nd Avenue Portland OR 97202	Kevin Q. Davis Stoel, Rives, Boley et al Standard Insurance Center 900 S.W. Fifth Ave., Suite 230 Portland OR 97204-1268
SA-891-43	Fred Meyer - Hyster 2902 N.E. Clackamas Street Portland	Hyster Co.	Hyster Co. P.O. Box 2902 Portland OR 97208	Steven R. Schell Rappleyea, Bock, et al 1200 Bank of California Tower 707 S.W. Washington Portland OR 97205
SA-891-45	General Battery Corp 4949 S.E. 25th Portland	J. Frank Schmidt Trust	c/o Jan E. Barkley 33098 S.E. Bluff Road Boring OR 97009	

F-11

71

FACILITIES AND ATTORNEYS NOTIFIED OF
RECISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-46	General Chain Bar Company 7320 S.W. Bonita Road Tigard	Empire Batteries, Inc.	Empire Batteries, Inc. P.O. Box 23962 Tigard OR 97223	Edward A. Finklea Tonkon, Torp, Galen, et al 1800 Orbanco Building 1001 S.W. Fifth Avenue Portland OR 97204-1162
SA-891-46	General Chain Bar Company 7320 S.W. Bonita Road Tigard	Rod A. Moore and First Interstate Bank	Rod A. Moore and First Interstate Bank 1300 S.W. 5th Portland OR 97201	J. Mark Morford Stoel, Rives, Boley et al Standard Insurance Center 900 S.W. Fifth Ave., Suite 230 Portland OR 97204-1268
SA-891-49	Gould, Inc./N. L. Industries, Inc. 5909 W. 61st Portland	Gould, Inc.	Gould, Inc. 10 Gould Center Rolling Meadows IL 60008	
SA-891-50	Gull Station TS39, R09, Sec4AA, TL5400 Klamath Falls	Gull Industries, Inc.	Gull Industries, Inc. 3404 Fourth Avenue South P.O. Box 24687 Seattle WA 98124	David H. Couch Bogle & Gates 1400 KOIN Center 220 S.W. Columbia Portland OR 97201
SA-891-53	Hewlett-Packard (Corvallis) 1020 N.E. Circle Blvd. Corvallis	Hewlett-Packard	Hewlett-Packard 1020 N.E. Circle Blvd. Corvallis OR 97330	James C. Brown Bogle & Gates 1400 KOIN Center 220 S.W. Columbia Portland OR 97201

F-12

08/29/89

FACILITIES AND ATTORNEYS NOTIFIED OF
 RECESSION OF INVENTORY OF CONFIRMED RELEASES
 NOTICE OF DISMISSAL OF DEQ ORDER
 NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-54	Union Pacific Railroad - The Dalles Tie Plant Rd The Dalles	Ore./Wash. Railroad & Navigation Co.	Ore./Wash. Railroad & Navigation Co. Corporate Tax Dept. P.O. Box 2500 Broomfield CO 80020	
SA-891-54	Union Pacific Railroad - The Dalles Tie Plant Rd The Dalles	Union Pacific Railroad Company	Union Pacific Railroad Company 406 West 100 South Salt Lake City UT 84101	Barry L. Groce Union Pacific Railroad Co. Law Department 1515 S.W. Fifth Ave., Suite 40 Portland OR 97201
SA-891-54	Union Pacific Railroad - The Dalles Tie Plant Rd The Dalles	Port of The Dalles	Port of The Dalles P.O. Box 457 The Dalles OR 97058	
SA-891-55	J. H. Baxter and Co. - Eugene 85 Baxter St. Eugene	J.H. Baxter & Co.	J.H. Baxter & Co. P.O. Box 10797 Eugene OR 97440	
SA-891-56	Jasper Wood Treating 37385 Jasper-Lowell Road Jasper	Jasper Drying and Milling, Inc.	Jasper Drying and Milling, Inc. P.O. Box 1351 Eugene OR 97440	

F-13

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-57	Jeld-Wen 3307 Lakeport Blvd. Klamath Falls	Jeld-Wen, Inc.	Jeld-Wen, Inc. P.O. Box 1329 Klamath Falls OR 97601	
SA-891-59	Johnson Controls - Globe Battery Divn. 800 N.W. 3rd Avenue Canby	Johnson Controls, Inc.	Johnson Controls, Inc. P.O. Box 591 Milwaukie WI 53201	
SA-891-60	Joseph F Such Company 730 North Albany Road N.W. Albany	Joseph F. Such	Joseph F. Such Company 730 North Albany Road Albany OR 97321	
SA-891-61	Joseph Forest Products S30, T25, R45E, TL802,1000 Joseph	Clifford C. Hinkley Estate	1817 Burrell Avenue Lewiston ID 83501	Timothy Esser Irwin, Myklbust, Savage, et al S.E. 1230 Bishop Blvd. P.O. Box 604 Pullman WA 99163-0604
SA-891-61	Joseph Forest Products S30, T25, R45E, TL802,1000 Joseph	Joseph Forest Products	Joseph Forest Products P.O. Box 198 Joseph OR 97846	Claudia K. Powers Lindsay, Hart, Neil & Weigler 222 S.W. Columbia, Suite 1800 Portland OR 97201-6618

5-14

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-62	Koppers Company, Inc. - Portland 7540 N.W. St. Helen's Road Portland	Northwest Natural Gas	Northwest Natural Gas One Pacific Square 220 N.W. 2nd Ave. Portland OR 97209	
SA-891-63	L. D. McFarland 90049 Hwy. 99N Eugene	L.D. McFarland Co.	L.D. McFarland Co. P.O. Box 1496 Tacoma WA 98401	Lynda L. Brothers Heller, Ehrman, White & McAuliff 4100 First Interstate Center 999 Third Avenue Seattle WA 98104-4011
SA-891-65	Laurence-David, Inc. 1400 S. Bertelsen Eugene	Laurence-David, Inc.	Laurence-David, Inc. P.O. box 2484 Eugene OR 97402	
SA-891-66	Liquid Air Corporation-Acetylene Plant 6501 N.W. Front Avenue Portland	Schnitzer Investment Corp.	Schnitzer Investment Corp 3200 N.W. Yeon Ave. Portland OR 97210	J. Mark Morford Stoel, Rives, Boley et al Standard Insurance Center 900 S.W. Fifth Ave., Suite 230 Portland OR 97204-1268
SA-891-67	Louisiana-Pacific Corporation 6045 Moffett Road Tillamook	Port of Tillamook	Port of Tillamook 6045 Moffett Rd. Tillamook OR 97141	

6-15

FACILITIES AND ATTORNEYS NOTIFIED OF
RECISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-68	Macleay Landfill 7825 S.E. Darling Street Salem	Marion County	Marion County Commissioners Marion County Courthouse Salem OR 97301	Robert C. Cannon Marion County Legal Counsel Marion County Courthouse Salem OR 97301
SA-891-69	Magnus Co., Inc. 3074 N.W. St. Helens Road Portland	Rudie Wilhelm Warehouse Co.	Rudie Wilhelm Warehouse Co. P.O. Box 22226 Milwaukie OR 97222	
SA-891-71	Martin Electric 91 Foothills Road Lake Oswego	Roger E. Martin	Martin Electric P.O. Box 588 Lake Oswego OR 97034	
SA-891-71	Martin Electric 91 Foothills Road Lake Oswego	Margaret B. Oliver	Warren Oliver Company 1534 S. Cherry Lane Lake Oswego OR 97034	
SA-891-72	Martin Marietta Reduction Facility 3313 West 2nd St. The Dalles	Harvey Machine Co., Inc.	Harvey Machine Co., Inc. c/o Martin Marietta Corp. P.O. Box 711 The Dalles OR 97058	
SA-891-74	McCormick and Baxter Creosoting Co 6900 N. Edgewater Street Portland	McCormick and Baxter Creosoting	McCormick & Baxter Creosoting Co. P.O. Box 3344 Portland OR 97208	

F-16

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-75	McGovern Metals, Inc. 200 Carlisle Coos Bay	Howard C. LeNeve	855 Seabreeze Coos Bay OR 97420	
SA-891-79	Montezuma West Spill Site Milepost 36 on I-5 Central Point	Double Dee Lumber Company	Double Dee Lumber Company 7111 Blackwell Road Central Point OR 97501	
SA-891-79	Montezuma West Spill Site Milepost 36 on I-5 Central Point	Mr. J.R. LeVasseur	L. and L. Machinery Co., Inc. 3918 Park Drive Olympia WA 98502	
SA-891-79	Montezuma West Spill Site Milepost 36 on I-5 Central Point	Maynards Industries, Inc.	Maynards Industries, Inc. 400 Oyster Point Blvd, #123 San Francisco CA 94080	
SA-891-80	Moore Mill and Lumber Company Riverside Drive Bandon	Moore Mill and Lumber Co.	Moore Mill and Lumber Co. P.O. Box 277 Bandon OR 97411	
SA-891-82	Multnomah Plywood Corporation 58144 Old Portland Road St. Helens	Multnomah Plywood Corporation	Multnomah Plywood Corporation P.O. Box 599 St. Helens OR 97051	

F-17

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-84	Northwest Natural Gas Co 7540 N.W. St. Helens Road Portland	Northwest Natural Gas Co.	Northwest Natural Gas Co. 735 S.W. Morrison Portland OR 97205	
SA-891-85	Northwest Web 3592 W. 5th St. Eugene	Northwest Web	Northwest Web 3592 W. 5th Street Eugene OR 97402	
SA-891-85	Northwest Web 3592 W. 5th St. Eugene	Guard Publishing Company	Guard Publishing Company 975 High Street Eugene OR 97401	
SA-891-85	Northwest Web 3592 W. 5th St. Eugene	Cascade Title Company	Cascade Title Company 1075 Oak Eugene OR 97401	
SA-891-86	Nosler Bullets Inc 61396 Parrell Rd. Bend	Nosler Partition Bullets, Inc.	Nosler Partition Bullets, Inc. P.O. Box 671 Bend OR 97709	Martin Hansen Marceau, Karnopp, et al 825 N.W. Bond Street Bend OR 97701-2799
SA-891-87	Nurnberg Scientific Company 3237 N. Williams Avenue Portland	Deborah Parker	P.O. Box 100321 Anchorage AK 99510	Alan S. Larson Schwabe, Williamson, et al Pacwest Center Suite 1600-1800 1211 S.W. Fifth Avenue Portland OR 97204-3795

F-18

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-88	Nu Way Oil Co. 7039 N.E. 46th Avenue Portland	Nu Way Oil Co.	Nu Way Oil Co. 7039 N.E. 46th Avenue Portland OR 97218	
SA-891-92	AAR Western Skyways Portland-Troutdale Airport Troutdale	Port of Portland	Port of Portland P.O. Box 3529 Portland OR 97208	
SA-891-93	Amcoat Enameling 8300 S.E. 26th Place Portland	Key Bank of OR & Key Trust Co. of the NW	Key Bank of OR & Key Trust Co. of the NW 1211 S.W. 5th Suite 500 Portland OR 97214	Joel Merkel Merkel, Caine & Donohue 64th Floor Columbia Center Seattle WA 98104
SA-891-93	Amcoat Enameling 8300 S.E. 26th Place Portland	Robert R. Finzer	310 S.E. Stephens Portland OR 97214	Mary E. Egan Ransom, Blackman & Simson 900 American Bank Building 621 S.W. Morrison Portland OR 97205
SA-891-94	Associated Chemists, Inc. 4401 S.E. Johnson Creek Blvd. Portland	Richard and Mary Rosenberg	2855 S.W. Rutland Terrace Portland OR 97201	James C. Brown Bogle & Gates 1400 KOIN Center 220 S.W. Columbia Portland OR 97201

F-19

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-94	Associated Chemists, Inc. 4401 S.E. Johnson Creek Blvd. Portland	Associated Chemists, Inc.	Associated Chemists, Inc. 4401 S.E. Johnson Creek Blvd. Portland OR 97222	
SA-891-95	Astoria Oil Services, Inc. 590 Hamburg Street Astoria	Port of Astoria	Port of Astoria No. 1 Portway Astoria OR 97103	James E. Benedict Schwabe, Williamson, et al Pacwest Center Suite 1600-1800 1211 S.W. Fifth Avenue Portland OR 97204-3795
SA-891-96	Auric Enterprises 10200 N.E. 6th Drive Portland	Bruce J. Sullivan	6380 N.E. Alberta St. Portland OR 97218	
SA-891-100	Burlington Northern - HUB Center N.W. Yeon Portland	Portland Terminal RR Co.	Portland Terminal RR Co. Union Station Portland OR 97209	
SA-891-100	Burlington Northern - HUB Center N.W. Yeon Portland	Burlington Northern Railroad	Burlington Northern Railroad 1101 N.W. Hoyt Portland Or 97209	
SA-891-101	Cannon Beach Jctn.-Petroleum Cleanup Proj. Junction of Hwy. 101 & Hwy. 26	Ore. Dept. of Transportation	Ore. Dept. of Transportation Environmental Section 324 Capital Street N.E. Salem OR 97310	

F-20

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-102	Chas. H. Lilly 7737 N.E. Killingsworth Portland	Chas. H. Lilly Co.	Chas. H. Lilly Co. 7737 N.E. Killingsworth Portland OR 97218	
SA-891-104	Columbia Steel/Joslyn Sludge Pond 10425 N. Bloss Avenue Portland	Columbia Steel Casting Co., Inc.	Columbia Metal Casting Co., Inc. P.O. Box 03095 Portland OR 97203	Michael J. Gentry Tooze, Marshall, Shenker, et al 333 S.W. Taylor Portland OR 97204-2496
SA-891-105	Container Care Portland, Inc 1501 N. Schmeer Road Portland	Hayden Meadows	Hayden Meadows 900 N. Tomahawk Island Drive Portland OR 97217	
SA-891-107	Crystal Lite Mfg Co 11971 S.W. Herman Road Sherwood	Contractors, Inc.	Contractors, Inc. P.O. Box 637 Tualatin OR 97062	
SA-891-108	Dant And Russell - Mill Site 775 West Hillcrest Avenue North Plains	Dant and Russell, Inc.	Dant and Russell, Inc. P.O. Box 587 North Plains OR 97133	Richard C. Josephson Stoel, Rives, Boley et al Standard Insurance Center 900 S.W. Fifth Ave., Suite 230 Portland OR 97204-1268

F-21

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-109	Dant and Russell - Vadis Pole Yard Vadis Road North Plains	Dant & Russell	Dant & Russell 1034 N.E. 102nd Seattle WA 98125	
SA-891-109	Dant and Russell - Vadis Pole Yard Vadis Road North Plains	William F. Durig	Route 3 Box 541E Cornelius OR 97113	
SA-891-111	Dura Industries 4466 N.W. Yeon Avenue Portland	Mt. Hood Chemical Corp.	Mt. Hood Chemical Corp. c/o APS Inc. 3000 Pawnee Houston TX 77054	
SA-891-111	Dura Industries 4466 N.W. Yeon Avenue Portland	Dura Finishes, Inc.	Dura Finishes, Inc. 4466 N.W. Yeon Ave. Portland OR 97210	Mary E. Egan Ransom, Blackman & Simson 900 American Bank Building 621 S.W. Morrison Portland OR 97205
SA-891-111	Dura Industries 4466 N.W. Yeon Avenue Portland	Mt. Hood Chemical Corporation	Mt. Hood Chemical Corporation 4444 NW Yeon Portland OR 97210	Kevin Q. Davis Stoel, Rives, Boley et al Standard Insurance Center 900 S.W. Fifth Ave., Suite 230 Portland OR 97204-1268

F-22

FACILITIES AND ATTORNEYS NOTIFIED OF
RECISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-113	Ferad, Inc. 725 S.W. 7th Street North Plains	Franz & Alice Kroell	Ferad, Inc. 13405 N.W. Greenwood Drive Portland OR 97229	Richard D. Senders Rose & Senders 400 S.W. Sixth Ave., Ste. 907 Portland OR 97204
SA-891-115	Freightliner Corp 5400 N. Basin Street Portland	Freightliner Acquisition Corp.	Freightliner Acquisition Corp. P.O. Box 3820 Portland OR 97208	
SA-891-116	Frontier Leather Co. Inc 1210 East Pacific Street Sherwood	Frontier Leather Co., Inc.	Frontier Leather Co., Inc. P.O. Box 502 Sherwood OR 97140	
SA-891-116	Frontier Leather Co. Inc 1210 East Pacific Street Sherwood	Transpacific International, Inc.	Transpacific International, Inc. c/o Frontier Leather Co. P.O. Bx 502 Sherwood OR 97140	Michael P. Opton Opton, Galton & Rosenthal 1410 American Bank Building 621 S.W. Morrison Portland OR 97205
SA-891-125	Intel Corporation - Jones Farm Facility 2111 N.E. 25th Hillsboro	Intel Corp.	Intel Corp. 3065 S.W. Bowers Avenue Santa Clara CA 95051	Jan L. Betz Miller, Nash, Weiner, et al 3500 U.S. Bancorp Tower 111 S.W. Fifth Avenue Portland OR 97204-3699

F-23

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-128	JB's Metal Finishing 5215 S.E. Flavel Drive Portland	Multnomah County	Multnomah County c/o Tax Title 2505 S.E. 11th Portland OR 97202	
SA-891-130	Clatskanie Arco Station 280 E. Columbia River Hwy. Clatskanie	Walter A. Reitman	9630 Greenhurst Drive Sun City AR 85351	
SA-891-130	Clatskanie Arco Station 280 E. Columbia River Hwy. Clatskanie	John E. Hector	P.O. Box 629 Astoria OR 97103	
SA-891-131	Landa 4920 N.E. 122nd Avenue Portland	Pacific Realty Associates	Pacific Realty Associates 111 S.W. 5th Ave., #2950 Portland OR 97204	J. Mark Morford Stoel, Rives, Boley et al Standard Insurance Center 900 S.W. Fifth Ave., Suite 230 Portland OR 97204-1268
SA-891-132	MAACO Auto Paint - Gresham 2441 N.W. Eleven Mile Avenue Gresham	Francis Parsons & A. Ryan	c/o Pro-Met 900 S.E. 199th Avenue Portland OR 97233	
SA-891-133	Matlack 8101 N.E. 11th Avenue Portland	Matlack, Inc.	Matlack, Inc. c/o Rollins/Matlock Adm Svc Co P.O. Box 8789 Wilmington DE 19899	

F-24

08/29/89

FACILITIES AND ATTORNEYS NOTIFIED OF
 REVISION OF INVENTORY OF CONFIRMED RELEASES
 NOTICE OF DISMISSAL OF DEQ ORDER
 NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-135	McClosky Varnish 4155 N.W. Yeon Avenue Portland	The McCloskey Corporation	The McCloskey Corporation 4155 N. W. Yeon St. Portland OR 97210	J. Mark Morford Stoel, Rives, Boley et al Standard Insurance Center 900 S.W. Fifth Ave., Suite 230 Portland OR 97204-1268
SA-891-136	Mercer Industries - Beaverton 10740 S.W. Denney Road Beaverton	Mercer Industries, Inc.	Mercer Industries, Inc. P.O. Box 10166 Portland OR 97210	
SA-891-137	Mobil Oil Corp 9420 N.W. St. Helens Road Portland	Mobil Oil Corp.	Mobil Oil Corp. c/o Property Tax Division P.O. Box 290 Dallas TX 75221	Melinda S. Eden Miller, Nash, Wiener, et al 3500 U.S. Bancorp Tower 111 S.W. Fifth Avenue Portland OR 97204-3699
SA-891-138	Northwest Pipe & Casing Co. - Portland 12005 N. Burgard Portland	Northwest Pipe and Casing Co.	Northwest Pipe and Casing Co. 12005 N. Burgard Street Portland OR 97203	Jack L. Landau Lindsay, Hart, Neil & Weigler 222 S.W. Columbia, Suite 1800 Portland OR 97201-6618
SA-891-138	Northwest Pipe & Casing Co. - Portland 12005 N. Burgard Portland	Multnomah Land & Equipment Co.	Multnomah Land & Equipment Co. c/o Paul Brown P.O. Box 03149 Portland OR 97203	

F-25

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-138	Northwest Pipe & Casing Co. - Portland 12005 N. Burgard Portland	Darlene Clemmer and Jerry McIntyre	2838 Valley View Drive Albany OR 97321	
SA-891-138	Northwest Pipe & Casing Co. - Portland 12005 N. Burgard Portland	Hawkeye Construction, Inc.	Hawkeye Construction, Inc. 12005 N. Burgard Rd. Portland OR 97203	Alan S. Larsen Schwabe, Williamson, et al Pacwest Center Suite 1600-1800 1211 S.W. Fifth Avenue Portland OR 97204-3795
SA-891-139	Northwest Pipe & Casing Co - Clackamas 9200 S.E. Lawnfield Road Clackamas	Oregon Department of Transportation	Oregon Department of Transportation Environmental Section 324 Capitol Street N.E. Salem OR 97310	
SA-891-139	Northwest Pipe & Casing Co - Clackamas 9200 S.E. Lawnfield Road Clackamas	Northwest Development Company	Northwest Development Company 1733/1743 N.W. Prospect Drive Portland OR 97201	
SA-891-139	Northwest Pipe & Casing Co - Clackamas 9200 S.E. Lawnfield Road Clackamas	Wayne C. Hall	Hall Process Co. 20100 S. Beaver Creek Road Oregon City OR 97045	

F-26

08/29/89

FACILITIES AND ATTORNEYS NOTIFIED OF
 REVISION OF INVENTORY OF CONFIRMED RELEASES
 NOTICE OF DISMISSAL OF DEQ ORDER
 NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-139	Northwest Pipe & Casing Co - Clackamas 9200 S.E. Lawnfield Road Clackamas	Clackamas County Development Agency	Clackamas County Development Agency 121 Library Ct. Oregon City OR 97045	
SA-891-139	Northwest Pipe & Casing Co - Clackamas 9200 S.E. Lawnfield Road Clackamas	First Sec. Bank of Utah	First Sec. Bank of Utah Trust Department P.O. Box 30007 Salt Lake City UT 84130	
SA-891-140	Oregon Health Science University 3181 S.W. Sam Jackson Park Rd. Portland	Oregon State Board of Higher Education	Oregon State Board of Higher Education 724 S.W. Harrison St. Portland OR 97201	Janet N. Billups Department of Justice 1515 S.W. Fifth Ave. Suite 410 Portland OR 97201
SA-891-140	Oregon Health Science University 3181 S.W. Sam Jackson Park Rd. Portland	Oregon State Board of Higher Education	Oregon State Board of Higher Education P.O. Box 3175 Eugene OR 97403	
SA-891-141	Oregon Steel Mills - Rivergate 14141 N. Rivergate Blvd. Portland	Pacific Power & Light	Pacific Power & Light 920 S.W. 6th Portland OR 97204	Margaret Kirkpatrick Stoel, Rives, Boley et al Standard Insurance Center 900 S.W. Fifth Ave., Suite 230 Portland OR 97204-1268

F-27

FACILITIES AND ATTORNEYS NOTIFIED OF
RECISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-141	Oregon Steel Mills - Rivergate 14141 N. Rivergate Blvd. Portland	Gilmore Steel Corp.	Gilmore Steel Corp. P.O. Box 5368 Portland OR 97228	
SA-891-141	Oregon Steel Mills - Rivergate 14141 N. Rivergate Blvd. Portland	Oregon Steel Mills	Oregon Steel Mills Division of Gilmore Steel 14400 Rivergate Blvd. Portland OR	James E. Benedict Schwabe, Williamson, et al Pacwest Center Suite 1600-1800 1211 S.W. Fifth Avenue Portland OR 97204-3795
SA-891-142	Pacific Chloride 11155 S.W. Denny Road Beaverton	Pacific Chloride, Inc. - St. Paul	Pacific Chloride, Inc. c/o Charles Tehelius-GNE, Inc. P.O. Box 64100 St. Paul MN 55164	Jay T. Waldron Schwabe, Williamson, et al Pacwest Center Suite 1600-1800 1211 S.W. Fifth Avenue Portland OR 97204-3795
SA-891-142	Pacific Chloride 11155 S.W. Denny Road Beaverton	Pacific Chloride, Inc. - Beaverton	Pacific Chloride, Inc. Chloride Western Battery Div. 11155 S.W. Denny Rd. Beaverton OR 97005	
SA-891-143	P. & C. Development, Incorporated 955 N. Columbia Blvd. Portland	P & C Development	P & C Development c/o Canlan Investment Corp. 1678 W. Broadway, #201 Vancouver BC V6J 1X6	

F-28

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-143	P. & C. Development, Incorporated 955 N. Columbia Blvd. Portland	Lee and June Porcelli	1603 N.E. 37th Avenue Portland Or 97232	
SA-891-144	Mercer Industries - Portland 2636 N.W. 26th Avenue Portland	Mercer Steel Co., Inc.	Mercer Steel Co., Inc. 2636 NW 26th Ave. Portland OR 97210	
SA-891-145	Pacific Meat Company 2701 N. Newark Street Portland	Peter and Eileen Haney	P.O. Box 17036 Portland OR 97219	
SA-891-145	Pacific Meat Company 2701 N. Newark Street Portland	Charles Tindall	2606 N. Newark Portland OR 97217	James E. Benedict Schwabe, Williamson, et al Pacwest Center Suite 1600-1800 1211 S.W. Fifth Avenue Portland OR 97204-3795
SA-891-145	Pacific Meat Company 2701 N. Newark Street Portland	Key Bank of Oregon (and Charles Tindall)	Key Bank of Oregon (and Charles Tindall) 1211 S.W. 5th, Suite 500 Portland OR 97214	

F-29

FACILITIES AND ATTORNEYS NOTIFIED OF
RECISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-145	Pacific Meat Company 2701 N. Newark Street Portland	Pacific Meat Company	Pacific Meat Company 2701 N Newark Portland OR 97217	
SA-891-146	Paco Pumps 2551 N.W. 30th Avenue Portland	Paco Pumps Inc.	Paco Pumps Inc. c/o Finance Manager PO Box 12924 Oakland CA 94604	
SA-891-147	Pacific Power & Light-Astoria Svc. Ctr. 1224 Marine Drive Astoria	Pacific Power & Light	Pacific Power & Light 851 SW 6th Ave Portland OR 97204	
SA-891-148	Permapost Product Co, Inc 25600 S.W. Tualatin Valley Hwy Hillsboro	Permapost Products Co., Inc.	Permapost Products Co., Inc. P.O. Box 100 Hillsboro OR 97123	James C. Brown Bogle & Gates 1400 KOIN Center 220 S.W. Columbia Portland OR 97201
SA-891-149	Portable Equipment Salvage 10281 S.E. Mather Road Clackamas	TLC Properties, Inc.	TLC Properties, Inc. 10281 S. Mather Rd. Clackamas OR 97015	
SA-891-150	Porter Road-Nelson Property 41919 S.E. Porter Road Estacada	Lloyd and Nelda L. Nelson	2607 N.E. Mason Portland OR 97211	

F-30

FACILITIES AND ATTORNEYS NOTIFIED OF
RECISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-150	Porter Road-Nelson Property 41919 S.E. Porter Road Estacada	James & Wanda Richard	41919 SE Porter Rd. Estacada OR 97023	
SA-891-151	Portland General Electric - Station L 1841 S.E. Water Avenue Portland	Portland General Electric	Portland General Electric 121 SW Salmon St. Portland OR 97204	
SA-891-151	Portland General Electric - Station L 1841 S.E. Water Avenue Portland	Oregon Museum of Science & Industry	Oregon Museum of Science & Industry c/o PGE Co. Tax Department Tax Dept. 121 SW Salmon St. Portland OR 97204	Robin B. Parisi Spears, Lubersky, Bledsoe, et al 520 S.W. Yamhill, Suite 800 Portland OR 97204-1383
SA-891-152	Precision Equipment, Inc 8440 N. Kerby Street Portland	Precision Equipment, Inc.	Precision Equipment, Inc. 8440 N. Kerby St. Portland OR 97217	James C. Brown Bogle & Gates 1400 KOIN Center 220 S.W. Columbia Portland OR 97201
SA-891-152	Precision Equipment, Inc 8440 N. Kerby Street Portland	D. F. & Joan L. Morgan	1231 S. Director Seattle WA 98108	

F-31

29

FACILITIES AND ATTORNEYS NOTIFIED OF
RECISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-153	Rasmussen Paints 12655 S.W. Beaverdam Road Beaverton	Sidney C., Jr. and Vivian S. Rasmussen	7920 SW Westmoor Way Portland OR 97225	
SA-891-155	Rhone-Poulenc, Inc. 6200 N.W. St. Helens Road Portland	Rhone-Poulenc AG Co.	Rhone-Poulenc Inc. Tax Department CN5266 Princeton NJ 08543	
SA-891-156	Riverside Way, Property on NE 2665 N.E. Riverside Way Portland	Equitable Life Assurance Society of U.S.	Equitable Life Assurance Society of U.S. c/o Equitable Real Estate 1000 2nd Av #3620 Seattle WA 98104	John Wiley Gould Spears, Lubersky, Bledsoe, et al 520 S.W. Yamhill, Suite 800 Portland OR 97204-1383
SA-891-157	Rodda Paint Co. 6123 N. Marine Drive Portland	Rodda Paint Co.	Rodda Paint Co. 6932 SW Macadam Ave Portland OR 97219	
SA-891-157	Rodda Paint Co. 6123 N. Marine Drive Portland	Port of Portland	Port of Portland c/o Rodda Paint Co. 6932 S.W. Macadam Ave. Portland OR 97201	
SA-891-158	Schultz Sanitation 10104 S.E. Ankeny Portland	Robert and Rose Schultz	Schultz Sanitation 12801 NE 122nd Portland OR 97236	

F-32

FACILITIES AND ATTORNEYS NOTIFIED OF
RECISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-158	Schultz Sanitation 10104 S.E. Ankeny Portland	Allen S. Pliska	10131 SE Ankenny Portland OR 97216	
SA-891-159	Sheldon Manufacturing 300 N. 26th Street Cornelius	Industrial Plastics, Inc.	Industrial Plastics, Inc. PO Box 626 Forest Grove OR 97116	Donald A. Haagensen Schwabe, Williamson, et al Pacwest Center Suite 1600-1800 1211 S.W. Fifth Avenue Portland OR 97204-3795
SA-891-159	Sheldon Manufacturing 300 N. 26th Street Cornelius	George H. & Charlotte M. Sheldon	PO Box 384 Cornelius OR 97113	Patrick Borleau Sheldon Manufacturing, Inc. 300 N. 26th Avenue Cornelius OR 97113
SA-891-160	Shell Oil Co. Willbridge Plant 5880 N.W. St. Helens Road Portland	Shell Oil Co.	Shell Oil Co. c/o Corporate Prop Valuation PO Box 2099 Houston TX 77252	
SA-891-162	Sinclair & Valentine 2700 S.E. Ankeny Street Portland	Wayne & Lois Williamson	1211 SW 5th Ave. #1600-1800 Portland OR 97204	Jay T. Waldron Schwabe, Williamson, et al Pacwest Center Suite 1600-1800 1211 S.W. Fifth Avenue Portland OR 97204-3795

A-33

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-163	Smurfit Newsprint Corp S. Soda Springs Road Molalla	RSG Forest Products, Inc.	RSG Forest Products, Inc. Kalama WA	Harold B. Hutchinson Hutchinson, Hooper & Maier 1211 S.W. Fifth Ave. Pacwest Center Suite 750 Portland OR 97204
SA-891-163	Smurfit Newsprint Corp S. Soda Springs Road Molalla	Sanders Wood Products	Sanders Wood Products 28890 Hwy 213 Molalla OR 97038	
SA-891-164	St. John's Landfill. 9363 N. Columbia Blvd. Portland	City of Portland	City of Portland 1120 S.W. 5th Room 500 Portland OR 97204	Peter A. Kasting City of Portland 1220 S.W. Fifth Avenue Portland OR 97204
SA-891-165	Stauffer Chemical Co 4429 N. Suttle Road Portland	Stauffer Chemical Co.	Stauffer Chemical Co. Division of Rhone-Poulenc Inc. CN 5266 Tax Dept. Princeton NJ 08543	James E. Benedict Schwabe, Williamson, et al Pacwest Center Suite 1600-1800 1211 S.W. Fifth Avenue Portland OR 97204-3795
SA-891-167	Tektronix - Beaverton Campus 13955 Millikan Way Beaverton	Tektronix, Inc.	Tektronix, Inc. PO Box 500 Beaverton OR 97077	Miriam Feder The Broadway Bldg., Suite 930 621 S.W. Alder Portland OR 97205-3627

F-34

FACILITIES AND ATTORNEYS NOTIFIED OF
RECISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-168	Tektronix, Inc - Forest Grove 1521 Poplar Street Forest Grove	Tektronix, Inc.	Tektronix, Inc. PO Box 500 Beaverton OR 97077	Miriam Feder The Broadway Bldg., Suite 930 621 S.W. Alder Portland OR 97205-3627
SA-891-169	Texaco Terminal 3640 N.W. St. Helens Road Portland	Texaco, Inc.	Texaco, Inc. P.O. Box 3756 Los Angeles CA 90051	
SA-891-170	Time Oil Co 12005 N. Burgard Portland	Time Oil Co.	Time Oil Co. PO Box 99007 Magnolia Station Seattle WA 98199	Jack L. Landau Lindsay, Hart, Neil & Weigler 222 S.W. Columbia, Suite 1800 Portland OR 97201-6618
SA-891-170	Time Oil Co 12005 N. Burgard Portland	Bell Oil Terminal Co.	Bell Oil Terminal Co. PO Box 99007 Magnolia Sta. Seattle WA 98199	
SA-891-171	Tongue Point Abandoned Landfill Tongue Point Astoria	Oregon Divn. of State Lands	Oregon Divn. of State Lands 1445 State Street Salem OR 97310	

F-35

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-172	Toyota Motor Sales 10400 N. Lombard Street Portland	Port of Portland	Port of Portland PO Box 3529 Portland OR 97208	
SA-891-173	Tri-County Industrial Parks, Inc 11093 S.W. Industrial Way Tualatin	Tri-County Industrial Parks, Inc.	Tri-County Industrial Parks, Inc. 301 NW Murray Rd. Portland OR 97229	
SA-891-178	Union Pacific Railroad - Portland 2525 N. Larrabee Portland	Oregon Washington RR & Navigation Co.	Oregon Washington RR & Navigation Co. Pittock Block Portland OR 97205	
SA-891-178	Union Pacific Railroad - Portland 2525 N. Larrabee Portland	Oregon Washington RR & Navigation Co.	Oregon Washington RR & Navigation Co. Property Tax Department PO Box 2500 Broomfield CO 80020	
SA-891-178	Union Pacific Railroad - Portland 2525 N. Larrabee Portland	Union Pacific Railroad Company	Union Pacific Railroad Company Law Department 1515 S.W. Fifth Avenue, #400 Portland OR 97201	Barry L. Groce Union Pacific Railroad Co. Law Department 1515 S.W. Fifth Ave., Suite 40 Portland OR 97201

F-36

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-181	USAF - Mt Hebo AFS 8 mi. E. of Hwy 22/Hwy 101 Jun Hebo	U.S. Forest Service	U.S. Forest Service 319 S.W. Pine Portland OR 97204	
SA-891-183	Wacker - Siltronic Corp 7200 N.W. Front Portland	Wacker Siltronic Corp.	Wacker Siltronic Corp. P.O. Box 03180 Portland OR 97203	Marvin B. Durning Wacker Siltronic Corp. P.O. Box 3180 Portland OR 97203
SA-891-184	Vance Property Route 2 Box 97 Astoria	Terry Vance	Terry Vance Properties P.O. Box 810 Astoria OR 97103	
SA-891-184	Vance Property Route 2 Box 97 Astoria	Eric and Audrey Hauke	1610 Coxcomb Astoria OR 97103	
SA-891-185	Western Foundry Company 8200 S.W. Hunziker Road Tigard	Western Foundry Company	Western Foundry Company PO Box 23278 Portland OR 97223	
SA-891-187	Zehrunge Corp Co 2205 N.W. 20th Portland	Graphic Arts Center	Graphic Arts Center 2000 NW Wilson St Portland OR 97209	

F-37

FACILITIES AND ATTORNEYS NOTIFIED OF
RECISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-187	Zehrunge Corp Co 2205 N.W. 20th Portland	State of Oregon/Econ. Development Comm.	State of Oregon/Econ. Development Comm. c/o Graphics Art Center, Inc. 2000 NW Wilson St. Portland OR 97209	
SA-891-187	Zehrunge Corp Co 2205 N.W. 20th Portland	State of Oregon/Econ. Development Comm.	State of Oregon/Econ. Development Comm. 155 Cottage Street N.E. Salem OR 97310	
SA-891-189	Albany Industrial Machine 1495 Industrial Way Albany	David Strong & Ronald Yung	Albany Industrial Machine 3533 NW Oak Drive Albany OR 97321-9362	
SA-891-191	Beatrice Foods 4095 Portland Road N.E. Salem	Termicold Corporation	Termicold Corporation 1515 SW 5th Av #700 Portland OR 97201	
SA-891-192	Bohemia, Inc - Coburg 92574 N. Coburg Rd. Eugene	Bohemia Inc.	Bohemia Inc. PO Box 1819 Eugene OR 97440	

F-38

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-194	Chembond Corporation 475 North 28th Street Springfield	Chembond Corporation	Chembond Corporation 475 N. 28th St. Springfield OR 97477	
SA-891-196	Coleman Metals, Inc. 4705 Turner Road S.E. Salem	Paul F. & Edna V. Parker	c/o KFP Investments 795 N.W. 9th Street Salem OR 97304	
SA-891-196	Coleman Metals, Inc. 4705 Turner Road S.E. Salem	KFP Investments	KFP Investments 795 N.W. 9th Street Salem OR 97304	Donald H. Upjohn Heltzel, Upjohn, Shaw, et al 117 Commercial Street, N.E. P.O. Box 1048 Salem OR 97301
SA-891-196	Coleman Metals, Inc. 4705 Turner Road S.E. Salem	Southern Pacific Transportation Co.	Southern Pacific Transportation Co. Room 304 Union Station Portland OR 97209	Marvin D. Fjordbeck Spears, Lubersky, Bledsoe, et al 520 S.W. Yamhill, Suite 800 Portland OR 97204-1383
SA-891-197	Coleman Metal Salvage- West Scio 38107 Jefferson-Scio Drive West Scio	Lyle Rhodes	P.O. Box 193 Montezuma KS 67867-0000	

F-39

9/6

08/29/89

FACILITIES AND ATTORNEYS NOTIFIED OF
 RECISION OF INVENTORY OF CONFIRMED RELEASES
 NOTICE OF DISMISSAL OF DEQ ORDER
 NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-197	Coleman Metal Salvage- West Scio 38107 Jefferson-Scio Drive West Scio	Coleman Metals Inc.	Coleman Metals Inc. 4705 S.E. Turner Road Salem OR 97301-0000	David L. Blount Alder & Blount 540 Benjamin Franklin Plaza One S.W. Columbia Portland OR 97258-2006
SA-891-197	Coleman Metal Salvage- West Scio 38107 Jefferson-Scio Drive West Scio	Mid-Willamette Pre-Cut Inc.	Coleman Metal Salvage - West Scio 1525 W Washington Street Stayton OR 97383-9509	Rodney C. Zeeb Crothers, Evans & Zeeb 750 Front Street, Suite 100 Salem OR 97301
SA-891-201	Forrest Paint Co. 1011 McKinley Eugene	Forrest Paint Co.	Forrest Paint Co. P.O. Box 2768 Eugene OR 97402	
SA-891-202	Freres Lumber Co 40580 Cedar Mill Road Lyons	Freres Lumber Co., Inc.	Freres Lumber Co., Inc. P.O. Box 8 Lyons OR 97358	Donald A. Haagensen Schwabe, Williamson, et al Pacwest Center Suite 1600-1800 1211 S.W. Fifth Avenue Portland OR 97204-3795
SA-891-203	Pacific Resins and Chemicals, Inc. 2665 Highway 99 North Eugene	Burlington Northern RR	Burlington Northern RR c/o Mike Wood 5319 SW Westgate Dr Suite #247 Portland OR 97221	Robert D. Nesler Preston, Thorgrimson, et al 3200 U.S. Bancorp Tower 111 S.W. Fifth Avenue Portland OR 97204-3635

F-40

08/29/89

FACILITIES AND ATTORNEYS NOTIFIED OF
 REVISION OF INVENTORY OF CONFIRMED RELEASES
 NOTICE OF DISMISSAL OF DEQ ORDER
 NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-203	Pacific Resins and Chemicals, Inc. 2665 Highway 99 North Eugene	Glacier Park Co.	Glacier Park Co. c/o Jan Bostick 1011 Western Ave.-Suite #700 Seattle WA 98104	
SA-891-203	Pacific Resins and Chemicals, Inc. 2665 Highway 99 North Eugene	Georgia-Pacific Corporation	Georgia-Pacific Corporation P.O. Box 168 Albany OR 97321	Melinda S. Eden Miller, Nash, Weiner, et al 3500 U.S. Bancorp Tower 111 S.W. Fifth Avenue Portland OR 97204-3699
SA-891-204	Georgia Pacific Resins, Inc. 2190 Old Salem Road N.E. Millersburg	Georgia-Pacific Resins, Inc.	Georgia-Pacific Resins, Inc. P.O. Box 1068 Albany OR 97321	Melinda S. Eden Miller, Nash, Weiner, et al 3500 U.S. Bancorp Tower 111 S.W. Fifth Avenue Portland OR 97204-3699
SA-891-213	Lane Plywood, Inc 65 North Bertelsen Road Eugene	Lane Plywood, Inc.	Lane Plywood, Inc. 65 North Bertelsen Eugene OR 97402	Edward A. Finklea Tonkon, Torp, Galen, et al 1800 Orbanco Building 1001 S.W. Fifth Avenue Portland OR 97204-1162
SA-891-216	Marion County Road Dept 5155 Silverton Road N.E. Salem	Marion County	Marion County Commissioners Marion County Courthouse Salem OR 97301	

E-41

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-219	Muller Mobile Home 7135 Yaquina Bay Road Newport	Chris and Lois Muller	15755 Salt Creek Road Dallas OR 97338	
SA-891-222	Nita's Auto Detail 2315 Pringle Road S.E. Salem	Dale & Myrtle Compton	2384 S.E. 13th Street Salem OR 97302	
SA-891-224	Northwest Industries 125 East 34th Street Albany	Northwest Industries	Northwest Industries c/o Herbert Kuebrich P.O. Box 550 Albany OR 97321-0163	
SA-891-225	Northwest Solvents and Supply, Inc. 509 Chambers Eugene	Duane N. and Dorothy Coble	N.W. Solvents and Supply, Inc. 1955 Taylor Street Eugene OR 97402	Bruce H. Anderson Hutchinson, Anderson, Cox, et al 200 Forum Building 777 High Street Eugene OR 97401
SA-891-226	Oregon California Chemicals, Inc. 29454 Meadowview Drive Junction City	Oregon California Chemical, Inc.	Oregon California Chemical, Inc. 29454 Meadowview Road Junction City OR 97448	
SA-891-226	Oregon California Chemicals, Inc. 29454 Meadowview Drive Junction City	Small Business Administration	Small Business Administration c/o Oregon Calif. Chemical Co. 30301 Riverview Drive Junction City OR 97448	

F-42

11

FACILITIES AND ATTORNEYS NOTIFIED OF
RECISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-227	Oregon Dust Control 4366 N.E. 41st Ave. Albany	Oregon Dust Control	Oregon Dust Control 4366 N.E. 41st Avenue Albany OR 97321	
SA-891-227	Oregon Dust Control 4366 N.E. 41st Ave. Albany	Robert & Diane Grammer	P.O. Box 103 Crabtree OR 97335-0101	
SA-891-227	Oregon Dust Control 4366 N.E. 41st Ave. Albany	Wayne E. Johnson	36242 Meyer Street Crabtree OR 97335	
SA-891-227	Oregon Dust Control 4366 N.E. 41st Ave. Albany	Robert E. and Linda Leach	33648 Berry Drive N.E. Albany OR 97321	
SA-891-229	Oregon Strand Board 34363 Lake Creek Drive Brownsville	Jeld-Wen, Inc.	Jeld-Wen, Inc. P.O. Box 488 Brownsville OR 97327-0481	Kevin Q. Davis Stoel, Rives, Boley et al Standard Insurance Center 900 S.W. Fifth Ave., Suite 230 Portland OR 97204-1268
SA-891-231	Greenstein Children's Trust 2715 Cherry Ave. N.E. Salem	Morris Greenstein, Trustee	Empire Pacific Ind., Inc. P.O. Box 2345 Lake Oswego OR 97035	

F-43

FACILITIES AND ATTORNEYS NOTIFIED OF
RECISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-232	Portland Distribution Dist. 1420 McDonald St. N.E. Salem	Portland Distribution Co.	Portland Distribution Co. 2026 N.E. Columbia Blvd. Portland OR 97211	
SA-891-242	3M National Advertising Co 1000 Obie Street Eugene	3M National Advertising Co.	3M National Advertising Co. P.O. Box 33441 St. Paul MN 55133-3331	
SA-891-242	3M National Advertising Co 1000 Obie Street Eugene	Obie Industries, Inc.	Obie Industries, Inc. P.O. Box 1356 Eugene OR 97440	Arlen C. Swearingen Gleaves, Swearingen, et al 975 Oak Street, Eighth Floor Eugene OR 97401-3156
SA-891-243	Truax Spill Hwy. 20-N of Meanear's Bend Pa Foster	Timber Service Co., Inc.	Timber Service Co., Inc. 1575 Main Street Sweet Home OR 97386-1621	
SA-891-250	Alpine Veneer, Inc 6809 S.E. Johnson Creek Blvd. Milwaukie	Rigby Investments	Rigby Investments PO Box 6370 Portland OR 97206	
SA-891-251	Bonneville Power Admin. - Troutdale Troutdale Substa., Sundial Road Troutdale	Bonneville Power Administration	Bonneville Power Administration US Courthouse 620 Main St Portland OR 97205	David J. Adler Bonneville Power Administration P.O. Box 3621 Portland OR 97208-3621

EA-44

FACILITIES AND ATTORNEYS NOTIFIED OF
RECISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-252	Brazier Forest Products, Inc. 15555 South Hwy. 211 Molalla	Brazier Forest Products, Inc.	Brazier Forest Products, Inc. PO Box 330 Molalla OR 97038	James E. Benedict Schwabe, Williamson, et al Pacwest Center Suite 1600-1800 1211 S.W. Fifth Avenue Portland OR 97204-3795
SA-891-252	Brazier Forest Products, Inc. 15555 South Hwy. 211 Molalla	J. T. Low	PO Box 330 Molalla OR 97038	
SA-891-253	Burns Brothers Truck Plaza Elligson Road Wilsonville	Burns Bros. Co.	Burns Bros. Co. 620 SE Union Ave. Portland OR 97214	
SA-891-254	Leathers Oil Co Proctor Blvd. and Bluff Road Sandy	Charles C. Leathers	Leathers Oil Co. 22300 SE Stark St. Gresham OR 97030	Richard S. Mannis 101 S.W. Main, Suite 250 Portland OR 97204
SA-891-256	Dobyns & Hart Pest Control - Portland 3303 S.E. 122nd Avenue Portland	Archie Stanley	3303 SE 122nd Ave. Portland OR 97266	David W. Owens American Bank Bldg. Suite 1410 621 S.W. Morrison Portland OR 97025

5-46

100

FACILITIES AND ATTORNEYS NOTIFIED OF
RECISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-258	Durametal Corporation 9560 S.W. Herman Road Tualatin	Mor-Ron Enterprises	Mor-Ron Enterprises PO Box 606 Tualatin Or 97062	
SA-891-259	Electronic Control Design, Inc 13626 South Freeman Road Mulino	Electronic Control Design	Electronic Control Design 13626 S Freeman Rd Mulino OR 97042	
SA-891-259	Electronic Control Design, Inc 13626 South Freeman Road Mulino	Rex L. Breunsbach	11644 Hazel Hill Rd. Clackamas OR 97015	Margaret Kirkpatrick Stoel, Rives, Boley et al Standard Insurance Center 900 S.W. Fifth Ave., Suite 230 Portland OR 97204-1268
SA-891-262	Industrial Coatings 17370 S.W. 63rd Avenue Lake Oswego	Norman F. & Dorothy L. Harrison	2040 SW 98th Ave Portland OR 97225	
SA-891-264	Camp Whithycombe T 2S, R 2E, Sec. 9 & 10 Clackamas	State of Oregon	State of Oregon Camp Whithycombe Clackamas OR 97015	
SA-891-265	American-Strevell, Inc. 13015 S.E. Pheasant Court Milwaukie	American-Strevell Inc.	American-Strevell Inc. PO Box 2798 Littleton CO 80161	

F-46

161

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-265	American-Strevell, Inc. 13015 S.E. Pheasant Court Milwaukie	Fleming Foods West, Inc.	Fleming Foods West, Inc. S.E. Milwaukie Expressway and Pheasant Court Milwaukie OR 97222	Robert E. Glasgow Glasgow & Wight Wilcox Building, Suite 111 506 S.W. 6th Avenue Portland OR 97204-1556
SA-891-266	K-Lines, Inc 375 S.W. Boones Ferry Road Lake Oswego	Jamey E. Berrey	PO Box 1549 Lake Oswego OR 97035	
SA-891-266	K-Lines, Inc 375 S.W. Boones Ferry Road Lake Oswego	Steve Berrey	Bulk Shippers Transport P.O. Box 444 Tualatin OR 97062	
SA-891-267	Omark Industries 4909 S.E. International Way Milwaukie	Omark Properties Inc.	Omark Properties Inc. 4909 SE International Way Portland OR 97222	James C. Brown Bogle & Gates 1400 KOIN Center 220 S.W. Columbia Portland OR 97201
SA-891-268	Pacific Carbide & Alloys Co 9901 N. Hurst Avenue Portland	Pacific Carbide and Alloys Co.	Pacific Carbide and Alloys Co. 555 California Street Suite 5180 San Francisco CA 94104	Jack L. Landau Lindsay, Hart, Neil & Weigler 222 S.W. Columbia, Suite 1800 Portland OR 97201-6618

F-47

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-269	Rose City Plating, Inc. 7884 S.E. 13th Avenue Portland	Nicholas and Sharon Le Beck	Rose City Plating, Inc. 717 S.W. 6th Ave Portland OR 97219	
SA-891-270	Pacific Northwest Bell - Argyle Facility 2111 N.E. Argyle Portland	U.S. West Communications Co.	U.S. West Communications Co. 421 SW Oak Room 4N13 Portland OR 97204	Jaye Caroline Fraser U.S. West Communications Legal Department 421 S.W. Oak Street Portland OR 97204
SA-891-270	Pacific Northwest Bell - Argyle Facility 2111 N.E. Argyle Portland	C C I Real Estate Equity Fund, Inc.	C C I Real Estate Equity Fund, Inc. Capital Consultants Inc. 2300 SW 1st Ave. Portland OR 97201	Robert E. Maloney, Jr. Spears, Lubersky, Bledsoe, et al 520 S.W. Yamhill, Suite 800 Portland OR 97204-1383
SA-891-271	Port of Portland - Ship Repair Yard Swan Island Portland	Port of Portland	Port of Portland Environmental Division PO Box 3529 Portland OR 97208	
SA-891-272	Port of Portland - Terminal 4 9504 N. Bradford Street Portland	Port of Portland	Port of Portland PO Box 3529 Portland OR 97208	Margaret Kirkpatrick Stoel, Rives, Boley et al Standard Insurance Center 900 S.W. Fifth Ave., Suite 230 Portland OR 97204-1268

F-48

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-273	Portland International Airport 7000 N.E. Airport Way Portland	Port of Portland - Port. Int'l Airport	Port of Portland - Port. Int'l Airport PO Box 3529 Portland OR 97208	
SA-891-275	Publishers Paper Co - Portland Division 6637 S.E. 100th Avenue Portland	Smurfit Newsprint Corp.	Smurfit Newsprint Corp. 427 Main St. Oregon City OR 97045	J. Mark Morford Stoel, Rives, Boley et al Standard Insurance Center 900 S.W. Fifth Ave., Suite 230 Portland OR 97204-1268
SA-891-276	Redi-Strip of Oregon 9942 N. Vancouver Way Portland	Bruce Sullivan	Pruden Pacific Construction 6380 NE Alberta St. Portland OR 97218	
SA-891-277	Riedel Env. Services - N Portland Yard 5828 N. Van Houten Place Portland	Riedel International, Inc.	Riedel International, Inc. PO Box 3320 Portland OR 97208	Margaret Kirkpatrick Stoel, Rives, Boley et al Standard Insurance Center 900 S.W. Fifth Ave., Suite 230 Portland OR 97204-1268
SA-891-278	Oregon Convention Center 700 N.E. 3rd Portland	Metropolitan Service District	Metropolitan Service District c/o Ms. Rena Cusma, Exec. Off. 2000 S.W. 1st Ave. Portland OR 97201	

F-49

FACILITIES AND ATTORNEYS NOTIFIED OF
RECISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-278	Oregon Convention Center 700 N.E. 3rd Portland	Portland Development Commission	Portland Development Commission 1120 S.W. Fifth Avenue Portland OR 97204	
SA-891-278	Oregon Convention Center 700 N.E. 3rd Portland	Metropolitan Service District	Metropolitan Service District c/o Portland Development Comm. 1120 SW 5th Ave. #1102 Portland OR 97204	Daniel B. Cooper Metropolitan Service District 2000 S.W. First Avenue Portland OR 97201-5398
SA-891-279	S.P. Anodizing 7415 S.E. Johnson Creek Blvd. Portland	James A. Haggerty	Oregon Screw Machine Products, Inc. 7415 SE Johnson Creek Rd. Portland OR 97206	Marilyn M. Wall Wall & Wall Lloyd Five Hundred Bldg. 500 N.E. Multnomah Portland OR 97232-2054
SA-891-281	Tri-Cities Texaco 410 Molalla Avenue Oregon City	Development Systems, Inc.	Development Systems, Inc. 921 S.W. Washington #325 Portland OR 97205	
SA-891-281	Tri-Cities Texaco 410 Molalla Avenue Oregon City	Paul and Sally Nichols	810 Monroe Oregon City OR 97045	

F-50

FACILITIES AND ATTORNEYS NOTIFIED OF
RECISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-282	Vanport Manufacturing Inc End of Wally Road Boring	Adolf Hertrich	Vanport Manufacturing Inc. PO Box 97 Boring OR 97009	Robert J. Grey Preston, Thorgrimson, et al 3200 U.S. Bancorp Tower 111 S.W. Fifth Avenue Portland OR 97204-3635
SA-891-282	Vanport Manufacturing Inc End of Wally Road Boring	Vanport Manufacturing, Inc.	Vanport Manufacturing, Inc. P.O. Box 97 Boring OR 97009	
SA-891-283	Willamette Falls Locks Betw. lock gts 4&5 W. of river West Linn	U.S. Dept. of the Army	U.S. Dept. of the Army Portland Dist. Corps. Engrs. P.O. Box 2946 Portland OR 97208-2946	
SA-891-286	Merlin Landfill 1749 Merlin Rd Grants Pass	U.S. Dept. of Interior	U.S. Dept. of Interior Bureau of Land Management 3040 Biddle Road Medford OR 97504	
SA-891-286	Merlin Landfill 1749 Merlin Rd Grants Pass	Trico Disposal, Inc.	Trico Disposal, Inc. 1920 N.W. Washington Blvd. Grants Pass OR 97526	David H. Couch Bogle & Gates 1400 KOIN Center 220 S.W. Columbia Portland OR 97201

F-51

08/29/89

FACILITIES AND ATTORNEYS NOTIFIED OF
 RECISION OF INVENTORY OF CONFIRMED RELEASES
 NOTICE OF DISMISSAL OF DEQ ORDER
 NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-291	Alkali Lake T 30S, R 23E, Sec 18, TL 300 Alkali Lake	Oregon Dept. of Environmental Quality	Oregon Dept. of Environmental Quality 811 SW 6th Ave Portland OR 97204	
SA-891-297	Southern Pacific Transportation Co. TS38S, R9E, Sec33BD/33CA, TL1500 Klamath Falls	Southern Pacific Transportation Co.	Southern Pacific Transportation Co. P.O. Box 668 Spring Street Klamath Falls OR 97601	Marvin D. Fjordbeck Spears, Lubersky, Bledsoe, et al 520 S.W. Yamhill, Suite 800 Portland OR 97204-1383
SA-891-299	Madras Airport 1914 NW Demers Dr Madras	City of Madras	City of Madras 416 Sixth St Madras OR 97741	David C. Glenn Glenn, Sites & Reeder 406 Fifth Street Madras OR 97741
SA-891-299	Madras Airport 1914 NW Demers Dr Madras	Jefferson County	Jefferson County 657 "C" Street Madras OR 97741	William F. Hanlon County of Jefferson Court House Madras OR 97741
SA-891-300	Unocal Service Station #0230 T 38S, R 9E, Sec. 32AD/33CB, T Klamath Falls	Union Oil Co. of California	Union Oil Co. of California Property Tax Division PO Box 7600 Los Angeles CA 90051	

F-52

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-303	Continental Chrome 90260 Prairie Road Eugene	Mid Oil Company	Mid Oil Company P.O. Box 23 Portland OR 97223	
SA-891-303	Continental Chrome 90260 Prairie Road Eugene	Pacific Crest Equities Corporation	Pacific Crest Equities Corporation 6600 S.W. 92nd Ave., Suite 30 Portland OR 97223-7142	
SA-891-304	Georgia-Pacific/Toledo Plywd&Sawmill Div Plywood&Sawmill Div. NW 1st St Toledo	Georgia Pacific Corporation	Georgia Pacific Corporation P.O. Box 580 Toledo OR 97391	Melinda S. Eden Miller, Nash, Wiener, et al 3500 U.S. Bancorp Tower 111 S.W. Fifth Avenue Portland OR 97204-3699
SA-891-305	Eyerly Aircraft 2050 Turner Road Salem	Jack V. Eyerly	c/o Salem Airport P.O. Box 13399 Salem OR 97309	
SA-891-306	Lane County - S Willamette St Landfill 52nd & Willamette Street Eugene	Michael A. Welt & Martin S. Hall	321 Goodpasture Island Road Eugene OR 97401	Robert Smejkal 1361 Pearl Street P.O. Box 654 Eugene OR 97440

F-53

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-307	Norris Paint Co 1675 Commercial St. N.E. Salem	Norris Paint & Varnish, Inc.	Norris Paint & Varnish, Inc. P.O. Box 2023 Salem OR 97308	
SA-891-308	Pacific Fabricators 4455 S.E. Marion Albany	CCMW Co.	CCMW Co. 4505 S.E. Marion Street Albany OR 97321-3890	
SA-891-308	Pacific Fabricators 4455 S.E. Marion Albany	Casey Enterprises, Inc.	Casey Enterprises, Inc. P.O. Box 889 Albany OR 97321-0327	
SA-891-309	Parrett Mountain Landfill Portions of Sec 14 & 23, T3S, Newberg	William MacDonald	2042 S.W. Summit Drive Lake Oswego OR 97034	Phillip E. Grillo O'Donnell, Ramis, Elliott, et al 1727 N.W. Hoyt Street Portland OR 97209
SA-891-310	Potter Manufacturing 415 River Road Eugene	William Emel	Potter Manufacturing P.O. Box 988 Eugene OR 97440	
SA-891-311	Roche Road Demolition Site S.E. Roche Road Corvallis	City of Corvallis	City of Corvallis P.O. Box 1083 Corvallis OR 97339	

R-54

11/11

FACILITIES AND ATTORNEYS NOTIFIED OF
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NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-311	Roche Road Demolition Site S.E. Roche Road Corvallis	Valley Landfills, Inc.	Valley Landfill, Inc. P.O. Box 1 Corvallis OR 97339	David H. Couch Bogle & Gates 1400 KOIN Center 220 S.W. Columbia Portland OR 97201
SA-891-313	Starfire Lumber Co. 2795 Mosby Creek Road Cottage Grove	Francis Engle	Starfire Lumber Co. P.O. Box 547 Cottage Grove OR 97424	
SA-891-313	Starfire Lumber Co. 2795 Mosby Creek Road Cottage Grove	Starfire Lumber Co.	Starfire Lumber Co. P.O. Box 547 Cottage Grove OR 97424	
SA-891-313	Starfire Lumber Co. 2795 Mosby Creek Road Cottage Grove	W.H. & Lola Claussen	32442 Taylor Butte Road Cottage Grove OR 97424	
SA-891-313	Starfire Lumber Co. 2795 Mosby Creek Road Cottage Grove	Jack E. Pruitt	809 S. 2nd Cottage Grove OR 97424	
SA-891-314	Technical Images 2206 Mountain View Drive Newberg	Technical Images	Technical Images 2206 Mountainview Drive Newberg OR 97132	

F-55

77

FACILITIES AND ATTORNEYS NOTIFIED OF
REGICISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-315	Teledyne Wah Chang Albany 1600 N.E. Old Salem Road Millersburg	Teledyne Wah Chang Albany	Teledyne Wah Chang Albany Div. of Teledyne Industries P.O. Box 460 Albany OR 97321-0136	Richard H. Williams Spears, Lubersky, Bledsoe, et al 520 S.W. Yamhill, Suite 800 Portland OR 97204-1383
SA-891-317	United Chrome Products, Inc. 2000 Airport Road Corvallis	City of Corvallis	City of Corvallis P.O. Box 427 Corvallis OR 97339	Donald A. Haagensen Schwabe, Williamson, et al Pacwest Center Suite 1600-1800 1211 S.W. Fifth Avenue Portland OR 97204-3795
SA-891-318	Valley Plating Inc 3985 W. 12th Avenue Eugene	Pacific First Federal Savings Bank	Pacific First Federal Savings Bank P.O. Box 1594 Springfield OR 97477	
SA-891-319	Velco, Inc. 3900 W. 1st Ave. Eugene	Genell Mays & Estate of Henry Mays	Genell Mays & Estate of Henry Mays 15960 Alcima Ave. Pacific Palisades CA 90272	
SA-891-323	Bend Millwork Company 62845 Boyd Acres Road Bend	Bend Millwork Company	Bend Millwork Company P.O. Box 5249 Bend OR 97708	

F-56

FACILITIES AND ATTORNEYS NOTIFIED OF
RECISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-324	Chevron Service Station #2383 Lakeview 1440 N 4th St. (4th and G St.) Lakeview	Bradley & David Staub	P.O. Box 1684 Alturus CA 96101	
SA-891-330	Van Waters & Rogers 3950 N.W. Yeon Portland	Van Waters & Rogers, Inc.	Van Waters & Rogers, Inc. ATTN Property Tax Dept. 801 2nd Av #1600 Seattle WA 98104	Sharon G. Newman Shidler, McBroom, Gates & Lucas 3500 First Interstate Center 999 Third Avenue Seattle WA 98104-4083
SA-891-333	West Coast Adhesive Co. 11104 N.W. Front Avenue Portland	Spokane Portland & Seattle RR Co.	Spokane Portland & Seattle RR Co. Dennis McKnire, Mgr. 777 Main St. #2680 Fort Worth TX 76102	
SA-891-333	West Coast Adhesive Co. 11104 N.W. Front Avenue Portland	Glacier Park/Burlington Northern	Glacier Park/Burlington Northern 5319 S.W. Westgate Drive Suite 247 Portland OR	Robert D. Nesler Preston, Thorgrimson, et al 3200 U.S. Bancorp Tower 111 S.W. Fifth Avenue Portland OR 97204-3635
SA-891-337	St. Helen's Rd. Gasoline Spill U.S. Route 30, East of Corneli	Oregon Department of Transportation	Oregon Department of Transportation Environmental Section 324 Capitol Street N.E. Salem OR 97310	

F-57

111

FACILITIES AND ATTORNEYS NOTIFIED OF
RECISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-338	Smurfit Newsprint Corp Foot of Wynoski Street Newberg	Smurfit Newsprint Corp.	c/o Little A.D. Valuation, Inc. Property Tax Department P.O.Box 4028 Woodland Hills CA 91365	J. Mark Morford Stoel, Rives, Boley et al Standard Insurance Center 900 S.W. Fifth Ave., Suite 230 Portland OR 97204-1268
SA-891-341	A-DEC Business Park 2601 Crestview Drive Newberg	A-dec, Inc.	A-dec, Inc. P.O. Box 111 2601 Crestview Drive Newberg OR 97132	J. Mark Morford Stoel, Rives, Boley et al Standard Insurance Center 900 S.W. Fifth Ave., Suite 230 Portland OR 97204-1268
SA-891-342	Selmet, Inc. 9010 Seven Mile Lane Albany	Selmet, Inc.	Selmet, Inc. P.O. Box 689 Albany OR 97321	
SA-891-354	Boise Cascade - Independence Airport Road Independence	Boise Cascade Corp.	Boise Cascade Corp. c/o Property Tax Dept P.O. Box 50 Boise ID 83728	Brian J. King Boise Cascade Corporation One Jefferson Square P.O. Box 50 Boise ID 83728
SA-891-355	Boise Cascade Corp -Salem (Minto Island) 315 Commercial S.E. Salem	Boise Cascade Corporation	Boise Cascade Corporation PO Box 2139 Salem OR 97308	Brian J. King Boise Cascade Corporation One Jefferson Square P.O. Box 50 Boise ID 83728

F-58

FACILITIES AND ATTORNEYS NOTIFIED OF
RECISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-356	Circuit World, Inc 585 9th St. N.W. Salem	Allan A. & Janet Ketchum	PO Box 5221 Salem OR 97304	
SA-891-358	GNB Battery 576 Patterson N.W. Salem	GNB Batteries, Inc.	GNB Batteries, Inc. 1110 Highway 110 Mendota Heights MN 55118	Jay T. Waldron Schwabe, Williamson, et al Pacwest Center Suite 1600-1800 1211 S.W. Fifth Avenue Portland OR 97204-3795
SA-891-359	Fort Hill Lumber 8885 Fort Hill Road Willamina	Fort Hill Lumber Co	Fort Hill Lumber Co PO Box 186 Grand Ronde OR 97347	Donald A. Haagensen Schwabe, Williamson, et al Pacwest Center Suite 1600-1800 1211 S.W. Fifth Avenue Portland OR 97204-3795
SA-891-360	Franklin Sweed Equipment Company 900 N. Main Independence	Franklin Sweed, Inc.	Franklin Sweed, Inc. Franklin Sweed Division P.O. Box 98 Independence OR 97351	
SA-891-360	Northwest Pine Products 21372 East Hwy 20 Bend	Barbara A. Van Osten	1538 NE 5th Bend OR 97701	

F-59

FACILITIES AND ATTORNEYS NOTIFIED OF
RECISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-374	Northwest Aviation 4905 Airport Road Independence	Oregon Aeronautics Division	Oregon Aeronautics Division 3040 25th St SE Salem OR 97310	
SA-891-375	Ja-Sant Corporation 1710 Fabry Road S.E. Salem	Jack L Bird	975 Lebanite Drive Lebanon OR 97355	
SA-891-383	Broadway Cab/Portland Development Comm. 234 N.W. 1st Avenue Portland	City of Portland	City of Portland Bureau of General Services 1120 S.W. 5th Ave. #1204 Portland OR 97204	
SA-891-395	Schnitzer Investment Corp. 500' W of 6501 N.W. Front Ave. Portland	Schnitzer Investment Corp.	Schnitzer Investment Corp. 3200 NW Yeon Avenue Portland OR 97210	
SA-891-397	ESCO Corp. 6900 N. Front Avenue Portland	ESCO Corp.	ESCO Corp. 2141 NW 25th Avenue Portland OR 97210	James C. Brown Bogle & Gates 1400 KOIN Center 220 S.W. Columbia Portland OR 97201
SA-891-398	Pennwalt Chemical Corp. 6400 N.W. Front Avenue Portland	Pennwalt Chemical Corp.	Pennwalt Chemical Corp. 6400 NW Front Avenue Portland OR 97210	Claudia K. Powers Lindsay, Hart, Neil & Weigler 222 S.W. Columbia, Suite 1800 Portland OR 97201-6618

F-60

102

08/29/89

FACILITIES AND ATTORNEYS NOTIFIED OF
 REVISION OF INVENTORY OF CONFIRMED RELEASES
 NOTICE OF DISMISSAL OF DEQ ORDER
 NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-401	Elstor Sales Corporation 1100 Old Salem Road Albany	Pantera Corp.	Pantera Corp. 1100 Old Salem Road Albany OR 97321	
SA-891-403	South 6th and Gettle South 6th and Gettle Klamath Falls	Dino D. Boito and Larry King	2540 Eberlein Klamath Falls OR 97601	
SA-891-404	Marathon -N.W. Industrial St. Properties 2615-2619 N.W. Industrial St. Portland	Marathon U.S. Realities, Inc.	Marathon U.S. Realities, Inc. Marathon Plaza Suite 850 North 303 Second Street San Fransisco CA 94107	
SA-891-501	Sunny Service Station - Glenwood 4197 Franklin Eugene	Thea Cochran	Sunny Service Stations, Inc. P.O. Box 1-U Eugene OR 97440	
SA-891-501	Sunny Service Station - Glenwood 4197 Franklin Eugene	Oscar Skjepstad	1128 W. Broadway Eugene OR 97402	
SA-891-505	Cove General Store T3S, R40E, Sec 16DD, TL 4200	Sherwood Lee & B. Simmons	P.O. Box 67 Cove OR 97824	

F-61

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-514	Umatilla Army Depot Activity T4N, R27E, Sec 1-24, parts of Hermiston	U.S. Department of Army	U.S. Department of Army Hermiston OR 97838	
SA-891-516	Union Pacific Railroad - Hinkle T4N,R28E,Sec27(NE1/4 of SE1/4) Hinkle	Union Pacific Railroad Co.	Union Pacific Railroad Co. 1416 Dodge Street Omaha NB 68179	
SA-891-516	Union Pacific Railroad - Hinkle T4N,R28E,Sec27(NE1/4 of SE1/4) Hinkle	Ore./Wash. Railroad and Navigation Co.	Ore./Wash. Railroad and Navigation Co. P.O. Box 2500 Bloomfield CO 80020	
SA-891-517	Union Oil Bulk Plant - Ontario, #0552 76 SE 4th Street Ontario	Union Oil Co. of California	Union Oil Co. of California Tax Division P.O. Box 7600 Los Angeles CA 90051	
SA-891-517	Union Oil Bulk Plant - Ontario, #0552 76 SE 4th Street Ontario	Unocal Corporation	Unocal Corporation P.O. Box 76 Seattle OR 98111	
SA-891-519	Vale, City of, Dump T 18S, R 45E, Sec 32 Vale	U.S. Dept. of Interior (BLM)	Bureau of Land Management P.O. Box 2965 825 N.E. Multnomah Street Portland OR 97208	

F-62

FACILITIES AND ATTORNEYS NOTIFIED OF
REGISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-526	Chevron Station 676 S.W. 4th Avenue Ontario	John Easley Estate	Western Bank Trust Department P.O. Box 1225 Coos Bay OR 97420	Cliff Bentz Yturri, Rose, Burnham, et al 89 S.W. Third Avenue P.O. Box S Ontario OR 97914
SA-891-527	Weyerhaeuser Co. - Wood Products Div. 3050 Tremont Street North Bend	Weyerhaeuser Company	Weyerhaeuser Company P.O. Box 389 North Bend OR 97459	David H. Couch Bogle & Gates 1400 KOIN Center 220 S.W. Columbia Portland OR 97201
SA-891-530	Roseburg Lumber - Coquille TS27S/28S, R13W, Sec35, TL400 Coquille	Roseburg Lumber	Roseburg Lumber P.O. Box 1088 Roseburg OR 97470	
SA-891-533	Balteau Standard 8001 Table Rock Road Medford	Balteau Standard, Inc.	Balteau Standard, Inc. 8001 Table Rock Road White City OR 97503	
SA-891-533	Balteau Standard 8001 Table Rock Road Medford	Building Management Corp.	Building Management Corp. c/o Morrow B. Garrison, Pres. 2200 E. Devon Ave. Suite #220 Des Plaines IL 60018-4587	

F-63

112

08/29/89

FACILITIES AND ATTORNEYS NOTIFIED OF
 REVISION OF INVENTORY OF CONFIRMED RELEASES
 NOTICE OF DISMISSAL OF DEQ ORDER
 NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-539	Bohemia, Inc. - Lakeside T 23S, R 12W, Sec 18D/18AC/18A Lakeside	Elkside Lumber Co.	Elkside Lumber Co. c/o Bohemia, Inc. P.O. Box 1819 Eugene OR 97440	
SA-891-543	Douglas Pacific Lumber Company T 28, R 14, S 17C, TL 1100 Bandon	Rogge Forest Products	Rogge Forest Products P.O. Box 609 Bandon OR 97411	Jay T. Waldron Schwabe, Williamson, et al Pacwest Center Suite 1600-1800 1211 S.W. Fifth Avenue Portland OR 97204-3795
SA-891-551	Montmore Timber Products 373 Olive Barber Road Coos Bay	Montmore Timber Products, Inc.	Montmore Timber Products, Inc. P.O. Box 389 Coos Bay OR 97420	Jack L. Landau Lindsay, Hart, Neil & Weigler 222 S.W. Columbia, Suite 1800 Portland OR 97201-6618
SA-891-561	J & F Mobil Station 1453 West Central Sutherlin	Emma Real	J & F Mobil 38204 Row River Road Culp Creek OR 97427	Michael R. Genna Genna & Shrank 11 South Sixth Street Cottage Grove OR 97424-2098
SA-891-562	Unocal Service Station #2414 T37S, R1W, Sec 30, TL BD100 Medford	Unocal	Unocal P.O. Box 76 Seattle WA 98111	

F-64.

107

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-574	Rice Hill TS23S, R5W, Sec28D, TL200 Rice Hill	Daniel M. and Pauline Webb	Mobil Oil P.O. Box 722 Yoncalla OR 97499	Melinda S. Eden Miller, Nash, Wiener, et al 3500 U.S. Bancorp Tower 111 S.W. Fifth Avenue Portland OR 97204-3699
SA-891-574	Rice Hill TS23S, R5W, Sec28D, TL200 Rice Hill	Ellis Emory	P.O. Box 489 Yoncalla OR 97499	
SA-891-579	International Paper Company T21S R12W S22 TL900,1000,1100 Gardiner	International Paper Co.	International Paper Co. P.O. Box 579 Longview WA 98632	
SA-891-581	Unocal Service Station #0727 T 25S, R5W, Sec 17DC/19AB Sutherlin	Union Oil Co. of California	Union Oil Co. of California Tax Division P.O. Box 7600 Los Angeles CA 90052	
SA-891-583	Roseburg Forest Products Co. - Dillard T 28, R 6, S 33, TL 100 Dillard	Roseburg Forest Products Co.	Roseburg Forest Products Co. P.O. Box 1088 Roseburg OR 97470	

F-65

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-591	CHEMLAWN Corp. 6024 S.W. Jean Road Lake Oswego	Rosenberg Equity Fund West-V	Rosenberg Equity Fund West-V c/o RREEF Port/Sea Management 1 S.W. Columbia #1222 Portland OR 97201	J. Patrick O'Malley Delo, O'Malley & Stamm 900 S.W. Fifth Ave., Suite 143 Portland OR 97204-1223
SA-891-591	CHEMLAWN Corp. 6024 S.W. Jean Road Lake Oswego	Melvin A. Peters	9350 Wilshire Blvd. Beverly Hills CA 90212	
SA-891-591	CHEMLAWN Corp. 6024 S.W. Jean Road Lake Oswego	P/3 Partners	P/3 Partners 9350 Wilshire Blvd. Beverly Hills CA 90212	
SA-891-598	Unocal Former Service Station #3259 1241 Highway Ave. Reedsport	Union Oil Co. of California	Union Oil Co. of California Tax Division P.O. Box 7600 Los Angeles CA 90052	
SA-891-601	White King Mine TS37S,R19E,Sec30/9,TL900/1000 Lakeview	U.S. Forest Service	U.S. Forest Service Fremont National Forest P.O. Box 1034 Lakeview OR 97630	
SA-891-601	White King Mine TS37S,R19E,Sec30/9,TL900/1000 Lakeview	Cleve W. & Caryl Coppin	Route 1 Box 190 Joseph OR 97846	

F-66

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-602	South Waterfront Redevelopment T 1S, R 1E, Sec 3 Portland	City of Portland	City of Portland Portland Development Commissio 1120 SW 5th Ave. #1102 Portland OR 97204	Jeannette Launer Portland Development Commission 1120 S.W. Fifth Avenue Portland OR 97204
SA-891-611	Weyerhaeuser Company - Bly TS36S, R14E, Sec34/34DB/35 Bly	Weyerhaeuser Company	Weyerhaeuser Company P.O. Box 9 Klamath Falls OR 97601	David H. Couch Bogle & Gates 1400 KOIN Center 220 S.W. Columbia Portland OR 97201
SA-891-611	Weyerhaeuser Company - Bly TS36S, R14E, Sec34/34DB/35 Bly	Weyerhaeuser Company	Weyerhaeuser Company 1015 A Street Tacoma WA 98402	
SA-891-612	Diamond Newman Ranch TS 36S, R 14E, Sec 27, TL 4600 Bly	Clough Oil Company	Clough Oil Company P.O. Box 338 Klamath Falls OR 97601	Donald A. Haagenson Schwabe, Williamson, et al Pacwest Center Suite 1600-1800 1211 S.W. Fifth Avenue Portland OR 97204-3795
SA-891-612	Diamond Newman Ranch TS 36S, R 14E, Sec 27, TL 4600 Bly	Newman Enterprises, Inc.	Newman Enterprises, Inc. 1859 Riverside Klamath Falls OR 97601	

F-67

67

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-614	Gregory Forest Products 4605 Lakeport Blvd. Klamath Falls	Gregory Forest Products, Inc.	Gregory Forest Products, Inc. 4800 SW Griffith Drive Beaverton OR 97005	Kevin Q. Davis Stoel, Rives, Boley et al Standard Insurance Center 900 S.W. Fifth Ave., Suite 230 Portland OR 97204-1268
SA-891-616	Full Circle, Inc. NW Depot Road Madras	Full Circle, Inc.	Full Circle, Inc. P.O. Box 49 Madras OR 97741	Douglas A. Shepard Shepard & Laws 262 5th Street P.O. Box G Madras OR 97741
SA-891-619	Mew Data Arms 1120 Spring Street Klamath Falls	H.O. and M.C. Juckeland	c/o Butler Minor 1120 Spring Street Klamath Falls OR 97601	
SA-891-619	Mew Data Arms 1120 Spring Street Klamath Falls	Butler B. Minor	1120 Spring Street Klamath Falls OR 97601	Miriam Feder The Broadway Bldg., Suite 930 621 S.W. Alder Portland OR 97205-3627
SA-891-622	Cascade Steel Rolling Mills, Inc. (CSRM) 3200 North Hwy. 99W McMinnville	Cascade Steel Rolling Mills, Inc.	Cascade Steel Rolling Mills, Inc. P.O. Box 687 McMinnville OR 97128	Margaret Kirkpatrick Stoel, Rives, Boley et al Standard Insurance Center 900 S.W. Fifth Ave., Suite 230 Portland OR 97204-1268

F-68

FACILITIES AND ATTORNEYS NOTIFIED OF
RECISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-623	B.P.A. Alvey Substation 87000 Franklin Blvd. Goshen	Bonneville Power Administration	Bonneville Power Administration P.O. Box 3621 Portland OR 97208	David J. Adler Bonneville Power Administration P.O. Box 3621 Portland OR 97208-3621
SA-891-626	Newberg Lot - Hess Creek T3S,R2W,Sec 17 Newberg	Springbrook Institute, Inc.	Springbrook Institute, Inc. 4000 Kruse Way Place Bldg #1 Suite #200 Lake Oswego OR 97035	Alan S. Larson Schwabe, Williamson, et al Pacwest Center Suite 1600-1800 1211 S.W. Fifth Avenue Portland OR 97204-3795
SA-891-631	Union Pacific Railroad - La Grande Jefferson and Fir Street La Grande	Union Pacific Railroad Company	Union Pacific Railroad Company OR & WA R.R. & Navigation Co. P.O. Box 2500 Broomfield CA 80020	Barry L. Groce Union Pacific Railroad Co. Law Department 1515 S.W. Fifth Ave., Suite 40 Portland OR 97201
SA-891-633	Baker County Rock Creek Road Baker	Baker County Commission	Baker County Commission Courthouse 1995 Third Street Baker OR 97814	Ken Hadley Baker County Baker County Courthouse 1995 Third Street Baker OR 97814-3313
SA-891-635	Cascade Corporation 2201 N.E. 201st Troutdale	Cascade Corporation	Cascade Corporation 2201 NE 201st Troutdale OR 97060	Jack B. Schwartz Newcomb, Sabin, Schwartz & Lands Commonwealth Bldg., Suite 1212 421 S.W. Sixth Avenue Portland OR 97204

F-69

109

08/29/89

FACILITIES AND ATTORNEYS NOTIFIED OF
 RECISION OF INVENTORY OF CONFIRMED RELEASES
 NOTICE OF DISMISSAL OF DEQ ORDER
 NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-635	Cascade Corporation 2201 N.E. 201st Troutdale	Cascade Manufacturing	Cascade Manufacturing P.O. Box 20187 Portland OR 97220	
SA-891-637	Oregon Natl. Guard -Ptld.Intl.Airport #1 Southwest portion of Airport Portland	Port of Portland	Port of Portland P.O. Box 3529 Portland OR 97208	
SA-891-638	Pendleton Tree Service Rt. 3 Box 557 Pendleton	Stanley and Delma R. Bracken	Pendleton Tree Service P.O. Box 1374 Pendleton OR 97801	
SA-891-639	Pendleton Grain Growers Feedville and Hinkle Roads Hermiston	Pendleton Grain Growers	Pendleton Grain Growers P.O. Box 1248 Pendleton OR 97801	
SA-891-641	Pendleton Grain Growers - Pendleton 127 N.W. 46th Street Pendleton	Pendleton Grain Growers	Pendleton Grain Growers P.O. Box 1248 Pendleton OR 97801	
SA-891-642	Vale Oregon Irrigation District T18S, R44E, S19, TL 900 Vale	U.S. Department of Interior	U.S. Department of Interior Bureau of Reclamation Box 043-550 West Fort Street Boise ID 83724	

F-70

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-644	East Side Plating Works - 26th Place 8310 S.E. 26th Place Portland	Robert R. Finzer	310 S.E. Stephens Portland OR 97214	Mary E. Egan Ransom, Blackman & Simson 900 American Bank Building 621 S.W. Morrison Portland OR 97205
SA-891-644	East Side Plating Works - 26th Place 8310 S.E. 26th Place Portland	Key Bank of Oregon	Key Bank of Oregon Trust Department 1211 S.W. 5th Suite 500 Portland OR 97204	Joel Merkel Merkel, Caine & Donohue 64th Floor Columbia Center Seattle WA 98104
SA-891-649	James River Corporation - Wauna Mill Hwy. 30 Clatskanie	James River II, Inc.	James River II, Inc. Land and Tax Division 904 N.W. Drake Street Camas WA 98607	
SA-891-649	James River Corporation - Wauna Mill Hwy. 30 Clatskanie	James River, Inc. (Nevada)	James River, Inc. (Nevada) PO Box 3869 Portland OR 97208	
SA-891-651	Gresham Outlook 1190 N.E. Division Gresham	Gresham Outlook	Gresham Outlook 1190 N.E. Division Street P.O. Box 880 Gresham OR 97030	

F-71

131

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-651	Gresham Outlook 1190 N.E. Division Gresham	Capitol Cities Communications	Capitol Cities Communications c/o John A. Irwin P.O. Box 130 Albany OR 97321	
SA-891-656	Micro Gold Mine Site T10S, R39E, Sec 9, Sand Hollow Baker	U.S. Forest Service	U.S. Forest Service Dept. of Agriculture P.O. Box 907 Baker OR 97814	
SA-891-657	Main Street Mobil Fueling Station 1850 Campbell Street Baker	Mid Oil Company	Mid Oil Company 6600 S.W. 92nd Street Portland OR 97223	
SA-891-658	Minexco Millsite T9S, R42E, Sec8 (NE4 of SW4) Baker	Bureau of Land Management	Bureau of Land Management P.O. Box 2965 825 N.E. Multnomah Street Portland OR 97208	
SA-891-659	Nyssa, City of T19S, R47E, Sec 32 Nyssa	City of Nyssa	City of Nyssa City Hall 14 South 3rd Street Nyssa OR 97913	
SA-891-662	Norm Poole Oil - Shell Station 330 E. Idaho Ave. Ontario	Norman Poole	Norm Poole Shell Oil P.O. 487 Ontario OR 97914	

F-72

FACILITIES AND ATTORNEYS NOTIFIED OF
RECISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-664	Chevron USA, Inc. - Baker Terminal 3370 17th Street Baker	Chevron USA, Inc.	Chevron USA, Inc. P.O. Box 7611 San Francisco CA 94120	Daniel E. Vineyard Chevron Corporation 555 Market Street P.O. Box 7141 San Francisco CA 94120-7141
SA-891-664	Chevron USA, Inc. - Baker Terminal 3370 17th Street Baker	Vernon C. Golar	3175 Grandview Baker OR 97814	Martin J. Leuenberger Coughlin, Leuenberger & Moon 1650 Dewey Avenue P.O. Box 1026 Baker OR 97814
SA-891-665	Alliance Gas Station T3S,R38E,S6DC,TL 3400 La Grande	Wesley L. Smith	1909 Oak Street La Grande OR 97850	
SA-891-665	Alliance Gas Station T3S,R38E,S6DC,TL 3400 La Grande	Larry Foley	2609 May Street La Grande OR 97850	
SA-891-665	Alliance Gas Station T3S,R38E,S6DC,TL 3400 La Grande	Donald D. and Lila M. Waldrop	A&B Enterprises, Inc. P.O. Box 3298 La Grande OR 97850	

5-73

FACILITIES AND ATTORNEYS NOTIFIED OF
RECISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

46-74

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-666	John C. Taylor Lumber Sales, Inc. Rock Creek Road and Hwy. 18 Sheridan	Taylor Lumber and Treating, Inc.	Taylor Lumber and Treating, Inc. Wood Preserving Division P.O. Box 248 Sheridan OR 97378	James C. Brown Bogle & Gates 1400 KOIN Center 220 S.W. Columbia Portland OR 97201
SA-891-673	Fuel Processors 4150 N. Suttle Road Portland	Merit U.S.A., Inc.	Merit U.S.A., Inc. 4150 N Suttle Road Portland OR 97217	Jeffery W. Ring Heller, Ehrman, White & McAuliff 4100 First Interstate Center 999 Third Avenue Seattle WA 98104-4011
SA-891-674	Rossman's Landfill, Inc. 1101 17th Street Oregon City	Park Place Dev., Inc.	Park Place Dev., Inc. P.O. Box 149 Oregon City OR 97045	Frank Josselson Josselson, Potter & Roberts 53 S.W. Yamhill Street Portland OR 97204
SA-891-675	Chevron USA, Inc. - Adams Terminal Wild Horse Creek Adams	Chevron USA, Inc.	Chevron USA, Inc. P.O. Box 220 Seattle WA 98111	Daniel E. Vineyard Chevron Corporation 555 Market Street P.O. Box 7141 San Francisco CA 94120-7141
SA-891-676	Lewis, Jim - Property 2 miles north of town Joseph	Jim Lewis	P.O. Box 606 Joseph OR 97846	

FACILITIES AND ATTORNEYS NOTIFIED OF
RECISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-677	NW Pipeline Corp.-Baker Compressor Stn. Rock Creek Road Baker	Northwest Pipeline Corp.	Northwest Pipeline Corp. P.O. Box 8900 M/S 10453 Salt Lake City UT 84108-0900	Del Draper Northwest Pipeline Corp. P.O. Box 8900 Salt Lake City UT 84108-0900
SA-891-679	Nicolai Company 1812 N. Columbia Blvd. Portland	Nicolai Door Manufacturing Co.	Nicolai Door Manufacturing Co. 1812 N Columbia Blvd. Portland OR 97217	
SA-891-684	Gem Fuel Co. Interstate 84 North Powder	Oregon Dept. of Transportation	Oregon Dept. of Transportation Environmental Section 324 Capitol Street N.E. Salem OR 97310	
SA-891-689	Zidell Explorations, Inc. 3121 S.W. Moody Portland	ZRZ Realty Company	ZRZ Realty Company 3121 S.W. Moody Portland OR	
SA-891-690	Malarkey Roofing Co. 3131 N. Columbia Blvd. Portland	Herbert Malarkey Roofing Co.	Herbert Malarkey Roofing Co. P.O. Box 17217 Portland OR 97217	Richard Gulick Ragen, Tremaine, Krieger, et al First Interstate Tower 1300 S.W. Fifth Ave., Suite 23 Portland OR 97201

F-75

111

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-690	Malarkey Roofing Co. 3131 N. Columbia Blvd. Portland	Tyrell B. Vance	Herbert Malarkey Roofing Co. 3131 N. Columbia Blvd. Portland OR 97217-7472	
SA-891-691	Beaverton Mall 3205 S.W. Cedar Hills Blvd. Beaverton	Center Development of Oregon	Center Development of Oregon c/o C.E. John Company, Inc. 7223 NE Hazel Dell Ave. Vancouver WA 98665	Margaret Kirkpatrick Stoel, Rives, Boley et al Standard Insurance Center 900 S.W. Fifth Ave., Suite 230 Portland OR 97204-1268
SA-891-692	Aloha Mobil Station 185th and T.V. Hwy. Aloha	Ronald Cain, L.P. Busch, Inc.	Ronald Cain, L.P. Busch, Inc. 2624 Pacific Ave. Forest Grove OR 97116	Christopher A. Rycewicz Bullivant, Houser, Bailey, et al Pacwest Center, Suite 1400 1211 S.W. Fifth Avenue Portland OR 97204-3797
SA-891-693	Burke's Mobil Station 245 S.E. Hwy. 224 Estacada	Burke's Mobil Station	Burke's Mobil Station 245 S.E. Hwy. 224 Estacada OR 97023	
SA-891-694	Dow Corning Corp.- Springfield Plant 1801 South A St Springfield	Dow Corning Corporation	Dow Corning Corporation 1801 Aster Street Springfield OR 97477-0013	

F-76

110

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
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ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-695	Exxon Service Station 14951 S.W. Bangy Road Lake Oswego	Exxon Corporation	Exxon Corporation P.O. Box 53 Houston TX 77001	
SA-891-696	Winter's Well Near 59655 E. Hwy. 26 Sandy	Cris Winter	59655 E. Hwy. 26 Sandy OR 97055	
SA-891-697	Wash. County Building Site 1st and Main Hillsboro	Greg Lambier	135 SW Ash Street, Suite 510 Portland OR 97204	
SA-891-699	Sliger-Monroe Station 439 Baseline Road Cornelius	Sliger-Monroe Station	Sliger-Monroe Oil Company 4815 SE T.V. Hwy. Hillsboro OR 97123	Thomas J. Moore Brink, Moore, Brink & Peterson 163 S.E. Second Street Hillsboro OR 97123
SA-891-700	Pacific University 2043 College Way Forest Grove	Pacific University	Pacific University 2043 College Way Forest Grove OR 97116	
SA-891-701	Oregon Bulb Farm 14071 N.E. Arndt Road Aurora	Oregon Bulb Farm	Oregon Bulb Farm 14071 N.E. Arndt Road Aurora OR 97002	Edward A. Finklea Tonkon, Torp, Galen, et al 1800 Orbanco Building 1001 S.W. Fifth Avenue Portland OR 97204-1162

66-77

FACILITIES AND ATTORNEYS NOTIFIED OF
 REVISION OF INVENTORY OF CONFIRMED RELEASES
 NOTICE OF DISMISSAL OF DEQ ORDER
 NOTICE OF PROPOSED EQC ORDER

F-78

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-702	Mobil Oil Bulk Plant Hwy. 224 & Currin Street Estacada	Mobil Oil Corporation	Mobil Oil Corporation 3800 W. Alameda Ave. Suite 700 Burbank CA 91505-4331	
SA-891-703	Jesuit High School 9000 S.W. Beaverton Hwy. Portland	Jesuit High School	Jesuit High School 9000 SW Beav-Hills. Hwy. Portland OR 97225	
SA-891-706	Milwaukie Public Water Supply 3800 S.E. Harvey Milwaukie	City of Milwaukie	City of Milwaukie 10964 SE Oak Milwaukie OR 97222	Timothy V. Ramis O'Donnell, Ramis, Elliott & Crew Ballow & Wright Building 1727 N.W. Hoyt Street Portland OR 97209
SA-891-710	Hicks Striping and Curbing 4733 Lancaster Dr. N.E. Salem	James E. Hicks	3965 Hayesville Drive Salem OR 97305	
SA-891-711	Westmoreland School 1717 City View Eugene	4J School District	4J School District 200 N. Monroe Eugene OR 97402	
SA-891-712	Mansell Recapping 1875 W. 7th Eugene	Bill and Darrell Mansell	570 Fillmore Eugene OR 97402	

100

FACILITIES AND ATTORNEYS NOTIFIED OF
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NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-713	Chevron 33096 Van Duyn Road Eugene	Chevron USA	Chevron USA P.O. Box 220 Seattle WA 98111	Jeffery J. Truskey Chevron Corporation 555 Market Street P.O. Box 7141 San Francisco CA 94120-7141
SA-891-714	Stan Forest Trucking 1600 Salem Industrial Dr. Salem	Stan Forest Trucking	Stan Forest Trucking 1660 Salem Industrial Drive Salem OR 97303	
SA-891-715	Unocal - Corvallis 429 S.W. 3rd Corvallis	Unocal	Unocal P.O. Box 76 Seattle WA 98111	
SA-891-716	B. and B. Properties 210 Capitol N.E. Salem	B and B Properties	B and B Properties 210 Capitol N.E. Salem OR 97301	
SA-891-717	Southern Pacific Pipeline Prairie Road Eugene	Southern Pacific Pipe Lines, Inc.	Southern Pacific Pipe Lines, Inc. 888 S. Figueroa St. Los Angeles CA 90017	

F-79

117

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

08-80

ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-718	Unocal - Eugene Seventh and Olive Eugene	Unocal Corporation	Unocal Corporation P.O. Box 76 Seattle WA 98111	
SA-891-719	Unocal Bulk Plant Quincy Ave. & Hwy. 99 Cottage Grove	Unocal Corporation	Unocal Corporation P.O. Box 76 Seattle WA 98111	
SA-891-720	Sunny Service Station - Springfield 5737 Main St. Springfield	Sunny Service Stations	Sunny Service Stations P.O. Box 1-U Eugene OR 97440	
SA-891-722	Unocal 1411 South 'A' Street Springfield	Unocal Corporation	Unocal Corporation P.O. Box 76 Seattle WA 98111	
SA-891-723	Shell Station 3850 River Road N. Salem	Shell Oil Co.	Shell Oil Co. 100 Howe Ave. Sacramento CA 95825	
SA-891-724	Younger Oil Co. T12S, R3W, Sec.4, TL601 Albany	Larry Younger	Younger Oil Company P.O. Box 87 Albany OR 97321	David B. Beckman 319 Sixth Avenue, S.W. Albany OR 97321

FACILITIES AND ATTORNEYS NOTIFIED OF
REVISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
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ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-724	Younger Oil Co. T12S, R3W, Sec.4, TL601 Albany	Glen W. and Frances L. White	1803 Park Terrace N.W. Albany OR 97321	
SA-891-727	Sunny Service Station - Junction City 825 Ivy St. Junction City	Sunny Service Stations	Sunny Service Stations P.O. Box 1-U Eugene OR 97440	
SA-891-729	Bingo Truck Stop 4220 Brook Lake Rd., N.E. Salem	ATM	ATM 890 Quail Valley Drive Provo UT 84604	
SA-891-730	Well at Hwy. 26 and Locust Street 875 Madras Hwy. Prineville	John Owens	875 Madras Hwy. Prineville OR 97754	
SA-891-731	Strong's Grocery 11245 Tiller Trail Hwy Days Creek	Strong's Grocery	Strong's Grocery P.O. Box 187 Days Creek OR 97429	
SA-891-733	Riverside Texaco 5587 US 95 Spur Ontario	Nancy Hulse	Riverside Texaco Mannscreek Road Weiser ID 83627	

F-81

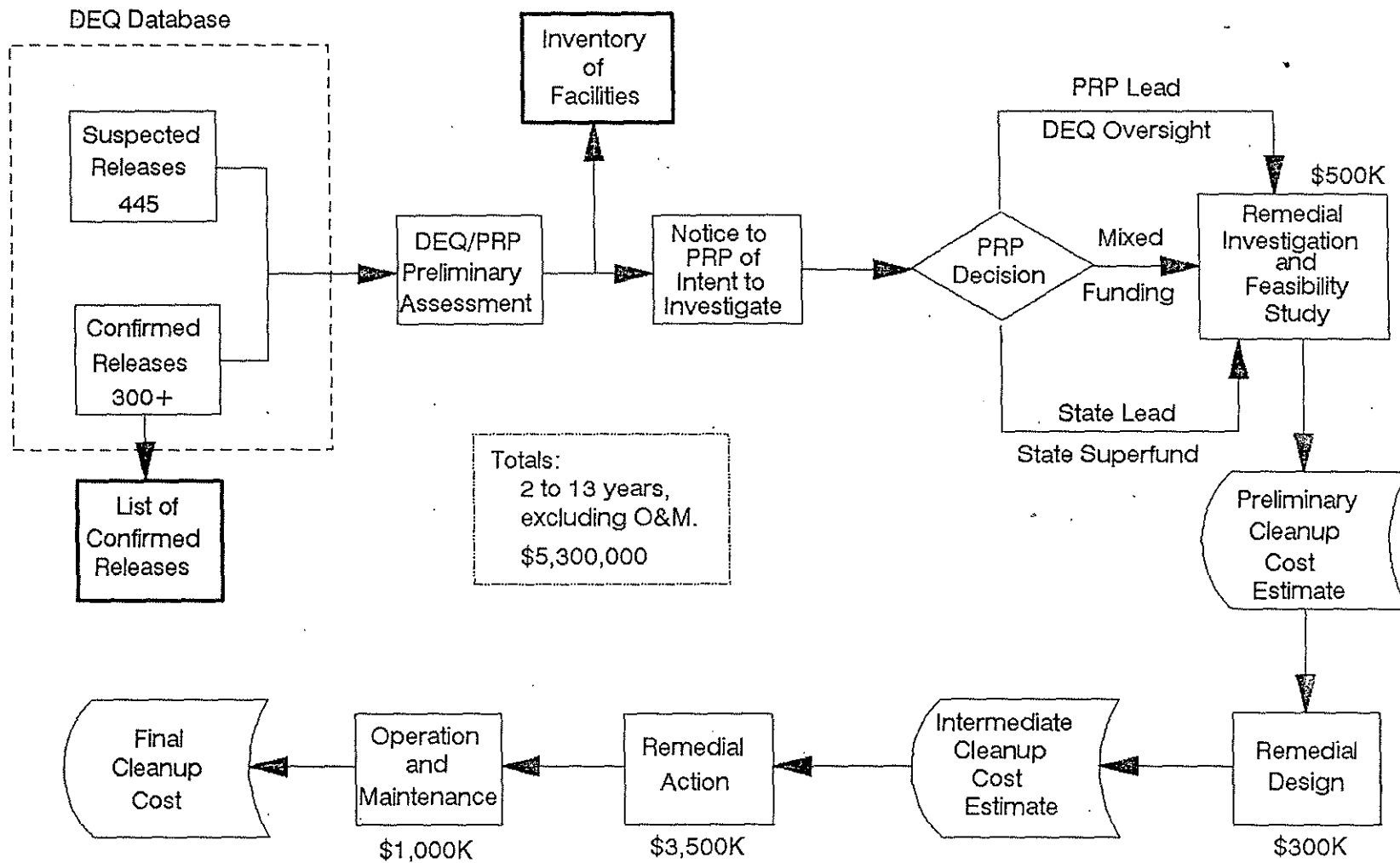
FACILITIES AND ATTORNEYS NOTIFIED OF
RECISION OF INVENTORY OF CONFIRMED RELEASES
NOTICE OF DISMISSAL OF DEQ ORDER
NOTICE OF PROPOSED EQC ORDER

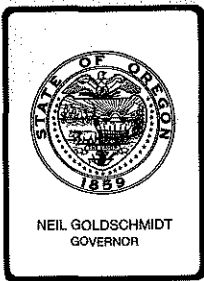
ORDER NO.	SITE NAME AND LOCATION**	PARTY NOTIFIED	PARTY MAILING ADDRESS	ATTORNEY NOTIFIED
SA-891-737	Coos Grange Co-op 1085 2nd Street Coos Bay	Coos Grange Co-op	Coos Grange Co-op 1085 S. 2nd Coos Bay OR 97420	
SA-891-738	Unocal Station #3387 1401 Siskiyou Ashland	Unocal	Unocal P.O. Box 76 Seattle WA 98111	
SA-891-739	Blossum Gulch School 333 S 10th Coos Bay	Blossum Gulch School	Coos Bay School District #9 P.O. Box 509 Coos Bay OR 97420	

F-82

** Not necessarily responsible for contamination

ECD Cleanup Flowchart





Environmental Quality Commission

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

MEMORANDUM

TO: Environmental Quality Commission DATE: October 12, 1989

FROM: Linda K. Zucker, ^{LKZ}Hearings Officer

SUBJECT: Agenda Item G
Appeal of Site Inventory Listing of Property Located in Clackamas
County, City of Milwaukie, Owner

On September 25, 1989, I issued an order in Case SA-891-706 dismissing the City of Milwaukie's request for contested case hearing to pursue its appeal of a November 30, 1988 DEQ order which proposed to include City property on an inventory of sites having confirmed releases of hazardous wastes. In the September 25, 1989 order I also affirmed DEQ's withdrawal of its November 30, 1988 order.

The City has filed an appeal of my decision in the Court of Appeals and has filed a precautionary appeal to the EQC. The City's Notice of Appeal to the EQC contains a request "...that any further action by the EQC be stayed in this case until a court of competent jurisdiction determines either the applicable review procedures or reviews the merits of this appeal."

The action before the EQC on October 20, 1989 is to grant or deny the requested stay.

LKZ:y
HY8986

Attachments: A. Notice of Appeal (EQC)
B. Petition for Judicial Review (w/o Order)
C. Affidavit Supporting Petition for Judicial Review

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON
3

4 In the matter of:)
5 SITE INVENTORY LISTING OF PROPERTY) No. SA-891-706
6 LOCATED IN CLACKAMAS COUNTY,) NOTICE OF APPEAL
7 OREGON, CITY OF MILWAUKIE, OWNER.)
8 _____)

9 Pursuant to OAR 340-11-132, petitioner, City of
10 Milwaukie, hereby files this precautionary Notice of Appeal from
11 the Hearings Officer's September 25, 1989, Order (attached).

12 Petitioner files this precautionary appeal solely to
13 preserve its right of review before the full Environmental Quality
14 Commission ("EQC") in the event a court of competent jurisdiction
15 finds that the review procedures set forth in OAR 340-11-132 apply
16 and are required to be exhausted prior to judicial review. The
17 petitioner maintains that the Hearings Officer's September 25,
18 1989, Order is final and subject to judicial review under either
19 ORS 183.482 or ORS 183.484.

20 Petitioner, by filing this Notice of Appeal, requests
21 that any further action by the EQC be stayed in this case until a
22 court of competent jurisdiction determines either the applicable
23 review procedures or reviews the merits of this appeal. Petitioner

24 ///
25 ///
26 ///

Attachment A.

O'DONNELL, RAMIS, ELLIOTT & CREW
Attorneys at Law
1727 N.W. Hoyt Street
Portland, Oregon 97209
(503) 222-4402
FAX (503) 243-2844

1 hereby moves that the chairman indefinitely extend the briefing
2 schedule in this matter in light of pending judicial review.

3 Respectfully submitted this 4th day of October, 1989.

4 O'DONNELL, RAMIS, ELLIOTT & CREW

5
6 By: 

7 Phillip E. Grillo, OSB #85220
8 Of Attorneys for the City of
9 Milwaukee

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21 PEG\MILWAUKI\APPEAL.NOT/gaj

1 Notice of Opportunity for Contested Case Hearing, was sent to the City.
2 Two-hundred and ten recipients, including the City, responded to DEQ's
3 order by filing appeals seeking a contested case hearing to challenge
4 their inclusion on the list. A timely request for hearing
5 automatically postponed the inclusion of the facility on the list
6 pending final disposition of the appeal. DEQ's December 30, 1988
7 letter to City.

8 The large number of appeals prompted DEQ to propose legislation
9 revising the conditions and process for placing facilities on the
10 inventory. Environmental Cleanup Report, Attachment, August 18, 1989
11 letter to hearings officer from City. A significant feature of the
12 proposed legislation was elimination of the facility owner's ability to
13 obtain contested case review of DEQ's decision to place a facility on
14 the list. The legislation was supported by key industry and
15 environmental groups. Minutes, House Committee on Environment &
16 Energy, March 22, 1989, p. 1. Because of the potential for legislative
17 action, the agency did not proceed with the contested cases. Minutes,
18 House Committee on Environment & Energy, March 3, 1989, p. 3.

19 The 1989 Legislature acted on DEQ's request by replacing the
20 requirement of a single list of all facilities where a release is
21 confirmed, with a dual list system separating facilities needing
22 further investigation from facilities not needing further
23 investigation. House Bill 3235, Sections 1 and 3 (1989). The
24 legislation specifically eliminated the contested case and court appeal
25 processes. Id., Section 1. Instead, it allowed owners or operators
26 the opportunity to comment on the decision to add a facility to the

1 list. Id., Section 3. The 1989 legislation did not specifically state
2 whether the amendments were to operate prospectively or retroactively.

3 ISSUES

4 1. Does HB 3235 operate retroactively to eliminate contested
5 case review in the City's appeal to the EQC?

6 2. May DEQ unilaterally withdraw its November 30, 1988 order
7 while the order is before the EQC for review?

8 CONCLUSIONS

9 The EQC has jurisdiction.

10 The 1989 Legislature intended House Bill 3235 to apply
11 retroactively, eliminating contested case review and court appeal for
12 all facilities subject to identification under ORS 466.557 et seq.

13 The City has a property interest in the review procedures of
14 ORS 466.587 (1987). The interest is subject to due process
15 protections.

16 The current review provides an appropriate and adequate process
17 for the City to present its objections to DEQ's withdrawal of its
18 November 30, 1988 order.

19 A balance of the competing interests of the City and DEQ supports
20 DEQ's withdrawal of its November 30, 1988 order.

21 DISCUSSION

22 The intent of the Legislature governs when a legislative provision
23 should be given effect. Whipple v Howser, 291 Or 475, 480 (1981).
24 Where the language of the statute itself does not provide a clear
25 statement of intent, intent is deduced from such considerations as the
26 language used, the statutory objective to be accomplished ("mischief"

1 to be remedied) and the history behind the act. Sunshine Dairy v
2 Peterson, 183 Or 305, 317 (1948); statutory maxims or rules of
3 statutory construction do not substitute for legislative intent. State
4 v Tucker, 90 Or App 506, 509 (1988).

5 In the present case, the statutory language does not explicitly
6 provide that it is to apply prospectively or retrospectively. In the
7 absence of an explicit statement of intent, the agency must determine
8 the Legislature's probable intent. In this case the problem to be
9 remedied, the statutory objective and the legislative history combine
10 to provide a strong indication that the legislative intent was to
11 address all sites having a confirmed release, including those under
12 orders on appeal.

13 The problem facing DEQ was well-defined and well understood. On
14 November 30, 1988, DEQ had notified 325 facility owners that their
15 property was identified for "listing" on DEQ's inventory of facilities
16 where a release of hazardous substances had been confirmed. The
17 statute authorized contested case appeal and judicial review. 210
18 facility owners availed themselves of this option by requesting
19 contested case hearings before the EQC. Whether frivolous or
20 undertaken in good faith, that number of appeals promised to sap
21 limited agency resources intended for environmental cleanup,
22 undermining the essential purpose of the program. Minutes,
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24 The purpose of the relevant amendments was remedial. It raised
25 the thresholds for inclusion eligibility and substituted a comment
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14 right the public has in knowing, and to make this a
15 simpler process. Minutes, House E & E, March 3,
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17 She recognized that the statute's purpose was remediation of past, not
18 prospective conduct:

19 It seems that you have to look at the larger
20 picture. What is going on right now is making it
21 more difficult. We're talking about cleaning up
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30 the basic contested case provision was included in
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33 basis. That is not what has happened. The process
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35 Joseph Forest Products and Park Place Development

1 are examples of frivolous appeals. We face two
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4 proceedings. We would take that to as an
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9 opportunity to be heard, but it would be something
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15 His testimony was one example of a "clean slate" assumption:

16 The solution presented in this bill has taken a
17 number of hours to work out. There has been
18 representation from DEQ, industry and the
19 environmental community. It is a compromise.
20 Essentially it will raise the threshold of getting
21 on to the inventory so that people don't get on
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We've given away quite a bit. We won't have any
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19 The amendments represent an effort by the major parties--DEQ, OSPIRG
20 and AOI--to proceed through the inventory process unburdened by 210
21 pending appeals. If intent can be gleaned short of an expressly
22 labeled declaration, it is present in the record of this legislative
23 process. The Legislature intended the amendments to operate
24 retroactively. ORS 468.557 as amended applies to pending appeals. The
25 right to contested case review is eliminated.

26 / / / /

1 JURISDICTION

2 DEQ contends it may now use its "inherent authority" to declare
3 its November 30, 1988 order withdrawn, leaving the City without an
4 administrative action to challenge and the EQC without jurisdiction to
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9 DEQ order is dismissed, or what right, if any, a regulated party has in
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25 A property interest in a benefit protected by the due process
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3 (1983). Procedural guarantees do not necessarily create
4 constitutionally protected interests. However, where procedural
5 requirements operate as significant substantive restrictions on
6 government action, they can create a property interest. Id. Review
7 procedures in former ORS 466.557 provided the City with an enforceable
8 expectation of avoiding the inventory unless DEQ met the demanding
9 proof and procedural requirements of contested case and judicial
10 review. Consequently, review procedures in former ORS 466.577 qualify
11 as a protected property interest.

12 Once the right to due process is established, various factors must
13 be balanced to determine the process appropriate to protect the
14 property interest. Matthews v Eldridge, 424 US 310, 96 S. Ct. 893, 47
15 L. Ed. 2d 18 (1976). These have been identified as the private
16 interest that will be affected by the official action; the risk of an
17 erroneous deprivation of a property interest through the procedures
18 used, and the probable value, if any, of additional or substitute
19 procedural safeguards; and, the government's interest, including the
20 function involved and the fiscal and administrative burdens that the
21 additional or substitute procedural requirement would entail. Id. at
22 96 S. Ct. at 893, 47 L. Ed. 2d at 33.

23 The City has provided its view of its interests to be weighed in
24 the balance:

25 DEQ's decision to place the subject property on
26 the List has subjects the city to significant
 liabilities frequently associated with the

1 characterization of a facility as a hazardous waste
2 site. The implications of such a characterization
3 places the city's reputation, and integrity at
4 stake because of DEQ's failure to fulfill its
5 statutory obligation in providing the city an
6 opportunity to be heard. See Board of Regents v
7 Roth. The listing of the city as a "Superfund
8 Site" has resulted in the following deprivations:
9 (1) depressed property values; (2) declining
10 property development; (3) potentially spiraling
11 insurance risks; (4) increased municipal water
12 costs; and (5) strict liability for remedial action
13 costs. City of Milwaukie, July 27, 1989
14 Memorandum p. 2.

9 Weighing against the City's request, the statute as amended
10 provides for an alternate procedure involving additional time for
11 notice and owner comments--a procedure designed to elicit the same
12 information as formerly. The contested case review process entailed a
13 heavy fiscal and administrative burden to the agency. The City will
14 not be able to seek "vindication" in a contested case, but the onus it
15 proposed to vindicate will be removed by withdrawal of the order. In
16 light of these competing interests, I find that any protectible
17 interest the City can establish can be adequately protected without a
18 contested case hearing.


19 The procedures afforded by the EQC in the present proceeding
20 provide the process due. The City has had an opportunity to state its
21 objections to EQC's withdrawal of the
22 November 30, 1988 order. It has had the opportunity to have the EQC,
23 through its hearings officer, consider these objections. The record in
24 this proceeding is in itself sufficient to determine whether DEQ may
25 withdraw its November 30, 1988 order as it wishes. The withdrawal
26 reflects DEQ's judgment that its responsibilities can best be met by

1 following the site identification system authorized by the 1989
2 Legislature. The City's interest in vindicating ostensible error is
3 preserved in the procedures authorized by the amended statute. DEQ
4 may withdraw its November 30, 1988 order.

5 It is ordered that: 1) the City's request for contested case
6 hearing is dismissed; and 2) DEQ's withdrawal of its November 30, 1988
7 order is affirmed.

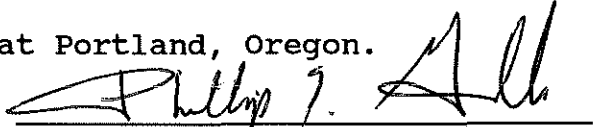
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Dated this 25th day of September, 1989.


Linda K. Zucker
Hearings Officer

1 CERTIFICATE OF FILING

2
3 I hereby certify that I filed the original of the foregoing
4 NOTICE OF APPEAL with the Environmental Quality Commission,
5 811 S.W. 6th Avenue, Portland, Oregon, 97204, on October 4th,
6 1989, by mailing same to the Environmental Quality Commission,
7 contained in a sealed envelope, with first class postage paid,
8 deposited in the post office at Portland, Oregon.

9 
10 Phillip E. Grillo, OSB # 85220
11 Of Attorneys for City of
12 Milwaukie

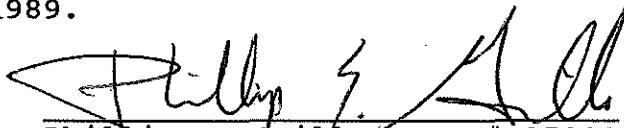
13 CERTIFICATE OF SERVICE

14 I hereby certify I served the foregoing NOTICE OF APPEAL on
15 the following parties on October 4th, 1989, by mailing to each
16 party a correct copy thereof, contained in a sealed envelope,
17 with first class postage paid, deposited in the post office at
18 Portland, Oregon, on said day, and addressed as follows:

19 Kurt Burkholder
20 Assistant Attorney General
21 Department of Justice
22 1515 S.W. 5th Ave., # 410
23 Portland, OR 97201

Fred Hansen, Director
Department of Environmental
Quality
811 S.W. 6th Ave.
Portland, OR 97204-1390

24 Dated: October 4th, 1989.

25 
26 Phillip E. Grillo, OSB # 85220
Of Attorneys for City of
Milwaukie

PEG\MILWAUKI\FILING.NOT/gaj

O'DONNELL, RAMIS, ELLIOTT & CREW
Attorneys at Law
1727 N.W. Hoyt Street
Portland, Oregon 97209
(503) 227-4400
FAX (503) 243-2544

IN THE COURT OF APPEALS
OF THE STATE OF OREGON

1			
2			
3	In the Matter of:	)	PETITION FOR JUDICIAL
4		)	REVIEW
5	SITE INVENTORY LISTING OF)	
6	PROPERTY LOCATED IN CLACKAMAS	)	EQC NO. SA-891-706
7	COUNTY, OREGON, CITY OF MILWAUKIE,)	
8	Owner,	)	Appellate Court No.
9	_____)	_____

PETITION FOR JUDICIAL REVIEW

Pursuant to authority provided in ORS 183.480 - 183.497, the City of Milwaukie (City), as petitioner, seeks judicial review of the Final Order of the Environmental Quality Commission (EQC) in case No. SA-891-706, dated September 25, 1989, attached as Exhibit A and incorporated by reference herein, and represents as follows:

A. Nature of the Order the Petitioner Desires Reviewed.

The EQC Hearings Officer denied the City's request that the EQC conduct a contested case hearing to allow the City to challenge a November 30, 1988, Department of Environmental Quality (DEQ) order that placed City property, located at 3800 SE Harvey, Milwaukie, Oregon, on the inventory of facilities where a release of a hazardous substance is confirmed.

B. The Nature of Petitioner's Interest.

On November 30, 1988, the Director of DEQ listed the City as the owner of a contaminated Facility under the Oregon Superfund Act pursuant to ORS 466.557 (1987). On December 12, 1988, the City filed a timely Notice of Intent to Appeal that decision to EQC, requesting a full contested case hearing on the merits as provided

Attachment B

17

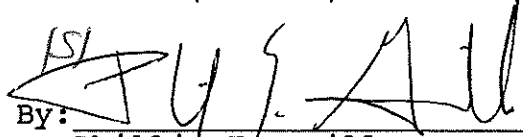
by the then applicable law, ORS 466.567 (1987).

1 The Oregon Superfund Act was amended by the 1989 Legislative
2 through H.B. 3235. Those amendments purport to remove property
3 owners' rights to both a contested case hearing and a judicial
4 review of the Director's decision to list a facility. H.B. 3235
5 did not expressly provide for retroactive application to Facilities
6 previously listed.

7 The City maintains that its right to a contested case hearing
8 and judicial review survives H.B. 3235 since the bill does not
9 apply retroactively. The City continued to request a contested
10 case hearing as provided by the statutory scheme effective at the
11 time the City filed its Notice of Intent to Appeal on December 12,
12 1988. On September 25, 1989, the EQC Hearings Officer issued an
13 Order denying the City a contested case hearing. Unless the
14 Hearing Officer's decision noted above is reversed, petitioner will
15 be denied its statutory and constitutional rights to a contested
16 case hearing on the merits.

17 Dated this 4th day of October, 1989.

18 O'DONNELL, RAMIS, ELLIOTT & CREW

19
20 
By: _____
21 Phillip E. Grillo, OSB #85220
22 1727 NW Hoyt
23 Portland, OR 97209
24 of Attorneys for Petitioner
25
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B-2

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CERTIFICATE OF FILING

I hereby certify that I filed the original of the foregoing PETITION FOR JUDICIAL REVIEW, together with 25 copies thereof, with the State Court Administrator, Case Records Division, Supreme Court Building, Salem, Oregon 97310, on October 4, 1989, by mailing same to the State Court Administrator, contained in a sealed envelope, with first class postage paid, deposited in the post office at Portland, Oregon.

LSJ
Phillip E. Grillo, OSB # 85220
Of Attorneys for City of
Milwaukie

CERTIFICATE OF SERVICE

I hereby certify I served two (2) copies of the foregoing PETITION FOR JUDICIAL REVIEW on the following parties on October 4, 1989, by mailing to each party a correct copy thereof, contained in a sealed envelope, with first class postage paid, deposited in the post office at Portland, Oregon, on said day, and addressed as follows:

Kurt Burkholder Assistant Attorney General Department of Justice 1515 S.W. 5th Ave., # 410 Portland, OR 97201	Fred Hansen, Director Department of Environmental Quality 811 S.W. 6th Ave. Portland, OR 97204-1390
---	---

Dated: October 4, 1989.

LSJ
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Of Attorneys for City of
Milwaukie

B-3 19

1 IN THE COURT OF APPEALS
2 OF THE STATE OF OREGON

3 In the Matter of:) AFFIDAVIT SUPPORTING
4) PETITION FOR JUDICIAL
5 SITE INVENTORY LISTING OF) REVIEW
6 PROPERTY LOCATED IN CLACKAMAS)
7 COUNTY, OREGON, CITY OF MILWAUKIE,) EQC NO. SA-891-706
Owner,)
) Appellate Court No.
) _____

8 STATE OF OREGON)
9) ss.
10 County of Multnomah)

11 I, Phillip E. Grillo, being first duly sworn do say:

12 1. I am one of the attorneys representing the City of
13 Milwaukie (City), the petitioner in the above-entitled action, and
14 make this Affidavit in support of the City's Petition For Judicial
15 Review of the Final Order of the Environmental Quality Commission
16 (EQC) in case No. SA-891-706, dated September 25, 1989. For the
17 following reasons, petitioner is adversely affected and aggrieved
18 by EQC's September 25th order pursuant to ORS 183.482(2).

19 2. In its September 25, 1989 Order, EQC denied the City's
20 request for a contested case hearing to allow the City to
21 challenging the November 30, 1988, Department of Environmental
22 Quality (DEQ) order that placed the City property, located at 3800
23 SE Harvey, Milwaukie, Oregon, on the inventory of facilities where
24 a release of a hazardous substance has been confirmed.

25 3. The City filed a timely Notice of Intent to Appeal the
26

Attachment C.

21

ODONNELL, RAMIS, ELLIOTT & CREW
Attorneys at Law
1724 N. High Street
Portland, Oregon 97208
(503) 222-4402
FAX (503) 243-2944

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1 DEQ's November 30, 1988 Order, requesting a full contested case
2 hearing on the merits as provided by ORS 466.567 (1987).

3 4. The 1989 Legislature later amended ORS 466.567 (1987) with
4 H.B. 3235. Those amendments took effect on June 28, 1989 and
5 purport to remove property owners' rights to both a contested case
6 hearing and a judicial review of DEQ's decision to list a facility.
7

8 5. The City maintained that H.B. 3235 does not apply
9 retroactively, and that its right to a contested case hearing and
10 judicial review survived the amendments to ORS 466.567. The City
11 pursued its right to a hearing. On September 25, 1989, EQC issued
12 an Order denying the City a contested case hearing. Unless the
13 EQC's order is reversed or remanded, petitioner will be denied its
14 statutory and constitutional rights to a contested case hearing on
15 the merits.

16
17 
18 Phillip E. Grillo

19 SUBSCRIBED and sworn to before me this 6th day of October,
20 1989.

21 Notary Public for Oregon
22 My commission expires: _____
23
24
25
26

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

In the Matter of:)	
	)	NO. SA-891-706
SITE INVENTORY LISTING OF)	
PROPERTY LOCATED IN CLACKAMAS	)	ORDER
COUNTY, OREGON, CITY OF MILWAUKIE,)	
<u>Owner, _____</u>)	

The City of Milwaukie (City) seeks to compel the Environmental Quality Commission (EQC) to conduct contested case review to enable the City to challenge a November 30, 1988, Department of Environmental Quality (DEQ) order placing City property¹ on the inventory of facilities where a release of a hazardous substance is confirmed. DEQ resists the City's request.

BACKGROUND

In 1987 the Legislature established a program to address the presence of hazardous substances in the environment and, among other things, to establish a statewide inventory of facilities with confirmed releases of hazardous substances. ORS 466.557 et seq.

Program procedure required the Director of DEQ to notify facility owners of his decision to include a facility on the inventory. It authorized the facility owner to appeal the Director's decision in accordance with the provisions of statutes governing contested cases and their review. ORS 183.310 to 183.550.

On November 30, 1988, the DEQ issued 325 orders formally stating its decision to list facilities on the inventory. A Department Order,

¹ The property is located at 3800 SE Harvey, Milwaukie, Oregon.

1 Notice of Opportunity for Contested Case Hearing, was sent to the City.
2 Two-hundred and ten recipients, including the City, responded to DEQ's
3 order by filing appeals seeking a contested case hearing to challenge
4 their inclusion on the list. A timely request for hearing
5 automatically postponed the inclusion of the facility on the list
6 pending final disposition of the appeal. DEQ's December 30, 1988
7 letter to City.

8 The large number of appeals prompted DEQ to propose legislation
9 revising the conditions and process for placing facilities on the
10 inventory. Environmental Cleanup Report, Attachment, August 18, 1989
11 letter to hearings officer from City. A significant feature of the
12 proposed legislation was elimination of the facility owner's ability to
13 obtain contested case review of DEQ's decision to place a facility on
14 the list. The legislation was supported by key industry and
15 environmental groups. Minutes, House Committee on Environment &
16 Energy, March 22, 1989, p. 1. Because of the potential for legislative
17 action, the agency did not proceed with the contested cases. Minutes,
18 House Committee on Environment & Energy, March 3, 1989, p. 3.

19 The 1989 Legislature acted on DEQ's request by replacing the
20 requirement of a single list of all facilities where a release is
21 confirmed, with a dual list system separating facilities needing
22 further investigation from facilities not needing further
23 investigation. House Bill 3235, Sections 1 and 3 (1989). The
24 legislation specifically eliminated the contested case and court appeal
25 processes. Id., Section 1. Instead, it allowed owners or operators
26 the opportunity to comment on the decision to add a facility to the

1 list. Id., Section 3. The 1989 legislation did not specifically state
2 whether the amendments were to operate prospectively or retroactively.

3 ISSUES

4 1. Does HB 3235 operate retroactively to eliminate contested
5 case review in the City's appeal to the EQC?

6 2. May DEQ unilaterally withdraw its November 30, 1988 order
7 while the order is before the EQC for review?

8 CONCLUSIONS

9 The EQC has jurisdiction.

10 The 1989 Legislature intended House Bill 3235 to apply
11 retroactively, eliminating contested case review and court appeal for
12 all facilities subject to identification under ORS 466.557 et seq.

13 The City has a property interest in the review procedures of
14 ORS 466.587 (1987). The interest is subject to due process
15 protections.

16 The current review provides an appropriate and adequate process
17 for the City to present its objections to DEQ's withdrawal of its
18 November 30, 1988 order.

19 A balance of the competing interests of the City and DEQ supports
20 DEQ's withdrawal of its November 30, 1988 order.

21 DISCUSSION

22 The intent of the Legislature governs when a legislative provision
23 should be given effect. Whipple v Howser, 291 Or 475, 480 (1981).

24 Where the language of the statute itself does not provide a clear
25 statement of intent, intent is deduced from such considerations as the
26 language used, the statutory objective to be accomplished ("mischief"

1 to be remedied) and the history behind the act. Sunshine Dairy v
2 Peterson, 183 Or 305, 317 (1948); statutory maxims or rules of
3 statutory construction do not substitute for legislative intent. State
4 v Tucker, 90 Or App 506, 509 (1988).

5 In the present case, the statutory language does not explicitly
6 provide that it is to apply prospectively or retrospectively. In the
7 absence of an explicit statement of intent, the agency must determine
8 the Legislature's probable intent. In this case the problem to be
9 remedied, the statutory objective and the legislative history combine
10 to provide a strong indication that the legislative intent was to
11 address all sites having a confirmed release, including those under
12 orders on appeal.

13 The problem facing DEQ was well-defined and well understood. On
14 November 30, 1988, DEQ had notified 325 facility owners that their
15 property was identified for "listing" on DEQ's inventory of facilities
16 where a release of hazardous substances had been confirmed. The
17 statute authorized contested case appeal and judicial review. 210
18 facility owners availed themselves of this option by requesting
19 contested case hearings before the EQC. Whether frivolous or
20 undertaken in good faith, that number of appeals promised to sap
21 limited agency resources intended for environmental cleanup,
22 undermining the essential purpose of the program. Minutes,
23 House E & E, March 3, 1989, pp. 5-6, passim.

24 The purpose of the relevant amendments was remedial. It raised
25 the thresholds for inclusion eligibility and substituted a comment
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1 establishing a cost effective system for providing the information the
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26 Id. at 4.

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28 joint submission, focused the legislative alternatives:

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35 Joseph Forest Products and Park Place Development

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14 The solution presented in this bill has taken a
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25 A property interest in a benefit protected by the due process
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7 procedures in former ORS 466.557 provided the City with an enforceable
8 expectation of avoiding the inventory unless DEQ met the demanding
9 proof and procedural requirements of contested case and judicial
10 review. Consequently, review procedures in former ORS 466.577 qualify
11 as a protected property interest.

12 Once the right to due process is established, various factors must
13 be balanced to determine the process appropriate to protect the
14 property interest. Matthews v Eldridge, 424 US 310, 96 S. Ct. 893, 47
15 L. Ed. 2d 18 (1976). These have been identified as the private
16 interest that will be affected by the official action; the risk of an
17 erroneous deprivation of a property interest through the procedures
18 used, and the probable value, if any, of additional or substitute
19 procedural safeguards; and, the government's interest, including the
20 function involved and the fiscal and administrative burdens that the
21 additional or substitute procedural requirement would entail. Id. at
22 96 S. Ct. at 893, 47 L. Ed. 2d at 33.

23 The City has provided its view of its interests to be weighed in
24 the balance:

25 DEQ's decision to place the subject property on
26 the List has subjects the city to significant
 liabilities frequently associated with the

1 characterization of a facility as a hazardous waste
2 site. The implications of such a characterization
3 places the city's reputation, and integrity at
4 stake because of DEQ's failure to fulfill its
5 statutory obligation in providing the city an
6 opportunity to be heard. See Board of Regents v
7 Roth. The listing of the city as a "Superfund
8 Site" has resulted in the following deprivations:
9 (1) depressed property values; (2) declining
10 property development; (3) potentially spiraling
11 insurance risks; (4) increased municipal water
12 costs; and (5) strict liability for remedial action
13 costs. City of Milwaukee, July 27, 1989
14 Memorandum p. 2.


9 Weighing against the City's request, the statute as amended
10 provides for an alternate procedure involving additional time for
11 notice and owner comments--a procedure designed to elicit the same
12 information as formerly. The contested case review process entailed a
13 heavy fiscal and administrative burden to the agency. The City will
14 not be able to seek "vindication" in a contested case, but the onus it
15 proposed to vindicate will be removed by withdrawal of the order. In
16 light of these competing interests, I find that any protectible
17 interest the City can establish can be adequately protected without a
18 contested case hearing.

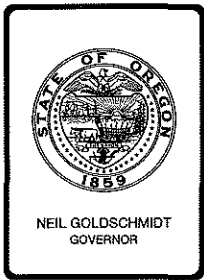
19 The procedures afforded by the EQC in the present proceeding
20 provide the process due. The City has had an opportunity to state its
21 objections to EQC's withdrawal of the
22 November 30, 1988 order. It has had the opportunity to have the EQC,
23 through its hearings officer, consider these objections. The record in
24 this proceeding is in itself sufficient to determine whether DEQ may
25 withdraw its November 30, 1988 order as it wishes. The withdrawal
26 reflects DEQ's judgment that its responsibilities can best be met by

1 following the site identification system authorized by the 1989
2 Legislature. The City's interest in vindicating ostensible error is
3 preserved in the procedures authorized by the amended statute. DEQ
4 may withdraw its November 30, 1988 order.

5 It is ordered that: 1) the City's request for contested case
6 hearing is dismissed; and 2) DEQ's withdrawal of its November 30, 1988
7 order is affirmed.

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10 Dated this 25th day of September, 19 89.

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14 Linda K. Zucker
15 Hearings Officer
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26



Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: October 20, 1989
Agenda Item: H
Division: Water Quality
Section: Planning & Monitoring

SUBJECT:

General Groundwater Quality Protection Policy — Adoption of Proposed Amendments

PURPOSE:

To consider adoption of amended and renumbered groundwater rules that were taken to public hearings in July, 1989.

ACTION REQUESTED:

- Work Session Discussion
 - General Program Background
 - Potential Strategy, Policy, or Rules
 - Agenda Item ___ for Current Meeting
 - Other: (specify)

- Authorize Rulemaking Hearing
- Adopt Rules
 - Proposed Rules Attachment A
 - Rulemaking Statements Attachment B
 - Fiscal and Economic Impact Statement Attachment B
 - Public Notice Attachment B

- Issue a Contested Case Order
- Approve a Stipulated Order
- Enter an Order
 - Proposed Order Attachment ___

- Approve Department Recommendation
 - Variance Request Attachment ___
 - Exception to Rule Attachment ___
 - Informational Report Attachment ___
 - Other: (specify) Attachment ___

DESCRIPTION OF REQUESTED ACTION:

The proposed groundwater rules would replace the current general groundwater protection policy (OAR 340-41-029) and would include more specific guidance on how groundwater quality protection is to be accomplished using the Department's existing permitting authorities. The proposed rules would establish:

1. An anti-degradation policy emphasizing the minimization of impacts to groundwater quality through the use of best available technologies.
2. Groundwater monitoring and reporting requirements to be included in permits for point sources.
3. Methods for setting concentration limits not to be exceeded in groundwater by point sources.
4. Methods for addressing groundwater contamination and for selecting remedial action plans.
5. Groundwater quality reference and guidance levels to be considered in setting permit-specific concentration limits.

AUTHORITY/NEED FOR ACTION:

<input type="checkbox"/> Required by Statute: _____	Attachment _____
Enactment Date: _____	
<input checked="" type="checkbox"/> Statutory Authority: 468.010 - 468.778	Attachment _____
<input type="checkbox"/> Pursuant to Rule: _____	Attachment _____
<input type="checkbox"/> Pursuant to Federal Law/Rule: _____	Attachment _____
<input type="checkbox"/> Other:	Attachment _____
<input type="checkbox"/> Time Constraints: (explain)	

DEVELOPMENTAL BACKGROUND:

<input type="checkbox"/> Advisory Committee Report/Recommendation	Attachment _____
<input checked="" type="checkbox"/> Hearing Officer's Report/Recommendations	Attachment <u>C</u>
<input checked="" type="checkbox"/> Response to Testimony/Comments	Attachment <u>D</u>
<input checked="" type="checkbox"/> Prior EQC Agenda Items: (list)	
Request for authorization to hold public hearings on proposed rule amendments:	Attachment <u>E</u>
<input checked="" type="checkbox"/> Other Related Reports/Rules/Statutes:	
-Summary of testimony, July-Aug. 1989	Attachment <u>F</u>

-Rulemaking statements, fiscal & economic impact statement, Spring, 1988	Attachment	<u>G</u>
-Rules proposed, Spring, 1988	Attachment	<u>H</u>
<u>X</u> Other Related Reports/Rules/Statutes, continued:		
-Hearings officer's report, Spring, 1988	Attachment	<u>I</u>
-Response to testimony, Spring, 1988	Attachment	<u>J</u>
-Summary of testimony, Spring, 1988	Attachment	<u>K</u>
-Rulemaking statements, fiscal & economic impact statement, Summer, 1988	Attachment	<u>L</u>
-Rules proposed, Summer, 1988	Attachment	<u>M</u>
-Hearings officer's report, Summer, 1988	Attachment	<u>N</u>
-Response to testimony, Summer, 1988	Attachment	<u>O</u>
-Summary of testimony, Summer, 1988	Attachment	<u>P</u>
-Attorney General's letter addressing statutory authority	Attachment	<u>Q</u>
___ Supplemental Background Information	Attachment	___

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The testimony from the public hearings held in July 1989 is summarized in Attachment F. Major issues arising from testimony have been compiled briefly in tabular form and responded to in detail Attachment D, with the Hearings Officer's report being presented in Attachment C.

Some of the major issues brought out in public testimony centered around: (1) The need for greater protection of groundwater quality through preventive efforts and better enforcement; (2) Concern over the cost of complying with the proposed rules; and (3) Possible conflicts with provisions contained in House Bill 3515 passed by the 1989 Legislature.

Regarding the need for greater protection, many respondents recommended the proposed rules go farther to promote a nondegradational approach which would prohibit and prevent all groundwater contamination rather than an antidegradational approach which minimizes quality impacts to groundwater. Some suggested that better enforcement procedures and closer scrutiny of existing permit program requirements would help to achieve such a goal.

Regarding the cost of compliance with the proposed rules groundwater quality protection requirements, several respondents noted that the expenses related to conducting groundwater monitoring, setting concentration limits, and applying for necessary variances will be prohibitive if there is no phase-in schedule for compliance.

A number of respondents expressed concern over possible conflicts in the proposed rules with the groundwater provisions contained in the newly enacted HB 3515. Several believed the statutory authority granted under ORS 468 giving the Environmental Quality Commission the ability to regulate discharges to groundwater had been undermined by the new legislation. Others were concerned that the proposed rules' approach to controlling groundwater contamination through existing permitting authorities was not consistent with that laid out in HB 3515.

PROGRAM CONSIDERATIONS:

The proposed rules establish the minimum groundwater protection requirements that must be met by all programs except the Environmental Cleanup Division. The most significant resource impacts will be felt in the Water Quality and Solid Waste Programs. Increases in staffing recently approved by the legislature for groundwater activities should allow both programs to meet the increased needs that will be resulting from the adoption of these rules.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Adopt the new groundwater quality protection rules as proposed (with clarifications and minor corrections recommended in public hearing testimony) by the Department.
2. Adopt new rules with more stringent requirements than proposed based on public hearing testimony:
 - a. establish a nondegradation policy for the protection of groundwater quality by allowing no increases in contaminant concentrations above background water quality levels;
 - b. require existing facilities to cleanup groundwater to background water quality levels;
 - c. provide specific public disclosure guidelines and stiff penalties for noncompliance.
3. Adopt new rules with less stringent requirements than those proposed based on public hearing testimony:

- a. continue to set permit conditions for groundwater quality protection on a case-by-case, contaminant-by-contaminant basis;
 - b. employ selective protection of certain aquifers;
 - c. allow existing facilities to phase-in any new groundwater quality permit conditions over a specified period of time;
 - d. make no restrictions on discharges of pollutants which have no adverse impact on human health;
 - e. utilize a numerical standards approach to controlling discharges to groundwater.
4. Postpone adoption and/or retain existing rule.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends the adoption of the proposed rules with clarifications and minor revisions recommended in the public hearings.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

Considerable attention was given to ensuring that the approach to groundwater protection proposed in these rules would be consistent with existing legislative policy, recently adopted policies in the Environmental Cleanup Division, and the Hazardous Waste program. The approach is also consistent with that taken in the 1989 Groundwater Quality Protection Act under House Bill 3515.

ISSUES FOR COMMISSION TO RESOLVE:

1. None.

INTENDED FOLLOWUP ACTIONS:

1. The Department will incorporate the necessary groundwater quality protection requirements into facility discharge control permits as new permits are issued and existing permits are modified or renewed.

Meeting Date: October 20, 1989
Agenda Item: H
Page 6

2. Guidance will be developed to aid divisional and regional Department staff in implementing the groundwater quality protection requirements for various types of facilities.

Approved:

Section: Neil J. Mullane
Division: Lydia Taylor
Director: Jul Hansen

Report Prepared By: Lucinda Bidleman

Phone: 229-6066

Date Prepared: 9/19/89

Lucinda A. Bidleman:hs
PM\WH3648
9/19/89

OREGON ADMINISTRATIVE RULES 340-41-029

NOTE:

⁶[bracketed] material is proposed to be deleted from the rules.

~~GENERAL GROUNDWATER QUALITY PROTECTION POLICY~~~~340-41-029~~

~~The following statements of policy are intended to guide federal agencies and state agencies, cities, counties, industries, citizens, and the Department of Environmental Quality staff in their efforts to protect the quality of groundwater:~~

~~(1) General Policies:~~

- ~~(a) It is the responsibility of the EQG to regulate and control waste sources so that impairment of the natural quality of groundwater is minimized to assure beneficial uses of these resources by future generations.~~
- ~~(b) In order to assure maximum reasonable protection of public health, the public should be informed that groundwater --- and most particularly local flow systems or water table aquifers --- should not be assumed to be safe for domestic use unless quality testing demonstrates a safe supply. Domestic water drawn from water table aquifers should be tested frequently to assure its continued safety for use.~~
- ~~(c) For the purpose of making the best use of limited staff resources, the Department will concentrate its control strategy development and implementation efforts in areas where waste disposal practices and activities regulated by the Department have the greatest potential for degrading groundwater quality. These areas will be delineated from a statewide map outlining the boundaries of major water table aquifers prepared in 1980 by Sweet, Edwards & Associates, Inc. This map may be revised periodically by the Water Resources Department.~~
- ~~(d) The Department will seek the assistance and cooperation of the Water Resources Department to design an ambient monitoring program adequate to determine long-term quality trends for significant groundwater flow systems. The Department will assist and cooperate with the Water~~

Resources Department in their groundwater studies. The Department will also seek the advice, assistance, and cooperation of local, state, and federal agencies to identify and resolve groundwater quality problems.

- (e) The EQG recognizes and supports the authority and responsibilities of the Water Resources Department and Water Policy Review Board in the management of groundwater and protection of groundwater quality. In particular, existing programs to regulate well construction and to control the withdrawal of groundwater provide important quality protective opportunities. These policies are intended to complement and not duplicate the programs of the Water Resources Department.

(2) Source Control Policies:

- (a) Consistent with general policies for protection of surface water, highest and best practicable treatment and control of sewage, industrial wastes, and landfill leachates, shall be required so as to minimize potential pollutant loading to groundwater. Among other factors, energy, economics, public health protection, potential value of the groundwater resource to present and future generations, and time required for recovery of quality after elimination of pollutant loadings may be considered in arriving at a case-by-case determination of highest and best practicable treatment and control. For areas where urban density development is planned or is occurring and where rapidly draining soils overlay local groundwater flow systems and their associated water table aquifers, the collection, treatment and disposal of sewage, industrial wastes and leachates from landfills will be deemed highest and best practicable treatment and control unless otherwise approved by the EQG pursuant to subsections (b) and (c) of this section.

- (b) Establishment of controls more stringent than those identified in subsection (a) of this section may be required by the EQG in situations where:

- (A) DEQ demonstrates such controls are needed to assure protection of beneficial uses;

- (B) The Water Resources Director declares a critical groundwater area for reasons of quality; or

- (C) EPA designates a sole source aquifer pursuant to the Federal Safe Drinking Water Act.

- (e) Less stringent controls than those identified in subsection (a) of this section may be approved by the EQG for a specific area if a request, including technical studies showing that lesser controls will adequately protect

beneficial uses is made by representatives of the area and if the request is consistent with other state laws and regulations:

(d) Disposal of wastes onto or into the ground in a manner which allows potential movement to groundwater shall be authorized and regulated by the existing rules of the Department's Water Pollution Control Facility (WPGF) Permit, Solid Waste Disposal Facility Permit, or On-Site (Subsurface) Sewage Disposal System Construction Permit, whichever is appropriate:

(A) WPGF permits shall specify appropriate groundwater quality protection requirements and monitoring and reporting requirements. -- Such permits shall be used in all cases other than for those covered by Solid Waste Disposal Facility Permit or On-site (subsurface) sewage disposal permits:

(B) Solid Waste Disposal Facility Permits shall be used for landfills and sludge disposal not covered by NPDES or WPGF permits. -- Such permits shall specify appropriate groundwater quality protection requirements and monitoring and reporting requirements:

(C) On-Site Sewage Disposal System Construction permits shall be issued in accordance with adopted rules. -- It is recognized that existing rules may not be adequate in all cases to protect groundwater quality. -- Therefore, as deficiencies are documented, the Department shall propose rule amendments to correct the deficiencies:

(e) In order to minimize groundwater quality degradation potentially resulting from nonpoint sources, it is the policy of the EQG that activities associated with land and animal management, chemical application and handling, and spill prevention be conducted using the appropriate state-of-the-art management practices ("Best Management Practices").

(3) Problem Abatement Policies:

(a) It is the intent of the EQG to see that groundwater problem abatement plans are developed and implemented in a timely fashion. -- In order to accomplish this all available and appropriate statutory and administrative authorities will be utilized, including but not limited to: -- permits, special permit conditions, penalties, fines, Commission orders, compliance schedules, moratoriums, Department orders, and geographic rules. -- It is recognized, however, that in some cases the identification, evaluation and implementation of abatement measures may take time and that continued

degradation may occur while the plan is being developed and implemented. - The EQG will allow short-term continued degradation only if the beneficial uses, public health, and groundwater resources are not significantly affected, and only if the approved abatement plan is being implemented on schedule.

- (b) In areas where groundwater quality is being degraded as a result of existing individual source activities or waste disposal practices the Department may establish the necessary control and abatement schedule requirements to be implemented by the individual sources to modify or eliminate their activities or waste disposal practices through existing permit authorities, Department orders, or Commission orders issued pursuant to ORS Chapter 183.

- (c) In urban areas where groundwater is being degraded as a result of on-site sewage disposal practices and an area-wide solution is necessary, the Department may propose a rule for adoption by the Commission and incorporation into the appropriate basin section of the State Water Quality Management Plan (OAR Division 41) which will achieve the following:
 - (A) Recite the findings describing the problem;
 - (B) Define the area where corrective action is required;
 - (C) Describe the problem correction and prevention measures to be ordered;
 - (D) Establish the schedule for required major increments of progress;
 - (E) Identify conditions under which new, modified, or repaired on-site sewage disposal systems may be installed in the interim while the area correction program is being implemented and is on schedule;
 - (F) Identify the conditions under which enforcement measures will be pursued if adequate progress to implement the corrective actions is not made. - These measures may include but are not limited to the measures authorized in ORS 454.235(2), 454.685, 454.645, and 454.317;
 - (G) Identify all known affected local governing bodies which the Department will notify by certified mail of the final rule adoption; and
 - (H) Any other items declared to be necessary by the Commission.

- (d) ~~The Department shall notify all known impacted or potentially affected local units of government of the opportunity to comment on the proposed rule at a scheduled public hearing and of their right to request a contested case hearing pursuant to ORS Chapter 183 prior to the Commission's final order adopting the rule.]~~

The following represents the amended, renumbered rule language proposed by the Department to replace the existing rule language under Oregon Administrative Rule (OAR) 340-41-029.

NOTE:

Underlined material is proposed to be inserted into the rules.

OREGON ADMINISTRATIVE RULES
DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 340
DIVISION 40
GROUNDWATER QUALITY PROTECTION

PREFACE

340-40-001

The Rules within this Division establish the mandatory minimum groundwater quality protection requirements for federal and state agencies, cities, counties, industries, and citizens. Other federal, state, and local programs may contain additional or more stringent groundwater quality protection requirements. Unless specifically exempted by statute, groundwater quality protection requirements must meet or be equivalent to these rules. Removal and remedial actions subject to Oregon Revised Statutes (ORS) 466.540 to 466.590, 466.705 to 466.835 and 466.895 shall not be subject to the requirements of these Rules.

DEFINITIONS

340-40-010

Terms not defined in this section have the meanings set forth in OAR 340-41-006 unless otherwise noted. Unless otherwise required by context, as used in this Division:

- (1) "Background Water Quality" means the quality of water immediately upgradient from a current or potential source of pollution that is unaffected by the source.
- (2) "Compliance Point(s)" means the point or points where groundwater quality parameters must be at or below the permit-specific concentration limits or the concentration limit variance.
- (3) "Concentration Limit" means the maximum acceptable concentration of a contaminant allowed in groundwater at a Department specified compliance point.

- (4) "Concentration Limit Variance" means a groundwater quality concentration limit which is granted by the Director or the EQC on a case-by-case basis as an alternative to a permit-specific concentration limit established under Section (3) of OAR 340-40-030.
- (5) "Contaminant" has the meaning set forth for "pollutant" as defined in OAR 340-45-010(13), and means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewerage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged to water, and includes any pollutant or other characteristic element which may result in pollution of the waters of the State.
- (6) "Downgradient Detection Monitoring Point(s)" means the point or points at which groundwater quality is monitored to immediately determine whether a pollutant has been discharged to groundwater. The detection monitoring point is not necessarily the same as the compliance point.
- (7) "Existing Facility" means any facility or activity operating under a Department approved permit on or before the effective date of OAR 340-40-030. Such facilities or activities shall include those facilities specifically exempted by statute from the permitting process.
- (8) "Guidance Level" means the contaminant concentration level used to evaluate the significance of a particular contaminant in groundwater. A guidance level generally indicates when the quality of groundwater may not be suitable for use as drinking water due to its aesthetic characteristics.
- (9) "Natural Water Quality" means the water quality that would exist as a result of conditions unaffected by human-caused pollution.
- (10) "New Facility" means a facility or activity authorized to operate under a Department approved permit for the first time after the effective date of OAR 340-40-030. A new facility or activity includes changes in facility operation, disposal technique, or other alterations which justify new conditions to and necessitate major modifications of an existing permit.
- (11) "Non-permitted Activity" means an activity which is not regulated through a Department-approved permit which could result in or has resulted in groundwater pollution. Unless specifically exempted by statute, such activities shall include but not be limited to spills, releases and past practices which either are not subject to a permit or are subject to a permit but were not permitted at the time of the release.

- (12) "Nonpoint Sources" refers to diffuse or unconfined sources of pollution where contaminants can either enter into -- or be conveyed by the movement of water to -- public waters.
- (13) "Permitted Operation" means any facility or activity which emits, discharges, or disposes of wastes or otherwise operates in accordance with specified limitations set forth in a written permit issued by the Department.
- (14) "Point Source" means any confined or discrete source of pollution where contaminants can either enter into -- or be conveyed by the movement of water to -- public waters.
- (15) "Pollution" has the meaning set forth for "pollution" as defined in the Water Pollution Control Statute ORS 468.700 (3) and means such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof.
- (16) "Reference Level" means the contaminant concentration level used to evaluate the significance of a particular contaminant in groundwater. A reference level generally indicates when groundwater may not be suitable for human consumption.
- (17) "Uppermost Aquifer" means the geologic formation, group of formations, or part of a formation that contains the uppermost potentiometric surface capable of yielding water to wells or springs, and may include fill material that is saturated.
- (18) "Wastes" means sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive, or other substances which will or may cause pollution or tend to cause pollution of any water of the state.
- (19) "Waste Management Area" means any area where waste, or material that could become waste if released to the environment, is located or has been located.

GENERAL POLICIES

340-40-020

- (1) Groundwater is a critical natural resource providing domestic, industrial, and agricultural water supply; and other legitimate

beneficial uses; and also providing base flow for rivers, lakes, streams, and wetlands.

- (2) Groundwater, once polluted, is difficult and sometimes impossible to clean up. Therefore, the EQC shall employ an anti-degradation policy to emphasize the prevention of groundwater pollution, and to control waste discharges to groundwater so that the highest possible water quality is maintained.
- (3) All groundwaters of the state shall be protected from pollution that could impair existing or potential beneficial uses for which the natural water quality of the groundwater is adequate. Among the recognized beneficial uses of groundwater, domestic water supply is recognized as being the use that would usually require the highest level of water quality. Existing high quality groundwaters which exceed those levels necessary to support recognized and legitimate beneficial uses shall be maintained except as provided for in these Rules.
- (4) Numerical groundwater quality reference levels and guidance levels are listed in Tables 1 through 3 of this Division. These levels have been obtained from the Safe Drinking Water Act, and indicate when groundwater may not be suitable for human consumption or when the aesthetic quality of groundwater may be impaired. They will be used by the Department and the public to evaluate the significance of a particular contaminant concentration, and will trigger necessary regulatory action. These levels should not be construed as acceptable groundwater quality goals because it is the policy of the EQC (OAR 340-41-026(1)(a)) to maintain and preserve the highest possible water quality.
- (5) For pollutant parameters for which numerical groundwater quality reference levels or guidance levels have not been established, or for evaluating adverse impacts on beneficial uses other than human consumption, the Department shall make use of the most current and scientifically valid information available in determining at what levels pollutants may affect present or potential beneficial uses. Such information shall include, but not be limited to, values set forth in OAR Chapter 340, Division 41, Table 20.
- (6) The Department shall develop, implement and conduct a comprehensive groundwater quality protection program. The program shall contain strategies and methods for problem prevention, problem abatement and the control of both point and nonpoint sources of groundwater pollution. The Department shall seek the assistance of federal, state, and local governments in implementing the program.
- (7) In order to assure maximum reasonable protection of public health, the public shall be informed that groundwater, and most particularly local flow systems or water table aquifers, may not be suitable for human consumption due either to natural or human-caused pollution problems, and shall not be assumed to be safe for

domestic use unless quality testing demonstrates a safe supply. The Department shall work cooperatively with the Water Resources Department and the Health Division in identifying areas where groundwater pollution may affect beneficial uses.

- (8) It is the policy of the EOC that groundwater quality be protected throughout the state. The Department will concentrate its groundwater quality protection implementation efforts in areas where practices and activities have the greatest potential for degrading groundwater quality, and where potential groundwater quality pollution would have the greatest adverse impact on beneficial uses.
- (9) The Department, as lead agency for groundwater quality protection, shall work cooperatively with the Water Resources Department, the lead agency for groundwater quantity management, to characterize the physical and chemical characteristics of the aquifers of the state. The Department will seek the assistance and cooperation of the Water Resources Department to design an ambient monitoring program adequate to determine representative groundwater quality for significant groundwater flow systems. The Department shall assist and cooperate with the Water Resources Department in its groundwater studies. The Department shall also seek the advice, assistance, and cooperation of local, state, and federal agencies to identify and resolve groundwater quality problems.
- (10) It is the intent of the EOC to see that groundwater problems associated with areawide on-site sewage disposal are corrected by developing and implementing areawide abatement plans. In order to accomplish this, all available and appropriate statutory and administrative authorities will be utilized, including but not limited to: permits, special permit conditions, penalties, fines, EOC orders, compliance schedules, moratoriums, Department orders, and geographic area rules (OAR 340-71-400). It is recognized, however, that in some cases the identification, evaluation and implementation of abatement measures may take time and that continued degradation may occur while the plan is being developed and implemented. The EOC may allow short-term continued degradation only if the beneficial uses, public health, and groundwater resources are not significantly affected, and only if the approved abatement plan is being implemented on a schedule approved by the Department.
- (11) In order to minimize groundwater quality degradation potentially resulting from point source activities, point sources shall employ the highest and best practicable methods to prevent the movement of pollutants to groundwater. Among other factors, available technologies for treatment and waste reduction, cost effectiveness, site characteristics, pollutant toxicity and persistence, and state and federal regulations shall be considered in arriving at a case-by-case determination of highest and best practicable methods that protect public health and the environment.

(12) In regulating point source activities that could result in the disposal of wastes onto or into the ground in a manner which allows potential movement of pollutants to groundwater, the Department shall utilize all available and appropriate statutory and administrative authorities, including but not limited to: permits, fines, EOC orders, compliance schedules, moratoriums, Department orders, and geographic area rules. Groundwater quality protection requirements shall be implemented through the Department's Water Pollution Control program, Solid Waste Disposal program, On-Site Sewage Disposal System Construction program, Hazardous Waste Facility (RCRA) program, Underground Injection Control program, Emergency Spill Response program, or other programs, whichever is appropriate.

PERMITTED OPERATIONS

340-40-030

- (1) Permits required by point sources shall specify appropriate groundwater quality protection requirements. Water Pollution Control Facility (WPCF) permits may be used in cases other than for those covered by Solid Waste Disposal Facility permits, NPDES permits, On-Site Sewage Disposal permits, or Hazardous Waste Facility permits.
- (2) The Department shall review and evaluate appropriate technical information and reports submitted by permitted sources to determine the potential for adverse impacts to groundwater quality. Where the above technical information and reports indicate that there is a likely adverse groundwater quality impact, the Department shall require through the permits and rules referred to in OAR 340-40-020 (12), and other appropriate statutory and administrative authorities, the following groundwater quality protection program:
- (a) Groundwater Monitoring Requirements. The permittee or permit applicant shall submit to the Department for approval a groundwater monitoring plan for the uppermost aquifer and any other potentially affected aquifers. The groundwater monitoring plan shall be capable of determining rate and direction of groundwater movement, and monitoring the groundwater quality immediately upgradient and downgradient from the waste management area. The plan shall include, but not be limited to, detailed information on the following:
- (A) System Design:
- (i) Well Locations.
 - (ii) Well Construction.
 - (iii) Background Monitoring Point(s).
 - (iv) Detection Monitoring Point(s).
 - (v) Water Quality Compliance Point(s).

(B) Sample Collection and Analysis:

- (i) Parameters to be Sampled.
- (ii) Sampling Frequency and Duration.
- (iii) Sample Collection Methods.
- (iv) Sample Handling and Chain of Custody
- (v) Analytical Methods.
- (vi) Acceptable Minimum Reporting Levels.
- (vii) Quality Assurance and Quality Control Plan.

(C) Data Analysis Procedure:

- (i) Statistical Analysis Method.
- (ii) Frequency of Analysis.

- (b) Reporting Requirements. The facility permit shall specify monitoring and assessment reporting requirements.
- (c) Background Monitoring Point(s) Requirements. The permittee shall monitor the background water quality of the uppermost aquifer. The background monitoring point(s) shall be located where water quality is unaffected by facility operation.
- (d) Downgradient Detection Monitoring Point(s) Requirements. The permittee shall monitor the aquifer directly downgradient from the waste management area to ensure immediate detection of waste released to groundwater. This shall be known as the downgradient detection monitoring point(s).
- (e) Compliance Point(s) Requirements. The Department shall specify the location at which groundwater quality parameters must be at or below the permit-specific concentration limits. Unless otherwise specified by the Department, that location will be defined by a vertical plane located along the waste management area boundary. Any monitoring point on that plane is a compliance point. The compliance point(s) may not necessarily be the same as the downgradient detection monitoring point(s).

- (3) Concentration Limits. The facility permit shall specify the maximum contaminant concentration allowed at the compliance point(s). Unless otherwise established according the variance procedure contained in Section (4) of this Rule, the Department shall set permit-specific concentration limits at new and existing facilities as established below.

- (a) Concentration Limit at Existing Facilities: The concentration limit at existing facilities shall be established by the Department on a case-by-case basis. The concentration limit at these facilities may be established at any level between background water quality levels and the numerical groundwater quality reference levels or guidance levels as listed in Tables 1 through 3 of this Division

unless the background water quality is above those numerical levels. If the background water quality exceeds those numerical levels, then the concentration limit shall be established at the background level. When a contaminant of concern has no numerical level listed in Tables 1 through 3 of this Division, the permit-specific concentration limit shall not exceed background water quality levels.

(b) Concentration Limit at New Facilities: The permit-specific concentration limits at new facilities shall be established at the background water quality levels for all contaminants.

(4) Concentration Limit Variance.

(a) Upon request by the permittee, Department, or permit applicant, and after opportunity for public review and comment, a concentration limit variance may be granted as an alternative to the permit-specific concentration limits specified in Section (3) of this Rule provided an existing, permit-specific concentration limit has not been exceeded at a compliance point.

(b) The Director may grant such concentration limit variances for concentrations up to but not exceeding numerical groundwater quality reference levels contained in Tables 1 and 2 of this Division; concentrations up to and above numerical groundwater quality guidance levels contained in Table 3 of this Division; and concentrations for contaminants for which there are no reference or guidance levels in Tables 1 through 3 of this Division. Concentration limit variances in excess of a numerical groundwater quality reference level listed in Tables 1 and 2 of this Division may only be granted by the EQC.

(c) The EQC or Director, as specified in Subsection (4)(b) of this Section above, may grant on a case-by-case determination a concentration limit variance for a pollutant provided no substantial present or potential hazard to human health or the environment is posed at that level. The party requesting the concentration limit variance shall provide all data required for consideration of the variance, and shall identify where gaps exist in the data for the required analysis. In establishing concentration limit variances, the EQC or Director shall consider the effects on groundwater quality, interconnected surface water quality, and associated effects on beneficial uses. Among others, the following factors shall be considered:

(A) The physical and chemical characteristics of the pollutant and degradation products, including the potential for migration;

- (B) The hydrogeologic characteristics at the facility and the surrounding area;
- (C) The quantity of groundwater and the direction of groundwater flow.
- (D) The proximity and withdrawal rates of groundwater users.
- (E) The current and future uses of groundwater in the area.
- (F) The existing quality of the groundwater, including other sources of pollution and their cumulative impact on water quality.
- (G) The potential for health risks caused by exposure to the pollutant and its degradation products.
- (H) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to the pollutant and its degradation products.
- (I) The persistence and permanence of potential adverse effects of the contaminant and its degradation products.
- (J) The proximity and interconnections with surface water in the area.
- (K) The potential effect on interconnected surface water.
- (L) The potential effect of the pollutant and its degradation products on ecosystems of the area.
- (M) The comparative feasibility and cost of obtaining the permit-specific concentration limit and the concentration limit variance.

(5) Action Requirements.

- (a) Resampling: If monitoring indicates a significant increase (increase or decrease for pH) in the value of a parameter monitored, the permittee shall immediately resample. If the resampling confirms the change in water quality the permittee shall: (A) report the results to the Department within 10 days of receipt of the laboratory data; and (B) prepare and submit to the Department within 30 days a plan for developing a preliminary assessment unless another time schedule is approved by the Department.
- (b) Preliminary Assessment Plan: The preliminary assessment plan must provide for an assessment of the source, extent, and potential migration of the pollution; a time schedule for the implementation of the preliminary assessment plan activities; and an evaluation of whether or not action will be necessary

to remain within the concentration limit at the Department approved compliance point(s).

- (c) Preventive Action: In order to prevent additional groundwater pollution from occurring, the Department shall require the utilization of all available and reasonable technology to decrease or prevent the release of additional contaminants when a significant change in water quality has occurred at a detection monitoring point.

(6) Remedial Action Requirements.

- (a) If the monitoring indicates a concentration limit for a contaminant other than those listed in Table 3 of this Division is violated at a compliance point, the Department shall require a remedial investigation and feasibility study be conducted by the permittee pursuant to the requirements contained in OAR 340-40-040, and remedial action conducted pursuant to the requirements contained in OAR 340-40-050.
- (b) If the monitoring indicates a concentration limit for a contaminant listed in Table 3 of this Division is violated at a compliance point and if the permittee demonstrates to the Director's satisfaction that beneficial uses are being protected, the permittee will not be required to conduct a remedial investigation and feasibility study in accordance with OAR 340-40-040, or to conduct remedial action pursuant to the requirements contained in OAR 340-40-050. However, if the Director determines that beneficial uses are not being protected, the Department shall require adequate remedial investigation necessary to characterize the extent of the pollution, and shall also require appropriate remedial action to protect beneficial uses.

REMEDIAL INVESTIGATION AND FEASIBILITY STUDY

340-40-040

- (1) If, based upon the preliminary assessment or other information, the Director determines there is a substantial likelihood that remedial action will be necessary to maintain or restore groundwater quality to achieve a specified concentration limit, or to protect public health, safety, or welfare or the environment, the Director shall require a remedial investigation and/or feasibility study be performed to develop information to determine the need for and selection of a remedial action.
- (2) The Department shall develop and maintain a list of all facilities currently developing remedial investigations and feasibility studies, and shall make such a list available to the public on request.

- (3) The remedial investigation shall include but is not limited to characterization of pollution, characterization of the facility, and an endangerment assessment. In presenting the required information, a clear description of the data used as well as any data gaps encountered in the analysis shall be included.
- (a) The characterization of the pollution as appropriate shall include but is not limited to information regarding:
- (A) Extent to which the source can be adequately identified and characterized;
 - (B) Amount, form, concentration, toxicity, environmental fate and transport, and other significant characterization of present substances; and
 - (C) Extent to which the substances might be reused or recycled.
- (b) The characterization of the facility as appropriate shall include but is not limited to information regarding:
- (A) Contaminant substance mixtures present, media of occurrence, and interface zones between media;
 - (B) Hydrogeologic factors;
 - (C) Climatologic and meteorologic factors; and
 - (D) Type, location, and description of facilities, or activities that could have resulted in the pollution.
- (c) The endangerment assessment as appropriate shall include but is not limited to information regarding:
- (A) Potential routes of exposure and concentration;
 - (B) Characterization of toxic effects;
 - (C) Populations at risk;
 - (D) Potential or actual adverse impact on:
 - (i) Biological receptors,
 - (ii) Present and future uses of the groundwater,
 - (iii) Ecosystems and natural resources, and
 - (iv) Aesthetic characteristics of the environment;
 - (E) Extent to which substances have migrated or are expected to migrate and the threat such migration might pose to public health, safety and welfare or the environment; and

(F) Potential for release of any substances or treatment residuals that might remain after remedial action.

(4) The feasibility study shall include but is not limited to the development and evaluation of remedial action options.

(a) The development of remedial action options as appropriate shall include but is not limited to the following range of options:

(A) Remedial action attaining the specified concentration limit;

(B) Highest and best technology attaining the lowest concentration levels technically achievable if item (A) above is not technically achievable;

(C) Best practicable technology attaining the lowest concentration level that meets the requirements of OAR 340-40-050 (1)(b) and (2), and does not exceed a site-specific concentration level considered protective of public health, safety, and welfare and the environment;

(D) Other measures to supplement or substitute for cleanup technologies, including but not limited to engineering or institutional controls (e.g., environmental hazard notice, alternative drinking water supply, caps, security measures, etc.)

(E) Combinations of any of the above options; and

(F) No action option.

(b) (A) Remedial action options developed under Subsection (4)(a) of this Section shall be evaluated under the requirements, criteria, preferences, and factors set forth in OAR 340-40-050 and according to any other criteria determined by the Director to be relevant to selection of a remedial action under OAR 340-40-050.

(B) The evaluation of remedial action options developed under Subsection (4)(a) of this Section shall include an evaluation of the extent to which the option or combination of options complies with relevant state, local, and federal law, standards, and guidance.

SELECTION OF THE REMEDIAL ACTION:

340-40-050

(1) Requirements: After opportunity for public review and comment, the Director shall select a remedial action. Such remedial action shall meet the following requirements:

- (a) Be protective of present and future public health, safety, and welfare and the environment; and
 - (b) To the maximum extent practicable:
 - (A) be cost effective;
 - (B) use permanent solutions and alternative technologies or resource recovery technologies;
 - (C) be implementable; and
 - (D) be effective.
- (2) Remedial Action Concentration Limit: The remedial action shall attain the concentration limit specified under OAR 340-40-030 (3) for permitted operations or OAR 340-40-060 (2) for non-permitted activities for the contaminant substances, unless the Director determines that the specified concentration limit does not satisfy the requirement set forth in Subsection (1)(b) of this Rule, in which case the Director shall select a remedial action that attains the lowest concentration level of the contaminant substances that satisfies the requirements set forth in Section (1) of this Rule.
- (3) Other Measures to Supplement Cleanup: The Director may require other measures (e.g. institutional controls, environmental hazard notice, alternate drinking water supply, caps, security measures, etc.) to supplement cleanup of contaminant substances to the remedial action concentration limit in accordance with Section (2) of this Rule, where such supplementary measures are necessary to satisfy the requirements set forth in Section (1) of this Rule.
- (4) Other Measures to Substitute for Cleanup: The Director may require other measures to substitute for cleanup of contaminant substances to the remedial action concentration limit under Section (2) of this Rule, provided that:
 - (a) The Director finds that there is no remedial action under Section (2) of this Rule, combined with supplementary measures under Section (3) of this Rule, that satisfies the requirements of Section (1) of this Rule;
 - (b) Any such substitute measures, as appropriate, include provision for long-term care and management, including monitoring and operation and maintenance, and periodic review to determine whether a remedial action satisfying the requirements of Section (1) of this Rule has become available;

(5) Protection:

(a) In determining whether a remedial action assures protection of the present and future public health, safety, and welfare and the environment under Subsection (1)(a) of this Rule, only the concentration limit specified under OAR 340-40-030 (3) for permitted operations or OAR 340-40-060 (2) for non-permitted activities shall be presumed to be protective. This presumption may be rebutted by information showing that a higher concentration level is also protective.

(b) In determining whether a concentration level higher than the specified concentration limit is protective, the Director shall consider:

(A) The characterization of contaminant substances and the facility, and the endangerment assessment;

(B) Other relevant cleanup or health standards, criteria, or guidance;

(C) Relevant and reasonably available scientific information; and

(D) Any other information relevant to the protectiveness of a remedial action.

(c) When comparing between potential concentration levels, a concentration level lower than another shall generally be considered to be more protective and preferable. This presumption may be rebutted by information showing that a higher concentration level is also protective.

(d) Any person responsible for undertaking the remedial action who proposes that the remedial action attain a concentration level higher than the specified concentration limit on the basis of protection shall have the burden of demonstrating to the Director that such concentration level is protective.

(6) Cost-effectiveness: In determining whether a remedial action is cost-effective under Subsection (1)(b) of this Rule, the Director may consider:

(a) Costs of the remedial action relative to the costs of another remedial action option, if any, that achieves the same concentration level;

(b) Extent to which the remedial action's incremental costs are proportionate to its incremental results;

(c) Extent to which the remedial action's total costs are proportionate to its total results; and

- (d) Any other criterion relevant to cost-effectiveness of the remedial action.
- (e) Costs that may be considered include but are not limited to:
 - (A) Capital costs;
 - (B) Operation and maintenance costs;
 - (C) Costs of periodic reviews, where required;
 - (D) Net present value of capital and operation and maintenance costs; and
 - (E) Potential future remedial action costs.

(7) Permanent Solutions and Alternative or Resource Recovery Technologies: In determining whether a remedial action uses a permanent solution and alternative or resource recovery technologies under Subsection (1)(b) of this Rule:

- (a) Remedial action options that use permanent solutions shall be preferred over other remedies;
- (b) Remedial action options in which resource recovery or alternative technology is a principal element shall be preferred over remedial action options not involving such technology;
- (c) Subject to Subsection (7)(e) of this Section, the offsite transport and secure disposition of contaminated materials without treatment may be preferred where practicable alternative treatment technologies are not available;
- (d) Subject to Subsections (7)(e) and (f) of this Section, and notwithstanding the availability of practicable alternative treatment technologies as provided in Subsection (7)(c) above, offsite transport and secure disposition of contaminated materials may be preferred when the disposal method would significantly expedite the cleanup or would achieve a total cleanup, especially at sites with contaminant materials of small quantity or low toxicity.
- (e) The transport and secure disposition offsite of a hazardous waste under ORS 466.005 in a treatment, storage, or disposal facility shall meet the requirements of Section 3004(c) to (g), (m), (o), (p), (u) and (v) and 3005(c) of the federal Solid Waste Disposal Act, as amended, P.L. 96-482 and P.L. 98-616.
- (f) The transport and secure disposition of contaminated materials, other than hazardous wastes, at an offsite facility may be allowed provided that the transport and

secure disposition of such contaminated materials, in the Director's determination, is adequate to protect the public health, safety, and welfare and the environment.

- (8) Implementability: In determining whether a remedial action is implementable under Subsection (1)(b) of this Rule, the Director may consider:
- (a) Degree of difficulty associated with implementing the technology;
 - (b) Expected operational reliability of the technology;
 - (c) Need to coordinate with and obtain necessary approvals or permits from other agencies;
 - (d) Availability of necessary equipment and specialists;
 - (e) Available capacity and location of needed treatment, storage, and disposal services; and
 - (f) Any other criterion relevant to implementability of the remedial action.
- (9) Effectiveness of the Remedial Action: In determining whether a remedial action is effective under Subsection (1)(b) of this Rule, the Director shall consider the following unless immediate action is needed to protect public health, safety and welfare and the environment:
- (a) Expected reduction in toxicity, mobility, and volume of the contaminant substances;
 - (b) Short-term risks that might be posed to community, workers, and the environment during implementation, including potential threats to human health and the environment associated with excavation, transport, and redispersion or containment;
 - (c) Length of time until full protection is achieved;
 - (d) Magnitude of residual risks in terms of amounts and concentrations of contaminant substances remaining following implementation of a remedial action, including consideration of the persistence, toxicity, mobility, and propensity to bioaccumulate of such contaminant substances and their constituents;
 - (e) Type and degree of long-term management required, including monitoring, operation and maintenance;
 - (f) Long-term potential for exposure of human and environmental receptors to remaining contaminants;

- (g) Long-term reliability of engineering and institutional controls, including long-term uncertainties associated with land disposal, treated or untreated waste, and residuals;
 - (h) Potential for failure of the remedial action or potential need for replacement of the remedy; and
 - (i) Any other criterion relevant to effectiveness of the remedial action.
- (10) Any person responsible for undertaking the remedial action who proposes one remedial action option over another on the basis of one or more of the elements of Subsection (1)(b) of this Rule shall have the burden of demonstrating to the Director that such remedial action option fulfills the requirements of Subsections (1)(a) and (b) of this Rule.

NON-PERMITTED ACTIVITIES

340-40-060

Non-permitted activities shall include, but not be limited to, spills, releases and past practices from activities that are not subject to a permit and activities that are subject to a permit but were not permitted at the time of the release.

- (1) Except as provided otherwise under statutory or administrative authorities, when a non-permitted activity could result in or has resulted in the pollution of groundwater the Department may require the liable person to:
 - (a) Conduct a remedial investigation and feasibility study pursuant to OAR 340-40-040.
 - (b) Implement remedial action pursuant to OAR 340-40-050
- (2) In conducting the remedial investigation and feasibility study, and selecting the remedial action under the requirements contained in OAR 340-40-040 and OAR 340-40-050, the concentration limits will be established at background water quality levels.
- (3) Clean-up levels for non-permitted activities will be established by the procedures contained in OAR 340-40-040 and OAR 340-40-050 which include evaluations of practicability as contained in OAR 340-40-050 (1)(b).

ON-SITE SEWAGE DISPOSAL: AREA WIDE MANAGEMENT

340-40-070

- (1) In areas where groundwater is being degraded as a result of on-site sewage disposal practices and an area wide solution is necessary, the Department may propose a rule for adoption by the

EQC and incorporation into the appropriate basin section of the State Water Quality Management Plan (OAR 340 Division 41) which will:

- (a) Recite the findings describing the problem and the aquifer impacted;
 - (b) Define the area where corrective action is required;
 - (c) Describe the problem correction and preventative measures to be ordered;
 - (d) Establish the schedule for required major increments of progress;
 - (e) Identify conditions under which new, modified, or repaired on-site sewage disposal systems may be installed in the interim while the area correction program is being implemented and is on schedule;
 - (f) Identify the conditions under which enforcement measures will be pursued if adequate progress to implement the corrective actions is not made. These measures may include but are not limited to measures authorized in ORS 454.235(2), 454.685, 454.645, and 454.317;
 - (g) Identify all known affected local governing bodies which the Department will notify by certified mail of the final rule adoption; and
 - (h) Accomplish any other objectives declared to be necessary by the EQC.
- (2) The Department shall notify all known impacted or potentially affected local units of government of the opportunity to comment on the proposed rule at a scheduled public hearing and of their right to request a contested case hearing pursuant to ORS Chapter 183 prior to the EQC's final order adopting the rule.

NUMERICAL GROUNDWATER QUALITY REFERENCE LEVELS AND GUIDANCE LEVELS

340-40-080

- (1) The numerical groundwater quality reference levels and guidance levels contained in Tables 1 through 3 of this Division are to be considered by the Department and the public in weighing the significance of a particular chemical concentration, and in determining the level of remedial action necessary to restore contaminated groundwater for human consumption. They are not to be construed as acceptable groundwater quality management goals. They are to be used by the Director and the EQC in establishing permit-specific and remedial action concentration limits according to the requirements of OAR 340-40-030 through OAR 340-40-060.

- (2) The Department shall periodically review information as it becomes available for establishing new numerical groundwater quality reference levels and guidance levels, and to ensure consistency with other statutorily mandated standards.
- (3) Human consumption is recognized as the highest and best use of groundwater, and the use which usually requires the highest level of water quality. The numerical groundwater quality reference levels listed in Tables 1 and 2 of this Division reflect the suitability of groundwater for human consumption.
- (4) The numerical groundwater quality guidance levels listed in Table 3 of this Division are for contaminants which do not adversely impact human health at the given concentrations. At considerably higher concentrations, human health implications may exist. These guidance levels are for contaminants that primarily affect the aesthetic qualities relating to the public acceptance of drinking water. The aesthetic degradation of groundwater may impair its beneficial use.
- (5) For pollutant parameters for which numerical groundwater quality reference levels or guidance levels have not been established and listed in Tables 1 through 3, or for evaluating adverse impacts on beneficial uses other than human consumption, the Department shall make use of the most current and scientifically valid information available in determining at what levels pollutants may affect present or potential beneficial uses. Such information shall include, but not be limited to, values set forth in OAR Chapter 340, Division 41, Table 20.

TABLE 1

Numerical Groundwater Quality Reference Levels:¹

<u>Inorganic Contaminants</u>	<u>Reference Level (mg/L)</u>
<u>Arsenic</u>	<u>0.05</u>
<u>Barium</u>	<u>1.0</u>
<u>Cadmium</u>	<u>0.01</u>
<u>Chromium</u>	<u>0.05</u>
<u>Fluoride</u>	<u>4.0</u>
<u>Lead</u>	<u>0.05</u>
<u>Mercury</u>	<u>0.002</u>
<u>Nitrate-N</u>	<u>10.0</u>
<u>Selenium</u>	<u>0.01</u>
<u>Silver</u>	<u>0.05</u>

¹All reference levels are for total (unfiltered) concentrations unless otherwise specified by the Department.

TABLE 2

Numerical Groundwater Quality Reference Levels (Continued):¹

<u>Organic Contaminants</u>	<u>Reference Level (mg/L)</u>
<u>Benzene</u>	<u>0.005</u>
<u>Carbon Tetrachloride</u>	<u>0.005</u>
<u>p-Dichlorobenzene</u>	<u>0.075</u>
<u>1,2-Dichloroethane</u>	<u>0.005</u>
<u>1,1-Dichloroethylene</u>	<u>0.007</u>
<u>1,1,1-Trichloroethane</u>	<u>0.200</u>
<u>Trichloroethylene</u>	<u>0.005</u>
<u>Total Trihalomethanes</u>	<u>0.100</u>
<u>(the sum of concentrations bromodichloromethane, dibromochloromethane, tribromomethane (bromoform), and trichloromethane (chloroform))</u>	
<u>Vinyl Chloride</u>	<u>0.002</u>
<u>2,4-D</u>	<u>0.100</u>
<u>Endrin</u>	<u>0.0002</u>
<u>Lindane</u>	<u>0.004</u>
<u>Methoxychlor</u>	<u>0.100</u>
<u>Toxaphene</u>	<u>0.005</u>
<u>2,4,5-TP Silvex</u>	<u>0.010</u>

¹ All reference levels are for total (unfiltered) concentrations unless otherwise specified by the Department.

TABLE 3

Numerical Groundwater Quality Guidance Levels:¹

<u>Miscellaneous Contaminants</u>	<u>Guidance Level (mg/L)²</u>
<u>Chloride</u>	<u>250</u>
<u>Color</u>	<u>15 Color Units</u>
<u>Copper</u>	<u>1.0</u>
<u>Foaming agents</u>	<u>0.5</u>
<u>Iron</u>	<u>0.3</u>
<u>Manganese</u>	<u>0.05</u>
<u>Odor</u>	<u>3 Threshold odor number</u>
<u>pH</u>	<u>6.5-8.5</u>
<u>Sulfate</u>	<u>250</u>
<u>Total dissolved solids</u>	<u>500</u>
<u>Zinc</u>	<u>5.0</u>

¹All guidance levels except total dissolved solids and are for total (unfiltered) concentrations unless otherwise specified by the Department.

²Unless otherwise specified, except pH.

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

NOTICE OF PUBLIC MEETING

Hearing Date: Noted Below
 Comments Due: August 2, 1989
 5:00 p.m.

**WHO IS
 AFFECTED:**

All businesses, residents, industries, and local governments in the State of Oregon.

**WHAT IS
 PROPOSED:**

The Department proposes to amend the existing General Groundwater Quality Protection Policy as contained in the Oregon Water Quality Rules Chapter 340, Division 41, Section 029, and adopt renumbered rules for Groundwater Quality Protection under OAR 340-40-001 through -080.

**WHAT ARE THE
 HIGHLIGHTS:**

Over the last several years, evidence of groundwater quality problems has increased in the State of Oregon. The Environmental Quality Commission adopted a General Groundwater Quality Protection Policy in August of 1981. The Department of Environmental Quality has had difficulty in applying the policy to some specific problem situations. Consequently, the Department proposes to amend the policy to include more specific guidance on how groundwater quality protection is to be implemented. The proposed amendments to the policy include the following:

1. **General Policies:** This section establishes the general policies that are to guide groundwater protection activities. The policies establish an anti-degradation standard for groundwaters of the State.
2. **Permitted Operations and Non-Permitted Activities:** These rules establish the specific groundwater quality protection requirements to be included in permits for point sources, and address contamination from non-permitted activities as well.
3. **Remedial Action:** These rules establish procedures for characterizing groundwater contamination, and for developing and selecting remedial action plans when groundwater has been polluted.
4. **Numerical Groundwater Quality Reference and Guidance Levels:** This section establishes groundwater quality reference and guidance levels that are to be used in setting permit-specific concentration limits.



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.

OVER

B-1

HOW TO
COMMENT:

PUBLIC HEARINGS SCHEDULE:

<u>When</u>	<u>Where</u>
July 17, 1989, 2:00 p.m.	EUGENE -- Public Service Building, Harris Hall, Main Room, 125 E. 8th
July 18, 1989, 10:00 a.m.	MEDFORD -- OSU-Jackson Co. Extension Auditorium, 1301 Maple Grove Dr.
July 19, 1989, 3:00 p.m.	BEND -- Police Station Commission Room 720 NW Wall St.
July 24, 1989, 6:30 p.m.	LA GRANDE -- Eastern Oregon State College, Zabel Hall, Room 110 (near 8th and "K" Ave.)
July 26, 1989, 2:00 p.m.	PORTLAND -- Department of Environmental Quality Headquarters 811 SW 6th Ave., Room 4A

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

Department of Environmental Quality
Water Quality Division
Planning and Monitoring Section
811 S.W. 6th Ave.
Portland, OR 97204

The comment period will end on August 2, 1989 at 5:00 p.m.

For more information or copies of documents, contact Lucinda Bidleman at 229-6066 or toll-free 1-800-452-4011.

**WHAT IS THE
NEXT STEP:**

After the public testimony has been received and evaluated, the proposed amendments will be revised as appropriate, and will be presented to the Environmental Quality Commission for their consideration. The Commission may adopt the proposed rule amendments, adopt modified rule amendments, or take no action at all.

ATTACHMENTS:

Attachment A-1: Statement of Need for Rule Making
Attachment A-2: Land Use Consistency
Attachment A-3: Fiscal & Economic Impact Statement
Attachment A-4: Existing Groundwater Quality Protection Policy (OAR 340-41-029)
Attachment A-5: Proposed Groundwater Quality Protection Rules (OAR 340-40-001 through -080)

STATEMENT OF NEED FOR RULE MAKING

Pursuant to ORS 183.335(7), this statement provides information on the Environmental Quality Commission's intended action to adopt rules.

(1) Legal Authority.

Oregon Revised Statute (ORS) 468.015 and 468.020 provide the Commission with the authority to establish the policies, rules and standards necessary and proper in performing the functions vested by law in the Commission, including the policies and purposes of ORS Chapter 468. It is the public policy of the state as defined in ORS 468.710 to protect and improve public water quality for beneficial uses including: "public water supplies, for the propagation of municipal, recreational and other beneficial uses." ORS 468.710, 468.715, and 468.720 go on to further state that "no waste be discharged to waters of the state without first receiving necessary treatment..."; that "all available and necessary methods" be used to prevent pollution and that waste not be allowed to "escape or be carried into the waters of the state by any means." ORS 468.700(7) includes in its definition of wastes "...substances which will or may cause pollution or tend to cause pollution of any water of the state." ORS 468.700(8) includes in its definition of waters of the state "...underground waters...." ORS 468.735 provides that the Commission by rule may establish standards of quality and purity for the waters of the state in accordance with the public policy set forth in ORS 468.710.

(2) Need for Rule.

Over the last few years there has been a rapid increase in the number of groundwater contamination incidents to which the Department has had to respond. Current rules lack the precise direction and specificity the Department needs to respond to these incidents, and to ensure that future contamination of groundwater is minimized. The proposed amendments to the rule contain a preface, definitions, general policies, and rules for permitted operations, remedial investigations and feasibility studies, non-permitted activities, area wide management of on-site sewage disposal, and numerical groundwater quality reference and guidance levels.

Adoption of the proposed rule amendments, modification of those amendments or no action may be taken by the Commission after the hearing record has been evaluated.

(3) **Principal Documents Relied Upon in this Rule Making.**

The following documents are available for review during normal business hours at the Department's office, 811 SW Sixth Ave., Portland, Oregon.

Discussion Paper, State Groundwater Quality Protection Program, July 14, 1986, Oregon Department of Environmental Quality.

40 CFR Parts 141 and 143

Groundwater Protection Strategy for the Environmental Protection Agency, August, 1984.

Groundwater Quality Protection State and Local Strategies, Prepared by Committee on Groundwater Quality Protection, National Research Council, 1986.

Groundwater - Saving the Unseen Resource, The National Groundwater Policy Forum, November, 1985.

Environmental Cleanup Rules, OAR 340-122-001 through -110.

LAND USE CONSISTENCY

The Department has concluded that the proposal conforms with statewide planning goals and guidelines.

Goal 6 (Air, Water, and Local Resource Quality):

The proposed revisions to the water quality regulations are designed to more clearly protect and maintain groundwater quality statewide.

Goal 11 (Public Facilities and Services):

To attain compliance with the revised regulations, additional costs for capital improvements, service area expansion, and operation of wastewater treatment facilities may be incurred. Additional planning to insure timely, orderly and efficient provisions of services, and construction of facilities to provide necessary availability of services and needed capacity, to meet groundwater quality protection plans may be necessary.

Public comment on any land use issue is welcome and may be submitted in the same manner as indicated for testimony in this notice. It is requested that local, state and federal agencies review the proposed action and comment on possible conflicts with their programs affecting land use, and with statewide planning goals within their expertise and jurisdiction. The Department of Environmental Quality intends to ask the Department of Land Conservation and Development to mediate any appropriate conflicts brought to our attention by local, state and federal authorities.

FISCAL AND ECONOMIC IMPACT OF PROPOSED GROUNDWATER QUALITY PROTECTION RULES

Introduction

Adoption and implementation of the proposed groundwater quality protection rules will result in increased costs to the Water Quality program and may result in increased costs to local governments, small and large businesses, industries, private and public utilities, and individuals. Specifically, increased costs may be incurred for:

- Groundwater monitoring;
- Hydrogeologic assessments needed for setting concentration limits;
- Providing data for the purpose of obtaining concentration limit variances;
- Capital construction improvements and other operating costs associated with protecting groundwater quality;
- Remediation of contaminated groundwater.

Requirements

The proposed regulations would require permitted facilities which may potentially degrade groundwater quality to monitor the groundwater quality and report the results to the Department. The types of facilities that may be required to conduct groundwater monitoring as a condition of a permit include sewage treatment plants that employ surface impoundments, lagoons, or infiltration beds, industrial facilities which use surface impoundments, facilities which dispose of waste water through land application techniques, mining operations which physically disturb groundwater or employ heap leach methods of metals extraction, and solid waste landfills.

Prior to issuing a new permit or to renewing or modifying an existing permit, the Department will evaluate the facility's potential to contaminate groundwater. Based on this evaluation, the facility may be required to conduct regular groundwater monitoring as a condition of the permit.

In addition to monitoring and reporting requirements, the permit will specify concentration limits for contaminants of concern. Information characterizing the hydrogeology at the facility location (such as the direction of groundwater flow and the

quality of the groundwater upgradient and downgradient of the existing or proposed facility) will be required to be submitted to the Department before such concentration limits may be established.

A permittee or permit applicant has the option to apply for a variance to the above mentioned permit-specific concentration limit if that limit is considered unattainable or infeasible. Should a permitted facility desire to obtain a concentration limit variance, it will have the burden of proving to the Director or the EQC that the concentration limit variance will be protective of human health and the environment. Such proof will include characterizing the contaminant of concern and the site's hydrology, examining current and future uses of the groundwater, and considering the comparative feasibility and cost of obtaining the permit-specific concentration limit.

The proposed regulations would also require that certain steps be taken in the event that groundwater contamination exceeds allowable limits at the facility compliance point. Such steps would include requiring the facility to perform a preliminary assessment of the contamination problem, and might lead to a remedial investigation, feasibility study, and selection of remedial action.

Costs

The fiscal and economic impacts cannot be fully defined until actions are taken to comply with the rules. There will be an immediate cost to achieve compliance with the rules. The costs incurred by individual private and public facilities through permit-specific groundwater protection requirements will vary considerably depending on a number of site-specific factors such as:

- The number and depth of monitoring wells needed;
- Method of drilling employed and level of safety needed for the drilling & installation of the wells;
- Types of materials used to construct the monitoring wells;
- The driller and whether or not a consulting geologist or engineer is needed;
- Complexity of geology;
- Types of contaminants to be analyzed;
- Information already available on the site;
- Types of capital construction improvements required;
- Degree of remedial action needed.

Depending on the different factors listed above; the cost to a facility to comply with the groundwater quality protection program in the proposed rules could range from \$4,000 to \$25,000 per facility if a minimum of 3 or 4 monitoring wells are drilled and installed at depths between ten and fifty feet. Costs will increase with the depth and number of wells and the level of safety called for at each site as well as with the type of quality analysis required. Information is not available on the total number of new or existing sites which may require groundwater quality monitoring at this time. In addition, the costs associated with ongoing monitoring will vary considerably depending on the parameters of concern, the number of wells and the frequency of monitoring. Estimated costs per sample may range from \$35 to \$1200 each.

Costs associated with remedial investigations, feasibility studies, and the selection & implementation of remedial actions can be substantial and will vary widely from site to site. Costs will vary for cleanup activities based on the nature and extent of contamination at individual sites, the potential public health or environmental hazards, the degree of cleanup, the technologies available, and the need for long term operation and maintenance.

The total cost estimates for cleanup activities cannot be determined because information is not available on the number of sites state wide. In addition, cleanup costs at even one site may vary dramatically depending on a large number of factors such as the level of cleanup selected and other considerations given during the complex process of groundwater pollution abatement. The cleanup costs at state superfund sites are estimated to range from \$50,000 to \$2 million, with an average cost of approximately \$500,000. While there are fundamental differences between the cleanup requirements in these rules and those adopted under the authority of SB 122, these figures may be considered representative of costs associated with remedial actions required through these rules.

The cost of implementing the proposed rules to the Department's Water Quality program will include staff time spent reviewing permits and groundwater monitoring data for compliance with the rules, evaluating the adequacy of groundwater quality protection plans, and preparing recommendations and staff reports for the Director and the Environmental Quality Commission. While the precise workload is difficult to gauge, it is estimated that two full time equivalent staff members will be needed to fulfill the Department's requirements. The approximate cost for maintaining two full time equivalent staff members is \$100,000 per year.

Table 1 summarizes the possible fiscal impacts to state and local governments, the general public, small and large businesses. In it, the following questions are considered: Who is impacted? How are they impacted? Where are they impacted?

TABLE 1

SUMMARY OF POSSIBLE FISCAL IMPACTS

WHO?	HOW?	WHERE?
State Government	Operating expenses-Direct	Cash Outlays-Ongoing
Local Government	Operating expenses-Direct	Cash Outlays-Ongoing
	Capital Investments in facilities-Direct	Cash Outlays-Ongoing
General Public	Rate Increases-Indirect	Cash Outlays-Ongoing
	Price Increases-Indirect	Cash Outlays-Ongoing
	Tax Increases-Indirect	Cash Outlays-Annual
Small Business	Increased Operating expenses-Indirect	Cash Outlays-Ongoing
	Capital Investments in facilities-Direct	Cash Outlays-Ongoing
Large Business	Increased Operating expenses-Indirect	Cash Outlays-Ongoing
	Capital Investments in facilities-Direct	Cash Outlays-Ongoing

Benefits

The benefits provided through the implementation of these proposed groundwater quality protection rules are enhanced protection of groundwater for drinking water supply and other beneficial uses. The baseline information garnered from the hydrogeologic assessment activities is of benefit to both the public and private sectors when it becomes public information. Such information is valuable to planners, developers, consultants, investors, regulators, and many others who may have a vested interest in property values or resource management.

Through groundwater quality monitoring, facilities are able to promptly detect the release of contaminants, thus enabling them to quickly take corrective action and employ early treatment and cleanup efforts before a major pollution problem results. The savings to private industry and the public in remedial action and court costs alone could be enormous. By preventing contamination from occurring, the beneficial use of groundwater will remain unimpaired, consequently saving potentially responsible parties

the cost of providing alternative sources of water to the affected users.

Conclusion

The proposed rules would require facilities to minimize their impacts on groundwater quality through the use of highest and best practicable technology as well as monitoring and reporting specifications. While the initial cost to comply with the rules will undoubtedly result in increased costs to local governments, small and large businesses, industries, private and public utilities, and individuals, the immediate and long-term economic benefits of protecting groundwater and its beneficial uses are beyond measure.

Public comment on any fiscal and economic impact is welcome and may be submitted in the same manner as indicated for testimony on this notice.

STATE OF OREGONDEPARTMENT OF ENVIRONMENTAL QUALITYINTEROFFICE MEMORANDUM

TO: Environmental Quality Commission DATE: Sept. 19, 1989

FROM: Lucinda Bidleman, Hearings Officer

SUBJECT: Hearings Reports: July 17, 1989, in Eugene
 July 18, 1989, in Medford
 July 19, 1989, in Bend
 July 24, 1989, in La Grande
 July 25, 1989, in Portland

Proposed Amendments to the General Groundwater Quality
 Protection Policy.

Schedule and Procedures

Public hearings were held in Eugene, Medford, Bend, La Grande, and Portland in the latter part of July. Public notices were mailed to 362 persons included in the groundwater mailing list and published in the Secretary of State Bulletin 30 to 45 days prior to the hearings. Notice was also published in local newspapers. The hearings officer at all five hearings was Lucinda Bidleman.

A total of 33 people provided testimony during the public hearings process. Verbal testimony was given by a total of 6 people. Written testimony was received by 30 people (some people provided both verbal and written testimony). A listing of the 33 people who provided comments is attached to this report. It includes the name, affiliation, and type (oral and/or written) of testimony given.

Summary of Major Issues

The major issues which were contained in public testimony are described below. A table summarizing these major issues and giving the names of the persons who supported those issues is attached.

1. Many of the respondents felt the rules should promote a nondegradation policy for groundwater protection. They favored the strictest permit conditions, allowing for no variances in groundwater concentration limits. Most of the persons advocating this position believed existing facilities could be subject to lesser controls than those proposed for new facilities.

2. Many people stressed the need to take a proactive stance in preventing all human-caused groundwater contamination so as to preserve groundwater resources for future generations.
3. A number of hearings respondents expressed concern that the proposed rules would conflict with the provisions in the groundwater protection act under the newly enacted House Bill 3515. Some uncertainty was voiced regarding the Environmental Quality Commission's continued authority to adopt rules regulating groundwater quality matters. Many of those questioning the EQC's authority stated that the new legislation superceded the authorities granted under ORS 468. Still others were concerned that the proposed rules' provisions for public involvement as given would be in conflict with those granted under House Bill 3515. There was also concern that the reference and guidance levels proposed under these rules would be in conflict with the groundwater standards mandated by House Bill 3515.
4. One attorney stated that the rules were not in compliance with the Administrative Procedures Act because the required Fiscal and Economic Impact Statement was inadequate. It was stated that the Public Notice did not contain sufficient information regarding the consideration given to significant adverse effects upon small businesses and how to reduce those effects. The adequacy of the Land Use Consistency Statement was also questioned by two respondents.
5. Many respondents stated that the Numerical Groundwater Quality Reference Levels were not sufficient to protect human health because the cancer risk for some of them exceeded one in one million. There was also concern that the levels were not protective of other life forms besides humans.
6. Several persons submitting testimony recommended better enforcement of current as well as proposed permit program requirements.
7. Some industry representatives commented that the proposed groundwater protection requirements would be too costly and burdensome to undertake, resulting in some facilities either going out of business or being out of compliance with the regulations. In particular, it was felt that setting permit-specific concentration limits, installing the required groundwater monitoring wells, conducting ongoing groundwater monitoring, and undertaking necessary groundwater cleanup activities would be beyond the means of some facilities. A

few respondents suggested the rule requirements be phased-in over a specified period of time to allow facilities to prepare for the expected financial burden.

8. Many respondents urged the Department to provide greater opportunity for public involvement in the development of remedial action plans. In particular, they asked to be allowed to review and comment on all draft remedial action plans, and requested the Department require the facility submitting the plans to incorporate those public comments into any final plans.

The Department's responses to these major issues is provided in the Hearings Officer's Response to Testimony/Comments. A summary of the public testimony received, including numerous editorial suggestions is included in Attachment F.

HEARINGS RESPONDENTS
 July-August, 1989

<u>Testimony No.</u>	<u>Person / Organization</u>	<u>Oral</u>	<u>Written</u>
1.	Marian Adda		X
2.	Allen F. Agnew OSU DEPT. OF GEOLOGY		X
3.	ASSOCIATED OREGON INDUSTRIES		X
4.	Paul Bonneau		X
5.	Sheila Canal SALUD	X	
6.	Ken Cerotsky SPRINGFIELD UTILITY BOARD		X
7.	John Charles OREGON ENVIRONMENTAL COUNCIL		X
8.	David H. Couch BOGLE & GATES		X
9.	David L. Craig PACIFIC POWER & LIGHT CO.	X	X
10.	Jim Craven AMERICAN ELECTRONICS ASSOCIATION		X
11.	Philip Curtis	X	
12.	Myra Erwin ROGUE GROUP SIERRA CLUB	X	X
13.	Wallace Eubanks		X
14.	Brett A. Fisher NORTHWEST COALITION FOR ALTERNATIVES TO PESTICIDES	X	X
15.	Annette Gurdjian		X
16.	R. J. Hess PORTLAND GENERAL ELECTRIC CO.		X
17.	Jerolee W. Hickey		X
18.	David Hopkins		X
19.	Robert R. Jones		X
20.	Joanna Karl		X
21.	Becky Kreag OREGON WATER RESOURCES DEPT.		X
22.	Jeff Leighton PORTLAND WATER BUREAU		X
23.	JoAnn McCauley LANE COUNCIL OF GOVERNMENTS		X
24.	Claudeen Cline Naffziger, Ph.D.		X
25.	Catherine Nollenberger		X

Memo to: Environmental Quality Commission
September 19, 1989
Page 5

<u>Testimony No.</u>	<u>Person / Organization</u>	<u>Oral</u>	<u>Written</u>
26.	Edward N. Olson MEDFORD WATER COMMISSION		x
27.	Gregory Paris		x
28.	Larry D. Patterson PENWALT CORPORATION		x
29.	Sandy Reed	x	
30.	Paul & Joyce Riedell		x
31.	Michael Schroeder NORTHWEST FOOD PROCESSORS ASSOC.		x
32.	Kara Stebbins		x
33.	Jan Wroncy		x

HEARINGS RESPONDENTS
July - August, 1989

BRIEF SUMMARY OF MAJOR ISSUES BROUGHT OUT IN PUBLIC TESTIMONY	1. Marian Adda	2. Allen F. Agnew	3. Associated Oregon Industries	4. Paul Bonneau	5. Sheila Canal	6. Ken Gerotsky	7. John Charles	8. David H. Couch	9. David L. Craig	10. Jim Craven	11. Phillip Curtis	12. Myura Erwin	13. Wallace Eubanks	14. Brett A. Fisher	15. Annette Gurdjian	16. R. J. Hess	17. Jerolee W. Hickey	18. David Hopkins	19. Robert R. Jones	20. Joanna Kari
Rules should promote a nondegradation policy with little or no flexibility.	x			x			x						x	x	x			x	x	x
The preventive of all human-caused groundwater contamination should be a top priority of the Department's.					x		x	x			x	x	x	x						
Concern was expressed about possible conflicts with HB 3515.			x					x		x				x		x				
Compliance with the Administrative Procedures Act was a concern.							x													
Numerical reference levels are not human health-based and do not consider other organisms.													x	x	x			x	x	x
The Department needs better enforcement and inspection program capabilities.											x									
New permit requirements will be too costly and burdensome.									x											
Greater opportunities for public involvement is needed in the development of draft remedial action plans.													x	x	x			x	x	x

HEARINGS RESPONDENTS
July - August, 1989 (Continued)

BRIEF SUMMARY OF MAJOR ISSUES BROUGHT OUT IN PUBLIC TESTIMONY	21. Becky Kreag	22. Jeff Leighton	23. JoAnna McCauley	24. Claudene Naffziger	25. Gatherin Nollengerger	26. Edward N. Olson	27. Gregory Paris	28. Larry D. Patterson	29. Sandy Reed	30. Paul & Joyce Riedell	31. Michael Schroeder	32. Kara Stebbins	33. Jan Wroncy						
Rules should promote a nondegradation policy with little or no flexibility.				x			x					x	x						
The preventive of all human-caused groundwater contamination should be a top priority of the Department's.						x				x		x	x						
Concern was expressed about possible conflicts with HB 3515.								x			x								
Compliance with the Administrative Procedures Act was a concern.		x																	
Numerical reference levels are not human health-based and do not consider other organisms.				x			x						x						
The Department needs better enforcement and inspection program capabilities.					x				x										
New permit requirements will be too costly and burdensome.			x					x											
Greater opportunities for public involvement is needed in the development of draft remedial action plans.				x			x					x							

RESPONSE TO TESTIMONY RECEIVED IN JULY - AUGUST, 1989, ON
PROPOSED AMENDMENTS TO
THE GENERAL GROUNDWATER QUALITY PROTECTION POLICY

The major issues identified in the public hearing testimony are summarized and discussed in this report. The issues are grouped into the following categories: Antidegradation vs. Nondegradation, Numerical Reference and Guidance Levels, ORS 468 vs. HB 3515, Administrative Procedures Act, General.

Antidegradation vs. Nondegradation

Issue No. 1: The Department should adopt a strict nondegradation policy, allowing no groundwater quality degradation to occur as the result of human activities. There should be no flexibility in setting permit conditions such as concentration limits and concentration limit variances. The prevention of groundwater contamination and protection of Oregon's groundwater resources for future beneficial uses should be a top priority of the Department's.

Response: The implementation of a strict nondegradation policy for groundwater is not technically or economically feasible. The proposed rules stress the importance of minimizing adverse impacts on groundwater to the highest extent practicable. This was the consensus approach worked out with the advisory committees.

Issue No. 2: Permit conditions for existing facilities should be equivalent to those for new facilities. The proposed rules could allow existing facilities to be subject to lesser controls than those for new facilities.

Response: The Department recognizes that the technical and economic difficulties of bringing existing facilities into compliance with the standards being proposed for new facilities would prohibit that approach. However, it is feasible when designing, building, and operating new facilities and operations to do so with less impact on groundwater quality than in the past. The emphasis on existing facilities is for the purpose of ensuring the protection of beneficial uses of the groundwater, whereas, the emphasis on new facilities is antidegradation.

Issue No. 3: The rules establish an antidegradation approach to groundwater quality protection, yet the permit conditions being proposed for new facilities are nondegradational. This is an inconsistency.

Response: The Department disagrees. Consistent with the antidegradation approach that is applied throughout the proposed rules, new facilities are required to minimize groundwater contamination to the highest extent practicable. This can only be achieved if no significant impact on groundwater quality becomes the goal. However, this is only the starting point. If a facility can demonstrate that no impact is not practicable, and that a certain level of a contaminant in the groundwater presents no substantial present or future hazard to human health or the environment, it can then be granted a variance from the background concentration limit. In a strict nondegradation approach no variances from background could be granted.

Numerical Reference & Guidance Levels

Issue No. 4: The proposed numerical groundwater quality reference levels are not health-based because some of them exceed the one in one million cancer risk factor.

Response: The Department does not agree. The proposed numerical groundwater quality reference levels are health based. They are based on the maximum contaminant levels for public water supply drinking water under the Safe Drinking Water Act. Some of the standards do have a certain carcinogenic risk level associated with them. There is no commonly agreed upon number for acceptable risk associated with drinking water standards.

Issue No. 5: The proposed numerical groundwater quality reference and guidance levels do not consider nonhuman organisms.

Response: The Department concurs. This fact is stated in several places in the proposed rules. The proposal requires all beneficial uses of groundwater to be protected, not just drinking water. Because of this, the Department is required to make use of the most current and scientifically valid information available in determining at what levels pollutants may affect present or potential beneficial uses. Such information shall include OAR Chapter 340, Division 41, Table 20 which does include toxics criteria for nonhuman organisms.

Issue No. 6: A procedure for the automatic adoption of standards should be included in the rules so that the rules remain current as new federal standards are developed.

Response: The Department explored the possibility of adopting federal standards by reference but found that it can not legally be done. The proposed rule does state that the Department shall review new information as it becomes

available for updating the rules and ensuring consistency with other standards.

ORS 468 vs. HB 3515

Issue No. 7: The authorities granted to the Strategic Groundwater Management Group to protect groundwater quality under the newly enacted Groundwater Protection Act in HB 3515 supersede the existing authorities given to the Environmental Quality Commission to regulate contaminant discharges to groundwater under ORS 468.

Response: The Department disagrees. This concern is apparently based on a misinterpretation of the legislative intent of House Bill 3515. The authorities granted the Strategic Water Management Group (SWMG) under House Bill 3515 do not replace or supercede the authorities of the Environmental Policy Commission. The authorities of SWMG under House Bill 3515 are complimentary to those of the Commission, and primarily related to matters where interagency cooperation is required for the implementation of groundwater protection activities. Attachment Q is a letter from the Attorney Generals office supporting these statements.

Issue No. 8: The numerical reference and guidance levels in the proposed rules will be in conflict with the numerical standards for maximum measurable levels of contaminants in groundwater required to be adopted under the new Groundwater Protection Act.

Response: The Department does not agree. The interim standards for maximum measurable levels of contaminants in groundwater are the same as the proposed numerical groundwater quality reference levels, except that the reference levels do not include bacteriologic and radiologic contaminants. There is no conflict. If the final standards for maximum measurable levels of contaminants in groundwater differ from the interim standards, then the commission should consider revising the numerical groundwater quality reference levels at that time. Numerical standards are always subject to revision as new information becomes available.

Issue No. 9: The proposed rules do not include the same statutorily mandated opportunities for public involvement as those set forth under the new Groundwater Protection Act, and therefore are in conflict with current statute. In particular, opportunities for public review and comment on the development of draft remedial action plans are missing.

Response: This comment is apparently a result of a misunderstanding of the semantics involved. All remedial action plans are subject to public review and comment before they are approved by the director and become final. If

public review and comment identifies issues which need to be addressed, this will be done prior to the acceptance of the remedial action plan.

Issue No. 10: All references to the control of nonpoint sources of groundwater contamination should be deleted from the proposed rules and be addressed separately under the provisions of the new Groundwater Protection Act. These rules should only regulate point sources of contamination.

Response: The references to nonpoint sources where they occur within the proposed rules are appropriate and necessary for an understanding of the Commission's overall policy for groundwater quality protection. The references to nonpoint sources that are contained in the rules are consistent with the goals and policies established in House Bill 3515.

Administrative Procedures Act

Issue No. 11: The fiscal and economic impact statement is inadequate. It contains insufficient information regarding the consideration given to significant adverse effects upon small businesses and ways to reduce those effects.

Response: The fiscal and economic impact statement was prepared utilizing the available information consistent with state law. The statement does address small business economic impacts. In addition, much of the work performed by the Department and advisory committee in developing the proposed rules was related to minimizing the cost to state agencies, small and large businesses, and the public.

General Comments

Issue No. 12: The Department lacks sufficient enforcement and inspection capabilities to properly implement the rules. Provisions for fines and penalties for noncompliance are needed.

Response: Both of these issues are outside the scope of the proposed rules.

Issue No. 13: Requiring existing facilities to immediately comply with the proposed regulations' groundwater protection requirements may result in an unreasonable financial hardship. Setting concentration limits, applying for concentration limit variances where needed, and implementing the requisite monitoring program will be extremely burdensome. A phased-in approach to implementing the rule requirements was suggested.

Response: New requirements for existing facilities will be phased in by the Department. New requirements will usually

be implemented through revised permits. This will generally take place at the time of permit renewal. In addition, existing facilities will be treated differently than new facilities under the rules in order to ease the cost of compliance for those facilities.



Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission
 From: Director
 Subject: Agenda Item I, January 22, 1987 EQC Meeting

Request For Authorization to Conduct Public Hearings on Proposed Amendments to the General Groundwater Quality Protection Policy, OAR 340-41-029: General Policies, Groundwater Quality Management Classification System, Point Source Control Rules, Nonpoint Source Control, and Groundwater Quality Standards

Background

It is the public policy of the state as defined in Oregon Revised Statute (ORS) 468.710 to protect and improve public water quality for beneficial uses including: "public water supplies, for the propagation of wildlife and fish, and aquatic life, and for domestic, industrial, municipal, recreational and other beneficial uses." ORS 468.710, 468.715, and 468.720 go on to further state that "no waste be discharged to waters of the state without first receiving necessary treatment..."; that "all available and necessary methods" be used to prevent pollution and that waste not be allowed to "escape or be carried into the waters of the state by any means." ORS 468.700(7) includes in its definition of wastes "...substances which will or may cause pollution or tend to cause pollution of any waters of the state." "ORS 468.700(8) includes in its definition of waters of the state "...underground waters..."

Groundwater contamination can ruin groundwater as a resource for hundreds and even thousands of years. The contamination gradually will spread, affecting larger and larger areas, and eventually affecting the water quality of surface water discharge points. Groundwater provides the base flow for Oregon's lakes and streams.

Until recently, groundwater was thought to be relatively safe from pollution because of the treatment and filtration capacity of the soils and geologic materials above the aquifers. A new awareness of groundwater vulnerability along with increased analytical capabilities have resulted in increased groundwater quality assessment activities. These assessment activities have revealed that contamination is affecting more groundwater than was previously suspected. The number of known groundwater contamination areas in the state has increased over the last few years from a few to well over two-hundred, and the list is growing at a steady rate. Similar trends have been noted in other states throughout the nation.

The Environmental Quality Commission adopted a State-wide Groundwater Quality Protection Policy in August 1981. This Policy provided the Department of Environmental Quality with an overall strategy for protecting groundwater quality. It created the basic framework into which the Department integrated its groundwater quality program protection requirements. Adoption of the policy has been the foundation of the state's groundwater quality protection effort.

Since its adoption, however, the Department has experienced some difficulty in applying the general policy statements to specific complex groundwater problems. This has been particularly true in areas where groundwater problems are suspected, problem severity must be determined, and appropriate remedial actions devised and implemented. These difficulties have highlighted weaknesses in the existing groundwater policy and the Department's implementation program.

In response to these problems, the Department conducted a thorough evaluation of the General Groundwater Quality Protection Policy, evaluated its strengths and weaknesses, and evaluated various groundwater quality management alternatives that could be used to solve those problems. This analysis is contained in a discussion paper (Attachment A). The discussion paper was circulated for review and comment both within the Department and to members of the Interagency Advisory Committee for Groundwater Quality Protection.

A citizens advisory committee was formed to assist the Department in evaluating the need for modifications in the General Groundwater Quality Protection Policy. The committee assisted the Department in the development of the proposed amendments to this policy. The committee membership list is attached (Attachment B).

The following problems were identified in the then current General Groundwater Quality Protection Policy:

Problems with Existing Policy

1. The most significant statement contained in the policy is General Policy statement OAR 340-41-029(1) (a);

"It is the responsibility of the EQC to regulate and control waste sources so that impairment of the natural quality of groundwater is minimized to assure beneficial uses of these resources by future generations."

This is a broad statement, and sets the overall groundwater quality management goal for the Department. There are, however, several phrases and words in this statement that are open to interpretation. These need definition and clarification. They are:

- a. "impairment"
 - b. "natural quality"
 - c. "minimize"
 - d. "beneficial uses"
2. No formal water quality standards have been set for groundwater as has been for surface waters.
 3. All aquifers of the state are not naturally suitable for the same beneficial uses. To maintain or protect existing and potential uses, different levels of protection may be necessary. The present policy does not address this problem.
 4. The source control policies section states that highest and best practicable methods will be used to minimize pollutant loading to groundwater. It does not define what these methods are, nor does it establish the criteria by which the Department can evaluate highest and best practicable treatment.
 5. Section 2(e) of the existing policy states that nonpoint sources shall use "best management" practices to minimize groundwater degradation. In many cases, best management practices and methods of implementation have not been developed for groundwater, as they have been for surface water.
 6. Section (3) addresses problem abatement policies. It lacks guidance, however, in several key areas: (1) What determined the level of water quality that should be targeted? (2) Where should compliance be measured? (3) How should compliance be measured? (4) What should be done about groundwater degradation from past practices or nonpoint sources.
 7. The present policy does not adequately stress the importance of contamination prevention.

8. The present policy does not clearly establish a common base for the groundwater quality protection activities of the various Department programs. Overlapping and inconsistent groundwater quality protection requirements are currently contained in the following Department administered programs:
 - a. Solid Waste
 - b. Water Quality
 - c. RCRA
 - d. CERCLA
 - e. Spill Response

As a result of agency meetings, interagency meetings, citizens advisory committee meetings, and review of the existing policy (OAR 340-41-029), the following elements were identified as being essential goals of a revised policy:

Goals for Revised Policy

1. Maintain existing high-quality groundwater to meet both present and future beneficial use needs.
2. Identify the beneficial uses for which groundwater shall be protected.
3. Establish mandatory minimum groundwater quality protection requirements that would apply regardless of program or type of source. This goal is to remedy existing inconsistencies on how groundwater protection is applied.
4. Establish a consistent and scientifically valid method for determining if an activity or activities were significantly affecting groundwater quality.
5. Establish a consistent and thorough process for assessing contamination impacts on present or potential future beneficial uses, and determining levels of contamination that could safely be allowed.
6. Adopt, where possible, numerical groundwater quality standards to help guide staff and the regulated community in assessing the potential impact of contamination, and in determining appropriate clean-up levels.

7. Develop a policy that recognizes that all groundwaters are not naturally suitable for all beneficial uses, and that some aquifers, because of value or sensitivity, require extra protection, and that alternative management policies may be appropriate for different aquifers.

Major Elements in Proposed Rule Amendments

The proposed amendments combine elements from each of the alternative groundwater quality management approaches discussed in Attachment A. The specific rule language proposed is contained in Attachment G. For the most part the entire policy was rewritten. There were, however, portions of the existing General Groundwater Quality Protection Policy that were included in the proposed amendments. Most important among these, was the concept that impairment of groundwater quality should be minimized to assure beneficial use of the resource by future generations. The major elements in the proposed rules are summarized as follows:

1. Change the name of the section from "General Groundwater Quality Protection Policy" to "Groundwater Quality Protection". The regulations contained in OAR 340-41-029 are the groundwater quality regulations the Department uses to ensure groundwater quality protection. It became evident early in the discussions on the policy that the word policy connoted to some people that they were only guidelines and not rules.
2. Exempts removal and remedial actions conducted pursuant to Oregon Laws 1987 Chapter 735 (State Remedial Action Program) from the requirements of the proposed rules. The 1987 Oregon Legislature passed Senate Bill 122. That Legislation establishes a program for the removal and remediation of hazards to the public health, safety, welfare, and the environment. Contained in the Bill was the requirement for the Director to establish a Remedial Action Advisory Committee to make recommendations to the Director in establishing the levels, factors, criteria or other provisions for determining the degree of cleanup, and the selection of the required remedial action. A number of specified factors have to be considered in that process.
3. Reorganize the Basic Format. The existing Groundwater Quality Protection Policy contains an opening statement and the following three sections:
 - a. (1) General Policies
 - b. (2) Source Control Policies
 - c. (3) Problem Abatement Policies

The proposed amendments contain three new sections and delete the problem abatement section. They are as follows:

- a. (1) General Policies
- b. (2) Groundwater Quality Management Classification System
- c. (3) Point Source Control Rules
- d. (4) Nonpoint Source Control
- e. (5) Groundwater Quality Standards

The problem abatement policies are incorporated within the framework of the above sections.

4. Opening Statement: The amended opening statement would state that the rules establish the mandatory minimum groundwater protection requirements. By way of comparison, the existing opening statement says, "The following statements of policy are intended to guide...".(emphasis added)
5. The General Policies Section:
 - a. Identifies beneficial uses of groundwater, with drinking water supply identified as being the highest and best use.
 - b. Establishes that it is the policy of the EQC to maintain the highest possible groundwater quality, and protect it from contamination that could impair its beneficial uses.
 - c. Establishes that the Department will implement its groundwater quality protection efforts based upon its priorities and resources.
 - d. Identifies the authorities by which groundwater problem abatement measures may be implemented.
6. The proposed amendments contain a Groundwater Quality Management Classification System. The purpose of this system would be to allow the Environmental Quality Commission to classify groundwaters according to the management requirements determined to be necessary for that particular aquifer. For example, in certain areas of the state the natural groundwater quality is unsuitable for drinking. In those cases, it does not make sense to require certain groundwater protection requirements that are designed to protect the drinking water use of groundwater, such as, certain on-site sewage disposal rules. In other areas, unique uses or sensitivities of the groundwater may require that extra groundwater quality protection be implemented.

It is important to note that the system would be used to determine how the groundwater is to be managed, and is not a system that would classify groundwater strictly according to its quality. Therefore certain areas within a classification could contain groundwater that would be unsuitable for the use for which groundwater is being managed in the area.

The classification system contains three classes; I, II, and III. Class I would be where special groundwater protection is being implemented; Class II would be where standard protection measures are implemented and the groundwater would be managed to provide for its recognized beneficial uses; Class III would be where certain groundwater protection requirements that were designed to protect the groundwater from impairment of drinking water use could be modified.

All groundwater of the state would start out classified as Class II groundwater. The Environmental Quality Commission would then designate areas as Class I, or Class III on a case-by-case basis.

7. Point Source Control Rules: This section contains the specific groundwater protection requirements that would be implemented by the Department where a specific identifiable source or potential source of groundwater contamination could be identified. Consistent with the policy of maintaining highest possible groundwater quality identified in the General Policies section, and as required under water quality standards for each river basin, the highest and best practicable methods for prevention of groundwater contamination would be required. The requirements of the section would be implemented through all relevant Department programs and authorities.

The Point Source Control section contains regulations related to:

- a. Permitted Operations:
- 1) Groundwater Monitoring Program Requirements
 - 2) Reporting Requirements
 - 3) Downgradient Monitoring Point Requirements
 - 4) Compliance Point Requirements
 - 5) Concentration Limits (measured at compliance points)
 - I. Existing Facilities
 - II. New Facilities

- 6) Action Requirements
 - I. Resampling
 - II. Assessment Plans
 - III. Preventative Action
 - IV. Remedial Action
- 7) Alternate Concentration Limits

b. Non-permitted activities: Spills, releases, past practices.

The regulations above would establish when groundwater monitoring would be required, when follow-up assessment work would be required, standards for groundwater protection, where those standards are to be measured, and when remediation would be required.

The main policy questions involved in the Point Source Control Rules and the direction given by the proposed policy are:

a. What should the standard be in measuring groundwater quality impacts, and determining what is acceptable and what is not?

While a strict non-degradation policy would provide the most complete groundwater protection, it would be impossible, in the Department's opinion, to implement, because we now realize that humans cannot exist without impacting in some way the environment around them. This has become increasingly apparent as recent advances in analytical technologies have allowed us to detect contaminants at lower and lower concentrations. Basing protection strictly on numerical standards would allow degradation of the groundwater up to the standard. Any additional contamination could result in groundwater exceeding standards. Numerical standards would not necessarily protect existing high quality water.

The proposed rules would establish a tiered system of groundwater protection. For existing facilities, where often there already are groundwater impacts, contamination could be allowed up to established numerical groundwater standards.

For new facilities where there are not any existing groundwater impacts, no significant (statistical determination) impacts on groundwater quality would be allowed. In either case, an exception could be granted by the Department or EQC to allow an alternative concentration limit, provided that the alternate concentration does not create a substantial present or future hazard to human health or the environment.

Certain members of the Citizens Advisory Committee on Groundwater Quality Protection thought that the alternate concentration limit section should include a process so that anyone could go to the Commission and request an alternative concentration limit be established; it could be either above or below the original concentration limit. This suggestion was not included in the proposed amendments. Under the proposed rules, only the permit holder or the Department could make such an application, similar to all other Department programs relative to the rights of permit holders.

- b. Where should compliance with groundwater quality standards be measured? As close as possible to the source of contamination? At the property boundary? At the closest point of use?

In establishing the compliance point where standards must be met, the Department is in affect defining the mixing zone that would be allowed by the Department. The proposed rules would establish the compliance point at the waste management area boundary unless otherwise specified by the Department. In the Department's opinion, there will be numerous situations where the location of compliance points should be determined on a case by case basis because of unique characteristics of individual situations.

- c. When and to what extent should the Department require remedial action?

Under the proposed rules, the Department could require remedial action sufficient to restore groundwater to specified concentration limits or alternative concentration limits at Department specified compliance points whenever those limits are, or are predicted to be, violated.

- d. To what extent should the regulations contain specific, inflexible requirements, or to what extent should the regulations allow the Department to utilize the professional expertise and judgment of the staff in determining specific application requirements?

concerned with the amount of discretion that was being given to the Department in how proposed rules would be applied, that this was not necessarily viewed as a bad approach, but, that it could be, depending upon how the Department used that authority. They stated that they recognized that increasing specificity in the rules could result in a lack of ability to tailor requirements to each unique situation.

8. The proposed amendments contain a section that prescribes the process by which the Department would address nonpoint source groundwater concerns. These are areas where no specific individual source of contamination can be identified, but contamination exists because of widespread land use activities, such as, urban development, on-site sewage disposal, or agricultural activity. The section contains procedures for identifying vulnerable areas and developing aquifer management plans to protect groundwater quality.

The main policy question addressed in this section is how the Department should respond to groundwater degradation that results from activities that are beyond the scope of specific permit program activities.

9. Section (5) in the proposed amendments contains groundwater quality standards. Included are both narrative and numerical groundwater standards.

The narrative portion states that consistent with the existing anti-degradation policy OAR 340-41-026(1)(a), existing high quality groundwaters which exceed those levels necessary to support recognized and legitimate beneficial uses shall be maintained. This statement along with those in the General Policies section would clearly establish that the goal for groundwater quality management in Oregon would be anti-degradation.

The proposed numerical standards are based upon the U.S. Environmental Protection Agency's drinking water standards and proposed standards. Human consumption is identified as the beneficial use of groundwater that usually requires the highest level of water quality. The standards are meant to be used as yardsticks in determining the severity of impairment, and not to be used as acceptable groundwater quality goals. They would be used by the Department in establishing concentration limits at compliance points, and in determining remedial action requirements.

They could not necessarily be used in evaluating the potential impact of contamination on other beneficial uses of groundwater. In the Department's opinion there is not an adequate data base upon which to develop groundwater quality standards that could ensure protection of all recognized beneficial uses of groundwater for a significant number of common groundwater contaminants.

The following numbers from the U.S. Environmental Protection Agency drinking water regulations were included as proposed groundwater standards:

- a. Adopted Primary Maximum Contaminant Levels.
- b. Adopted Secondary Maximum Contaminant Levels.
- c. Proposed Primary Maximum Contaminant Levels.
- d. Proposed Primary Maximum Contaminant Level Goals.

The Department prepared a number of (5) different drafts of the proposed rules that emphasized different approaches to groundwater quality protection. These alternative approaches are discussed in detail in Attachment A. The Citizens Advisory Committee on Groundwater Quality Protection evaluated the merits of the different alternatives. Each approach has its own unique advantages and disadvantages. The proposed rule amendments developed by the Department staff and the Citizens Advisory Committee contain components from all of these approaches.

The existing rule language and the proposed new rule language are contained in Attachment G. The Department proposes to delete all of the existing language under OAR 340-41-029 and adopt the proposed new language.

Alternatives and Evaluation

The Alternatives are as follows:

1. Authorize the Department to conduct public hearings on the proposed amendments.
2. Do not authorize public hearings....

The Department believes that public hearings are needed to solicit comments and to raise important issues involving groundwater quality protection. Public testimony assists the Department staff in preparing the proposed rule amendments to be presented for Commission consideration and possible adoption.

Summation

1. The Department has had some difficulty in applying the existing General Groundwater Quality Protection Policy.
2. Individual programs have had to develop their own solutions to groundwater quality management. These solutions have not always resulted in consistent groundwater protection requirements.
3. The Department prepared an extensive review of the existing General Groundwater Quality Protection Policy and alternative approaches to groundwater management. This analysis is contained in Attachment A.
4. Beginning with the discussion paper referenced above, and with the assistance of an interagency advisory committee, and a citizens advisory committee, the Department prepared the proposed extensive groundwater quality protection rule revisions.
5. The proposed rule revisions would coordinate groundwater quality protection requirements by establishing minimum groundwater protection requirements. The proposed rules contain: General Policies, Groundwater Quality Management Classification System, Point Source Control Rules, Nonpoint Source Control, and Groundwater Quality Standards.
6. The Department believes that rule amendments are necessary in light of the increasing evidence of groundwater contamination, the potential impact of that contamination on beneficial uses of groundwater, and the difficulty the Department has had in adequately addressing these issues under the existing regulations.
7. The proposed rule amendments are extensive in both scope and potential impact. It should be recognized that the proposed rules are an initial attempt to address a major new area of concern, and that changes and improvements will undoubtedly be necessary as we gain experience in groundwater management. The Department will continue to evaluate proposals submitted and will propose future rule making actions as appropriate. Hearing testimony will undoubtedly raise additional issues which will be discussed as part of the hearing record evaluation and response.

Directors Recommendation

Based on the summation, the Department requests authorization from the Commission to proceed to public hearing to take testimony on the proposed amendments for groundwater quality protection, as presented in Attachment G.

Fred Hansen
Fred Hansen for

Attachments: (7)

- A. Discussion Paper - State Groundwater Quality Protection Program.
- B. Membership List - Citizens Advisory Committee On Groundwater Quality Protection.
- C. Hearing Notice.
- D. Statement of Need for Rulemaking.
- E. Fiscal and Economic Impact Statement.
- F. Land Use Consistency Statement.
- G. Proposed Rule Amendments and Rule References.

Greg A. Pettitt:tas
WT13
229-6065
December 28, 1987

SUMMARY OF PUBLIC TESTIMONY RECEIVED JUNE-AUGUST, 1989

1. Marian Adda, P.O. Box 313, Seal Rock, OR 97376; 7/26/89 (Written Testimony)

Ms. Adda testified that the Department must stop allowing any groundwater degradation to occur no matter what the short term costs to profits and convenience are. The costs of contamination in the long run must be fully considered. The protection of natural resources must not be a short-sighted effort.

2. Allen F. Agnew, Dept. of Geology, Oregon State University, Wilkinson Hall 102, Corvallis, OR 97331-5506; 6/20/89 (Written Testimony)

Professor Agnew complimented the Department staff on the thoroughness and reasonableness of the proposed rule amendments. In addition, he suggested a number of editorial changes.

3. Associated Oregon Industries, P.O. Box 12519, 1149 Court St. NE, Salem, OR 97309-0519; 8/2/89 (Written Testimony)

The Associated Oregon Industries (AOI) reviewed the proposed rules and submitted the following comments:

AOI believes a substantial conflict exists between the authority to control groundwater pollution as granted under OAR Chapter 468 and the groundwater provisions of the recently enacted House Bill 3515. There was some uncertainty in the AOI's view over what governing body (the EQC or the Strategic Water Management Group) has authority over groundwater quality protection. The AOI is also concerned that confusion will result if the Department adopts the proposed rules and then, under an emergency order, adopt a set of numerical standards for groundwater as mandated by the new legislation. As such, the AOI suggested no action be taken by the Commission on the proposed rule amendments until an Attorney General's ruling has been made on the issue of conflicting authorities.

Should the Department proceed to promulgate the proposed rules, AOI was concerned that the rules operate in a reasonable and consistent manner, and offered the following additional comments:

1. If on-site sewage disposal is considered a nonpoint source of contamination, it should be dealt with under the authority of HB 3515 instead of the currently proposed rules.

2. Allowing local programs to propose additional or "non-stringent" (sic) groundwater protection requirements will permit the creation of conflicting rules that are difficult for the regulated community to deal with.
3. AOI found the distinction between "permitted facilities" and "nonpermitted activities" difficult to discern, and suggested that all releases at a currently permitted facility should be treated consistently under the rules.
4. It was not clear to AOI whether or not "permitted operations" is meant to include RCRA facilities.
5. AOI believes the Department should maintain the discretion to establish concentration limits between background and the numerical reference levels at both existing and new facilities.
6. The proposed rules should clearly state that the establishment of concentration limits will not occur until sufficient site characterization has occurred to allow for reasoned decision-making in the setting of the relevant limits.
7. The need for sufficient site characterization prior to setting permit-specific concentration limits is necessary also in cases where concentration limit variances may be sought.
8. AOI believes the Department should require full remedial investigations and feasibility studies at particular sites and for contaminants not listed in Tables 1-3 only on a case-by-case basis.
9. Information regarding the potential for the release of any substances or treatment residuals that might remain after remedial action should be eliminated from the remedial investigation requirements and be made part of the feasibility study.
10. AOI believed it would be more appropriate to use filtered rather than unfiltered samples for metals analyses.
11. AOI was confused about how the rules are to be implemented for non-permitted activities and whether or not such activities would be put on permits.
12. The rules should clearly define what the term "liable person(s)" means with regard to non-permitted activities.
13. AOI perceived problems and inconsistencies with the way the rules address study and cleanup requirements for non-permitted activities and similar requirements for permitted operations. Demonstration of a "likely adverse groundwater quality impact" through groundwater monitoring should be a prerequisite to a remedial investigation at non-permitted activities. Concentration

limit variance should be made available to non-permitted activities to ensure that unnecessary and expensive cleanup steps are not taken in situations where they are not required to remove all reasonable threats to human health and the environment.

14. AOI re-submitted the comments made by Tom Donaca on the proposed rules in August, 1988. (A summary of those comments and the Department's response to them may be found along with the summary and response to testimony received as a part of the hearings process which took place in July and August, 1988.)

4. Paul Bonneau, 12820 SW Sixth, Beaverton, OR 97005; 8/1/89 (Written Testimony)

Mr. Bonneau implored the Department not to permit further pollution of the groundwater by manmade chemicals. He opposes the proposed rule amendments because they would allow permit conditions to be negotiated on a case-by-case basis. While past mistakes which have resulted in the permanent contamination of Oregon's groundwater may be forgiven, further violations for the sake of economical convenience is unacceptable.

5. Sheila Canal, 4077 Humbug Creek Rd., Jacksonville, OR 97530; 7/18/89 (Oral Testimony)

Ms. Canal commented on the proposed rules as a representative of SALUD, a local grassroots organization which educates farm workers and the community at large about the hazards associated with the use of and exposure to agricultural chemicals. Ms. Canal wished to convey to the Commission that the issue of groundwater protection is one the general public feels strongly about. She commended the Department on its recent work toward passing the new groundwater act, and hoped to see even more efforts put into preventing groundwater contamination in the future. In closing, Ms. Canal stated that as a mother of a young child she would like future generations to have access to safe supplies of groundwater for drinking water and other uses.

6. Ken Cerotsky, Springfield Utility Board Water Department, 250 North "A" St., P.O. Box 300, Springfield, OR 97477; 8/18/89 (Written Testimony)

Mr. Cerotsky urged the Department to adopt guidance levels and reference levels that are consistent with proposed federal drinking water regulations in the interest of consistency and understanding for the general public.

7. John A. Charles, Oregon Environmental Council, 2637 S.W. Water Ave., Portland, OR 97201; 8/2/89 (Written Testimony)

The Oregon Environmental Council (OEC) supports the proposed rules and especially supports the following critical elements:

1. Protection of Oregon's groundwater resources for both current and future beneficial uses;
2. The emphasis on prevention of contamination;
3. Permits are to specify groundwater monitoring and reporting requirements as well as action requirements including prevention of future degradation if contamination occurs.
4. Setting concentration limits at background for all new permits and for some existing permits, amounting to a nondegradation policy in these cases; and
5. Specified concentration limit variances require public involvement and put the burden of proof on the applicant to show that no threat to the public or the environment will result from the variance.

OEC also supports the statement in 340-40-080 (1) that the numerical groundwater quality reference levels are for reference and not to be used as goals. To more specifically reinforce this point, a revision in wording under 340-40-030 (3)(a) was suggested in which the concentration limit at existing facilities would be established at the "lowest practicable level" between background water quality levels and the reference level.

In conclusion, with the exception of the suggested change noted above, OEC supports the adoption of the proposed rule package.

8. David H. Couch, Bogle & Gates, 1400 KOIN Center, 222 S.W. Columbia, Portland, OR 97201; 8/2/89 (Written Testimony)

Bogle & Gates supports the Department's policy of protecting, maintaining, and improving the quality of the waters of the State for beneficial uses, and commends the Department for its efforts in developing the rule drafts. Further comments from Bogle & Gates are as follows:

The Land Use Consistency statement does not provide enough explanation to show that the proposed rules conform with statewide planning goals.

The Fiscal and Economic Impact statement accompanying the rule package does not include sufficient information regarding the consideration given to significant adverse effects upon small

businesses and specific methods to reduce those effects as required by ORS 183.335 (2)(b)(d).

Because Bogle & Gates believes that the newly enacted House Bill 3515 appears to change the authority of the Environmental Quality Commission to promulgate new rules, it is recommended that the currently proposed rule adoption be delayed until the Oregon Attorney General has analyzed the issue.

The proposed rules introduce a method of establishing concentration limits and compliance points at facilities without sufficient technical information on which to base those decisions. The distinction between new and existing facilities is difficult to make, and Bogle & Gate questions the need for such a distinction in setting permit-specific concentration limits. In addition, Bogle & Gates expressed concern that the concentration limit variance lacks sufficient flexibility and the data requirements for obtaining a variance are too burdensome, especially for small businesses.

In conclusion, Bogle & Gates encouraged the Environmental Quality Commission to postpone final consideration of the proposed rules until the impacts of HB 3515 have been analyzed and addressed.

9. David L. Craig, Pacific Power & Light Co., 920 SW 6th Ave., Portland, OR 97204; 7/26/89 & 8/2/89 (Oral & Written Testimony)

Mr. Craig submitted testimony on behalf of Pacific Power & Light Co. (Pacific), and outlined the company's concerns as follows:

1. Section 6 under the general policies should indicate that opportunities for public participation will be provided.
2. Pacific submitted language for inclusion Section 7 of the general policies which would emphasize the natural variability in groundwater quality.
3. Pacific suggested more specific language be included in the rules to address the placement of downgradient detection monitoring points and compliance monitoring points.
4. The proposed process for setting concentration limits will be extremely burdensome for existing facilities according to Pacific. The economics of operating these facilities may have been based on a regulatory approach which did not emphasize groundwater protection, and in some cases the immediate imposition of the proposed requirements could force some facilities to close down. Pacific suggested that the regulation be phased in over a period of ten years for existing facilities, allowing them an opportunity to spread out the costs of compliance.

5. The Director should have the authority to approve all concentration limit variances after opportunity for detailed technical review and public comment. As proposed, the rules would require the EQC to consider certain variance applications, resulting in a prolonged permitting process and unnecessarily placing a technical burden on a policy-setting group.

6. The rule language in OAR 340-40-040 (1) was found to be somewhat confusing. Pacific suggested the section be broken up into more than one sentence in order to make its intent clearer.

7. The entire section on "Selection of Remedial Action" appears a workable and reasonable approach to groundwater cleanups.

8. Pacific expressed support for the method with which the Department proposes to deal with the contaminants which have guidance levels listed in Table 3.

In conclusion, Mr. Craig commended the Department for giving him and others the opportunity to provide input into the formulation of the proposed rules. In particular, he was pleased with the way the public review period was handled since August, 1988, when the last public hearings were held on the proposed rules.

10. Jim Craven, American Electronics Association, Oregon Council, 707 13th St., SE, Suite 118, Salem, OR 97301; 8/2/89 (Written Testimony)

Mr. Craven submitted testimony on behalf of the Oregon Council of the American Electronics Association (AEA), and commented primarily on the legal authority for the proposed rules in light of the recently enacted HB 3515. The AEA believes HB 3515 takes precedence over the mandate of ORS 468, making the current rule making process null and void. If the currently proposed rules are not abandoned, then the AEA believes that, if adopted, the proposed rule amendments might serve as "interim rules" only until "final rules" are adopted under HB 3515.

11. Philip Curtis, 1440 N. Valley View Rd., Ashland, OR 97520; 7/18/89 (Oral Testimony)

Mr. Curtis commented as a concerned citizen, and stated that he felt the proposed rules represented a significant step forward that will result in long-term improvement in the protection of the uses of groundwater, for now and in the future. Other observations made by him were:

1. An "urgency process" is needed for changing the reference and guidance levels in the rules as new standards are developed. Such a process would be more effective than the established

administrative process, saving the staff time and the commission embarrassment.

2. Existing geology should be included when determining if some areas of the state are pollution prone and should receive more attention than other areas.

3. Mr. Curtis urged the Department to undertake positive cooperative efforts with other agencies for both agricultural and industrial applications.

In conclusion, Mr. Curtis strongly suggested a better enforcement program be implemented, stating that additional inspection staffing will most likely be necessary.

12. Myra Erwin, Rogue Group Sierra Club, 300 Grandview Dr., Ashland, OR 97520; 7/18/89 (Written & Oral Testimony)

Ms. Erwin delivered oral comments on behalf of the Rogue Group Sierra Club. The Rogue Group is concerned about the increasing incidence of groundwater contamination problems and the difficulty of addressing those problems using the existing rules. The proposed amendments can significantly improve the present situation in terms of protecting groundwater, generating valuable baseline information, and aiding in avoiding litigation and cleanup costs. The Rogue Group is especially supportive of the proposed rules' antidegradation policy. Ms. Erwin stated that the Rogue Group would have preferred the use of "highest and best available technology" rather than "highest and best practicable technology". The Rogue Group Sierra Club was pleased with the rule proposal overall, and offered its support for their adoption.

13. Wallace Eubanks, 410 Evans N., Salem, OR 97303; 7/24/89 (Written Testimony)

Mr. Eubanks expressed concern about the availability of good water for future generations. He stated that the preservation of high water quality should be the Department's first priority. Additional points he commented on are: (1) The Department should not allow any contamination of water. (2) The groundwater quality reference levels must be based on human health, and consider aquatic organisms as well as their ecosystems. (3) There should be greater opportunity for public involvement when remedial action plans are developed.

14. Brett A. Fisher, Northwest Coalition for Alternatives to Pesticides, P.O. Box 1393, Eugene, OR 97440; 7/17/89 & 7/31/89
(Oral and Written Testimony)

The Northwest Coalition for Alternatives to Pesticides (NCAP) commends the Commission and the Department for taking steps to strengthen protection of Oregon's groundwater, and for making the protection of human health and the environment a high priority.

NCAP is concerned that the numerical groundwater quality reference levels given in Tables 1 and 2 are not adequate to protect human health as stated in the proposed rules. The cancer risk associated with some of the proposed contaminant levels exceeds the one cancer in a million risk identified by the EPA. NCAP urges the Department to call for the highest level of protection and allow no carcinogens to be discharged into Oregon's groundwater. Further, NCAP believes the Department should explicitly state in the rules that the implications of adopting and using any standards as groundwater quality standards include allowing groundwater degradation. NCAP is also concerned that the number of contaminants listed in the rules is inadequate and could lead to limited groundwater protection by not requiring facilities to monitor for all possible contaminants.

NCAP objects to the Department's practice of issuing permits to discharge wastes to groundwater, specifically when this is done on a contaminant-by-contaminant basis for each facility. NCAP also opposes the proposed method of setting permit-specific concentration limits for new and existing facilities, stating that older facilities will be allowed to cause more contamination than new ones. In addition, NCAP believes the Department should not allow individual facilities to negotiate for concentration limit variances. While opportunity for public review and comment are available when a variance is sought, NCAP doubts that meaningful public involvement will be possible because precise guidelines are lacking.

NCAP believes the rules should be less flexible in regulating nonpermitted activities and in requiring responsible parties to perform cleanup activities as well as inform the public of the contamination.

NCAP states that the goals and policies of the proposed rules need to be consistent with those set forth in the newly enacted HB 3515 groundwater act. NCAP believes that the provisions under HB 3515 are in conflict with the proposed rules. In particular, the public must be able to comment on draft remedial action plans and the facility must be required to respond to and incorporate substantial comments on the draft plan into a final plan prior to the Director's final decision. In addition, the proposed rules need provisions for public education, research and demonstration projects to prevent groundwater degradation, and they lack the same emphasis on best practicable management practices that is

included in HB 3515. NCAP strongly advocates public involvement in groundwater protection with a proactive approach to preventing and reducing groundwater contamination.

Attached to the written testimony submitted by NCAP were excerpts taken from the 1988 U.S. General Accounting Office report, Groundwater Protection: The Use of Drinking Water Standards by the States. Also attached was correspondence from Mary H. O'Brien discussing aquatic life guidelines and amounts of compounds associated with a one in one million cancer risk.

15. Annette Gurdjian, 95 W. 30 Ave., Eugene, OR 97405; 7/24/89
(Written Testimony)

Ms. Gurdjian commented that the Department should not permit any groundwater contamination. Industries should be held responsible for informing the public about groundwater contamination and for cleaning it up.

She stated that the reference levels in Tables 1 through 3 of the proposed rules should be health based and consider aquatic organisms as well.

In conclusion, Ms. Gurdjian recommended more opportunities for public involvement be made available when a facility develops remedial action plan options.

16. R. J. Hess, Portland General Electric Co., 121 SW Salmon St., Portland, OR 97204; 8/2/89 (Written Testimony)

Mr. Hess, commenting on behalf of Portland General Electric Co. (PGE) requested the Environmental Quality Commission take no action on the proposed rules until all the effects of the passage of HB 3515 have been fully understood. PGE believes the proposed rules may be in conflict with provisions made under HB 3515, including basic areas such as who has authority to regulate groundwater quality. When the proposed rules have been written so as to be in compliance with HB 3515, PGE suggests that the following issues be given special attention:

1. The proposed rules should specify methods to be used in sampling and laboratory analyses of groundwater samples. In order to be in compliance with provisions under HB 3515, special attention should be given to which methods are specified. In addition, PGE suggests that water samples should be filtered through a 0.45 micron filter to 1.0 TU before analyses. To require analyses be made on unfiltered water would be an unduly conservative requirement in PGE's opinion.

2. The National Secondary Drinking Water Standards may not be appropriate in the rules (Table 3) since they are not reference in

Section 24 of HB 3515 and since they do not have adverse affects on public health and safety. PGE suggested that the Department would be assuming the authority of the Health Division by enforcing any secondary drinking water standards.

3. PGE commented that the rules should be consistent in stating the beneficial uses of groundwater and the ranking of those beneficial uses. In addition, PGE stated that the Department lacks the statutory authority to declare that human consumption is the "highest and best use" of groundwater.

4. The proposed process for obtaining a concentration limit variance is too burdensome and may put people out of business according to PGE. PGE also questions the legality of granting variances under the Clean Water Act.

5. PGE recommended that the rules clearly state which activities and facilities are to be regulated by which rules.

6. The financial statement for the rules should show both the cost to implement the rules to both the regulated community and the DEQ, direct and indirect. PGE requests the Department show numerical values wherever possible.

In conclusion, PGE suggests that the money spent to protect most shallow aquifers could be better used on other programs.

17. Jerolee W. Hickey, 407 "M" Ave., LaGrande, OR 97850; 9/5/89
(Written Testimony)

Jerolee Hickey commented in writing that while she opposes groundwater degradation, she feels that the proposed rule changes will only serve to benefit the insurance industry. It was recommended that the proposed rules not be adopted.

18. David Hopkins, 2221 SW 1st, #1321, Portland, OR 97201; 7/31/89
(Written Testimony)

Mr. Hopkins commented that the proposed rule amendments do not go far enough toward providing environmental quality to Oregonians. He stated that levels of contamination should be health based and non-negotiable. When contamination does occur, he suggested industry should be required to: (1) inform the public, (2) provide opportunities for public comment on draft and final remedial action plans, and (3) take responsibility for cleanup.

19. Robert R. Jones, Route 1, Box 235, Hillsboro, OR 97124; 8/1/89
(Written Testimony)

Mr. Jones does not believe any ongoing groundwater contamination is acceptable to the public or defensible by the Department given the present level of knowledge about the impact of industrial effluent on groundwater resources. Groundwater contamination should be non-negotiable.

He also stated that the proposed amendments should not allow existing facilities to be subject to lesser controls. Public assistance should be made available to aid those facilities in upgrading their pollution controls rather than simply tolerating continuing pollution practices.

Mr. Jones objected to the inclusion of Tables 1 through 3, stating that the reference levels are not health-based.

In conclusion, he stated that groundwater belongs to the public, and should not be used as an industry dumping ground. He supported the rules requiring facilities to clean up contaminated groundwater, but called for more opportunities for public involvement during the development of remedial action plans.

20. Joanna Karl, 2022 SE 42 Ave., Portland, OR 97215; 7/24/89 (Written Testimony)

Ms. Karl was concerned that the proposed rule changes make industrial groundwater contamination a negotiable process. No amount of any contaminant should be allowed. She commented that the proposed groundwater quality reference levels are not health-based and they do not consider aquatic organisms. In addition, she stated that there need to be more opportunities for public involvement in the development and selection of remedial action plans.

21. Becky Kreag, Oregon Water Resources Department, 3850 Portland Road NE, Salem, OR 97310; 7/30/89 (Written Testimony)

Ms. Kreag commended the Department for proposing rules that are understandable, provide for action, and are a strong improvement over the existing groundwater protection policy. She submitted the following comments provided to her by Water Resources Department (WRD) staff:

WRD suggested the Division 40 preface or policy section state that the rules are directed towards point sources and only certain nonpoint source problems since the bulk of any nonpoint source rules have yet to be written.

Section 10 under the general policies gives conditions under which short-term continued degradation may be allowed. These conditions should specify that degradation will only be allowed if the purpose is to develop an abatement plan or implement the approved abatement plan on schedules approved by the Department.

If the proposed rules are to be applied to underground injection activities such as artificial groundwater recharge activities, then the groundwater monitoring requirements and concentration limit provisions under the point source control rules should be modified accordingly.

The word, "significant," as used to describe changes in groundwater quality that may lead to action requirements should be defined unless it is the intent of the Department to retain some discretionary authority.

WRD questions the ability of the Department to measure the cost/benefit of clean water to the public when selecting a remedial action option. Also, if a non-permitted activity has resulted in groundwater contamination and no liable party can be found, how will the matter be addressed?

Once the proposed rule amendments are adopted, WRD would like to work with the Department to submit them for inclusion in the state water management program document.

22. Jeff Leighton, City of Portland, Bureau of Water Works, 1120 S.W. 5th Ave., Portland, OR 97204-1926; 8/2/89 (Written Testimony)

In addition to editorial suggestions aimed at improving rule clarity and intent, the City of Portland Water Bureau submitted a variety of comments on the proposed rules as follows:

Land Use Consistency: Consideration should be given as to whether the proposed rules conform to the statewide planning goal #5 in the Land Use Consistency statement.

Point Source Control Section: The proposed rules should directly address potential problems from the disposal of storm water via sumps and dry wells. The Department should consider requiring all point sources of contamination to implement groundwater monitoring programs, and putting them on permits if a release is noted.

Background water quality should be monitored in all potentially affected aquifers, not just the uppermost aquifer. In-situ leak detection systems are preferable to groundwater detection monitoring when trying to prevent contamination from reaching the groundwater. All groundwater is a public resource to be protected, including that which is located under a permitted facility; the proposed rules will allow groundwater to be degraded

beneath a facility as long as it is upgradient from a compliance point.

Allowing concentration limit variances in excess of the numerical groundwater quality reference levels will result in an aquifer becoming unsuitable for human consumption, and will not protect the aquifer for that particular beneficial use, either now or in the future. The term "significant" as applied to changes in water quality should be more clearly defined under the Action Requirements.

Selection of Remedial Action: The language given in the rules should clearly state that the permit-specific concentration limit is protective of human health if it is at or below the reference levels in Tables 1 through 3.

Numerical Groundwater Quality Reference Levels and Guidance Levels: The definitions given for and references in other parts of the proposed rules to the "guidance levels" and "reference levels" need to clearly state that water quality at (but not above) the numerical groundwater quality reference levels listed in Tables 1 through 3 is suitable for human consumption.

23. JoAnn McCauley, Lane Council of Governments, 125 E. 8th Ave., Eugene, OR 97401; 8/3/89 (Written Testimony)

Clearinghouse comments from the Lane COG included concerns by Lane Community College that the cost estimates given for implementation of the proposed rule amendments were too low. Guidelines for Department staff are lacking in specificity and could result in inequities in implementation. A phased-in approach for implementation of the rules would provide ample opportunity to integrate the additional costs to the local budgeting process.

24. Claudeen Cline Naffziger, Ph.D., Psychologist, 2221 Bristol, Eugene, OR 97403; 8/2/89 (Written Testimony)

Ms. Naffziger stated that industries should not be allowed to contaminate groundwater to any degree, and that the groundwater quality reference levels should consider aquatic life as well human health. She also commented that all phases of remedial action plan development should be open to public involvement.

25. Catherine Nollenberger, 1026 Henry St., #8, Ashland, OR 97520; 7/20/89 (Written Testimony)

Ms. Nollenberger urges the Department to adopt and enforce strong regulations to protect groundwater quality. She was alarmed to learn that groundwater in Oregon is contaminated by such things as trichloroethylene (TCE).

26. Edward N. Olson, Medford Water Commission, 411 West 8th St., Medford, OR 97501-3189; 7/24/89 (Written Testimony)

Mr. Olson submitted testimony on behalf of the Medford Water Commission. They emphasized the importance of groundwater protection and offered the following comments:

1. The proposed rules will provide very limited groundwater protection due to the fact that the "waste" material under regulation constitutes only a narrow band of likely groundwater contaminants.

2. The rules should be set up to automatically adopt new federal contaminant reference and guidance levels as standards are established.

3. The reference level list should include bacteriological and virus contaminants.

In conclusion, Mr. Olson expressed a desire for further rule development to address other areas of groundwater protection such as that related to nonpoint source discharges.

27. Gregory Paris, 2920 A S.E. 109th, Portland, OR 97266; 7/26/89 (Written Testimony)

Mr. Paris urged the Department to stop permitting groundwater contamination. If contamination does occur, he stated that the industry responsible for it should clean it up and pay for it.

He commented that the reference levels given in Tables 1 through 3 in the proposed rules are not health based and do not consider aquatic organisms.

Since groundwater is a public resource, he believes the public should be involved in the development of draft remedial action plans.

28. Larry D. Patterson, Penwalt Corporation, P.O. Box 4102, Portland, OR 97208; 7/31/89 (Written Testimony)

Mr. Patterson believes the adoption of the amendments to the General Groundwater Quality Protection Policy should be delayed in view of the recently enacted House Bill 3515. In addition, he suggested modifications to the currently proposed rules as follows:

1. He found the definitions for "Permitted Operations" and "Non-

Permitted Activity" to be confusing, and suggested the latter refer to "facilities" rather than "activities".

2. 340-40-030 (5)(a) should be changed to reflect a significant change in the groundwater quality of a downgradient well to avoid unnecessarily requiring a permittee to perform a preliminary assessment if a change should occur at an upgradient well.

3. Mr. Patterson was confused by the concept of establishing the background concentration limit and the corresponding cleanup concentration level in the case of a release at a nonpermitted activity. He recommended the concentration limit variance be made possible for nonpermitted activities.

4. He suggested that compliance points and concentration limit variances may not always be a necessary requirement under certain circumstances.

29. Sandy Reed, 85139 Apple Tree Drive, Eugene, OR 97405; 7/17/89
(Oral Testimony)

Ms. Reed expressed concern about lagoons and septic systems that have been permitted in the Spencer Creek - Fern Ridge area. She stated that such permits should not be allowed in a flood areas where both ground and surface water may be polluted. Ms. Reed requested the permitting process be re-examined.

30. Paul and Joyce Riedell, 85532 Appletree Dr., Eugene, OR 97402;
8/3/89 (Written Testimony)

Mr. & Ms. Riedell expressed a vested interest in any decisions regarding groundwater quality or quantity. They appreciate the Department's farsightedness in addressing the issue of water pollution.

31. Michael Schroeder, Northwest Food Processors Association, 2300 SW
1st Ave., Portland, OR 97201-5047; 8/2/89 (Written Testimony)

Northwest Food Processors Association (NWFPFA) supported the Department's goal of adopting rules to ensure adequate groundwater protection. However, NWFPFA expressed concern that the proposed rules may conflict with requirements contained in the recently enacted House Bill 3515 and create a situation in which it would be difficult for food processors to comply with State regulations. In addition, NWFPFA felt the wording in the proposed rules lacked clarity and order. In conclusion, NWFPFA recommended the proposed rules be withdrawn and that the matter be referred to the Strategic Water Management Group⁰ for the development and proposal of new rules.

32. Kara Stebbins, 2221 SW 1st, #1321, Portland, OR 97201; 7/25/89
(Written Testimony)

Ms. Stebbins commented that the proposed rule amendments do not go far enough toward providing environmental quality to Oregonians. She stated that levels of contamination should be health based and non-negotiable. When contamination does occur, she suggested industry should be required to: (1) inform the public, (2) provide opportunities for public comment on draft and final remedial action plans, and (3) take responsibility for cleanup.

33. Jan Wroncy, Oregon Tilth, Residents of Oregon Against Deadly Sprays and Smoke (ROADS2), P.O. Box 1101, Eugene, OR 97440; 8/2/89 (Written Testimony)

Oregon Tilth and ROADS2 commented that the goal of the proposed rules should be to prevent any and all human-caused pollution of the waters of the state and to return the waters of the state to a condition as close to pristine as possible. The Department is required under federal law to protect the environment as a public resource.

Oregon Tilth and ROADS2 believe the implementation of the proposed rules will result in: degradation of the waters of the state; immeasurable suffering by people, the environment, and ecosystems; irreversible and irreparable harm; and one or more lawsuits for violations of federal and state laws. The Department was urged to revise and resubmit the proposed rules for further public comment.

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Notice of Public Hearing

Hearing Date: Noted below
 Comments Due: August 16, 1988
 5:00 p.m.

WHO IS

AFFECTED: All businesses, residents, industries, and local governments in the State of Oregon.

WHAT IS

PROPOSED: The Department proposes to amend the existing General Groundwater Quality Protection Policy as contained in the Oregon Water Quality Rules Chapter 340, Division 41, Section 029.

WHAT ARE THE HIGHLIGHTS:

Over the last several years, evidence of groundwater quality problems has increased in the State of Oregon. The Environmental Quality Commission adopted a General Groundwater Quality Protection Policy in August of 1981. The Department of Environmental Quality has had difficulty in applying the policy to some specific problem situations. Consequently, the Department proposes to amend the policy to include more specific guidance on how groundwater quality protection is to be implemented. The proposed amendments to the policy include the following:

- a) **General Policies:** This section establishes the general policies that are to guide groundwater protection activities.
- b) **Point Source Control Rules:** These rules establish the specific groundwater quality requirements for point sources, and the requirements for remedial action when groundwater has been polluted.
- c) **On-Site Sewage Disposal:** This section sets up the procedure addressing area wide on-site sewage disposal problems.
- d) **Groundwater Quality Standard:** This section establishes a standard of anti-degradation for the groundwaters of the State.
- e) **Groundwater Quality Numerical Reference Levels:** This section establishes numerical groundwater quality reference levels that are to be used in setting permit specific concentration limits, and determining clean-up levels.



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.

HOW TO COMMENT:

Public Hearings Schedule:

Medford -- August 8, 1988, 6:00 p.m., City Council Chambers, 3rd Floor, City Hall, 411 W. 8th (at the corner of 8th & Oak), Medford, Oregon

Eugene -- August 9, 1988, 6:00 p.m., Room 308, Forum Building, Lane Community College, 4000 E. 30th Ave. (30th at I-5), Eugene, Oregon

Pendleton -- August 10, 1988, 6:00 p.m., 1st Floor Conference Room, State Office Building, 700 SE Emigrant St., Pendleton, Oregon

Portland -- August 11, 1988, 6:00 p.m., Room 338, Smith Memorial Center, Portland State University, 1825 S.W. Broadway (on Broadway between Montgomery & Harrison), Portland, 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
Water Quality Division
Planning and Monitoring Section
811 S.W. Sixth Avenue
Portland, OR 97204

The comment period will end on August 16, 1988, at 5:00 p.m.

For more information or copies of documents, contact Lucinda Bidleman at 229-6295 or toll-free 1-800-452-4011.

WHAT IS THE

NEXT STEP:

After the public testimony has been received and evaluated, the proposed amendments will be revised as appropriate, and will be presented to the Environmental Quality Commission for their consideration. The Commission may adopt rule amendments, adopt modified rule amendments, or decline to adopt rule amendments and take no further action.

WC3530

STATEMENT OF NEED FOR RULE MAKING

Pursuant to ORS 183.335(7), this statement provides information on the Environmental Quality Commission's intended action to adopt rules.

(1) Legal Authority.

Oregon Revised Statute (ORS) 468.015 and 468.020 provide the Commission with the authority to establish the policies, rules, and standards necessary and proper in performing the functions vested by law in the Commission, including the policies and purposes of ORS Chapter 468. It is the public policy of the state as defined in ORS 468.710 to protect and improve public water quality for beneficial uses including: "public water supplies, for the propagation of municipal, recreational and other beneficial uses." ORS 468.710, 468.715, and 468.720 go on to further state that "no waste be discharged to waters of the state without first receiving necessary treatment..."; that "all available and necessary methods" be used to prevent pollution and that waste not be allowed to "escape or be carried into the waters of the state by any means." ORS 468.700(7) includes in its definition of wastes "...substances which will or may cause pollution or tend to cause pollution of any water of the state." ORS 468.700 (8) includes in its definition of waters of the state "...underground waters...." ORS 468.735 provides that the commission by rule may establish standards of quality and purity for the waters of the state in accordance with the public policy set forth in ORS 468.710.

(2) Need For Rule.

Over the last few years there has been a rapid increase in the number of groundwater contamination incidents to which the Department has had to respond. Current rules lack the specific direction and specificity the Department needs to respond to these incidents, and to ensure that future contamination of groundwater is minimized. The proposed rule amendments contain general policies, point source control rules, and groundwater quality standards.

Adoption of the proposed rule amendments, modification of those amendments or no action may be taken by the Commission after the hearing record has been evaluated.

(3) Principal Documents Relied Upon in this Rule Making.

Discussion Paper, State Groundwater Quality Protection Program, July 14, 1986, Oregon Department of Environmental Quality.

Statement of Need for Rule Making
Page 2

Federal Register, Vol. 44, No. 140, July 19, 1979, National Secondary Drinking Water Regulations.

Federal Register, Vol. 50, No. 219, November 13, 1985, Part III, Part IV, National Primary Drinking Water Regulations, Proposed Rule.

Groundwater Protection Strategy for the Environmental Protection Agency, August, 1984.

Groundwater Quality Protection State and Local Strategies, Prepared by Committee on Groundwater Quality Protection, National Research Council, 1986.

Groundwater - Saving the Unseen Resource, The National Groundwater Policy Forum, November, 1985.

Oregon Revised Statutes 468.005-468.035, 468.700-468.740.

FISCAL AND ECONOMIC IMPACT

Adoption and implementation of the proposed revisions to the groundwater quality protection rules could result in increased costs to local governments, small and large businesses, industries, private and public utilities, and individuals. Specifically, increased cost for groundwater monitoring, hydrogeological assessments, groundwater quality protection capital construction improvements, increased operating costs, and remediation of contaminated groundwater could be incurred.

Long term economic benefits would be gained by the protection of groundwater from contamination that would result in loss of its availability to meet beneficial uses. Alternate water supplies would have to be made available, or groundwater quality treatment and remediation implemented. Such cost savings would benefit potential responsible parties, public and private water supply systems, individual groundwater users, irrigators, and industrial groundwater users, as well as local, state, and federal government entities.

Reduced contamination of groundwater as a result of the proposed rules would result in reduced public exposure to toxic and carcinogenic contaminants. This would result in reduced illnesses, increased productivity, and reduced medical expenses.

In summary, the fiscal and economic impacts are not well defined. There would be immediate cost to achieve compliance, and long term benefits and cost savings. Public comment on any fiscal and economic impact is welcome and may be submitted in the same manner as indicated for testimony on this notice.

Following is the amended rule language that is proposed to replace existing rule language under Oregon Administrative Rule (OAR) 340-41-029, and new definitions that would be included in the definitions Section OAR 340-41-006.

GROUNDWATER QUALITY PROTECTION

340-41-029 The following regulations establish the mandatory minimum groundwater quality protection requirements for federal and state agencies, cities, counties, industries, and citizens. Other federal, state, and local programs may contain additional or more stringent groundwater quality protection requirements. Unless specifically exempted by statute, groundwater quality protection requirements must meet or be equivalent to these regulations. Removal and remedial actions conducted pursuant to Oregon Revised Statutes (ORS) 466.540 to 466.590 shall not be subject to the requirements of these rules (340-41-029).

(1) GENERAL POLICIES:

- (a) Groundwater is a critical natural resource providing domestic, industrial, and agricultural water supply; and other legitimate beneficial uses; and also providing base flow for rivers, lakes, streams, and marshes.
- (b) Groundwater, once polluted, is difficult and sometimes impossible to clean up. Therefore, it is the policy of the EQC to emphasize the prevention of groundwater contamination, and to control waste discharges to groundwater so that the highest possible groundwater quality is maintained.
- (c) All groundwaters of the state shall be protected from pollution that could impair existing or potential beneficial uses for which the natural water quality of the aquifer is adequate. Among the recognized beneficial uses of groundwater, domestic water supply is recognized as being the highest and best use and the use that would usually require the highest level of water quality.
- (d) Section (5) of this rule contains numerical groundwater quality reference levels. The purpose of these levels is to indicate when groundwater is not suitable for human consumption. They are to be used by the Department and the public to aid in evaluating the significance of a particular chemical concentration. These levels should not be construed as acceptable groundwater quality goals because it is the policy of the EQC (340-41-026(1)(a)) to maintain and preserve the highest possible groundwater quality.
- (e) For pollutant parameters for which numerical groundwater quality reference levels have not been established, or for evaluating

adverse impacts on beneficial uses other than human consumption, the Department shall make use of the most current and scientifically valid information available in determining at what levels pollutants may affect present or potential beneficial uses.

- (f) The Department shall develop, implement and conduct a comprehensive groundwater quality protection program. The program shall contain strategies and methods for problem abatement and control of both point and nonpoint sources of groundwater pollution. The Department shall seek the assistance of federal, state, and local governments in implementing the program.
- (g) In order to assure maximum reasonable protection of public health, the public should be informed that groundwater, and most particularly local flow systems or water table aquifers, should not be assumed to be safe for domestic use unless quality testing demonstrates a safe supply. The Department shall work cooperatively with the Water Resources Department and the Health Division in identifying areas where groundwater contamination may affect beneficial uses.
- (h) The Department shall concentrate its groundwater quality protection implementation efforts in areas where practices and activities have the greatest potential for degrading groundwater quality, and where potential groundwater quality contamination would have the greatest adverse impact on beneficial uses. Therefore, the Department shall implement these rules based upon priorities it establishes which reflect the agency's available resources and the severity of threat to the groundwater and to public health.
- (i) The Department shall work cooperatively with the Water Resources Department to characterize the physical and chemical characteristics of the aquifers of the state. The Department will seek the assistance and cooperation of the Water Resources Department to design an ambient monitoring program adequate to determine representative groundwater quality for significant groundwater flow systems. The Department shall assist and cooperate with the Water Resources Department in its groundwater studies. The Department shall also seek the advice, assistance, and cooperation of local, state, and federal agencies to identify and resolve groundwater quality problems.
- (j) It is the intent of the EQC to see that groundwater problem abatement plans are developed and implemented in a timely fashion. In order to accomplish this, all available and appropriate statutory and administrative authorities will be utilized, including but not limited to: permits, special permit conditions, penalties, fines, Commission orders, compliance schedules, moratoriums, Department orders, and geographic rules. It is recognized, however, that in some cases the identification, evaluation and implementation of abatement measures may take time and that continued degradation may occur while the plan is being

developed and implemented. The EQC may allow short-term continued degradation only if the beneficial uses, public health, and groundwater resources are not significantly affected, and only if the approved abatement plan is being implemented on a schedule approved by the Department.

(2) POINT SOURCE CONTROL RULES:

The following point source control rules apply to all groundwaters of the state:

- (a) In order to minimize groundwater quality degradation potentially resulting from point source activities, point sources shall employ the highest and best practicable methods to prevent the movement of pollutants to groundwater. Among other factors, available technologies, cost, public health protection, site characteristics, pollutant toxicity and persistence, and state and federal regulations shall be considered in arriving at a case-by-case determination of highest and best practicable methods.
- (b) Activities that could result in the disposal of wastes onto or into the ground in a manner which allows potential movement of pollutants to groundwater shall be regulated by utilizing all available and appropriate statutory and administrative authorities, including but not limited to: permits, fines, Commission orders, compliance schedules, moratoriums, Department orders, and geographic rules. These groundwater quality protection requirements shall be implemented through the Department's Water Pollution Control program, Solid Waste Disposal program, Individual On-Site (Subsurface) Sewage Disposal System Construction program, Hazardous Waste Facility (RCRA) program, Underground Storage Tank program, Underground Injection Control program, Emergency Spill Response program, Remedial Action program, or other programs, whichever is appropriate.
- (c) **Permitted Operations:**
 - (A) Program permits shall, as deemed necessary by the Director, specify appropriate groundwater quality protection requirements and monitoring and reporting requirements. Water Pollution Control Facility (WPCF) permits may be used in cases other than for those covered by Solid Waste Disposal Facility permits, NPDES permits, Individual On-Site (subsurface) Sewage Disposal permits, Underground Storage Tank permits, or Hazardous Waste Facility permits.
 - (B) The Department shall evaluate, based on available resources and priorities of the Department, new and existing permitted sources and determine the potential for adverse impacts to beneficial uses. Where the Department determines that there is a potential adverse groundwater quality impact, it may

require through the above referenced permits and rules, and other appropriate statutory and administrative authorities, the following groundwater quality protection program requirements:

(i) **Groundwater Monitoring Program Requirements.** The permittee or permit applicant shall submit to the Department for approval a groundwater monitoring program plan. The groundwater monitoring program shall be capable of determining rate and direction of groundwater movement, and monitoring the groundwater immediately upgradient and downgradient from the waste management area. A background monitoring point(s) shall be located where water quality is not affected by contamination from the waste management area. The plan, unless otherwise specified by the Department, shall include, but not be limited to, detailed information on the following:

(1) System Design:

- (a) Well Locations.
- (b) Well Construction.
- (c) Background Monitoring Point(s).
- (d) Downgradient Monitoring Point(s).
- (e) Water Quality Compliance Point(s).

(2) Sample Collection and Analysis:

- (a) Parameters to be Sampled.
- (b) Sampling Frequency.
- (c) Sample Collection Methods.
- (d) Sample Handling and Chain of Custody
- (e) Analytical Methods.
- (f) Acceptable Minimum Detection Limits.
- (g) Quality Assurance and Quality Control Plan.

(3) Data Analysis Procedure:

- (a) Statistical Analysis Method.
- (b) Frequency of Analysis.

- (ii) **Reporting Requirements.** The facility permit shall specify monitoring and assessment reporting requirements.
- (iii) **Downgradient Monitoring Point(s) Requirements.** The permittee shall monitor the aquifer directly downgradient from the waste management area to ensure immediate detection of waste discharged. This shall be known as the downgradient monitoring point(s).
- (iv) **Compliance Point(s) Requirements.** The Department shall specify the location at which groundwater quality parameters must be at or below the concentration limits specified in the permit. Unless otherwise specified by the Department, that location will be defined by a vertical plane located along the waste management area boundary. Any monitoring point on that plane is a compliance point. The compliance point(s) may not necessarily be the same as the downgradient monitoring point(s).
- (v) **Concentration Limits.**
 - (1) **Concentration Limit at Existing Facilities.** For facilities or activities operating under a Department approved permit, on or before the effective date of these rules, groundwater quality shall be maintained at the compliance point(s) within the concentration limits that are to be specified in the facility permit. The permit specific concentration limits may be above background water quality, but shall not exceed numerical groundwater quality reference levels as listed in Section 5 of this rule, or background water quality, whichever is greater, unless otherwise established by the EQC or the Director according to the procedure contained in Subsection (2)(c)(B)(vi) of this Section.
 - (2) **Concentration Limit at New Facilities.** For new facilities or activities permitted for the first time after the effective date of these rules, concentration limits at the compliance point(s) will be the background values, unless otherwise established by the EQC or the Director according to the procedure contained in Subsection (2)(c)(B)(vi) of this Section.
- (vi) **Alternate Concentration Limit.**
 - (1) Upon request by the permittee, Department, or permit applicant, and after opportunity for public review and comment, an alternate

concentration limit to the concentration limits specified in Subsection (2)(c)(B)(v) of this Section may be granted.

- (2) The Director may grant such alternate concentration limits for concentrations up to, but not exceeding numerical groundwater quality reference levels contained in Section (5) of this rule, and for compounds for which there are no reference levels. Alternate concentration limits, in excess of a numerical groundwater quality reference level, may only be granted by the EQC.
- (3) The EQC or Director, as specified in item (2) above, may grant on a case-by-case determination an alternate concentration limit for a pollutant if it is found that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In establishing alternate concentration limits, the EQC or Director shall consider the effects on groundwater quality, interconnected surface water quality, and associated effects on beneficial uses. Among others, the following factors shall be considered:
 - (a) The physical and chemical characteristics of the pollutant, including its potential for migration;
 - (b) The hydrogeologic characteristics at the facility and the surrounding area;
 - (c) The quantity of groundwater and the direction of groundwater flow.
 - (d) The proximity and withdrawal rates of groundwater users.
 - (e) The current and future uses of groundwater in the area.
 - (f) The existing quality of the groundwater, including other sources of contamination and their cumulative impact on water quality.
 - (g) The potential for health risks caused by exposure to the pollutant.

- (h) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to the pollutant.
- (i) The persistence and permanence of potential adverse effects.
- (j) The proximity and interconnections with surface water in the area.
- (k) The potential effect on interconnected surface water.
- (l) The potential effect of the pollutant on ecosystems of the area.
- (m) The comparative feasibility and cost of obtaining the concentration limit and the alternative concentration limit.

(vii) **Action Requirements.**

- (1) **Resampling:** If monitoring indicates a statistically significant increase (increase or decrease for pH) in the value of a parameter monitored, the permittee shall immediately resample. If the resampling confirms the change in water quality the permittee shall: (a) report the results to the Department within 10 days of receipt of the laboratory data; and (b) prepare and submit to the Department within 30 days a preliminary assessment plan and time schedule unless otherwise specified by the Department.
- (2) **Preliminary Assessment Plan and Time Schedule:** The preliminary assessment plan must provide for an assessment of the source, extent, and potential dispersion of the contamination; and an evaluation of whether or not remedial action will be necessary to restore and/or maintain groundwater quality, to achieve the concentration limit at the Department approved compliance point(s).
- (3) **Preventive Action:** In order to prevent additional contamination, the Department may order the implementation of preventive action to decrease or prevent the release of additional contaminants when a significant change in water quality is detected at a downgradient monitoring point.

- (4) **Remedial Action Requirements:** If the preliminary assessment indicates a concentration limit is or will be violated at a compliance point, the Department may require a remedial investigation and feasibility study be conducted pursuant to the requirements contained in Subsection (2)(d) of this Section, and remedial action conducted pursuant to the requirements contained Subsection (2)(e) of this Section.

(d) **Remedial Investigation and Feasibility Study**

- (A) If, based upon the preliminary assessment or other information, the Director determines that remedial action might be necessary to maintain or restore groundwater quality to achieve a specified concentration limit, or to protect public health, safety, or welfare or the environment, the Director may require to be performed a remedial investigation and/or feasibility study to develop information to determine the need for and selection of a remedial action.
- (B) The remedial investigation shall include but is not limited to characterization of contamination, characterization of the facility, and an endangerment assessment.
- (i) The characterization of the contamination may include but is not limited to information regarding:
- (1) Extent to which the source can be adequately identified and characterized;
 - (2) Amount, form, concentration, toxicity, environmental fate and transport, and other significant characterization of present substances; and
 - (3) Extent to which the substances might be reused or recycled.
- (ii) The characterization of the facility may include but is not limited to information regarding:
- (1) Contaminant substance mixtures present, media of occurrence, and interface zones between media;
 - (2) Hydrogeologic factors;
 - (3) Climatologic and meteorologic factors; and
 - (4) Type, location, and description of facilities, or activities that could have resulted in the contamination.

- (iii) The endangerment assessment may include but is not limited to information regarding:
 - (1) Potential routes of exposure and concentration;
 - (2) Characterization of toxic effects;
 - (3) Populations at risk;
 - (4) Potential or actual adverse impact on:
 - (a) Biological receptors,
 - (b) Present and future uses of the groundwater,
 - (c) Ecosystems and natural resources, and
 - (d) Aesthetic characteristics of the environment;
 - (5) Extent to which substances have migrated or are expected to migrate and the threat such migration might pose to public health, safety and welfare or the environment; and
 - (6) Potential for release of any substances or treatment residuals that might remain after remedial action.

(C) The feasibility study shall include but is not limited to the development and evaluation of remedial action options.

- (i) The development of remedial action options may include but is not limited to the following range of options:
 - (1) Remedial action attaining the specified concentration limit;
 - (2) If (1) above is not technically achievable, highest and best technology attaining the lowest concentration levels technically achievable;
 - (3) Best practicable technology attaining the lowest concentration level that meets the requirements of Subsection (2)(e)(A)(ii) and (B) of this section, and does not exceed a site-specific concentration level considered protective of public health, safety, and welfare and the environment;
 - (4) Other measures to supplement or substitute for cleanup technologies, including but not limited to engineering or institutional controls (e.g.,

environmental hazard notice, alternative drinking water supply, caps, security measures, etc.)

- (5) Combinations of any of the above options; and
 - (6) No action option.
- (ii) (1) Remedial action options developed under Subsection (2)(d)(c)(i) of this Section shall be evaluated under the requirements, criteria, preferences, and factors set forth in Subsection (2)(e) of this Section and according to any other criteria determined by the Director to be relevant to selection of a remedial action under Subsection (2)(e) of this Section.
- (2) The evaluation of remedial action options developed under Subsection (2)(d)(C)(i) of this Section shall include an evaluation of the extent to which the option or combination of options complies with relevant state, local, and federal law, standards, and guidance.

(e) Selection of the Remedial Action

(A) Requirements

The Director shall select a remedial action. Such remedial action shall meet the following requirements:

- (i) Be protective of present and future public health, safety, and welfare and the environment; and
- (ii) To the maximum extent practicable:
 - (1) be cost effective;
 - (2) use permanent solutions and alternative technologies or resource recovery technologies;
 - (3) be implementable; and
 - (4) be effective.

(B) Concentration Limit

The remedial action shall attain the concentration limit level specified under Subsections (2)(c)(B)(v) or (2)(f)(C) of this Section for the contaminant substances, unless the Director determines that the specified concentration limit does not satisfy the requirement set forth in Subsection (2)(e)(A)(ii) of this Section, in which case the Director shall select a remedial action that attains the lowest

concentration level of the contaminant substances that satisfies the requirements set forth in Subsection (2)(e)(A) of this Section.

(C) Other Measures to Supplement Cleanup

The Director may require other measures (e.g. institutional controls, environmental hazard notice, alternate drinking water supply, caps, security measures, etc.) to supplement cleanup of contaminant substances to the concentration limit level or the lowest concentration level in accordance with Subsection (2)(e)(B) of this Section, where such supplementary measures are necessary to satisfy the requirements set forth in Subsection (2)(e)(A) of this Section.

(D) Other Measures to Substitute for Cleanup

The Director may require other measures to substitute for cleanup of contaminant substances to the concentration limit level or the lowest concentration level under Subsection (2)(e)(B) of this Section, provided that:

- (i) The Director finds that there is no remedial action under Subsection (2)(e)(B) of this Section, combined with supplementary measures under Subsection (2)(e)(C) of this Section, that satisfies the requirements of Subsection (2)(e)(A) of this Section;
- (ii) Any such substitute measures, as appropriate, include provision for long-term care and management, including monitoring and operation and maintenance, and periodic review to determine whether a remedial action satisfying the requirements of Subsection (2)(e)(A) of this Section has become available; and

(E) Protection

- (i) In determining whether a remedial action assures protection of the present and future public health, safety, and welfare and the environment under Subsection (2)(e)(A)(i), only the concentration limit level specified under subsection (2)(c)(B)(v) or (2)(f)(c) of this Section shall be presumed to be protective. This presumption may be rebutted by information showing that a higher concentration level is also protective.
- (ii) In determining whether a concentration level higher than the specified concentration limit level is protective, the Director may consider:
 - (1) The characterization of contaminant substances and the facility, and the endangerment assessment;

- (2) Other relevant cleanup or health standards, criteria, or guidance;
 - (3) Relevant and reasonably available scientific information; and
 - (4) Any other information relevant to the protectiveness of a remedial action.
- (iii) When comparing between potential concentration levels, a concentration level lower than another shall generally be considered to be more protective and preferable. This presumption may be rebutted by information showing that a higher concentration level is also protective.
- (iv) Any person responsible for undertaking the remedial action who proposes that the remedial action attain a concentration level higher than the specified concentration limit level on the basis of protection shall have the burden of demonstrating to the Director that such concentration level is protective.

(F) Cost-effectiveness

In determining whether a remedial action is cost-effective under Subsection (2)(e)(A)(ii) of this Section, the Director may consider:

- (i) Costs of the remedial action relative to the costs of another remedial action option, if any, that achieves the same concentration level;
- (ii) Extent to which the remedial action's incremental costs are proportionate to its incremental results;
- (iii) Extent to which the remedial action's total costs are proportionate to its total results; and
- (iv) Any other criterion relevant to cost-effectiveness of the remedial action.
- (v) Costs that may be considered include but are not limited to:
 - (1) Capital costs;
 - (2) Operation and maintenance costs;
 - (3) Costs of periodic reviews, where required;
 - (4) Net present value of capital and operation and maintenance costs; and

(5) Potential future remedial action costs.

(G) Permanent Solutions and Alternative or Resource Recovery Technologies

In determining whether a remedial action uses a permanent solution and alternative or resource recovery technologies under Subsection (2)(e)(A)(ii) of this Section:

- (i) Remedial action options that use permanent solutions shall be preferred over other remedies;
- (ii) Remedial action options in which resource recovery or alternative technology is a principal element shall be preferred over remedial action options not involving such technology;
- (iii) Subject to Subsection (2)(e)(G)(v) of this Section, the offsite transport and secure disposition of contaminated materials without treatment may be preferred where practicable alternative treatment technologies are not available;
- (iv) Subject to Subsections (2)(e)(G)(v) and (vi) of this Section, and notwithstanding the availability of practicable alternative treatment technologies as provided in Subsection (2)(e)(G)(iii) of this Section, offsite transport and secure disposition of contaminated materials may be preferred when the disposal method would significantly expedite the cleanup or would achieve a total cleanup, especially at sites with contaminant substances of small quantity or low toxicity.
- (v) The transport and secure disposition offsite of a hazardous waste under ORS 466.005 in a treatment, storage, or disposal facility shall meet the requirements of section 3004(c) to (g), (m), (o), (p), (u) and (v) and 3005(c) of the federal Solid Waste Disposal Act, as amended, P.L. 96-482 and P.L. 98-616.
- (vi) The transport and secure disposition of contaminated materials, other than hazardous wastes, at an offsite facility may be allowed provided that the transport and secure disposition of such contaminated materials, in the Director's determination, is adequate to protect the public health, safety, and welfare and the environment.

(H) Implementability

In determining whether a remedial action is implementable under Subsection (2)(e)(A)(ii) of this Section, the Director may consider:

- (i) Degree of difficulty associated with implementing the technology;
- (ii) Expected operational reliability of the technology;
- (iii) Need to coordinate with and obtain necessary approvals or permits from other agencies;
- (iv) Availability of necessary equipment and specialists;
- (v) Available capacity and location of needed treatment, storage, and disposal services; and
- (vi) Any other criterion relevant to implementability of the remedial action.

(I) Effectiveness of the Remedial Action

In determining whether a remedial action is effective under Subsection (2)(e)(A)(ii) of this Section, the Director may consider:

- (i) Expected reduction in toxicity, mobility, and volume of the contaminant substances;
- (ii) Short-term risks that might be posed to community, workers, and the environment during implementation, including potential threats to human health and the environment associated with excavation, transport, and redisposal or containment;
- (iii) Length of time until full protection is achieved;
- (iv) Magnitude of residual risks in terms of amounts and concentrations of contaminant substances remaining following implementation of a remedial action, including consideration of the persistence, toxicity, mobility, and propensity to bioaccumulate of such contaminant substances and their constituents;
- (v) Type and degree of long-term management required, including monitoring, operation and maintenance;
- (vi) Long-term potential for exposure of human and environmental receptors to remaining contaminants;
- (vii) Long-term reliability of engineering and institutional controls, including long-term uncertainties associated with land disposal, treated or untreated waste, and residuals;
- (viii) Potential for failure of the remedial action or potential need for replacement of the remedy; and

(ix) Any other criterion relevant to effectiveness of the remedial action.

(J) Any person responsible for undertaking the remedial action who proposes one remedial action option over another on the basis of one or more of the elements of Subsection (2)(e)(A)(ii) of this Section shall have the burden of demonstrating to the Director that such remedial action option fulfills the requirements of Subsection (2)(e)(A)(i) and (ii) of this Section.

(f) **Non-permitted Activities: Spills, releases, past practices:**

Except as provided otherwise under statutory or administrative authorities, when a non-permitted activity could result in or has resulted in the pollution of groundwater the Department may require the liable person to:

(A) Conduct a remedial investigation and feasibility study pursuant to Subsection (2)(d) of this Section.

(B) Implement remedial action pursuant to Subsection (2)(e) of this Section.

(C) In conducting the remedial investigation and feasibility study, and selecting the remedial action under the requirements contained in Subsections (2)(e) and (d) of this Section, the concentration limits will be established at background water quality levels. (Note: Actual clean-up levels will be established by the procedures contained in Subsections (2)(e) and (d) of this Section which include evaluations of practicability as contained in Subsection (2)(e)(A)(ii).)

(3) ON-SITE SEWAGE DISPOSAL: AREA WIDE MANAGEMENT

In areas where groundwater is being degraded as a result of on-site sewage disposal practices and an area wide solution is necessary, the Department may propose a rule for adoption by the EQC and incorporation into the appropriate basin section of the State Water Quality Management Plan (OAR 340 Division 41) which will:

(a) Recite the findings describing the problem and the aquifer impacted;

(b) Define the area where corrective action is required;

(c) Describe the problem correction and preventative measures to be ordered;

(d) Establish the schedule for required major increments of progress;

- (e) Identify conditions under which new, modified, or repaired on-site sewage disposal systems may be installed in the interim while the area correction program is being implemented and is on schedule;
- (f) Identify the conditions under which enforcement measures will be pursued if adequate progress to implement the corrective actions is not made. These measures may include but are not limited to measures authorized in ORS 454.235(2), 454.685, 454.645, and 454.317;
- (g) Identify all known affected local governing bodies which the Department will notify by certified mail of the final rule adoption; and
- (h) Accomplish any other objectives declared to be necessary by the EQC.

The Department shall notify all known impacted or potentially affected local units of government of the opportunity to comment on the proposed rule at a scheduled public hearing and of their right to request a contested case hearing pursuant to ORS Chapter 183 prior to the EQC's final order adopting the rule.

(4) GROUNDWATER QUALITY STANDARD: ANTI-DEGRADATION

- (a) Impairment of the natural quality of groundwater shall be minimized to the greatest extent practicable to assure the beneficial uses of these resources by future generations.
- (b) In accordance with OAR 340-41-026(1)(a) existing high quality groundwaters which exceed those levels necessary to support recognized and legitimate beneficial uses shall be maintained except as provided in 340-41-026(1)(a).

(5) NUMERICAL GROUNDWATER QUALITY REFERENCE LEVELS:

- (a) Human consumption is recognized as the highest and best use of groundwater and as the use which usually requires the highest level of water quality. The following numerical groundwater quality reference levels reflect the suitability of groundwater for human consumption. They are not to be construed as acceptable groundwater quality management goals. They are to be considered by the Department and the public in considering the significance of a particular chemical concentration, and in determining the level of remedial action necessary to restore polluted groundwater for human consumption. They also are to be used by the Director, and the EQC in establishing permit specific concentration limits according to the requirements of Section (2) of this rule.

(b) ¹Numerical Groundwater Quality Reference Levels:

<u>Inorganic Compounds</u>	<u>²Standard mg/L</u>
Arsenic	0.05
Asbestos	7.1 ³
Barium	1.0
Cadmium	0.01
Chloride	250.0
Chromium	0.05
Copper	1.3
Fluoride	4.0
Iron	0.3
Lead	0.05
Manganese	0.05
Mercury	0.002
Nitrate-N	10.0
Nitrite-N	1.0
Selenium	0.01
Sulfate	250.0
Total Dissolved Solids	500.0
Zinc	5.0

¹All standards except total dissolved solids and turbidity are for total (unfiltered) concentrations.

²Unless otherwise specified.

³Million fibers per liter.

<u>Volatile Organic Compounds</u>	² <u>Standard mg/L</u>
Trichloroethylene	0.005
Carbon Tetrachloride	0.005
Vinyl Chloride	0.001
1,2-Dichloroethane	0.005
Benzene	0.005
1,1-Dichloroethylene	0.007
1,1,1-Trichloroethane	0.200
p-Dichlorobenzene	0.005
Trihalomethanes	0.100

(the sum of concentrations
bromodichloromethane, dibromochloromethane,
tribromomethane (bromoform),
and trichloromethane
(chloroform))

²Unless otherwise specified.

<u>Synthetic Organic Compounds</u>	² <u>Standard mg/L</u>
Acrylamide	³ ND
Alachlor	³ ND
Aldicarb, aldicarb sulfoxide and aldicarb sulfone	0.009
Carbofuran	0.036
Chlordane	³ ND
Cis-1,2-Dichloropropane	0.006
O-Dichlorobenzene	0.620
2,4-D	0.100
EDB	³ ND
Epichlorohydrin	³ ND
Ethylbenzene	0.680
Heptachlor	³ ND
Heptachlor Epoxide	³ ND
Lindane	0.004
Methoxychlor	0.100
Monochlorobenzene	0.060
PCBs	³ ND

²Unless otherwise specified.

³None detected -- detection limit must be at 0.001 mg/L or less.

<u>Synthetic Organic Compounds</u>	<u>²Standard mg/L</u>
Pentachlorophenol	0.220
Styrene	0.140
Toluene	2.000
2,4,5-TP	0.010
Toxaphene	0.005
Trans-1,2-Dichloroethylene	0.070
Xylene	0.440

²Unless otherwise specified.

<u>Miscellaneous</u>	<u>Standard</u>
Color	15 Color unit
Foaming Agents MBAS	0.5 mg/L
Turbidity	5 NTU

New definitions to be included in the definition section (OAR 340-41-006).

Alternate Concentration Limit -- Means the maximum acceptable level of a pollutant allowed in groundwater at a Department specified compliance point as determined by the Director or EQC, and adopted in accordance with the requirements contained in OAR 340-41-029(b)(B)(vi).

Background Water Quality - Means the quality of water immediately upgradient from a source, or potential source of contamination that is not affected by the source.

Natural Water Quality -- Means the state of water quality that would exist as a result of natural conditions, unaffected by anthropogenic sources of contamination.

Nonpoint Source -- Means a source of pollution that results from widespread land use activities and cannot be traced to a specific source.

Point-Source -- Means a source of pollution that results from a specific activity that can be traced to a specific source.

Compliance Point -- Means the point or points where groundwater quality concentration limits must be met.

Monitoring Point -- Means a point or points established to immediately detect downgradient from a facility a discharge to the aquifer where groundwater quality is assessed. It may or may not be the same as the compliance point.

Concentration Limit -- Means the maximum acceptable concentration of a pollutant allowed in groundwater at a Department specified compliance point.

Waste Management Area - Means any area where waste, or material that could become waste if released to the environment, is located or has been located.

STATE OF OREGONDEPARTMENT OF ENVIRONMENTAL QUALITYINTEROFFICE MEMORANDUM

TO: Environmental Quality Commission DATE: Sept. 19, 1989
FROM: Lucinda Bidleman, Hearings Officer
SUBJECT: Hearings Reports: August 8, 1988, in Medford
August 9, 1988, in Eugene
August 10, 1988, in Pendleton
August 11, 1988, in Portland

Proposed Amendments to the General Groundwater Quality
Protection Policy.

Schedule and Procedures

Public hearings were held in Medford, Eugene, Pendleton, and Portland in early August, 1988. Public notice was published in the Secretary of State's Bulletin 15 to 20 days prior to the hearings. In addition, notices were mailed to more than 350 persons included on the groundwater mailing list and published in local newspapers. The hearings officer at all four hearings was Lucinda Bidleman.

A total of 42 people provided testimony during the public hearings process. Verbal testimony was given by 17 people. Written testimony was received from 36 people (some people provided both verbal and written testimony). A listing of the parties who provided comments is attached to this report. It includes the name, affiliation, and type (oral and/or written) of testimony given.

Summary of Major Issues

An outline of the major issues contained in the public testimony is discussed below. A table briefly summarizing these major issues and giving the names of the persons who supported those issues is attached.

1. Many of the respondents (a dozen) stated that the rules should adhere to a strict nondegradation policy of groundwater quality protection. They favored implementation of inflexible permit conditions, allowing for no alternate concentration limits in groundwater concentration limits. Many people stressed the need to take a proactive stance in

preventing all human-caused groundwater contamination so as to preserve groundwater resources for future generations.

2. Nearly an equal number of hearings respondents (10) expressed opposition to provisions in the proposed rules which appeared to emphasize a nondegradation approach to groundwater protection. They favored a policy of antidegradation as a more reasonable goal for groundwater quality protection.
3. Several persons submitting testimony recommended better enforcement and inspection capabilities. A number of testifiers were concerned that the rules would become an additional burden on the Department's resources.
4. Some industry respondents objected to the inclusion of the remedial action sections in the rules. They felt it was inappropriate and outside the Water Quality Division's authority to propose remedial action procedures which were nearly identical to those being proposed for adoption by the Environmental Quality Commission for the State Superfund program.
5. Some industry representatives stated that the rules were not in compliance with the Administrative Procedures Act due to the omission of the required statements of rulemaking from the general mailing notice for the hearings. It was felt that the Fiscal and Economic Impact Statement did not adequately analyze the impact of the rules on small businesses engaged in crop protection activities. There were also complaints that not enough notice was provided prior to the public hearings.
6. Several respondents were opposed to the inclusion of secondary drinking water contaminants such as iron, turbidity, and chloride in the list of Numerical Groundwater Quality Reference Levels. It was felt that since these contaminants were not a threat to human health at the levels given that they should either be omitted completely from the rules or dealt with in a less stringent manner in permits and cleanup actions.
7. The proposed rule numbering system was found to be extremely unwieldy and difficult to follow by some respondents.

Memo to: Environmental Quality Commission
September 19, 1989
Page 3

Recommendations

Because the Department received extensive comments from both the regulated population and the environmental community demonstrating a need for further clarification of parts of the proposed rules, an informal work group was formed. This group met several times through the fall and winter of 1988-89 and resulted in numerous editorial changes in the text of the proposed rules. Following the work group meetings, the groundwater rule development citizens advisory committee was invited to review the newly drafted rules at two meetings in the spring of 1989. In addition, the proposed rules were renumbered under a separate rule division (OAR Chapter 340, Division 40), greatly enhancing their readability. Due to the ubiquitous nature of the changes that were incorporated into the rules, it was deemed necessary to hold a third set of public hearings before recommending them for adoption by the Commission.

Testimony No. Person / Organization Oral Written

HEARINGS RESPONDENTS
 August-September, 1988

Testimony No. Person / Organization Oral Written

1.	Scott Ashcom OREGON ASSN. OF NURSERYMEN, INC.		X
2.	Jeffrey Bennet	X	X
3.	Christopher Bratt HEADWATERS	X	
4.	Douglas H. Breese OREGON FARM BUREAU FEDERATION		X
5.	James C. Brown BOGLE & GATES	X	X
6.	Larry Caldwell		X
7.	Joe Chadek	X	
8.	John A. Charles OREGON ENVIRONMENTAL COUNCIL		X
9.	Richard & Christine Colvard		X
10.	Lynn Coody NORTHWEST COALITION FOR ALTERNATIVES TO PESTICIDES	X	X
11.	David H. Couch BOGLE & GATES		X
12.	David L. Craig PACIFIC POWER & LIGHT CO.	X	X
13.	Philip Curtis	X	
14.	James H. Denham TELEDYNE WAH CHANG ALBANY		X
15.	Thomas C. Donaca ASSOCIATED OREGON INDUSTRIES		X
16.	Jess E. Eblen ORE-IDA FOODS, INC.		X
17.	Alan & Myra Erwin		X
18.	Lucie Giampaoli		X
19.	R. J. Hess PORTLAND GENERAL ELECTRIC CO.		X
20.	Frank Josselson JOSSELSO, POTTER & ROBERTS		X
21.	Andrew J. Klein MONSANTO AGRICULTURAL CO.		X
22.	Loren D. Koller OSU COLLEGE OF VETERINARY MEDICINE		X
23.	Rick McClung J. R. SIMPLOT CO.		X

<u>Testimony No.</u>	<u>Person / Organization</u>	<u>Oral</u>	<u>Written</u>
24.	John McCully OREGON TREE FRUIT GROWERS	x	x
25.	Jean Meddaugh OREGON ENVIRONMENTAL COUNCIL	x	x
26.	Elin D. Miller WESTERN AGRICULTURAL CHEMICALS ASSOCIATION		x
27.	Douglas S. Morrison NORTHWEST PULP & PAPER ASSN.	x	x
28.	John C. Neely, Jr.		x
29.	Bruce M. Niss PORTLAND WATER BUREAU		x
30.	Gerald L. Odman CITY OF PENDLETON PUBLIC WORKS		x
31.	Edward Olson MEDFORD WATER COMMISSION	x	
32.	Jack W. Parker ROSSMAN'S LANDFILL, INC.		x
33.	Larry D. Patterson PENWALT CORPORATION		x
34.	Jeffrey H. Randall CH2M HILL		x
35.	Harold Reed SPENCER CREEK REGION HOMEOWNERS' ASSN.	x	
36.	Sandy Reed	x	
37.	Kenneth W. Shump		x
38.	Brian R. Stahl CITY OF THE DALLES	x	x
39.	Lisa Quincy Sugarman	x	x
40.	Terrence T. Virnig CHEM-SECURITY SYSTEMS, INC.		x
41.	Terry L. Witt OREGONIANS FOR FOOD & SHELTER	x	x
42.	Jan Wroncy RESIDENTS OF OREGON AGAINST DEADLY SPRAYS AND SMOKE	x	x

HEARINGS RESPONDENTS
August - September, 1988

BRIEF SUMMARY OF MAJOR ISSUES BROUGHT OUT IN PUBLIC TESTIMONY	1. Scott Ashcom	2. Jeffrey Bennet	3. Christopher Bratt	4. Douglas H. Breese	5. James C. Brown	6. Larry Caldwell	7. Joe Chadek	8. John A. Charles	9. Richard & C. Colvard	10. Lynn Goody	11. David H. Couch	12. David L. Craig	13. Philip Curtis	14. James H. Denham	15. Thomas C. Donaca	16. Jess E. Eblen	17. Alan & Myra Erwin	18. Lucie Giampaoli	19. R. J. Hess	20. Frank Josselson
Commented in support of strict adherence to a nondegradation goal and preventive measures.		X	X			X		X		X								X		
Favored antidegradation policy over nondegradation emphasis.					X							X		X		X				X
Concerned that Department enforcement capabilities are inadequate.			X			X	X						X							
Expressed opposition to inclusion of remedial action sections.					X									X	X					
Concerned that proper administrative procedures were not utilized.				X	X									X	X				X	
Opposed to inclusion of non-health related reference levels.					X									X	X				X	X
Rule numbering found to be difficult to follow.					X			X						X	X					

HEARINGS RESPONDENTS
August - September, 1989 (Continued)

BRIEF SUMMARY OF MAJOR ISSUES BROUGHT OUT IN PUBLIC TESTIMONY	41. Terry L. Witt	42. Jan Wroncy																	
Commented in support of strict adherence to a nondegradation goal and preventive measures.		x																	
Favored antidegradation policy over nondegradation emphasis.	x																		
Concerned that Department enforcement capabilities are inadequate.																			
Expressed opposition to inclusion of remedial action sections.	x																		
Concerned that proper administrative procedures were not utilized.	x																		
Opposed to inclusion of non-health related reference levels.	x																		
Rule numbering found to be difficult to follow.	x																		

RESPONSE TO TESTIMONY RECEIVED IN AUGUST - SEPTEMBER, 1988
ON PROPOSED AMENDMENTS TO
THE GENERAL GROUNDWATER QUALITY PROTECTION POLICY

The major issues identified in the public hearings testimony are summarized and discussed in this report. The issues are grouped into the following categories: Antidegradation vs. Nondegradation; Numerical Levels; Administrative Procedures; General Comments.

Antidegradation vs. Nondegradation

Issue No. 1: The rule's proposed antidegradation standard does not go far enough toward protecting groundwater from contamination. No amount of groundwater pollution should be permitted by the Department.

Response: The implementation of a strict nondegradation policy for groundwater quality protection is not technically or economically feasible. The proposed rules stress the importance of minimizing the adverse impacts to groundwater to the greatest extent practicable. Antidegradation was the consensus approach worked out with the advisory committees.

Issue No. 2: No provisions should be made to allow alternate concentration limits above background water quality levels at any facility.

Response: Allowing alternate concentration limits above background water quality levels is consistent with the rules' antidegradation policy, and will only be permitted if it can be demonstrated that no substantial or future hazard to public health or the environment will result from the increase.

Issue No. 3: The rules establish an antidegradation standard for the control and minimization of discharges to groundwater. While this is a reasonable approach to environmental regulation which is protective of public health, environmental quality, and beneficial uses, there are some aspects of the rules that appear to be nondegradational in nature. An example of this is the way in which permit-specific concentration limits are established at background water quality levels for new facilities. The rules do not recognize and allow the utilization of the natural treatment afforded by groundwater in some limited instances.

Response: Consistent with the antidegradation approach applied throughout the proposed rules, new facilities are required to minimize groundwater contamination to the highest extent practicable. In no way does this disallow the natural treatment provided by groundwater. However, if a facility can demonstrate that no impact is not practicable, and that a certain level of a contaminant in groundwater presents no substantial present or future hazard to human health or the environment, an alternate concentration limit above background levels may be granted.

Numerical Levels

Issue No. 4: The federal drinking water standards being proposed as numerical reference levels are not human health based. The rules do not consider the effects of contaminants on other organisms in the ecosystem.

Response: The Department does not agree. The proposed numerical groundwater quality reference levels are health based. They are based upon the maximum contaminant levels for public water supply drinking water established under the Safe Drinking Water Act. The proposed rules recognize in both the General Policies Section and the Numerical Groundwater Quality Reference Level Section that the reference levels are not appropriate for protecting beneficial uses other than drinking and require the Department to utilize other sources of information to ensure that other beneficial uses are protected.

Issue No. 5: The list of contaminants given is too limited in scope.

Response: The list contained all chemical substances for which drinking water standards or goals have been adopted or proposed.

Issue No. 6: The proposed levels are not consistent with currently adopted federal standards.

Response: The list was based on adopted or proposed federal drinking water standards.

Issue No. 7: Federal drinking water standards are not relevant to ambient groundwater quality. Most groundwater will not meet those standards.

Response: The Department disagrees. Most groundwater is suitable for drinking, and the standards are appropriate for ensuring that its use is protected.

Issue No. 8: Secondary drinking water contaminants should not be regulated in the same manner as primary drinking water contaminants because they are not a threat to human health. Their inclusion in the list of reference levels will result in some facilities having to go through a costly procedure to obtain an alternate concentration limit or to undertake expensive cleanup activities.

Response: The Department agrees and as a result has changed the rule proposal to treat secondary standards differently.

Issue No. 9: A process is needed to change reference levels as new standards are adopted at the federal level.

Response: The Department has investigated the possibility of adopting standards by reference, but found it could not adopt future EPA standards by reference. The Department did include in the revised rule proposal a statement requiring periodic review and update of the reference levels.

Administrative Procedures

Issue No. 10: The proposed rule package sent out as part of the general mailing did not contain the necessary rulemaking statements including an adequate Fiscal and Economic Impact Statement.

Response: The fact that those documents were available and information on how they could be obtained was included in the public mailing.

Issue No. 11: The public notice did not allow sufficient time in which to comment on the rules. The comment period was poorly timed.

Response: The comment period was considerably longer than required by law. However, in response to this concern the comment period was extended to allow for additional comment.

Issue No. 12: The rules were not reviewed by a technically qualified Citizens' Advisory Committee prior to the hearings.

Response: Revisions that were made between the first set of public hearing and the second were in response to public comment received during the first set of hearings. The Department did not feel it necessary to appoint an advisory committee to address issues that resulted from the public review and comment process.

Issue No. 13: The Department has included nearly word for word

parts of rules being proposed under the State Superfund Law. This is outside the Water Quality Division's statutory authority.

Response: The Department disagrees. It is well within the Department's authority to require cleanup actions, and desirable to ensure consistency across programs in protecting the environment.

General Comments

Issue No. 14: Better enforcement and inspection capabilities are needed by the Department to properly implement the proposed as well as existing rules.

Response: This issue is outside of the scope of the proposed rules.

Issue No. 15: More opportunities for public participation should be provided in the development, implementation, and enforcement of the rules.

Response: Even though public involvement up to this point in the development of the proposed rules has been extensive, an ad hoc citizens advisory committee (work group) was formed following the second set of public hearings. In addition, in the process of revising the proposed rules, more opportunities for public involvement were included.

Issue No. 16: The rule numbering system is too unwieldy and difficult to cross-reference.

Response: The Department agreed, and as a result received permission to establish a new division for the proposed rules which made them much easier to follow.

SUMMARY OF PUBLIC TESTIMONY RECEIVED AUGUST-SEPTEMBER, 1988

1. Scott Ashcom, Oregon Association of Nurserymen, Inc., 707 13th St. SE, #300, Salem, OR 97310; 8/16/88 (Written Testimony)

Mr. Ashcom submitted comments on behalf of the Oregon Association of Nurserymen, Inc. (OAN) which represents more than one third of all nurseries in Oregon. He requested the Commission adopt the proposed rules with the following changes included:

1. Eliminate "potential" pollution of groundwater from regulation and allow regulation only of actual pollution of groundwater. The OAN believes that the "protective" approach taken by the Department's proposed rules would divert staff time away from actual pollution problems.
2. Require objective, scientific proof of contamination as a condition of any regulation by permit to avoid charges of arbitrary and capricious imposition of conditions by prospective litigants.
3. Limit the scope of the rules to only pollution which impacts existing, "lawful" beneficial uses of groundwater. The proposed rules' use of the term "beneficial uses" is unclear.

In addition, Mr. Ashcom supplied the Department with an edited copy of the proposed rules which reflects the suggested changes noted above.

2. Jeffrey Bennet, 1241 E. Jefferson, Cottage Grove, OR 97424; 8/9/88 (Oral and Written Testimony)

Mr. Bennet urged the Department to consider how groundwater affects all the components of the ecosystem, not just that part which includes humans. He emphasized the importance of adequate hydrogeologic characterization and suggested the Department undertake an intensive study in this area. He also requested the Department seek alternatives to systems that result in groundwater pollution rather than focusing on minimizing their effects. He strongly advised the Department to adopt a nondegradation policy. He asked that the alternate concentration limit concept be clarified. In conclusion, Mr. Bennet stated that he was impressed with the new rule draft's clear goals to protect Oregon's groundwater.

3. Christopher Bratt, Headwaters, P.O. Box 1075, Grants Pass, OR 97526; 8/8/88 (Oral Testimony)

Mr. Bratt spoke as a representative of Headwaters and went on record commending the Department for work done in revising the proposed rules. He concurred with comments made by both Mr. Edward Olson and Mr. Philip Curtis regarding references to statute within the rules as well as the apparent lack of penalty for noncompliance.

He suggested that prevention is the key to preserving Oregon's groundwater resources rather than reacting to problems after they have occurred. He was concerned about the possible ineffectiveness of addressing nonpoint source problems through other mechanisms and agencies.

4. Douglas H. Breese, President, Oregon Farm Bureau Federation, 1730 Commercial St. SE, P.O. Box 2209, Salem, OR 97308-2209; 8/16/88 (Written Testimony)

Mr. Breese submitted comments on behalf of the over 10,500 member families of the Oregon Farm Bureau (OFB). He expressed concern that the public comment period was too short and poorly timed for people engaged in farming and ranching. Mr. Breese requested that data be sent to OFB supporting the statement in the policy which states that unconfined aquifers should not be assumed to be safe for domestic use.

5. Jim Brown, 3575 SW 106th Ave., Beaverton, OR 97005; 8/11/89 (Oral Testimony)

Mr. Brown, an environmental attorney, offered oral comments in an individual capacity and not on behalf of his clients. In reviewing the proposed rules, he found a number of things that were disturbing.

First, the notice given for the proposed rulemaking hearings was inadequate. He requested the Department extend the comment period. Second, Mr. Brown did not believe the Department utilized a technically competent citizen's advisory committee in the development of the proposed rules.

Mr. Brown expressed concern about the need for further duplicity in groundwater regulations. He also stated that the statutorily required fiscal and economic impact statement was lacking in the currently proposed rule package. Mr. Brown suggested the Department ask the Attorney General's office to review the proposed rules for statutory conformity and legal applicability.

There was concern that the Department was attempting to prematurely adopt proposed remedial action rules. In addition,

Mr. Brown expressed opposition to the nondegradation emphasis in the rules with regard to new facilities.

James C. Brown, Bogle & Gates Law Offices, 1400 KOIN Center, 222 S.W. Columbia, Portland, OR 97201; 9/1/88 (Written Testimony)

Mr. Brown submitted written comments on behalf of Bogle & Gates Law Offices. The clients represented are as follows:

Associated Chemists, Inc.	Cascade Wood Products
Chemex, Inc.	ESCO Corporation
Great Western Chemical Co.	Chas. H. LILLY Co.
Lone Star Industries, Inc.	Lone Star Northwest
McCall Oil and Chemical Co.	OMARK Industries
Permapost Products Co., Inc.	Taylor Lumber & Treating, Inc.

Bogle & Gates was concerned that the Department did not receive the advice of a technically qualified advisory committee prior to taking the proposed regulations out to public hearings.

Bogle & Gates asked to go on record supporting the testimony submitted by the Associated Oregon Industries, Portland General Electric Company, and Northwest Pulp and Paper Association. Bogle & Gates, along with these industries, support rules that are in compliance with the statutory provisions of the ORS 468.710 and 648.735.

6. Larry Caldwell, Rt. 5, Box 5945 #5, Hermiston, OR 97838-9671; 8/15/88 (Written Testimony)

Mr. Caldwell commented that new rules are not the solution to the problem of groundwater protection. He stated the proposed rules are not necessary because the Department already has sufficient authorities and rules for regulating groundwater quality. He felt the Department has so far failed in its efforts to regulate groundwater quality due to inadequate dedication and resources needed to address problems and enforce any rules that are adopted.

In addition, Mr. Caldwell submitted a number of editorial comments which he believed would clarify the intent of the proposed. He suggested alternate wording to indicate that domestic water usage always requires the highest level of quality. A definition of terms such as "problem abatement plans" as used in the General Policies section was requested. Under the remedial investigations subsection ((2)(d)(B)), Mr. Caldwell suggested a contaminant's persistence be considered, and he asked for further definition of other terms such as "media of occurrence" and "interface zones".

The nondegradation objectives of the proposed rules were supported by Mr. Caldwell, and he urged the EQC to acquire a funding source to achieve the long-term commitment needed to enforce the rules.

He expressed opposition parts of the rules he felt differed from a nondegradation goal such as allowing alternate concentration limits.

Mr. Caldwell was opposed to the use of federal drinking water standards in the rules because they are not health-based. He also felt that the list of compounds in the numerical reference level section (5) is too short.

In conclusion, Mr. Caldwell expressed concern that the proposed rules would give groundwater in rural areas less protection and allow its degradation because of low population density.

7. Joe Chadek, 33970 Orchard Ave., Creswell, OR 97426; 8/9/88 (Oral Testimony)

Mr. Chadek commended the Department for emphasizing the importance of preventing groundwater pollution, and he expressed concerns about improperly installed septic systems in his neighborhood. He stated that there is a need for a better enforcement when septic systems are not properly installed.

8. John A. Charles, Executive Director, Oregon Environmental Council, 2637 SW Water Ave., Portland, OR 97201; 8/18/88 (Written Testimony)

Mr. Charles submitted comments on behalf of the Oregon Environmental Council (OEC) which commended the Department for improvements made in the proposed rules since the first public hearings were held. Notably, OEC was pleased that the rules no longer included a groundwater classification system, and that the Department had chosen to seek additional legislative authority to deal with nonpoint sources of groundwater contamination.

General Policies Section OEC supported a policy which would undertake improvement of contaminated aquifers in order to provide for its potential use for human consumption. OEC also suggested the rules set forth a procedure for informing the public when groundwater is not suitable for human consumption. In addition, a lead agency should be designated by the rules when implementing interagency coordinated activities.

Point Source Control Rules Section In addition to various editorial suggestions, OEC recommended the rules specifically state which programs within the Department will implement the groundwater quality protection requirements. The rule language pertaining to alternate concentration limits (ACLs) should reflect that the burden of requesting alternate concentration limits should not be on the Department. OEC would prefer that the EQC be responsible for granting all ACLs other than those for compounds that have no reference levels. If sampling indicates a

significant change in groundwater quality, reporting should take place within 5 days, not 10 days proposed. In determining whether a cleanup concentration level greater than the specified concentration limit is protective, OEC suggested the Department use the same set of findings required for ACLs.

Groundwater Quality Standard: Anti-degradation Section The OEC suggested nondegradation as a goal rather than anti-degradation which implies limited but consistently allowed levels of pollution. The reference to OAR 340-41-026(1)(a) should be deleted since it would allow the EQC to lower quality goals for economic and social reasons.

Numerical Groundwater Quality Reference Levels Section The rules should state both here and in the General Policies section that the EQC has authority to adopt new reference levels as more data becomes available.

Definitions Section OEC recommended a definition of "alternative technology" be included in the rules. A definition for "beneficial uses" was also suggested.

Conclusions OEC found the rule numbering awkward and the cross-references difficult to follow. It was recommended that a table of contents be included to aid in understanding the rules. In response to what some other commenters had stated at the August 11th hearing, OEC suggested that the Department did provide adequate time for review of the proposed rules prior to holding the hearing. OEC also felt confident that opportunity was provided for public participation.

9. Richard and Christine Colvard, P.O. Box 514, Ashland, OR 97520; 8/4/88 (Written Testimony)

The Colvards commended the Department for many of the changes that had been made in the proposed rules since March, 1988, and had two concerns:

1. The source of the Numerical Groundwater Reference Levels should be cited so that their reasonableness may be evaluated.
2. A process should be included in the rules for changing the Numerical Groundwater Reference Levels so that the rules may reflect new research and findings.

The Colvards also supported the inclusion of secondary drinking water standards such as turbidity, color, and taste in the rules.

10. Lynn Coody, Programs Coordinator, Northwest Coalition for Alternatives to Pesticides, P.O. Box 1383, Eugene, OR 97440; 8/9/88 (Oral and Written Testimony)

Ms. Coody presented testimony as a representative for the Northwest Coalition for Alternatives to Pesticides (NCAP). She commended the Department for providing excellent opportunities for public involvement and for being responsive to the public.

NCAP was pleased to see a number of changes in the proposed rules, including the following:

1. The classification system was dropped in favor of uniformly protecting all groundwater.
2. The numerical standards had been changed to "Numerical Groundwater Quality Reference Levels" and a section stating the agency's antidegradation policy had been added.
3. The addition of a remedial action section.
4. The section dealing with nonpoint sources was deleted in order that they may be more fully addressed through new legislation.

While NCAP supports the protection of groundwater for the purpose of protecting its use as a drinking water source, its importance to the entire ecosystem should also be considered.

NCAP stressed the need to consider alternatives to the present systems in order to prevent groundwater pollution; the development of alternative technologies is basic to this concept and should be emphasized in the proposed rules.

Since it is difficult or impossible to accurately predict the level of contamination from a given source or its effects on the environment, NCAP urged the Department to reconsider permitting any groundwater degradation to occur.

11. David H. Couch, Bogle & Gates Law Offices, 1400 KOIN Center, 222 SW Columbia, Portland, OR 97201; 8/16/88 (Written Testimony)

Mr. Couch commented on the importance of groundwater in a rural state with diverse water needs. He stated that groundwater protection rules must be thoughtfully drafted to meet those needs and be integrated as a part of the statewide Oregon water quality plan. Mr. Couch offered his assistance in the review and rulemaking process.

12. David L. Craig, Senior Environmental Analyst, Hydrogeology, Pacific Power & Light Company, 920 S.W. 6th Avenue, Portland, OR 97204; 8/11/88 & 8/15/88 (Oral & Written Testimony)

Mr. Craig submitted comments on behalf of Pacific Power and Light Company (Pacific) as follows:

As a provider of electricity throughout the State of Oregon, property owner, and owner and operator of several small drinking water systems, Pacific supports the development of a comprehensive approach to groundwater management that is protective of public health, environmental quality, and the beneficial uses of groundwater. Pacific promoted the Department's use of an antidegradation policy as appropriate and realistic.

Pacific noted that not all groundwater is naturally suitable for drinking water purposes, and also stated that background water quality of groundwater can have a large degree of natural variability. Therefore, regulatory flexibility is needed to manage groundwater and to assure that it is not overprotected simply to meet arbitrary standards. Pacific commended the Department for the recent revisions made in the proposed rule amendments because they augment flexibility. However, Pacific felt that more changes are necessary.

Pacific believes the proposed rules should not rely on the U.S. Environmental Protection Agency's (EPA's) drinking water standards because they are not relevant to ambient water quality. Pacific maintains that most shallow groundwater in the United States does not meet these standards. In order to avoid confusion in setting appropriate standards, Pacific favors eliminating the Groundwater Quality Reference Levels from the proposed rules.

Pacific believes the rules contradict the antidegradation standard by allowing no groundwater degradation at new permitted facilities. The rules are perceived as inflexible in this respect. Pacific also commented that the rules arbitrarily locate the compliance point at the waste management area boundary and therefore do not allow flexibility in professional judgement to maximize the natural treatment characteristics of some aquifers. It was suggested that using groundwater reservoirs to provide treatment in some limited instances is an appropriate use of the resource.

13. Philip Curtis, 1440 N. Valley View Rd., Ashland, OR 97520; 8/8/88
(Oral Testimony)

Mr. Curtis concurred with points made by Mr. Edward Olson. Specifically, he felt that a comprehensive groundwater protection program should be all-encompassing, and that statutory references in the proposed rules were confusing. In addition, he was concerned that no punishment was proposed for noncompliance with the rules, and no time schedule for remedial action was set forth. He suggested a bond be posted for the completion of remedial action programs.

14. James H. Denham, Teledyne Wah Chang Albany, 1600 N.E. Salem Road, P.O. Box 480, Albany, OR 97321; 9/1/88 (Written Testimony)

Mr. Denham asked to go on record supporting the testimony submitted by Douglas Morrison of the Northwest Pulp and Paper Association. He also requested that no new groundwater quality regulations be adopted at this time.

Mr. Denham did not believe the Department had the assistance of a technically qualified advisory committee in preparing the proposed rules. He stated that the proposed rules are inconsistent with the statutory framework for addressing water quality. He also felt the proposed rules do not include the necessary statements of statutory authority, statement of need, or a statement of their fiscal and economic impact.

15. Thomas C. Donaca, General Counsel, Associated Oregon Industries, 1149 Court St. NE, P.O. Box 12519, Salem, OR 97309-0519; 8/16/88 (Written Testimony)

Mr. Donaca submitted testimony on behalf of the Associate Oregon Industries (AOI). While the AOI agrees that the existing policy needs updating, it is felt that the proposed rules should not be adopted. As stated in testimony previously submitted by the AOI (received by the Department 4/4/88), the proposed rule adoption should be delayed until the remedial action rules are ready for Commission action. A new, well-qualified advisory committee should then be convened to review the existing and proposed groundwater rules. The AOI is willing to provide assistance should the Department require it.

The AOI expressed concern over the omission of the nonpoint source section in the current draft of the proposed rules, and stated that deferring this issue to the legislature is a serious mistake. In addition to various editorial suggestions, other comments on the rules are as follows:

1. The intention of the proposed rules is unclear. The rules should clearly state what programs they do and do not apply to.
2. It is unclear how the Department will apply both the proposed groundwater protection rules and the remedial action rules with respect to action requirements and ACLs.
3. The rules should address the following matters:
 - Protection of existing drinking water aquifers;
 - Identification and protection of sole source aquifers;
 - Identification of potential groundwater contamination sources;
 - Identification and mapping of groundwater quality;

Significance of point and nonpoint source contamination.

4. Not enough time was given for public comment on the proposed rules.
5. No economic impact statement was included in the material received with the hearing notice.
6. The internal references in the rules are difficult to follow and find.
7. The General Policies (OAR 340-41-029 (1)) are a mixture of policies and rules; they should be limited to policies.
8. The Numerical Groundwater Quality Reference Levels are standards as applied by the proposed rules. AOI is concerned that many industries will not be in compliance if secondary, nontoxic standards such as iron, manganese and turbidity are included.
9. The rules should clearly state up front that if the background water quality is higher than the reference levels, the background level will be the controlling level.
10. Department staff should be able to grant or deny ACLs, and appeals to ACLs should be handled by the Commission.
11. Because there may be seasonal variations in groundwater flows, AOI suggests that sampling should extend over a longer period of time after a statistically significant change in groundwater quality has been confirmed. The proposed 30 day time for submittal of a preliminary assessment and time schedule is too short.
12. If the preferred permanent solution for the cleanup of groundwater involves pumping out the contaminated groundwater, the resource may become depleted and the contamination merely transferred to the surface. AOI suggests the following wording be added to (2)(D)(G)(i): "...unless such solution would be less protective or cause greater damage or loss to the groundwater involved."
13. The "Note" in subparagraph (2)(f)(C) appears to conflict with the proposed rule and will be a source of confusion.
16. Jess E. Eblen, Sr. Environmental Engineer, Ore-Ida Foods, Inc., P.O. Box 10, Boise, ID 83707; 8/18/88 (Written Testimony)

Mr. Eblen submitted comments on behalf of Ore-Ida Foods, Inc. (Ore-Ida) regarding the proposed amendments to ORS 340-41-029. Mr. Eblen was a member of the Citizens Advisory Committee to consider changes to the existing Groundwater Quality Protection Policy in 1986 and 1987.

Ore-Ida strongly supports the adoption of rules that promote an antidegradation policy which will allow changes in groundwater quality when other beneficial uses are not impaired. Ore-Ida opposed the adoption of the currently proposed rules because it believes they promote a nondegradation policy prohibiting the land application of food processing wastewater.

17. Alan and Myra Erwin, 300 Grandview Dr., Ashland, OR 97520; 8/15/88 (Written Testimony)

The Erwins commended the Department on a job well done. They submitted editorial comments aimed at strengthening the language of the proposed rules.

18. Lucie Giampaoli, P.O. Box 419, Brookings, OR 97415; 8/16/88 (Written Testimony)

Ms. Giampaoli commended the Department for its responsiveness in revising the proposed rules after the hearings held in March, 1988. She supported the deletion of the aquifer classification system and lauded the Department's steps toward the initiation of groundwater protection legislation. Ms. Giampaoli expressed support for the Department's preventive approach to groundwater protection.

19. R. J. Hess, Manager, Environmental Sciences, Portland General Electric Company, 121 SW Salmon St., Portland, OR 97204; 8/16/88 (Written Testimony)

Mr. Hess, commenting on behalf of Portland General Electric (PGE), commended the Department for revisions made to the previously proposed rules and expressed support for a program that will prevent groundwater contamination.

PGE stated that designating domestic water supply as the highest and best beneficial use of groundwater and describing it as the use that requires the highest level of water quality as set forth in the proposed rules is outside the Department's statutory authority. PGE agrees that sole source aquifers and established groundwater sources of drinking water merit protection from pollution that could impair human health.

There was confusion about which section of the Department will administer remedial actions for point source permits. In addition, PGE expressed concern about using the proposed numerical reference levels for remedial action levels. It was felt that the drinking water standards upon which the reference levels are based are unnecessarily stringent, and the cost to clean up to those levels was questioned.

PGE pointed out that some of the numerical reference levels in the proposed rules are lower than the Practical Quantitation Limits for groundwater monitoring at Resource Conservation and Recovery Act (RCRA) sites. PGE suggested a conflict may exist in using Safe Drinking Water Amendment standards to regulate programs covered under the Clean Water Act and RCRA. It was recommended that the Department establish which set of analytical methods be used in implementing the proposed rules.

It was felt that requiring the analyses of unfiltered groundwater samples would be unnecessarily restrictive when turbidity is greater than 5 NTU or total dissolved solids exceeds 500 mg/L.

PGE recommended the deletion of the term "natural groundwater quality" from the proposed rules. Suggested alternative language that could be used in place of "natural" included, "existing background water quality without contamination." PGE also offered new verbiage to clarify the meaning within subsection (d) of the General Policies section.

PGE commented that the proposed rules do not allow for seasonal changes in groundwater quality. It was suggested that the resampling requirements and the definition of the term "statistically significant increase" be modified to take this factor into account. Additionally, PGE suggested the rules give consideration to the natural variability that may occur in background water quality due to geochemical processes.

PGE suggested that background and compliance wells be limited to fifty feet in order to prevent cross-contamination between deep aquifers and shallow aquifers or surface water.

In conclusion, PGE supported the Associated Oregon Industries and the Northwest Pulp and Paper Association in stating that the proposed rules do not have the required Fiscal and Economic Impact statement. The comments given by PGE in March, 1988 on the first proposal were resubmitted to the Department as well. PGE supported the adoption of rules that are scientifically justified, reasonable, practical, cost effective, and implementable.

20. Frank Josselson, Josselson, Potter & Roberts, 53 S.W. Yamhill Street, Portland, OR 97204; 8/30/88 (Written Testimony)

Mr. Josselson submitted written comments on the second draft of the proposed rules, and requested that the following comments be considered supplemental to those received by the Department on April 4, 1988.

Mr. Josselson expressed concern over the inclusion of secondary drinking water standards in the section on numerical groundwater quality reference levels. He urged the Department to strike these

standards from the rules. A letter supporting his recommendation written to Mr. Josselson by Mr. Kenneth W. Shump, P.G., a hydrogeologist with the consulting firm of CH2M Hill, was also submitted as testimony.

Further clarification or definition was requested for such terms as "beneficial uses" and "background water quality". In addition, it was felt that parts of the rules promote a nondegradation policy which is considered unrealistic and unattainable.

The general policy allowing short term continued degradation appears to conflict with other parts of the rules, including: the setting of permitted concentration limits above background levels; the establishment of alternate concentration limits; the provision allowing other measures to be substituted for cleanup; and the anti-degradation statement.

In conclusion, Mr. Josselson suggested that the adoption of rules be postponed until the EPA has published its own rules.

21. Andrew J. Klein, Manager, Regulatory Affairs, Monsanto Agricultural Company, 800 N. Lindbergh Blvd., St. Louis, MO 63167; 8/16/88 (Written Testimony)

Mr. Klein commented on behalf of Monsanto Agricultural Company, a manufacturer of pesticides including alachlor. Monsanto supports the use of groundwater standards based on sound scientific principles, and commented that regulatory decisions pertaining to the use of agricultural chemicals should consider the associated risks and benefits.

Monsanto questioned the rationale used in choosing the substances and standards listed in the Numerical Groundwater Quality Reference Levels section. It was recommended that the reference levels for synthetic organic chemicals be deleted from the proposed rules because they are not based on U.S. EPA's maximum contaminant levels (MCLs). A rule-making procedure that includes a judiciary appeal provision should be established for setting interim groundwater standards for chemicals which have no MCLs.

Barring the deletion of the proposed reference levels discussed above, Monsanto requested additional time in which to assemble extensive comments in regard to the level proposed for alachlor which it believes is overly restrictive. A draft of the U.S. EPA's proposed MCL sets the standard for alachlor at 2 ppb.

22. Loren D. Koller, DVM, PhD, Dean of the College of Veterinary Medicine, Oregon State University, Corvallis, OR 97331-4802; 8/8/88 (Written Testimony)

Dr. Koller believed the rules, as proposed, would be detrimental to the operation of the Veterinary Medical Animal Isolation Laboratory (VMAIL) located on the Oregon State University Campus. He stated that mandatory analysis of groundwater would be cost prohibitive to the College of Veterinary Medicine to continue to operate the research facility. He suggested the State provide funds for the collection and chemical analysis of groundwater sampled. In addition, Dr. Koller commented that no provision was made to prevent the expansion of the list of chemicals included in the Groundwater Quality Reference Level Section. Without such a provision, the present cost of analysis could increase significantly. Dr. Koller also commented that the concentration limits for some chemicals are too low. In conclusion, Dr. Koller felt that the Department should work closely with permit applicants in developing specific requirements for groundwater monitoring.

23. Rick McClung, Environmental Affairs Manager, J.R. Simplot Company, Hermiston Food Division, P.O. Box 850, Hermiston, OR 97838; 8/18/88 (Written Testimony)

Mr. McClung submitted comments in response to his attendance at the August 10, 1988 public hearing in Pendleton. He also wished to go on record as supporting the testimony submitted by Mr. Tom Donaca of Associated Oregon Industries.

Mr. McClung was concerned how the Numerical Groundwater Quality Reference Levels would impact existing land application programs and solid waste management. He requested a follow-up hearing be held to reconsider the proposed rules.

24. John McCully, Oregon Tree Fruit Growers, 1270 Chemeketa St. NE, Salem, OR 97301; 8/11/89 (Oral and Written Testimony)

Mr. McCully submitted testimony as a representative of the Tree Fruit Growers of Oregon. He commended the Department for revising the proposed rules so that nonpoint source, agricultural chemical related issues may be addressed through new legislation. He was concerned that even though this new avenue was being pursued, the currently proposed regulations still contain several references to nonpoint sources of pollution. Mr. McCully was concerned with inconsistencies in the rule's proposed list of reference levels and those established by the E.P.A. as drinking water standards. In addition, he felt that listing the reference levels of some contaminants as "none detected" was unrealistic and unachievable.

25. Jean Meddaugh, Associate Director, Oregon Environmental Council, 2637 SW Water Ave., Portland, OR 97201; 8/11/89 (Written & Oral Testimony)

Ms. Meddaugh, testifying on behalf of the Oregon Environmental Council (OEC), stated that she was pleased to see the newly proposed rules did not include the aquifer classification system as had been previously proposed. The OEC supported the Department's decision to seek legislative authority to deal more effectively with nonpoint sources of contamination. The Department was commended for more clearly defining how the rule's numerical reference levels would be used.

OEC also submitted a number of editorial comments in addition to the following concerns:

General Policies Section OEC supported a policy which would undertake improvement of contaminated aquifers in order to provide for its potential use for human consumption. OEC also suggested the rules set forth a procedure for informing the public when groundwater is not suitable for human consumption. In addition, a lead agency should be designated by the rules when implementing interagency coordinated activities.

Point Source Control Rules Section In addition to various editorial suggestions, OEC recommended the rules specifically state which programs within the Department will implement the groundwater quality protection requirements. The rule language pertaining to alternate concentration limits (ACLs) should reflect that the burden of requesting alternate concentration limits should not be on the Department. OEC would prefer that the EQC be responsible for granting all ACLs other than those for compounds that have no reference levels. If sampling indicates a significant change in groundwater quality, reporting should take place within 5 days, not 10 days proposed. In determining whether a cleanup concentration level greater than the specified concentration limit is protective, OEC suggested the Department use the same set of findings required for ACLs.

Groundwater Quality Standard: Anti-degradation Section The OEC suggested nondegradation as a goal rather than anti-degradation which implies limited but consistently allowed levels of pollution. The reference to OAR 340-41-026(1)(a) should be deleted since it would allow the EQC to lower quality goals for economic and social reasons.

Numerical Groundwater Quality Reference Levels Section The rules should state both here and in the General Policies section that the EQC has authority to adopt new reference levels as more data becomes available.

Definitions Section OEC recommended a definition of "alternative

technology" be included in the rules. A definition for "beneficial uses" was also suggested.

Conclusions OEC found the rule numbering awkward and the cross-references difficult to follow. It was recommended that a table of contents be included to aid in understanding the rules.

26. Elin D. Miller, Executive Director, Western Agricultural Chemicals Association, 930 G Street, Suite 210, Sacramento, CA 95814; 8/16/88 (Written Testimony)

Mr. Miller submitted comments on behalf of Western Agricultural Chemicals Association (WACA), representing manufacturers, dealers, distributors and formulators of crop protection chemicals in nine Western states. He felt the comment period was too short and asked that it be extended.

WACA believes groundwater protection is important and that rules which regulate groundwater contamination should adequately prioritize the threat to groundwater. There was concern that the proposed rules would apply to non-point sources of contamination when the understood intent was to exclusively regulate point sources of groundwater contamination.

WACA requested a fiscal review of the impact the proposed rules would have on small business involved in the crop protection industry. It was felt that requiring small business to conduct groundwater monitoring programs would be too expensive. WACA also expressed concern over the use of federal drinking water standards as water quality reference levels for permitted discharges, stating that would be overly burdensome and inappropriate.

WACA also suggested the rules clarify who is to make "case by case" decisions and asked that a process for appeal to such decisions be added to the proposed rules.

27. Douglas S. Morrison, Northwest Pulp & Paper Association (NWPPA), 1300 114th Ave. SE, Suite 110, Bellevue, WA 98004; 8/11/88 & 9/1/88 (Oral and Written Testimony)

Mr. Morrison submitted comments on behalf of NWPPA which represents the majority of pulp and paper manufacturers in Oregon. NWPPA supports regulations which: address identifiable environmental or health problems; are consistent with Departmental resources for implementation and enforcement; are based on sound scientific and technical grounds; and will result in benefits to the state.

NWPPA urged the Department not to adopt the proposed rules for the following reasons:

1. The proposed rules were not considered by a qualified advisory committee. The EQC should adopt no rules having either statewide or substantial effect, or having a scientific or technical nature, without first appointing a technically qualified citizens advisory committee which has adequate opportunity to review the rules and make recommendations to the Department.

2. The proposed rules do not consider the statutory framework for addressing water quality. Specifically, the proposal is not in accordance with the policies cited in ORS 468.710 nor does it appear that the Department considered the factors set out in ORS 468.735 for establishing standards of quality and purity for waters of the state. NWPPA pointed out that while the proposed anti-degradation policy is consistent with statute, it is not consistently applied to all facilities. In addition, NWPPA commented that the proposed rules do not consider the "value of stability" or allow affected parties a reasonable time to "plan, schedule, finance, and operate improvements in an orderly and practical manner" (ORS 468.735(1)(h)).

3. The Department failed to meet statutory and internal requirements for rulemaking. Notably, NWPPA commented that the notice of proposed rulemaking lacked a statement of need, statement of statutory authority, a list of principal documents, reports or studies relied upon, and a fiscal and economic impact statement.

4. The proposed rules contain provisions which are not technically sound such as the inclusion of maximum contaminant levels for secondary water quality standards. Moreover, NWPPA requested that some health or environmental based justification be given for requiring groundwater monitoring for any substances. It was not clear to NWPPA how permit-specific concentration limits would be set at existing facilities and that concentration limit specifications at new facilities promoted a nondegradation policy. In addition, NWPPA felt that designating the EQC, a policy-setting group, to set alternate concentration limit (ACL) is a highly technical issue. NWPPA supported the inclusion of comparative feasibility and cost of obtaining a concentration limit and an ACL as factors in considering ACLs. In requiring resampling and other action, the Department should consider the natural variability of groundwater and the margin of error of analytical methods.

NWPPA questioned the Department's authority to create a new remedial action program such as the section included in the proposed rules particularly since that section replicates a portion of rules being proposed under the authority of SB 122.

Included with numerous editorial comments submitted by NWPPA was a concern that the Department inadvertently left some references to nonpoint sources of contamination in the rules. The numbering system in the proposed rules was found to be awkward and difficult to cross-reference.

28. John C. Neely, Jr., 1600 Horn Lane, Eugene, OR 97404; 8/12/88
(Written Testimony)

Mr. Neely submitted comments on the proposed rules requesting that the written and oral testimony he presented in March, 1988 (see summary of testimony, March, 1988) be reintroduced and supplemented as follows:

Mr. Neely stated that the watertight standard for sanitary sewer collection pipes is not being met in the Santa Clara-River Road (Eugene-Springfield) area's new sewer collection pipelines. He noted that this has resulted in leakage into the subsurface and contamination of both surface and groundwater. He also commented that the sewage treatment facility installed in 1984 provides only secondary treatment and inadequately protects the area's water quality.

29. Bruce M. Niss, Deputy Director, Water Quality & Environmental Policy Division, Bureau of Water Works, City of Portland, 1120 S.W. 5th Ave., Portland, OR 97204-1926; 8/18/88 & 9/1/88 (Written Testimony)

Mr. Niss submitted testimony on behalf of the Portland Water Bureau (PWB). The PWB commended the Department on improvements made in the proposed rules over the first draft, and strongly supported the rules' antidegradation standard. In addition to editorial suggestions for clarifying the rules' intent and protective function, the PWB recommended more public participation be included in their implementation. Additional comments submitted included the following:

General Policies The second sentence in subsection (d) which states that the purpose of the reference levels is "...to indicate when groundwater is not suitable for human consumption" should be deleted. The reason for compliance with the reference levels should be conformance to the State's antidegradation policy.

Point Source Control Rules The waste disposal facility's ability to achieve the groundwater quality reference levels should be demonstrated before a waste disposal activity is issued a permit.

Downgradient monitoring requirements at waste management areas should take into account the influence exerted on the direction of groundwater flow by nearby wells. In addition, the compliance point should be designated at a point directly under the deposited waste.

Alternate concentration levels (ACLs) in excess of the reference levels will transfer the cost of cleanup from the contaminator to the domestic, water-consuming public, and should not be allowed.

In order to provide a basis for developing information to determine the need for and selection of remedial action, the Director should be required to perform a remedial investigation and feasibility study

The highest and best technology standard should only be used where a reference level is not available. If a reference level is available, the waste disposal practice must have been shown capable of achieving it before being issued a permit.

Numerical Groundwater Quality Reference Levels The State's goal should be that of nondegradation. In addition, an explanation of the source of the listed reference levels and the rationale for their inclusion should be provided in the rules.

30. Gerald L. Odman, Public Works Director, City of Pendleton, P.O. Box 190, Pendleton, OR 97801; 8/18/88 (Written Testimony)

Mr. Odman suggested that the proposed language under subsection on Permitted Operations allow for exceptions to or exemptions from groundwater monitoring wells. He stated that some areas have a heavy basalt overburden providing an effective barrier between surface water and groundwater. In these areas, monitoring wells would not be necessary and could, in fact, provide a direct avenue for contamination.

31. Edward Olson, Manager, Medford Water Commission, 411 W. 8th, Medford, OR 97501; 8/8/88 (Oral Testimony)

Mr. Olson stated that the revised rules were an improvement over what was previously proposed. He commented that statutory references given in the rules were a source of confusion, and suggested that a comprehensive groundwater protection program should be just that: comprehensive with no exceptions.

The proposed rules should not limit the reference levels to only those standards that have been adopted under the Safe Drinking Water Act. Mr. Olson recommended the rules remain flexible enough to incorporate new standards as they are developed.

Finally, Mr. Olson urged the Department to include a time schedule for remedial action. He also noted that no penalties were included in the proposed regulations.

32. Jack W. Parker, President, Rossman's Landfill, Inc., 1101 17th Street, Oregon City, OR 97045; 8/31/88 (Written Testimony)

Mr. Parker felt that the proposed rules' definition of "background water quality" is not realistic. He suggested a more appropriate definition such as that used by the U.S. Environmental Protection Agency be substituted.

In addition, Mr. Parker expressed opposition to the inclusion of secondary drinking water standards in the rules. He noted that contaminants such as iron, manganese, chloride, color and turbidity may be naturally present in groundwater in exceedence of the reference levels; he was concerned that many people would be required to apply for alternate concentration limits in such cases. Mr. Parker felt it was inappropriate to require compliance with the secondary drinking water standards because they do not pose a threat to human health.

33. Larry D. Patterson, Environmental Control Director, Pennwalt Corporation, P.O. Box 4102, Portland, OR 97208; 8/12/88 (Written Testimony)

Mr. Patterson submitted comments on behalf of the Pennwalt Corporation (Pennwalt) as follows:

1. Pennwalt supports the General Policy which would allow implementation of the proposed rules based upon priorities established by the Department. The policy set forth in the Point Source Control section requiring the highest and best practicable methods while allowing for a case-by-case determination of those methods was also commended. It is not clear, however, what the scope of the rules is intended to be. Pennwalt suggested a more comprehensive program should be drafted if the rules are meant to govern the groundwater activities for the entire Department.

2. In locating background monitoring points, the Department should consider those situations in which access may be denied to upgradient property.

3. Situations may arise where the downgradient edge of a facility's waste management area is bordered by surface water. In such cases, Pennwalt suggested a compliance point may not need to be established if the migrating groundwater has no environmental effect on the quality of the surface water.

4. The concentration limits section specifies that "groundwater quality shall be maintained at the compliance point(s) within the concentration limits that are to be specified in the facility permit". Pennwalt felt this wording made it appear that the Department must include such limits in all existing facilities' permits, and recommended the words underlined be replaced with, "which may be".

5. To eliminate any possible confusion, Pennwalt suggested the words "for new facilities" be inserted after the word "limits" in line 2, paragraph (2) of the Alternate Concentration Limit Section, and insert the words "for new and existing facilities" after the word "and" in line 5 of the same paragraph.

6. The resampling paragraph of the Action Requirements Section requires the submittal of a preliminary assessment plan within 30 days of confirming a change in water quality. Pennwalt believes that a period of 60 days would be more realistic.

In conclusion, Pennwalt expressed its support for the proposed rule package since it appears to be very workable.

34. Jeffrey H. Randall, Ph.D., P.G., Northwest Director Groundwater, CH2M Hill, P.O. Box 91500, Bellevue, WA 98009-2050; 8/31/88
(Written Testimony)

Mr. Randall submitted the following comments that he felt would make the proposed rules more consistent and easier to enforce.

1. Secondary drinking water standards should not be regulated to the same degree as primary drinking water standards because they are not consistent with the proposed rules' human health focus.

2. The proposed rules state in several places that human consumption is the highest beneficial use. They also state in several places that human health, welfare, and the environment are to be protected. Ambient water quality criteria are often below human health criteria. Mr. Randall felt this inconsistency may lead to enforcement problems.

35. Harold Reed, President, Spencer Creek Region Homeowners Association, 85139 Appletree Dr., Eugene, OR 97405; 8/9/88 (Oral Testimony)

Mr. Reed presented oral testimony as the president of the Spencer Creek Regional Homeowners' Association. While expressing general support for the revised rule proposal, he was concerned about the length of time and the cost to the Department involved in implementing the rules. Of primary concern to the Homeowner's Association was the probability for contamination from nonpoint sources in the Spencer Creek area where water resources are limited.

36. Sandy Reed, 85139 Appletree Dr., Eugene, OR 97405; 8/9/88 (Oral Testimony)

Ms. Reed expressed concern about confined animal feeding operations in the Spencer Creek area. She commented that an existing farm operation has dumped liquid waste into a ditch that drains to surface water, and she was concerned that the limited groundwater resources in the area would be threatened by continued activities of this sort.

37. Kenneth W. Shump, 3805 S.W. 94th Ave., Portland, OR 97225;
8/22/88 (Written Testimony)

Mr. Shump presented written testimony as a practicing professional hydrogeologist in Oregon who has frequently worked with projects involving industry and governmental entities. He commended the Department for its work toward the development of groundwater quality protection rules. He suggested a number of changes in the proposed rule language to improve their readability, interpretation and workability.

Because secondary drinking water standards are included with the numerical groundwater quality reference levels, Mr. Shump suggested that the second sentence in subsection (d) of the General Policies section should read: "The purpose of these levels is to indicate when groundwater is not suitable for human consumption because of aesthetic reasons or health effects."

Mr. Shump felt that the scope of the rules is not clear. Will the rules authorize the requirement of additional groundwater quality assessments at sites that are currently under compliance orders to investigate and remediate groundwater contamination?

Guidance is needed in determining which aquifer is to be monitored downgradient of a permitted facility. In addition, Mr. Shump stated that the requirement in the proposed rules that the downgradient monitoring point be located to "ensure immediate detection of waste discharged" sets a standard that no monitoring well network can meet in the real world. He suggested that wording such as "to reliably determine if a discharge from the waste management area has affected groundwater quality at the downgradient edge of the waste management area" would be more realistic. He also commented that the edge of the waste management area may include space taken up by liners, caps, dikes, or other barriers.

A clear distinction needs to be made between compliance point monitoring wells and downgradient monitoring wells. Alternative wording was suggested which defined the compliance point as a single point within the uppermost aquifer, with a provision for the owner or operator to propose an alternate point of compliance.

As a factor to be considered when establishing an alternate concentration limit (ACL), a more precise description of what is meant by "quantity of groundwater" is needed.

Mr. Shump commented that the subsection covering the selection of remedial action concentration limits is very complex and difficult to understand as written. He asked if this subsection authorized the Director to set a concentration level higher than a reference level; if so, this appears to be inconsistent with the section establishing ACLs where only the EQC may set a concentration level higher than a reference level.

Mr. Shump expressed concern about including turbidity as a reference level for groundwater quality, and suggested it be deleted from the proposed rules. He stated that the first footnote in the section which addresses the filtering of samples is confusing with regard to turbidity, and added that samples taken for the analysis of metals should be field filtered immediately upon collection before introducing an acid preservative.

Because the proposed definition of point source differs from that used in federal regulations for surface water pollution, the Department may want to add a sentence acknowledging this difference.

New language to clarify the definition of a monitoring point was suggested by Mr. Shump. In addition, he recommended the definition for a waste management area be modified so that an area's designation as a waste management area may be changed following waste removal and cleanup.

38. Brian R. Stahl, Assistant Director, Utilities Department, City of The Dalles, 6780 Reservoir Rd., The Dalles, OR 97058; 8/10/88
(Oral and Written Testimony)

Mr. Stahl, commenting on behalf of the City of The Dalles, stated that it is imperative that the Department adopt a strong position with regards to protection of groundwater resources. He recommended that the department implement a program aimed at characterizing current groundwater resources and identifying areas of concern and potential sources of contamination. He voiced support for giving public health issues the highest priority.

Mr. Stahl also called for a periodic evaluation of existing facilities to compare current with future standards of operation, and to require facilities to upgrade appropriately. He stressed the importance of using background water quality levels rather than numerical reference values as the goal for groundwater quality management. In closing, Mr. Stahl advised the Department to include a procedure for updating reference levels as new information and regulations become available.

39. Lisa Quincy Sugarman, 549 W. Broadway, Eugene, OR 97401; 8/9/88
(Oral and Written Testimony)

Ms. Sugarman felt that the proposed rules were based on a good concept, and commented that the anti-degradation approach was consistent with the high value that is placed on groundwater resources. She offered several suggestions intended to improve the quality and consistency of the regulations.

1. The proposed rules should consider the impacts of groundwater pollution on non-human uses as well as impacts on human uses.
2. Provisions for incentives to encourage or even force the development and use of new and better technologies for detection, monitoring, and cleanup of groundwater pollution should be included in the proposal.
3. Incorporating cost considerations into the procedures for seeking a concentration limit variance and the selection of remedial action is inappropriate to an anti-degradation policy.
4. Funding provisions need to be made for research and investigations, and incentives should be provided to encourage development of new, non-polluting techniques and materials.
5. More public participation should be incorporated into the rules, specifically in areas of policy development and enforcement.
6. The rules establish the use of compliance points without providing funding for the geohydrologic characterization needed to determine proper compliance point placement. Also, Ms. Sugarman pointed out difficulties with investigating and cleaning up groundwater contamination from non-permitted activities, and potential problems of requiring a liable party to cover the costs of any study and cleanup.

40. Terrence T. Virnig, P.E., District Engineer, Chem-Security Systems, Inc., 200 SW Market St., Suite 925, Portland, OR 97201; 8/31/88 (Written Testimony)

Mr. Virnig offered testimony on the proposed rules on behalf of Waste Management of North America and its affiliate, Chemical Waste Management. He was concerned that his previously submitted comments (received by the Department 4/6/88) were not incorporated into the redrafted rule proposal. Waste Management resubmitted those comments (see summary and response to testimony received through April, 1988) and provided additional testimony as follows:

In general, Waste Management recommended that hazardous waste facilities which are currently regulated under other programs be excluded from regulation under the proposed rules in order to avoid unnecessary redundancy and contradictory requirements.

Waste Management, Inc., requested clarification on a number of terms in the proposed rules, including: "other factors" employed in the context of determining the highest and best practicable methods to prevent the movement of pollutants to groundwater; "other programs" to be used to implement the proposed groundwater quality protection requirements; criteria to be employed in establishing "priorities" and "potential adverse impacts to

beneficial uses"; the relationship of "background monitoring point(s)" to the gradient; "statistically significant increase"; "long term care and management" provisions in the context of other measures to substitute for cleanup"; "alternative technology";

Waste Management, Inc., suggested a number of technical clarifications to be included in the outline of a groundwater monitoring program. These included a more specific definition of a background monitoring point as well as model language for determining statistical significance.

It was recommended that the rules specify that the purpose of a preliminary assessment plan is to determine the necessity of a remedial investigation and feasibility study rather than remedial action. The remedial investigation and feasibility study should, in turn, be the basis for deciding that remedial action may be necessary.

Also attached to the testimony submitted by Waste Management, Inc., was an excerpt National Solid Wastes Management Association's Institute for Solid Waste Disposal Model Rule (July, 1987) which addressed groundwater protection, monitoring, and corrective action.

41. Terry L. Witt, Executive Director, Oregonians for Food & Shelter (OFS), 567 Union Street N.E., Salem, OR 97301; (8/11/88 & 9/1/88) (Oral & Written Testimony)

Mr. Witt submitted oral and written comments on behalf of OFS, a coalition representing approximately 20,000 Oregonians involved in land or environmental management. OFS felt that the public comment period was not long enough to allow many people time to submit testimony.

OFS supports the development of a groundwater quality protection program which regulates both point and nonpoint sources of contamination provided the rules for such a program are practical, economically justifiable, and based on sound science and technology. OFS advocates the rules' stated antidegradation approach to groundwater protection, but felt that the rules promote a nondegradation policy which is unworkable.

Other major concerns OFS expressed were as follows:

1. The proposed rules do not deal exclusively with point sources of pollution, as per statement of intended scope. OFS felt that the public had been misled into thinking that the scope of the proposed rules has been limited to only point sources of contamination.

2. The Numerical Groundwater Quality Reference Levels listed are

inconsistent, not scientifically justified, and therefore totally unacceptable.

3. The proposal lacks an adequate fiscal review and economic impact analysis.

4. Inadequately defined Departmental decision-making criteria/protocols will spawn inconsistencies and selective enforcement.

5. The proposal is based on perception and speculation, with emphasis on undefined "potential" risks as opposed to real risks of groundwater contamination and the practical aspects of preventive management.

6. There is concern that biased opinions held by a Department official are interfering with the objective handling of legitimate public comments.

7. The proposed rule changes lack review by a qualified advisory committee. OFS recommended a new advisory committee be appointed, and it offered the assistance of Mr. Witt on such a committee.

In conclusion, OFS asked that the Commission not adopt any new groundwater protection rules until the need for them has been examined. OFS asked to go on record as supporting the comments submitted by Thomas C. Donaca of Associated Oregon Industries and Douglas S. Morrison of the Northwest Pulp and Paper Association.

42. Jan Wroncy, Spokesperson for Residents of Oregon Against Deadly Sprays and Smoke (R.O.A.D.S.2), P.O. Box 1101, Eugene, OR 97440; 8/9/88 (Oral and Written Testimony)

Ms. Wroncy presented comments as a spokesperson for R.O.A.D.S.2. She suggested that pollution sources must be stopped because the solution to pollution is not dillution. She was pleased with much of the work the Department has done on revising the proposed rules, but was skeptical about leaving the nonpoint source concerns to new legislation. She preferred to redefine nonpoint source contaminants as point source contaminants by tracing them back to manufacturers, chemical containers, or applicators.

Ms. Wroncy was primarily concerned about agricultural chemicals and the risk of cancer associated with those chemicals. She suggested the Department work with other state agencies to resolve problems associated with agricultural chemicals. She stated that the quality of the environment must be considered separately from the economic concerns of industries that will be required to change practices. Risk management and cost-benefit analysis are inappropriate in this realm.

In addition to these oral comments, Ms. Wroncy submitted written suggestions for new laws and comments on soil and water conservation.

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

NOTICE OF PUBLIC HEARING

Hearing Date: Noted Below
 Comments Due: April 3, 1988
 5:00 p.m.

**WHO IS
 AFFECTED:**

All businesses, residents, industries, and local governments in the State of Oregon.

**WHAT IS
 PROPOSED:**

The Department proposes to amend the existing General Groundwater Quality Protection Policy as contained in the Oregon Water Quality Rules Chapter 340, Division 41, Section 029.

**WHAT ARE THE
 HIGHLIGHTS:**

Over the last several years evidence of groundwater quality problems has increased in the State of Oregon. The Environmental Quality Commission adopted a General Groundwater Quality Protection Policy in August of 1981. The Department of Environmental Quality has had difficulty in applying the policy to some specific problem situations. Consequently, the Department proposes to amend the policy to include more specific guidance on how groundwater quality protection is to be implemented. The proposed amendments to the policy include the following:

- a) **General Policies:** This section establishes the general policies that are to guide groundwater protection activities.
- b) **Groundwater Quality Management Classification System:** This section describes a system for classifying groundwater according to its management needs.
- c) **Point Source Rules:** These rules establish the specific requirements for groundwater quality protection for point sources.
- d) **Nonpoint Source Control:** This section establishes the procedure the Department will follow in minimizing groundwater quality impacts from nonpoint sources.
- e) **Groundwater Quality Standards:** This section establishes narrative and numerical groundwater quality standards.



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.

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HOW TO COMMENT:

Public Hearings Schedule:

Portland -- March 1, 1988, 9:00 a.m., Room 4, Department of Environmental Quality Headquarters, 811 SW 6th Ave., Portland, Oregon

Eugene -- March 7, 1988, 1:00 p.m., Main Room of Harris Hall, Public Service Building, 125 E. 8th, Eugene, Oregon

Medford -- March 8, 1988, 1:00 p.m., Room 106 and 107, Justice Building, 100 S. Oakdale, Medford, Oregon

Bend -- March 14, 1988, 2:00 p.m., Commission Room, Police Station, 720 NW Wall St., Bend, Oregon

Pendleton -- March 16, 1988, 1:00 p.m., Department of Environmental Quality Conference Room, State Office Building, 700 SE Emigrant St., Pendleton, Oregon

Ontario -- March 15, 1988, 2:00 p.m., City Council Chambers, City Hall, 444 SW 4th St., Ontario, 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
Water Quality Division
Planning and Monitoring Section
811 S.W. Sixth Avenue
Portland, OR 97204

The comment period will end on April 3, 1988, at 5:00 p.m.

For more information or copies of documents, contact Greg Pettit at 229-6065 or toll-free 1-800-452-4011.

**WHAT IS THE
NEXT STEP:**

After the public testimony has been received and evaluated, the proposed amendments will be revised as appropriate, and will be presented to the Environmental Quality Commission for their consideration. The Commission may adopt rule amendments, adopt modified rule amendments, or decline to adopt rule amendments and take no further action.

WQ59

STATEMENT OF NEED FOR RULE MAKING

Pursuant to ORS 183.335(7), this statement provides information on the Environmental Quality Commission's intended action to adopt rules.

(1) Legal Authority.

Oregon Revised Statute (ORS) 468.015 and 468.020 provide the Commission with the authority to establish the policies, rules, and standards necessary and proper in performing the functions vested by law in the Commission, including the policies and purposes of ORS Chapter 468. It is the public policy of the state as defined in ORS 468.710 to protect and improve public water quality for beneficial uses including: "public water supplies, for the propagation of wildlife and fish, and aquatic life, and for domestic, industrial, municipal, recreational and other beneficial uses." ORS 468.710, 468.715, and 468.720 go on to further state that "no waste be discharged to waters of the state without first receiving necessary treatment..."; that "all available and necessary methods" be used to prevent pollution and that waste not be allowed to "escape or be carried into the waters of the state by any means." ORS 468.700 (7) includes in its definition of wastes "...substances which will or may cause pollution or tend to cause pollution of any water of the state." ORS 468.700(8) includes in its definition of waters of the state "...underground waters..." ORS 468.735 provides that the commission by rule may establish standards of quality and purity for the waters of the state in accordance with the public policy set forth in ORS 468.710.

(2) Need For Rule

Over the last few years there has been a rapid increase in the number of groundwater contamination incidents that the Department has had to respond to. Current rules lack the specific direction and specificity the Department needs to respond to these incidents, and to ensure that future contamination of groundwater is minimized. The proposed rule amendments contain general policies, a groundwater quality management classification system, point source control rules, nonpoint source control, and groundwater standards.

Adoption of the proposed rule amendments, modification of those amendments, or no action may be taken by the Commission after the hearing record has been evaluated.

(3) Principal Documents Relied Upon in this Rulemaking

Discussion Paper, State Groundwater Quality Protection Program, July 14, 1986, Oregon Department of Environmental Quality.

Statement of Need for Rule Making
Page 2

Federal Register, Vol. 44, No. 140, July 19, 1979, National Secondary Drinking Water Regulations.

Federal Register, Vol. 50, No. 219, November 13, 1985, Part III, Part IV, National Primary Drinking Water Regulations, Proposed Rule.

Groundwater Protection Strategy for the Environmental Protection Agency, August 1984.

Groundwater Quality Protection State and Local Strategies, Prepared by Committee on Groundwater Quality Protection, National Research Council, 1986.

Groundwater - Saving the Unseen Resource, The National Groundwater Policy Forum, November 1985.

Oregon Revised Statutes 468.005-468.035, 468.700-468.740.

LAND USE CONSISTENCY

The Department has concluded that the proposal conforms with statewide planning goals and guidelines.

Goal 6 (Air, Water, and Local resource Quality):

The proposed revisions to the water quality regulations are designed to more clearly protect and maintain groundwater quality statewide.

Goal 11 (Public Facilities and Services):

To attain compliance with the revised regulations, additional costs for capital improvements, service area expansion, and operation of wastewater treatment facilities may be incurred. Additional planning to insure timely, orderly and efficient provision of services, and construction of facilities to provide necessary availability of services and needed capacity, to meet groundwater quality protection plans may be necessary.

Public comment on any land use issue is welcome and may be submitted in the same manner as indicated for testimony in this notice. It is requested that local, state, and federal agencies review the proposed action and comment on possible conflicts with their programs affecting land use, and with statewide planning goals within their expertise and jurisdiction. The Department of Environmental Quality intends to ask the Department of Land Conservation and Development to mediate any appropriate conflicts brought to our attention by local, state, and federal authorities.

FISCAL AND ECONOMIC IMPACT

Adoption and implementation of the proposed revisions to the groundwater quality protection rules could result in increased costs to local governments, small and large businesses, industries, private and public utilities, and individuals. Specifically, increased cost for groundwater monitoring, hydrogeological assessments, groundwater quality protection capital construction improvements, increased operating cost, and remediation of contaminated groundwater could be incurred.

In addition, a wide range of individuals and government entities could incur cost for the development and implementation of aquifer management plans and best management practices. These would primarily relate to the control of nonpoint sources of groundwater contamination.

Long term economic benefits would be gained by the protection of groundwater from contamination that would result in loss of its availability to meet beneficial uses. Alternate water supplies would have to be made available, or groundwater quality treatment and remediation implemented. Such cost saving would benefit potential responsible parties, public and private water supply systems, individual groundwater users, irrigators, industrial groundwater users, local, state, and federal government entities.

Reduced contamination of groundwater as a result of the proposed rules would result in reduced public exposure to toxic and carcinogenic contaminants. This would result in reduced illnesses, increased productivity, and reduced medical expenses.

In summary, the fiscal and economic impacts are not well defined. There would be immediate cost to achieve compliance, and long term benefits and cost savings. Public comment on any fiscal and economic impact is welcome and may be submitted in the same manner as indicated for testimony on this notice.

Following is the existing language under Oregon Administrative Rule (OAR) 340-41-029. The Department proposal would delete all of the existing language (bracketed) and replace it with the amended rule.

Existing Language Proposed to be Deleted.

[GENERAL GROUNDWATER QUALITY PROTECTION POLICY

340-41-029 GENERAL POLICIES

The following statements of policy are intended to guide federal agencies and state agencies, cities, counties, industries, citizens, and the Department of Environmental Quality staff in their efforts to protect the quality of groundwater:

(1) GENERAL POLICIES

- (a) It is the responsibility of the EQC to regulate and control waste sources so that impairment of the natural quality of groundwater is minimized to assure beneficial uses of these resources by future generations.
- (b) In order to assure maximum reasonable protection of public health, the public should be informed that groundwater -- and most particularly local flow systems or water table aquifers -- should not be assured to be safe for domestic use unless quality testing demonstrates a safe supply. Domestic water drawn from water table aquifers should be tested frequently to assure its continued safety for use.
- (c) For the purpose of making the best use of limited staff resources, the Department will concentrate its control strategy development and implementation efforts in areas where waste disposal practices and activities regulated by the Department have the greatest potential for degrading groundwater quality. These areas will be delineated from a statewide map outlining the boundaries of major water table aquifers prepared in 1980 by Sweet, Edwards & Associates, Inc. This map may be revised periodically by the Water Resources Department.
- (d) The Department will seek the assistance and cooperation of the Water resources Department to design an ambient monitoring program adequate to determine long-term quality trends for significant groundwater flow systems. The Department will assist and cooperate with the Water resources Department in their groundwater studies. The Department will also seek the advise, assistance, and cooperation of local, state, and federal agencies to identify and resolve groundwater quality problems.

- (e) The EQC recognizes and supports the authority and responsibilities of the Water Resources Department and Water Policy Review Board in the management of groundwater and protection of groundwater quality. In particular, existing programs to regulate well construction and to control the withdrawal of groundwater provide important quality protective opportunities. These policies are intended to complement and not duplicate the programs of the Water Resources Department.

(2) SOURCE CONTROL POLICIES

- (a) Consistent with general policies for protection of surface water, highest and best practicable treatment and control of sewage, industrial wastes, and landfill leachates, shall be required so as to minimize potential pollutant loading to groundwater. Among other factors, energy, economics, public health protection, potential value of the groundwater resource to present and future generations, and time required for recovery of quality after elimination of pollutant loadings may be considered in arriving at a case-by-case determination of highest and best practicable treatment and control. For areas where urban density development is planned or is occurring and where rapidly draining soils overlay local groundwater flow systems and their associated water table aquifers, the collection, treatment and disposal of sewage, industrial wastes and leachates from landfills will be deemed highest and best practicable treatment and control unless otherwise approved by the EQC pursuant to subsections (b) or (c) of this section.

- (b) Establishment of controls more stringent than those identified in subsection (a) of this section may be required by the EQC in situations where:

- (A) DEQ demonstrates such controls are needed to assure protection of beneficial uses:
- (B) The Water Resources Director declares a critical groundwater area for reasons of quality; or
- (C) EPA designates a sole source aquifer pursuant to the Federal Safe Drinking Water Act.

- (c) Less stringent controls than those identified in subsection (a) of this section may be approved by the EQC for a specific area if a request, including technical studies showing that lesser controls will adequately protect beneficial uses is

made by representatives of the area and if the request is consistent with other state laws and regulations.

- (d) Disposal of wastes into or into the ground in a manner which allows potential movement to groundwater shall be authorized and regulated by the existing rules of the Department's Water Pollution Control Facility (WPCF) Permit, Solid Waste Disposal Facility Permit, or On-Site (Subsurface) Sewage Disposal System Construction Permit, whichever is appropriate:
- (A) WPCF permits shall specify appropriate groundwater quality protection requirements and monitoring and reporting requirements. Such permits shall be used in all cases other than for those covered by Solid Waste Disposal Facility Permit or On-Site (subsurface) Sewage Disposal Permits.
 - (B) Solid Waste Disposal Facility Permits shall be used for landfills and sludge disposal not covered by NPDES or WPCF permits. Such permits shall specify appropriate groundwater quality protection requirements and monitoring and reporting requirements.
 - (C) On-Site Sewage Disposal System Construction Permits shall be issued in accordance with adopted rules. It is recognized that existing rules may not be adequate in all cases to protect groundwater quality. Therefore, as deficiencies are documented, the Department shall propose rule amendments to correct the deficiencies.
- (e) In order to minimize groundwater quality degradation potentially resulting from nonpoint sources, it is the policy of the EQC that activities associated with land and animal management, chemical application and handling, and spill prevention be conducted using the appropriate state-of-the-art management practices ("Best Management Practices").

(3) PROBLEM ABATEMENT POLICIES

- (a) It is the intent of the EQC to see that groundwater problems abatement plans are developed and implemented in a timely fashion. In order to accomplish this all available and appropriate statutory and administrative authorities will be utilized, including but not limited to: permits, special permit conditions, penalties, fines, Commission orders compliance schedules, moratoriums, Department orders, and geographic rules. It is recognized, however, that in some cases the identification, evaluation and implementation of abatement measures may take time and that continued degradation may occur while the plan is being developed and implemented. The EQC will allow short-term continued degradation only if the beneficial uses, public health, and groundwater resource are not significantly affected, and only if the approved abatement plan is being implemented on schedule.

- (b) In areas where groundwater quality is being degraded as a result of existing individual source activities or waste disposal practices the Department may establish the necessary control and abatement schedule requirements to be implemented by the individual sources to modify or eliminate their activities or waste disposal practices through existing permit authorities, Department orders, or Commission orders issued pursuant to ORS Chapter 183.

- (c) In urban areas where groundwater is being degraded as a result of on-site sewage disposal practices and an areawide solution is necessary, the Department may propose a rule for adoption by the Commission and incorporation into the appropriate basin section of the State Water Quality Management Plan (OAR Division 41) which will achieve the following:
 - (A) Recite the findings describing the problem,
 - (B) Define the area where corrective action is required,
 - (C) Describe the problem correction and prevention measure to be ordered,
 - (D) Establish the schedule for required major increments of progress,
 - (E) Identify conditions under which new, modified, or repaired on-site sewage disposal systems may be installed in the interim while the area correction program is being implemented and is on schedule,
 - (F) Identify the conditions under which enforcement measures will be pursued if adequate progress to implement the corrective actions is not made. These measures may include but are not limited to the measures authorized in ORS 454.235(2), 454.685, 454.645, and 454.317.
 - (G) Identify all known affected local governing bodies which the Department will notify by certified mail of the final rule adoption, and
 - (H) Any other items declared to be necessary by the Commission.

- (d) The Department shall notify all known impacted or potentially affected local units of government of the opportunity to comment on the proposed rules at a scheduled public hearing and of their right to request a contested case hearing pursuant to ORS Chapter 183 prior to the Commission's final order adopting the rules.]

Stat. Auth.: ORS Ch. 468
Hist: DEQ 24-1981, f. & ef. 9-8-81
Adopted by the EQC 6/29/84

Following is the amended rule language (underlined) that is proposed to replace existing rule language under Oregon Administrative Rule (OAR) 340-41-029, and new definitions that would be included in the definitions Section OAR 340-41-006.

GROUNDWATER QUALITY PROTECTION

340-41-029 The following regulations establish the mandatory minimum groundwater quality protection requirements for federal and state agencies, cities, counties, industries, and citizens. Other federal, state, and local programs may contain additional or more stringent groundwater quality protection requirements. Unless specifically exempted by statute, groundwater quality protection requirements must meet or be equivalent to these regulations. Removal and remedial actions conducted pursuant to Oregon Revised Statutes (ORS) 466.540 to 466.590 shall not be subject to the requirements of these rules (340-41-029).

(1) GENERAL POLICIES:

- (a) Groundwater is a critical natural resource providing domestic, industrial, and agricultural water supply; and other legitimate beneficial uses; and also providing base flow for rivers, lakes, streams, and marshes.
- (b) Groundwater, once polluted, is difficult and sometimes impossible to clean up. Therefore, it is the policy of the EQC to emphasize the prevention of groundwater contamination, and to control waste discharges to groundwater so that the highest possible groundwater quality is maintained.
- (c) All groundwaters of the state shall be protected from pollution that could impair existing or potential beneficial uses for which the natural water quality of the aquifer is adequate. Among the recognized beneficial uses of groundwater, domestic water supply is recognized as being the highest and best use and the use that would usually require the highest level of water quality.
- (d) Subsection (5)(d) of this rule contains numerical groundwater quality standards. The purpose of these standards is to indicate when groundwater is not suitable for human consumption. They are to be used by the Department and the public to aid in evaluating the significance of a particular chemical concentration. These standards should not be construed as acceptable groundwater quality goals because it is the policy of the EQC (340-41-026(1)(a)) to maintain and preserve the highest possible groundwater quality.

- (e) For pollutant parameters for which groundwater quality standards have not been established, or for evaluating adverse impacts on beneficial uses other than human consumption, the Department shall make use of the most current and scientifically valid information available in determining at what levels pollutants may affect present or potential beneficial uses.
- (f) In order to apply appropriate and reasonable groundwater quality protection, all groundwater shall be classified and managed according to the classification system described in Subsection (2) of this rule.
- (g) The Department shall develop, implement and conduct a comprehensive groundwater quality protection program. The program shall contain strategies and methods for problem abatement and control of both point and nonpoint sources of groundwater pollution. The Department shall seek the assistance of federal, state, and local governments in implementing the policy.
- (h) In order to assure maximum reasonable protection of public health, the public should be informed that groundwater, and most particularly local flow systems or water table aquifers, should not be assumed to be safe for domestic use unless quality testing demonstrates a safe supply. The Department shall work cooperatively with the Water Resources Department and the Health Division in identifying areas where groundwater contamination may affect beneficial uses.
- (i) The Department shall concentrate its groundwater quality protection implementation efforts in areas where practices and activities have the greatest potential for degrading groundwater quality, and where potential groundwater quality contamination would have the greatest adverse impact on beneficial uses. Therefore, the Department shall implement these rules based upon priorities it establishes which reflect the agency's available resources and the severity of threat to the groundwater and to public health.
- (j) The Department shall work cooperatively with the Water Resources Department to characterize the physical and chemical characteristics of the aquifers of the state. The Department will seek the assistance and cooperation of the Water Resources Department to design an ambient monitoring program adequate to determine representative groundwater quality for significant groundwater flow systems. The Department shall assist and cooperate with the Water Resources Department in its groundwater studies. The Department shall also seek the advice, assistance, and cooperation of local, state, and federal agencies to identify and resolve groundwater quality problems.

(k) It is the intent of the EQC to see that groundwater problem abatement plans are developed and implemented in a timely fashion. In order to accomplish this, all available and appropriate statutory and administrative authorities will be utilized, including but not limited to: permits, special permit conditions, penalties, fines, Commission orders, compliance schedules, moratoriums, Department orders, and geographic rules. It is recognized, however, that in some cases the identification, evaluation and implementation of abatement measures may take time and that continued degradation may occur while the plan is being developed and implemented. The EQC may allow short-term continued degradation only if the beneficial uses, public health, and groundwater resources are not significantly affected, and only if the approved abatement plan is being implemented on a schedule approved by the Department.

(2) GROUNDWATER QUALITY MANAGEMENT CLASSIFICATION SYSTEM:

(a) All groundwaters of the state shall be classified by the EQC for the purposes of determining groundwater quality protection requirements. It is not the purpose of the classification system to describe existing water quality, but to establish for an aquifer the appropriate management requirements to protect its beneficial uses. In classifying groundwater, the EQC shall consider at least the following:

(A) The natural quality of the groundwater, and the existing and potential beneficial uses for which the natural water quality is adequate.

(B) The social, environmental, and economic importance of the groundwater resource to present and future citizens of the State.

(b) All groundwaters of the state shall be classified according to one of the following classifications:

(A) Class I Groundwater: Shall be managed as special resource groundwater to the citizens of the state, and requires the highest level of protection.

Groundwaters to be classified as Class I must exhibit one of the following characteristics:

(i) The groundwater is an irreplaceable source of drinking water, in that no reasonable alternative source of drinking water is available to a substantial population; or

(ii) The groundwater is ecologically vital, in that the aquifer provides base flow for a particularly sensitive ecological system that, if polluted, would substantially impair a valuable habitat; or

- (iii) Intensive protection of the groundwater is necessary to maintain or restore an appropriate beneficial use.
- (B) Class II Groundwater: Shall be managed to provide for recognized beneficial uses, and recharge for base flow of rivers, lakes, and streams. Class II groundwaters may require standard treatment for such use.
- (C) Class III Groundwater: Shall be managed as limited use groundwaters that are not suitable for human consumption without extensive treatment. Class III groundwaters shall be managed to maintain or improve existing groundwater quality, except as provided by subsection (g)(C) of this section.
- (c) All groundwaters of the state shall be designated Class II groundwaters unless classified otherwise by the EOC.
- (d) All actions of the EOC classifying groundwaters as Class I or Class III shall be made through rule adoption only after a opportunity for public review and comment.
- (e) Any person may submit proposals to the EOC for consideration for a Class I or a Class III groundwater designation. These proposals shall be submitted as petitions requesting rule adoption in accordance with ORS 183.390 and OAR 340-11-47. All such proposals shall include the following information:
- (A) The reasons as related to Subsection (2)(a) of this rule that the proposal is being made and appropriate supporting information;
- (B) A description of the aquifers hydrogeologic characteristics. This must include description of the area geology; groundwater quality, quantity, direction of flow and hydraulic gradients, velocity, recharge, discharge, interaction with other aquifer units, and interaction with surface waters;
- (C) A precise (legal) description of the proposed Class I or Class III groundwater area vertical and horizontal boundaries; and
- (D) A discussion of aquifer management needs.
- (f) The EOC shall make one of the following findings on a proposal for a change in groundwater classification designation: (1) classification as proposed is appropriate, (2) the information presented does not support a change in classification as proposed, or (3) the information presented was inadequate upon which to base a decision for a change in groundwater classification.

(g) The following specific management requirements are established to protect the groundwater quality for the beneficial uses of the identified Groundwater Class.

(A) For each Class I groundwater area designated, the EQC shall adopt an aquifer management plan. The aquifer management plan shall identify specific source control, nonpoint source control, and other requirements necessary to adequately protect the aquifer. Class I groundwaters shall not be used for either direct or indirect discharge of wastes that results in an increase over background concentrations of pollutants.

(B) Groundwater quality management for Class II groundwaters shall meet the requirements of this rule (340-41-029).

(C) For each Class III groundwater area designated, the EQC will adopt an aquifer management plan. The aquifer management plan shall identify the specific source control, nonpoint source control, and other requirements that shall be exempted from the requirements of this rule and other OAR 340 regulatory programs as referenced therein. Any exemption from these requirements, including discharge of waste to groundwater, may be allowed by the Department provided it does not impair a beneficial use of the groundwater for which the natural water quality is adequate, or have a deleterious effect upon ecosystems which may be influenced by the groundwater.

(3) POINT SOURCE CONTROL RULES:

The following point source control rules apply to all aquifer classifications, except as provided in specific additions or exemptions included in the aquifer management plan for Class I or Class III aquifers:

(a) In order to minimize groundwater quality degradation potentially resulting from point source activities point sources shall employ the highest and best practicable methods to prevent the movement of pollutants to groundwater. Among other factors, available technologies, cost, public health protection, site characteristics, pollutant toxicity and persistence, and state and federal regulations shall be considered in arriving at a case-by-case determination of highest and best practicable methods.

(b) Activities that could result in the disposal of wastes onto or into the ground in a manner which allows potential movement of pollutants to groundwater shall be regulated by utilizing all available and appropriate statutory and administrative authorities, including but not limited to: permits, fines, Commission orders, compliance schedules, moratoriums, Department orders, and geographic rules. These groundwater quality protection requirements shall be implemented through the Department's Water Pollution Control program, Solid Waste Disposal program, Individual On-Site (Subsurface) Sewage Disposal System Construction program, Hazardous Waste Facility (RCRA) program, Underground Storage Tank program, Underground Injection Control program, Emergency Spill Response program, Remedial Action program, or other programs, whichever is appropriate.

(c) Permitted Operations:

(A) Program permits shall, as deemed necessary by the Director, specify appropriate groundwater quality protection requirements and monitoring and reporting requirements. Water Pollution Control Facility (WPCF) permits may be used in cases other than for those covered by Solid Waste Disposal Facility permits, NPDES permits, Individual On-Site (subsurface) Sewage Disposal permits, Underground Storage Tank permit, or Hazardous Waste Facility permit.

(B) The Department shall evaluate, based on available resources and priorities of the Department, new and existing permitted sources and determine the potential for adverse impacts to beneficial uses. Where the Department determines that there is a potential adverse groundwater quality impact, it may require through the above referenced permits and rules, and other appropriate statutory and administrative authorities, the following groundwater quality protection program requirements:

(i) Groundwater Monitoring Program Requirements. The permittee or permit applicant shall submit to the Department for approval a groundwater monitoring program plan. The groundwater monitoring program shall be capable of determining rate and direction of groundwater movement and monitoring the groundwater immediately downgradient from the waste management area. A background monitoring point shall be located where water quality is not affected by contamination from the waste management area. The plan, unless otherwise specified by the Department, shall include, but not be limited to, detailed information on the following:

1. System Design:

- a. Well Locations.
- b. Well Construction.
- c. Background Monitoring Point.
- d. Downgradient Monitoring Point.
- e. Water Quality Compliance Point.

2. Sample Collection and Analysis:

- a. Parameters to be Sampled.
- b. Sampling Frequency.
- c. Sample Collection Methods.
- d. Sample Handling and Chain of Custody
- e. Analytical Methods.
- f. Acceptable Minimum Detection Limits.
- g. Quality Assurance and Quality Control Plan.

3. Data Analysis Procedure:

- a. Statistical Analysis Method.
- b. Frequency of Analysis.

(ii) Reporting Requirements. The facility permit shall specify monitoring and assessment reporting requirements.

(iii) Downgradient Monitoring Point Requirements. The permittee shall monitor the aquifer directly downgradient from the waste management area to ensure immediate detection of waste discharged. This shall be known as the downgradient monitoring point.

(iv) Compliance Point Requirements. The Department shall specify the point at which groundwater quality must be at or below the concentration limits specified in the permit. Unless otherwise specified by the Department, the compliance point will be the waste management area boundary. The compliance point may not necessarily be the same as the downgradient monitoring point.

(v) Concentration Limits.

(1) Compliance Point Concentration Limit at Existing Facilities. For facilities operating under a Department approved permit, on, or before the effective date of these rules, groundwater quality shall be restored and maintained at the compliance point to the concentration limits that are to be specified in the facility permit. The permit specific concentration limits may be above background, but shall not exceed groundwater quality standards as listed in Section 5 of this rule, or background, whichever is greater, unless otherwise established by the EQC/Director according to the procedure contained in Subsection (3)(c)(B)(vii) of this Section.

(2) Compliance Point Concentration Limit at New Facilities. For facilities permitted after the effective date of these rules, concentration limits at the compliance point will be the background values, unless otherwise established by the EQC/Director according to the procedure contained in Subsection (3)(c)(B)(vii) of this Section.

(vi) Action Requirements.

(1) Resampling: If monitoring indicates a statistically significant increase (increase or decrease for pH) in the value of a parameter monitored, the permittee shall immediately resample. If the resampling confirms the change in water quality the permittee shall: (a) report the results to the Department within 10 days; and (b) prepare and submit to the Department within 30 days an assessment plan and time schedule unless otherwise specified by the Department.

(2) Assessment Plan and Time Schedule: The assessment plan must provide for an assessment of the source, extent, and potential dispersion of the contamination; and the evaluation of potential remedial action that may be taken to restore and/or maintain groundwater quality, and the action that would be necessary to achieve a specified concentration limit at the Department approved compliance point. Remedial action plans shall identify two phases of remedial action. Phase one will evaluate the effect of actions that prevent the release of additional

pollutants that may eventually move into the groundwater. Phase two will evaluate effect of groundwater contamination containment and treatment actions.

(3) Preventive Action: In order to prevent additional contamination, the Department may order the implementation of phase one remedial action when a significant change in water quality at a downgradient monitoring point is detected.

(4) Remedial Action Requirements: Upon Department approval, remedial action shall be implemented by the permittee or responsible party, if the assessment indicates a concentration limit or alternate concentration limit is or will be violated at a compliance point.

(vii) Alternate Concentration Limit.

(1) Upon request by the liable person, permittee, Department, or permit applicant, and after opportunity for public review and comment an alternate concentration limit to the concentration limits specified in Subsection (3)(c)(B)(v) of this Section may be granted.

(2) The Director may grant such alternate concentration limits for concentrations up to, but not exceeding numerical groundwater quality standards of Section (5) of this rules, and for compounds for which there are no standards. Alternate concentration limits, in excess of a numerical groundwater quality standard, may only be granted by the EQC.

(3) The EQC or Director, as specified in item (2) above, may grant on a case-by-case determination an alternate concentration limit for a pollutant if it is found that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In establishing alternate concentration limits, the EQC or Director shall consider the effects on groundwater quality, interconnected surface water quality, and associated effects on beneficial uses. Among others, the following factors shall be considered:

- a. The physical and chemical characteristics of the pollutant, including its potential for migration;
 - b. The hydrogeologic characteristics at the facility and the surrounding area;
 - c. The quantity of groundwater and the direction of groundwater flow.
 - d. The proximity and withdrawal rates of groundwater users.
 - e. The current and future uses of groundwater in the area.
 - f. The existing quality of the groundwater, including other sources of contamination and their cumulative impact on water quality.
 - g. The potential for health risks caused by exposure to the pollutant.
 - h. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to the pollutant.
 - i. The persistence and permanence of potential adverse effects.
 - j. The proximity and interconnections with surface water in the area.
 - k. The potential effect on interconnected surface water.
 - l. The potential effect of the pollutant on ecosystems of the area.
 - m. The comparative feasibility and cost of obtaining the concentration limit and the alternative concentration limit.
- (4) At the time of the initial proposal for Class 3 aquifer designation, or at some other time, alternative concentration limits for a variety of pollutants may be adopted as part of the aquifer management plan.

(d) Non-permitted Activities: Spills, releases, past practices:

Except as provided otherwise under statutory or administrative authorities, when a non-permitted activity could result in or has resulted in the pollution of groundwater the Department may require the liable person to:

- (A) Conduct a groundwater assessment program capable of determining the extent, magnitude, source, dispersion and rate of the contamination.
- (B) Determine potential affects of the contamination on the water quality of interconnected surface waters, and groundwaters.
- (C) Determine potential of the contamination to affect existing, potential, or future beneficial uses of the groundwater, or any other interconnected waters of the state.
- (D) Implement remedial action including but not limited to restoration of groundwater quality to a Department approved concentration limit at a Department specified compliance point.
 - (i) The concentration limit will be established at background levels unless otherwise established according to the procedure contained in Subsection (3)(c)(B)(vii) of this Section.
 - (ii) The compliance point shall be established by the Department as close as is practicable to the source of contamination. Among other factors, available technologies, cost, public health protection, site characteristics, pollutant toxicity and persistence, and existing and future beneficial uses will be considered in arriving at a case-by-case determination of compliance point location.

(4) NONPOINT SOURCE CONTROL:

- (a) In order to minimize groundwater quality degradation potentially resulting from nonpoint sources, it is the policy of the EOC that activities associated with land and animal management, be conducted using the appropriate best management practices.

(b) In order to adequately maintain and preserve groundwater quality in areas within the state where pollution from nonpoint sources is affecting or has the potential to affect groundwater quality, the Department, subject to resource limitations, shall identify aquifers that are vulnerable to nonpoint source contamination. Any Class I, Class II, or Class III aquifer may be designated as an aquifer vulnerable to pollution from nonpoint sources. In the identification of vulnerable aquifers the following information shall be considered:

(A) Evidence of existing contamination.

(B) Characteristics of soils, land use practices, irrigation practices, climate, depth to groundwater, infiltration rates, hydraulic conductivity, vertical and horizontal groundwater velocities, and other factors identified by the Department as being related to aquifer vulnerability.

(C) The advice and recommendations of the Water Resources Department, Oregon Department of Agriculture, and the United States Geological Survey.

(c) It shall be the policy of the Department to work cooperatively with state, local, and federal agencies in developing and establishing best management practices for the control of nonpoint sources. Agencies involved in this process will include but not be limited to: the Oregon Department of Agriculture, the Oregon Department of Forestry, the EPA Office of Pesticides, the Oregon State Cooperative Extension service, and the United States Department of Agriculture.

(d) The Department shall work cooperatively with state, local and federal agencies in developing aquifer management plans for aquifers that have been identified as being vulnerable to groundwater contamination under paragraph (4)(b) of this section. The purpose of the management plan will be to maintain or restore groundwater quality sufficient to provide for the beneficial uses of the groundwater. Requirements of this Section may be met by appropriate groundwater quality protection mechanisms developed, required, or implemented by other local, state, or federal agencies.

(e) In areas where groundwater is being degraded as a result of on-site sewage disposal practices and an areawide solution is necessary, the Department may propose a rule for adoption by the EQC and incorporation into the appropriate basin section of the State Water Quality Management Plan (OAR 340 Division 41) which will:

(A) Recite the findings describing the problem and the aquifer impacted;

- (B) Define the area where corrective action is required;
- (C) Describe the problem correction and preventative measures to be ordered;
- (D) Establish the schedule for required major increments of progress;
- (E) Identify conditions under which new, modified, or repaired on-site sewage disposal systems may be installed in the interim while the area correction program is being implemented and is on schedule;
- (F) Identify the conditions under which enforcement measures will be pursued if adequate progress to implement the corrective actions is not made. These measures may include but are not limited to measures authorized in ORS 454.235(2), 454.685, 454.645, and 454.317;
- (G) Identify all known affected local governing bodies which the Department will notify by certified mail of the final rule adoption; and
- (H) Accomplish any other objectives declared to be necessary by the EQC.

(f) The Department shall notify all known impacted or potentially affected local units of government of the opportunity to comment on the proposed rule at a scheduled public hearing and of their right to request a contested case hearing pursuant to ORS Chapter 183 prior to the EQC's final order adopting the rule.

(5) GROUNDWATER QUALITY STANDARDS:

- (a) In accordance with OAR 340-41-026(1)(a) existing high quality groundwaters which exceed those levels necessary to support recognized and legitimate beneficial uses shall be maintained except as provided in 340-41-026(1)(a).
- (b) Human consumption is recognized as the highest and best use of groundwater and as the use which usually requires the highest level of water quality. The following numerical standards reflect the suitability of groundwater for human consumption. They are not to be construed as acceptable groundwater quality management goals. They are to be considered by the Department and the public in considering the significance of a particular chemical concentration, and in determining the level of remedial action necessary to restore polluted groundwater for human consumption.

(c) ¹Numerical Groundwater Quality Standards:

<u>Inorganic Compounds</u>	<u>²Standard mg/L</u>
<u>Arsenic</u>	<u>0.05</u>
<u>Asbestos</u>	<u>7.1 Million fibers</u> <u>per liter</u>
<u>Barium</u>	<u>1.0</u>
<u>Cadmium</u>	<u>0.01</u>
<u>Chloride</u>	<u>250.0</u>
<u>Chromium</u>	<u>0.05</u>
<u>Copper</u>	<u>1.3</u>
<u>Fluoride</u>	<u>4.0</u>
<u>Iron</u>	<u>0.3</u>
<u>Lead</u>	<u>0.05</u>
<u>Manganese</u>	<u>0.05</u>
<u>Mercury</u>	<u>0.002</u>
<u>Nitrate-N</u>	<u>10.0</u>
<u>Nitrite-N</u>	<u>1.0</u>
<u>Selenium</u>	<u>0.01</u>
<u>Sulfate</u>	<u>250.0</u>
<u>Total Dissolved Solids</u>	<u>500.0</u>
<u>Zinc</u>	<u>5.0</u>

¹All standards except total dissolved solids are for total (unfiltered) concentrations.

²Unless otherwise specified.

Volatile Organic Compounds ²Standard mg/L

<u>Trichloroethylene</u>	<u>0.005</u>
<u>Carbon Tetrachloride</u>	<u>0.005</u>
<u>Vinyl Chloride</u>	<u>0.001</u>
<u>1,2-Dichloroethane</u>	<u>0.005</u>
<u>Benzene</u>	<u>0.005</u>
<u>1,1-Dichloroethylene</u>	<u>0.007</u>
<u>1,1,1-Trichloroethane</u>	<u>0.200</u>
<u>p-Dichlorobenzene</u>	<u>0.005</u>
<u>Trihalomethanes</u>	<u>0.100</u>

(the sum of concentrations
bromodichloromethane, dibromochloromethane,
tribromomethane (bromoform),
and trichloromethane
(chloroform))

²Unless otherwise specified.

Synthetic Organic Compounds ²Standard mg/L

Acrylamide	³ ND
Alachlor	³ ND
Aldicarb, aldicarb sulfoxide and aldicarb sulfone	0.009
Carbofuran	0.036
Chlorodane	³ ND
Cis-1,2-Dichloropropane	0.006
O-Dichlorobenzene	0.620
2,4-D	0.100
EDB	³ ND
Epichlorohydrin	³ ND
Ethylbenzene	0.680
Heptachlor	³ ND
Heptachlor Epoxide	³ ND
Lindane	0.004
Methoxychlor	0.100
Monochlorobenzene	0.060
PCBs	³ ND
Pentachlorophenol	0.220
Styrene	0.140
Toluene	2.000
2,4,5-TP	0.010
Toxaphene	0.005
Trans-1,2-Dichloroethylene	0.070
Xylene	0.440

²Unless otherwise specified.

³None detected -- detection limit must be at 0.001 mg/L or less.

<u>Microbiological</u>	<u>Standard</u>
<u>Total Coliforms</u>	<u>Less than 1 (Organisms/100 ml)</u>
<u>Giardia</u>	<u>Less than 1 (Organisms/100 ml)</u>
<u>Viruses</u>	<u>Less than 1 (Organisms/100 ml)</u>

<u>Miscellaneous</u>	<u>Standard</u>
<u>Color</u>	<u>15 Color unit</u>
<u>Foaming Agents MBAS</u>	<u>0.5 mg/L</u>
<u>Turbidity</u>	<u>5 NTU</u>

New definitions to be included in the definition section (OAR 340-41-006).

Alternate Concentration Limit -- Means the maximum acceptable level of a pollutant allowed in groundwater at a Department specified compliance point as determined by the Director or EQC, and adopted in accordance with the requirements contained in OAR 340-41-029(b)(B)(vi).

Background Water Quality - Means the quality of water immediately upgradient from a source, or potential source of contamination.

Natural Water Quality -- Means the state of water quality that would exist as a result of natural conditions, unaffected by anthropogenic sources of contamination.

Nonpoint Source Pollution -- Means pollution that results from widespread land use activities and cannot be traced to a specific source.

Point-Source Pollution -- Means pollution that results from a specific activity that can be traced to a specific source.

Compliance Point -- Means the point or points where groundwater quality concentration limits must be met.

Monitoring Point -- Means a point or points established to immediately detect downgradient from a facility a discharge to the aquifer where groundwater quality is assessed. It may or may not be the same as the compliance point.

Concentration Limit -- Means the maximum acceptable concentration of a pollutant allowed in groundwater at a Department specified compliance point.

Waste Management Area - Means any area where waste, or material that that could become waste if released to the environment, is located or has been located.

STATE OF OREGONDEPARTMENT OF ENVIRONMENTAL QUALITYINTEROFFICE MEMORANDUM

TO: Environmental Quality Commission DATE: Sept. 19, 1989

FROM: Lucinda Bidleman, Hearings Officer

SUBJECT: Hearings Reports: March 1, 1988, in Portland
 March 7, 1988, in Eugene
 March 8, 1988, in Medford
 March 14, 1988, in Bend
 March 15, 1988, in Ontario
 March 16, 1988, in Pendleton

Proposed Amendments to the General Groundwater Quality Protection Policy.

Schedule and Procedures

Public hearings were held in Portland, Eugene, Medford, Bend, Ontario, and Pendleton in early to mid-March, 1988. Public notice was published in the Secretary of State's Bulletin 15 to 30 days prior to the hearings. In addition, notices were mailed to more than 1,000 persons included on Water Quality Division permit mailing lists, and published in local newspapers. The hearings officer for the Portland public hearing was Andrew Schaedel. The hearings officer at the remaining five hearings was Lucinda Bidleman.

A total of 84 people provided testimony during the public hearings process. Verbal testimony was given by 31 people. Written testimony was received from 67 people (some people provided both verbal and written testimony). A listing of the parties who provided comments is attached to this report. It includes the name, affiliation, and type (oral and/or written) of testimony given.

Summary of Major Issues

An outline of the major issues contained in the public testimony is discussed below. A table briefly summarizing these major issues and giving the names of the persons who supported those issues is attached.

1. A leading concern for over one third of the respondents was the Department's apparent lack of enforcement capabilities. Many felt it was inappropriate for permittees to conduct

their own sampling and monitoring programs. It was stated that new rules would be of no added value without some increase in the staff for monitoring, inspection and enforcement.

2. Many of those giving testimony stated that the source control section covering nonpoint sources of contamination was totally inadequate. An overwhelming number of respondents urged the Department to seek firm legislative authority to protect groundwater from nonpoint source contamination. A recently passed groundwater bill from Iowa was suggested as a model, with strong emphasis put on prevention, public involvement, education, research into the development of alternatives to contaminating practices and materials, and demonstration projects.
3. Many of the respondents (30) stated that the rules should adhere to a strict nondegradation policy of groundwater quality protection, promoting prevention as the best approach to achieving this goal. They favored implementation of inflexible permit conditions, allowing for no alternate concentration limits in groundwater concentration limits.
4. Some respondents expressed opposition to provisions in the proposed rules which appeared to promote a nondegradation approach to groundwater protection. They favored a policy of antidegradation as a more reasonable goal for groundwater quality protection.
5. More than one third of the hearings respondents objected to the inclusion of an aquifer classification system in the rules. While some believed such a system would block or slow the siting of new facilities, many felt the system could result in widespread groundwater degradation. Most respondents stated that the procedure for changing an aquifer's classification was much too burdensome.

Recommendations

As a result of the testimony received by the Department, extensive revisions were recommended to the staff. A decision was made to delete completely the aquifer classification section in favor of a policy giving equal protection to all groundwater aquifers. The section on nonpoint source control was lifted from the rule as well, and a decision was made to pursue additional legislative authority to regulate nonpoint sources of contamination. In addition, a section detailing action to be taken when

Memo to: Environmental Quality Commission
September 19, 1989
Page 3

contamination has occurred was deemed necessary for the sake of consistency within Departmental regulations. Due to the sweeping changes that were incorporated into the rules, it was recommended that the Department seek additional public input through public hearings before taking the proposed rules to the Commission for adoption.

HEARINGS RESPONDENTS
 March-April, 1988

<u>Testimony No.</u>	<u>Person / Organization</u>	<u>Oral</u>	<u>Written</u>
1.	Carol Ach		X
2.	Richard L. Angstrom OREGON CONCRETE & AGGREGATE PRODUCERS ASSOCIATION, INC.		X
3.	Loraine L. Baker		X
4.	Tom Bender		X
5.	Christopher Bratt SOUTHERN OREGON NORTHWEST COALITION FOR ALTERNATIVES TO PESTICIDES / HEADWATERS	X	
6.	Roger Brinkerhoff, MSW	X	X
7.	S. Brooks		X
8.	Barbara Brown OREGON CONSUMER LEAGUE		X
9.	James C. Brown BOGLE & GATES		X
10.	Carolyn Browne		X
11.	Thomas Cable		X
12.	Larry Caldwell	X	X
13.	Sheila Canal SALUD (SAFE ALTERNATIVES FOR FARM WORKERS)	X	
14.	Don & June Carlton		X
15.	Joe Chadek	X	
16.	John A. Charles OREGON ENVIRONMENTAL COUNCIL		X
17.	Harold C. Christiansen		X
18.	Richard M. & Christine Colvard		X
19.	Lynn S. Coody OREGON TILTH	X	X
20.	Donald Cordell SWEET-EDWARDS / EMCON, INC.	X	
21.	Phyllis Cottingham		X
22.	David L. Craig PACIFIC POWER & LIGHT CO.		X
23.	Philip W. Curtis	X	
24.	Jean M. Davis		X
25.	Eric Dittmer ROGUE VALLEY COUNCIL OF GOVERNMENTS	X	X
26.	Thomas C. Donaca ASSOCIATED OREGON INDUSTRIES		X

<u>Testimony No.</u>	<u>Person / Organization</u>	<u>Oral</u>	<u>Written</u>
27.	Melba Durrant	x	
28.	Myra Erwin	x	
29.	Lynn Fox	x	
30.	Olga A. Freeman		x
31.	Barry Geiken FRIENDS OF CATHEDRAL FOREST	x	
32.	Lucie Giampaoli	x	
33.	Andrew Gigler	x	
34.	Diana E. Godwin OREGON SANITARY SERVICE INSTITUTE	x	x
35.	David L. Goodman THE CLOROX COMPANY		x
36.	Janet Gregory		x
37.	Norma Grier NORTHWEST COALITION FOR ALTERNATIVES TO PESTICIDES	x	x
38.	Annette Gurdjian		x
39.	Neva Hassanein	x	x
40.	R. J. Hess PORTLAND GENERAL ELECTRIC COMPANY		x
41.	Mary Hornig		x
42.	Lucille Houston		x
43.	Nancy Hull		x
44.	Wayne Hunter CATHEDRAL FOREST ACTION GROUP	x	
45.	Linda Johns		x
46.	Frank Josselson THE LAW OFFICES OF JOSSELYN, POTTER & ROBERTS		x
47.	Loren D. Koller OSU COLLEGE OF VETERINARY MEDICINE		x
48.	Fred J Kupel SPENCER CREEK REGIONAL HOMEOWNERS ASSOCIATION		x
49.	Karen J. Kupel	x	
50.	Leo B. Lightle CITY OF BROOKINGS	x	x
51.	Sharon Little LEAGUE OF WOMEN VOTERS		x
52.	Conny Lindley		x
53.	Fran Mackey	x	
54.	Lucy Marrs		x
55.	Betty McArdle		x
56.	Ron McMullen NORTHWEST COALITION FOR ALTERNATIVES TO PESTICIDES	x	x
57.	Ted Molinari		x

<u>Testimony No.</u>	<u>Person / Organization</u>	<u>Oral</u>	<u>Written</u>
	AMERICAN ELECTRONICS ASSOCIATION/ OREGON COUNCIL		
58.	Ashley J. Molk		x
59.	Anthony R. Morrell		x
	U.S. DEPARTMENT OF ENERGY, BONNEVILLE POWER ADMINISTRATION		
60.	Douglas S. Morrison		x
	NORTHWEST PULP & PAPER ASSOCIATION		
61.	William A. Mullen		x
	U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 10		
62.	John C. Neely, Jr.	x	x
63.	Nancy L. Nesevich		x
64.	Mr. & Mrs. W.B. Newby		x
65.	Bruce M. Niss, CITY OF PORTLAND WATER BUREAU	x	
66.	Catherine B. Nollenberger		x
67.	David L. Pickering		x
68.	Sandy Reed	x	
69.	Larry Rice DESCHUTES COUNTY	x	x
70.	Rich Rohde	x	
71.	Carol Scherer	x	x
72.	Timothy J. Scherer	x	x
73.	Lisa Quincy Sugarman	x	x
74.	Dr. Leon Swartzberg, Jr. OREGON ENVIRONMENTAL COUNCIL		x
75.	H. Randy Sweet SWEET-EDWARDS / EMCON, INC.		x
76.	Livia Szekely		x
77.	Steven Tichenor		x
78.	Terrence T. Virnig, P.E. CHEM-SECURITY SYSTEMS, INC. and WASTE MANAGEMENT OF N.A., INC.		x
79.	Eileen F. Ward		x
80.	John A. Ward		x
81.	E. Jack Weathersbee		x
82.	Jan Wroncy RESIDENTS OF OREGON AGAINST DEADLY SPRAYS		x
83.	William H. Young OREGON WATER RESOURCES DEPARTMENT		x
84.	Ralph Zusman		x

BRIEF SUMMARY OF
 MAJOR ISSUES BROUGHT
 OUT IN
 PUBLIC TESTIMONY

HEARINGS RESPONDENTS
 March - April, 1988

	Concerned that enforcement and monitoring capabilities are lacking.	The rules do not go far enough in preventing contamination from nonpoint sources.	Rules should emphasize the prevention rather than minimization of contamination.	Opposed to nondegradation emphasis.	Objected to aquifer classification system.
1. Carol Ach	X	X	X		
2. Richard L. Angstrom					
3. Loraine L. Baker		X			
4. Tom Bender	X	X			
5. Christopher Bratt	X	X	X		X
6. Roger Brinkerhoff		X	X		
7. S. Brooks		X			
8. Barbara Brown		X			X
9. James C. Brown	X			X	X
10. Carolyn Browne					
11. Thomas Cable		X			
12. Larry Caldwell	X				
13. Sheila Canal	X	X	X		X
14. Don & June Carlton		X			
15. Joe Chadek	X		X		
16. John A. Charles		X			X
17. Harold C. Christiansen		X			
18. Richard & C. Colvard		X	X		
19. Lynn S. Coody		X			
20. Donald Cordell	X				X

HEARINGS RESPONDENTS
March - April, 1988 (Continued)

BRIEF SUMMARY OF MAJOR ISSUES BROUGHT OUT IN PUBLIC TESTIMONY					
Concerned that enforcement and monitoring capabilities are lacking.	The rules do not go far enough in preventing contamination from nonpoint sources.	Rules should emphasize the prevention rather than minimization of contamination.	Opposed to nondegradation emphasis.	Objected to aquifer classification system.	
X		X			21. Phyllis Cottingham
			X		22. David L. Craig
	X				23. Philip W. Curtis
	X	X		X	24. Jean M. Davis
	X	X			25. Eric Dittmer
				X	26. Thomas C. Donaca
					27. Melba Durrant
	X			X	28. Myra Erwin
	X				29. Lynn Fox
	X	X			30. Olga A. Freeman
	X	X		X	31. Barry Geiken
	X				32. Lucie Giampaoli
	X	X		X	33. Andrew Gigler
				X	34. Diana E. Godwin
					35. David L. Goodman
	X	X			36. Janet Gregory
	X	X		X	37. Norma Grier
	X	X			38. Annette Gurdjian
	X	X		X	39. Neva Hassanein
				X	40. R. J. Hess

BRIEF SUMMARY OF
 MAJOR ISSUES BROUGHT
 OUT IN
 PUBLIC TESTIMONY

	Concerned that enforcement and monitoring capabilities are lacking.	The rules do not go far enough in preventing contamination from nonpoint sources.	Rules should emphasize the prevention rather than minimization of contamination.	Opposed to nondegradation emphasis.	Objected to aquifer classification system.
61. William A. Mullen					X
62. John C. Neely	X		X		X
63. Nancy L. Nesevich	X	X	X		X
64. Mr. & Mrs. WB Newby	X	X			
65. Bruce M. Niss					X
66. Catherin Nollenberger		X	X		
67. David L. Pickering	X		X		X
68. Sandy Reed	X				
69. Larry Rice					
70. Rich Rohde					X
71. Carol Scherer	X	X			X
72. Timothy J. Scherer	X	X			X
73. Lisa Quincy Sugarman		X	X		X
74. Dr. Leon Swartzberg		X	X	X	
75. H. Randy Sweet	X	X			X
76. Livia Szekely		X	X		
77. Steven Tichenor		X			
78. Terrence T. Virnig					
79. Eileen F. Ward	X		X		
80. John A. Ward	X	X			

HEARINGS RESPONDENTS
 March - April, 1988 (Continued)

HEARINGS RESPONDENTS
March - April, 1988 (Continued)

BRIEF SUMMARY OF MAJOR ISSUES BROUGHT OUT IN PUBLIC TESTIMONY	81. E. Jack Weathersbee	82. Jan Wroncy	83. William H. Young	84. Ralph Zusman															
Concerned that enforcement and monitoring capabilities are lacking.		X		X															
The rules do not go far enough in preventing contamination from nonpoint sources.		X		X															
Rules should emphasize the prevention rather than minimization of contamination.	X	X	X	X															
Opposed to nondegradation emphasis.																			
Objected to aquifer classification system.																			

RESPONSE TO TESTIMONY RECEIVED IN MARCH - APRIL, 1988
ON PROPOSED AMENDMENTS TO
THE GENERAL GROUNDWATER QUALITY PROTECTION POLICY

The major issues identified in the public hearing testimony are summarized and discussed in this report. The issues are grouped into the following categories: Antidegradation vs. Nondegradation, Numerical Standards, Nonpoint Source Contamination, Aquifer Classification, General Comments.

Antidegradation vs. Nondegradation

Issue No. 1: The rules should promote a strict nondegradation policy, allowing no groundwater quality degradation to occur as the result of human activities.

Response: A strict nondegradation policy is neither technically nor economically feasible. The consensus opinion developed by the Citizen Advisory Committee was to minimize adverse impacts on groundwater quality to the greatest extent practicable to ensure that the existing and potential beneficial uses of the groundwater were protected. This anti-degradation approach was proposed in the rules.

Issue No. 2: The rules should establish an antidegradation approach to groundwater management, recognizing that human activities will have an impact on the environment. The apparent nondegradation emphasis employed by the rules will result in many existing facilities being in violation of standards, resulting in both economic hardship for the operators and enforcement difficulties for the Department.

Response: The proposed rules did contain an antidegradation approach. The background concentration limit for new facilities caused some commentators to consider it a nondegradation approach. However, that was only the starting point. If a facility could demonstrate that no impact was not feasible, and that a certain concentration of contaminant in the groundwater posed no significant hazard to public health or the environment, an alternative concentration to background could be granted. Subsequent revisions in the proposal clarified and refined this approach.

Numerical Standards

Issue No. 3: Proposed numerical standards based on federal standards should not be included in the rules because they are always changing at the federal level.

Response: The Department recognizes the fact that federal drinking water standards are subject to change. However, because the demonstrated rate of change has been extremely slow, the Department does not see this as a problem.

Issue No. 4: Numerical standards for secondary drinking water contaminants such as total dissolved solids should not be included in the proposed rules because they are not a threat to human health.

Response: The Department disagrees. While no threat to human health may result from consumption of water containing the given concentration levels for these contaminants in most instances, the degradation in the aesthetic quality of groundwater could be detrimental to its beneficial uses. Odor, taste, and appearance are important water quality criteria even though they may pose no immediate hazard to human health. The department did revise the proposal so that secondary drinking water contaminants are treated differently and slightly less stringently than contaminants which pose a public health threat.

Issue No. 5: Use of the proposed numerical standards will essentially promote groundwater quality degradation to those standard levels. A standards-driven policy is contrary to antidegradation.

Response: The Department and the advisory committee shared this concern. The proposed rules were rigorously constructed to avoid allowing the deterioration of groundwater quality as a result of the adoption of the standards. For example, the new facilities concentration limits were established at background levels, and all facilities are required to use the highest and best practicable technology in order to minimize groundwater quality impacts. In an attempt to clarify this approach the name of the standards were changed to reference levels.

Nonpoint Sources

Issue No. 6: The section covering nonpoint sources of contamination is totally inadequate. Legislation is needed to properly address the nonpoint source problem and acquire adequate funding.

Response: The Department agrees. Legislation was developed and adopted to address nonpoint source groundwater

contamination and other groundwater protection issues that were beyond the scope of the proposed rules. The section on nonpoint sources that was in the March, 1988 rule proposal was deleted from subsequent proposals.

Aquifer Classification

Issue No. 7: The proposed aquifer classification system will be abused by those who only want to block industrial development or landfill siting in areas.

Response: In response to this and numerous other negative comments received concerning the aquifer classification system, the classification system was dropped from subsequent rule proposals.

Issue No. 8: Because all aquifers are not given the highest level of protection, the proposed aquifer classification system will result in widespread degradation.

Response: While the department did not agree with this particular statement, because of the widespread concern about the system it was dropped from future proposals.

Issue No. 9: The process for changing an aquifer's classification puts an unreasonable burden of proof on individual citizens who may wish to upgrade an aquifer classification. Because of this, those aquifers that deserve a Class I designation will not receive the protection they need.

Response: See response issue number 6.

General Comments

Issue No. 10: The Department's enforcement and inspection policies are too lax. All sampling and monitoring programs required by the Department should be carried out by agency staff; permittees should not be allowed to be self-monitoring.

Response: Increases in the Department's enforcement, inspection, and monitoring staff are beyond the scope of the proposed rules.

Issue No. 11: The proposed rules should be merged with the newly proposed State Superfund rules to insure consistency agency-wide.

Response: The Department agreed with this suggestion and in subsequent proposals incorporated appropriate sections from the state superfund clean-up rules. This included the incorporation of nearly identical requirements for Remedial

Investigation/ Feasibility Studies, and the process for selecting a remedial action. Considerable interagency activity was devoted to ensuring a coordinated and consistent agency approach to groundwater contamination and protection.

SUMMARY OF PUBLIC TESTIMONY RECEIVED THROUGH APRIL 19, 1988

1. Carol Ach, 1850 Old Wagon Road, Coos Bay, OR 97420; 3/21/88
(Written Testimony)

Ms. Ach suggested the Department create and enforce regulations to protect groundwater from agricultural chemicals and other contaminants. As an advocate of the production of organically grown agricultural products, she stressed the importance of maintaining a supply of good quality water.

2. Richard L. Angstrom, Managing Director, Oregon Concrete & Aggregate Producers Association, Inc., 3000 Market St., N.E. - #200, Salem, OR 97301; 3/30/88 (Written Testimony)

Mr. Angstrom submitted testimony on behalf of the Oregon Aggregate Producers Association, Inc.

He expressed opposition to the use of numerical standards for total dissolved solids (5 NTU), a secondary public health standard. Due to the nature of aggregate mining, turbidities in excess of 5 NTU often occur. Expensive treatment will be required to meet the proposed standard, thus creating an adverse impact on the ability to mine aggregate at an economical cost. He questioned the use of a secondary standard for aesthetic reasons, and stated that the public benefits do not justify the costs to meet this standard.

3. Lorraine L. Baker, P.O. Box 104, Dexter, OR 97431; 4/7/88 (Written Testimony)

Ms. Baker expressed concern that the proposed rules would allow groundwater to be polluted. She emphasized the need for providing research into the effects of toxic substances on the environment and human health. She urged the Department to limit the use and encourage development of alternatives to toxic chemicals.

Ms. Baker suggested the Department use Iowa's groundwater legislation as a model for Oregon's groundwater quality protection rules.

4. Tom Bender, Architect, 38755 Reed Road, Nehalem, OR 97131; 3/15/88 (Written Testimony)

Mr. Bender gave comments as a local water district board member and owner of a public water system. He suggested the following changes in the proposed regulations:

1. Prevent contamination of groundwater by discouraging the use of and developing alternatives to toxic chemicals.
2. Give Oregon's citizens the right to enforce the rules in court.
3. Require the Department to act to protect groundwater rather than giving freedom whether or not to enforce.
4. Do not classify aquifers based on anticipated future uses.
5. Provide incentives for research and development of alternatives to groundwater pollutants.

In conclusion, Mr Bender recommended the Iowa groundwater legislation be used as a model in developing Oregon's groundwater regulations.

5. Christopher Bratt, Southern Oregon Northwest Coalition for Alternatives to Pesticides / Headwaters, P.O. Box 1075, Grants Pass, OR 97526; 3/8/88 (Oral testimony)

Mr. Bratt submitted testimony on behalf of two organizations: Southern Oregon Northwest Coalition for Alternatives to Pesticides; and Headwaters, an environmental forestry organization. He outlined a number of concerns for these groups.

1. People want safe drinking water.
2. The waters of the State are polluted.
3. We don't know very much about the pollution of Oregon's water due to the lack of technology and money available.
4. The State won't have the money to clean up the water if it is polluted any further. It is now that we should be protecting water from pollution rather than waiting to relying on clean-up measures.

Mr. Bratt expressed concerns about the proposed rule amendments and he suggested several changes and/or additions to the them. He felt the rules were good but did not go far enough.

While prevention of pollution is suggested by the rules, no specific methods such as using alternatives to pesticides or other agricultural chemicals are given, and it is doubtful that pollution will be reduced. Like the Iowa groundwater program, Oregon's plan should state that no contamination is acceptable.

California has some good ideas on protecting groundwater in terms of timetables and the chemicals considered. The rules should consider problems with the inert ingredients in some chemical

compounds as well as the symbiotic relationship of toxics, recognizing hazards do exist. If industry has the technology to create toxic substances that are polluting water, then it has the technology to solve those problems; they should be included in the solution. Taxation of toxic chemicals is a good idea in this respect.

The proposed rules should not place the burden of proof on the people to upgrade classification. All groundwater should be classified as Class I, and a management plan is needed for Class I groundwater.

Greater public involvement is needed and strict enforcement rules should be included in the policy. The U.S. EPA should institute an education program to make the public aware of groundwater issues and problems.

In conclusion, Mr. Bratt advised that a statewide environmental impact statement is needed to protect groundwater.

6. Roger Brinkerhoff, MSW, 880 Lewis Street, Eugene, OR 97402; 3/7/88 (Written & Oral Testimony)

Mr. Brinkerhoff offered comments as a social worker who is concerned about the role the natural environment plays in human interaction and development. He expressed opposition to legalized contamination of groundwater which he felt the proposed rules endorse, and he suggested the use of Iowa's groundwater legislation as a model for the development of Oregon's rules.

7. S. Brooks, 81900 Mahr Lane, Creswell, OR 97426; 3/15/88 (Written Testimony)

Strongly opposed the proposed amendments, stating that they will encourage further pollution when no groundwater contamination is acceptable.

8. Barbara Brown, President, Oregon Consumer League, P.O. Box 8934, Portland, OR 97207; 4/11/88 (Written Testimony)

Ms. Brown expressed concern over the use of pesticides and stressed the importance of preventing groundwater contamination from agricultural chemicals.

She opposed the classification of Oregon groundwater as Class II, stating that the reclassification to Class I places an intolerable burden of proof on the ordinary citizen. She advocated the adoption of a non-degradation policy, meaning that aquifer classification and numerical standards are inappropriate when prevention should be the main focus.

Ms. Brown urged the Department to support legislation that would develop alternatives to polluting practices.

9. James C. Brown, Bogle & Gates Law Offices, 121 S.W. Salmon, Suite 1600, Portland, OR 97204; 4/4/88 (Written Testimony)

Mr. Brown submitted testimony for Bogle & Gates on behalf of its clients, McCall Oil & Chemical Company, Great Western Chemical Company, Lone Star Northwest, and Cascade Wood Products.

He supported the overall intent of the rules, but stated that non-degradation is not realistically achievable due to the costly studies and remedial action required and the resulting lack of added protection to the environment or public health.

He was concerned that the Department's rules prematurely establish positions/standards which may subsequently have to be revised as federal regulations are subsequently adopted.

He expressed concern that the Department lacks the necessary staff and resources to administer the program proposed by the rules, resulting in only selective enforcement.

It was suggested that the proposed rules be merged with the Oregon Superfund "Clean-Up Rules" now being developed by the Remedial Action Advisory Committee.

Mr. Brown was also concerned with the potential economic impact of the rules, and endorsed the comments received by the Department from Mr. R.J. Hess, Manager, Environmental Sciences Department, Portland General Electric, which discuss these financial impacts.

Requested further clarification of the following terms:

- Aquifer
- Reasonable alternative
- Substantial population
- Valuable habitat
- Beneficial uses
- Local flow systems
- Water table aquifer
- Ambient monitoring program
- Standard treatment
- Extensive treatment
- No reasonable alternative source
- Substantially impair a valuable habitat

Mr. Brown expressed opposition to the use of secondary drinking water standards in the proposed rules, and also stated that reclassification of groundwater by anyone is not practically or economically feasible. He was concerned that the alternate concentration limits (ACLs) will be too expensive to establish, difficult to grant, and of no benefit if no real impact to human health or the environment exists without the ACL.

In conclusion, Bogle & Gates supports the establishment of groundwater protection rules which protect the public's health and environment while maintaining a climate which allows industrial growth and economic stability. He requested that adoption of the proposed rules be postponed.

10. Carolyn Browne, 1717 S.W. Park Avenue, #1102, Portland, OR 97201; 3/21/88 (Written Testimony)

Ms. Browne expressed opposition to the use of secondary drinking water standards in the proposed rules, and was concerned about the excessive costs associated with mitigation over compliance with non-toxic standards.

She suggested a pro-active educational program to address nonpoint source contamination rather than standards and regulations.

11. Thomas Cable, 28168 Briggs Hill Road, Eugene, OR 97405; 3/18/88 (Written Testimony)

Mr. Cable expressed concern that the rules do not insure the protection of groundwater. He suggested the Department use Iowa's groundwater legislation as a model, and supported the Northwest Coalition for Alternatives to Pesticides' stance on protection of Oregon's groundwater resources.

12. Larry Caldwell, Route 5, Box 5945 #5, Hermiston, OR 97838-9671; 3/16/88 (Written & Oral Testimony)

Mr. Caldwell opposed the adoption of the proposed rules because they give broad discretionary and absolute exemptive powers in regard to groundwater quality to the Environmental Quality Commission and the Director of the Department of Environmental Quality, all of whom are political appointees.

He also was concerned that the rules do not identify the resources and the method by which those resources are to be acquired in carrying out the increased workload associated with implementing the proposed rules. He urged the Commission and the Department to identify and acquire the necessary resources and expertise for carrying out its legislative mandate. He suggested that legislation would be a more permanent solution to current funding and policy problems in the Department.

13. Sheila Canal, Coordinator, SALUD (Safe Alternatives for Farm Workers) 4077 Humbug Creek Road, Jacksonville, OR 97530; 3/8/88 (Oral Testimony)

Ms. Canal is the coordinator SALUD, a local grass roots organization which educates and empowers farm workers and the community at large about the agricultural use of pesticides. Many people who live adjacent to agricultural land are concerned about

the use of toxics and the possibility of resultant groundwater contamination. She detailed difficulties in acquiring governmental assistance for sampling and monitoring efforts.

Ms. Canal commended the Department for its work in researching groundwater quality throughout the State. The stated goal of the policy to preserve and maintain the highest possible quality groundwater was also commended. She asked what mechanisms would be in place to attain this goal. Prevention of groundwater pollution should be a top priority.

By setting numerical standards for allowable contamination, the rules make groundwater degradation acceptable. A provision is needed to encourage development and use of alternatives to toxics in agriculture, forestry, industry, and the private sector. Ms. Canal felt that by stating that the public must assume its groundwater is not safe, the Department's rules are essentially stating that the public does not have the right to pure drinking water. Automatically classifying all groundwater as Class II will allow degradation by contaminants about which we know too little. Also, not enough is known about the movement of groundwater and its potential future uses. All of Oregon's groundwater should be considered vital and irreplaceable without requiring individual citizens to prove it.

The rules do not provide protection to victims of contaminated groundwater, nor do they give citizens the right to enforce the rules in court. Too much discretion is allowed on the part of the Department, and the rules are lax on enforcement.

In conclusion, Ms. Canal recommended using the Iowa groundwater protection legislation as a model in Oregon for the development of a non-degradation policy based on research, demonstration projects, and education regarding alternatives to the use of pesticides and other toxic chemicals. Taxing the sale of agricultural chemicals could provide funding for these programs that benefit everyone. All citizens have a right to clean water and a duty not to pollute.

14. June and Don Carlton, P.O. Box 55, Deadwood, OR 97430; 4/6/88
(Written Testimony)

Mr. & Mrs. Carlton supported the Department's efforts to amend the rules and recommended the following changes:

(1) GENERAL POLICIES

(b) The last phrase, "...control waste discharges to groundwater so that the highest possible groundwater quality is maintained." implies that the quality of groundwater could deteriorate each year without violating the rules since the adjective "possible" allows this flexibility.

The policy should have three goals:

1. The future goal should be to eliminate the discharge of waste to groundwater. Water reaching the groundwater should not be polluted.
2. The immediate goal should be that no further degradation of any groundwater system should be allowed.
3. The interim goal should be to control waste discharges until complete elimination is possible.

(e) The phrase "most current and scientifically valid information available" is too flexible. No discharge should be allowed where valid information is inadequate.

(g, i, j, k) Legislation should be sought to provide on-going funding for the groundwater quality protection program and the ambient monitoring program so these activities are not affected by the vagaries of grants. The taxation of products producing pollution was recommended as a source of revenue.

(2) GROUNDWATER QUALITY MANAGEMENT CLASSIFICATION SYSTEM

Classification should be used as a management tool during the transition period between now and zero groundwater pollution.

(d): The top priority should be to identify Class I groundwaters.

(g)(C): The aquifer management plan for Class III groundwaters should not allow further degradation of the groundwater.

(4) NONPOINT SOURCE CONTROL

(a): Acquiring funds for education and research into best management practices aimed at eliminating nonpoint source pollution should be given high priority.

In conclusion, Mr. & Mrs. Carlton recommended using Iowa's groundwater legislation as a model for Oregon's groundwater protection plan.

15. Joe Chadek, 33970 Orchard Avenue, Creswell, OR 97426; (3/7/88) (Oral Testimony)

Mr. Chadek's primary concern was that proper enforcement is currently far from adequate in groundwater quality matters. He felt the current lack of enforcement undermines the integrity of governmental agencies.

Mr. Chadek expressed concern about potential and documented groundwater contamination in his neighborhood located approximately one mile south and one mile east of Creswell. The local aquifer is shallow and vulnerable to contamination from failing septic systems. A study conducted by the Lane County Watermaster in 1980-81 revealed a severe bacterial contamination problem in over forty percent of the wells tested. Sources of bacterial contamination include two mobile home courts and a stable. Arsenic has also been detected in groundwater in the general area.

Stating that solutions to groundwater problems can be expensive and that its prevention should be a top priority, Mr. Chadek cited several instances when problems could have been abated or avoided. In addition, he stated that more public involvement is needed in issues that affect groundwater. He was distressed about enforcement difficulties he has had with various governmental agencies including the Department of Environmental Quality, the Department of Agriculture, and Lane County land use authorities.

16. John A. Charles, Executive Director, Oregon Environmental Council, 2637 S.W. Water Avenue, Portland, OR 97201; 4/4/88
(Written Testimony)

Mr. Charles expressed concern that the proposed rule amendments would fail to provide adequate protection for Oregon's groundwater and he commented on the proposed rules' failure to address all the issues raised in the Department narrative of Agenda Item I, 1/22/88 EQC Meeting.

He requested further definition and clarification of "impairment", "minimize", "beneficial uses", "best practicable methods", and "best management practices".

The classification of all of Oregon's groundwater as Class II does not maintain the highest possible groundwater quality. Reclassification will be too expensive and burdensome for the average citizen, and the Department lacks the necessary resources to undertake aquifer classification.

Concern was expressed that numerical standards will institutionalize groundwater degradation, and their use was questioned when they have yet to be set for many chemicals.

Other comments provided by Mr. Charles in regard to the proposed amendments are as follows:

(1)(i): Guidelines need to be developed for determining the severity of the threat to groundwater and public health.

(1)(k): The rules should provide information on alternative practices to reduce the contamination of groundwater.

(3)(b): A lead division within the Department which will be responsible for implementation should be designated.

(3)(c)(B)(ii): Monitoring and assessment reports should be provided to the Department regularly and promptly. Monitoring should be conducted by the Department with the costs assessed to the regulated facility.

(3)(c)(B)(vi)(1)(a): Any statistically significant increase in contamination should be reported to the Department immediately.

(3)(c)(B)(vi)(3): Should be changed to read as follows: "In order to prevent additional contamination, the Department [may] shall order the implementation of phase one remedial action..."

(4)(c): A lead agency should be designated to address the research and development of best management practices.

Mr. Charles wanted to go on record stating that Agenda Item I indicated that the Citizens Advisory Committee "developed" and thus approved the proposed rules when in fact the Committee never formally voted on the package. The OEC was involved in drafting the proposed rules, supporting some parts and opposing others.

In conclusion, Mr. Charles urged the Commission not to adopt the proposed rules. He advocated a well-funded statutory commitment to a non-degradation policy that emphasizes the research and development of alternatives to toxic substances and contaminating practices. He also supported a major commitment to public education and involvement.

17. Harold C. Christiansen, Route 2, Box 347-6, Otis, OR 97368;
4/1/88 (Written Testimony)

Mr. Christiansen submitted testimony outlining concerns about toxic pollution of vital and irreplaceable groundwater resources. He supported implementation of a program which will stop current polluting practices and clean up already polluted groundwater.

18. Richard M. & Christine Colvard, P.O. Box 514, Ashland, OR 97520;
3/14/88 (Written Testimony)

The Colvards expressed concern about the use of acids in mining and pesticides in forestry. They advocated a policy to prevent groundwater pollution by outlawing the use of toxic substances.

In addition, they supported processes for the taxation of toxin producers and purchasers, legal recourse, prevention of pollution, and research into alternatives to toxic chemicals.

It was recommended that the Department use the Iowa groundwater legislation as a model for the development of Oregon's program. Extensive public participation take place at all levels of the program's development.

19. Lynn S. Coody, Chairperson, Oregon Tilth's Legislation and Government Committee, and Organic Farm Systems Consultant, Fresh Start Farm, 1241 E. Jefferson Street, Cottage Grove, OR 97424; 3/15/88 (Written & Oral Testimony)

Ms. Coody expressed concern that the proposed policy amendments are inadequate to protect Oregon's groundwater. She stated that Oregon's policy is standards-driven and it would allow continued degradation to take place.

She suggested the Iowa Groundwater Protection Act serve as a model for Oregon's rule development. The prevention of contamination through a non-degradation policy rather than regulation was emphasized. She suggested research, demonstration projects, and public education be the major approaches to prevention of groundwater contamination, adding that funds for these programs could come from a variety of fees such as registration fees on pesticides and fertilizers.

20. Donald Cordell, Sweet-Edwards/EMCON, Inc. (SE/E), 506 Royal, P.O. Drawer B, Kelso, WA 98626-3409; (3/1/88) (Oral Testimony)

Mr. Cordell submitted oral testimony on behalf of SE/E. SE/E is concerned about the workability of the proposed rules, asserting that the State of Oregon would feel the biggest impact from them.

Mr. Cordell stated that the inclusion of secondary standards in the rules would place most waste disposal sites out of compliance, making the rules difficult to implement. Secondary standards should only be enforced when a significant impact on health and the environment occurs. The ability of the Department to effectively prioritize situations such as these was questioned. Alternate concentration limits (ACLs) will need to be adopted to bring facilities into compliance. Experience with federal programs has shown that ACLs are expensive and difficult to adopt, and they rarely are adopted.

The rules should provide a definition for "short term degradation."

SE/E expressed concern that the proposed classification system will be difficult to evaluate and will serve as a tool for blocking or delaying siting of controversial projects. In addition, the decision to site some facilities would be made by the EQC instead of the Hazardous and Solid Waste Division, overloading the EQC unnecessarily in most cases.

In the context of Class I aquifers, the rules should define "reasonable alternative", and clarify what delineates an aquifer boundary. In addition, a time frame should be given in which decisions are to be made on reclassifying an aquifer as Class I. "Direct or indirect discharges" also need to be further defined. Non-degradation, while an honorable goal, is not practical.

On page fifteen, item "a", the rules should state "ten days of the receipt of laboratory data" in order to make the meaning clear.

SE/E suggests that samples with a turbidity greater than 5 NTU be filtered to avoid unrepresentative results in analysis. Given the extremely low levels of detection required, a statistical basis such as a ninety-five percent confidence interval should be given whenever a standard is exceeded. The regulation for coliform bacteria should be removed because bacteria may be inadvertently introduced into monitoring wells by the drilling process and it is not acceptable procedure to chlorinate these wells.

21. Phyllis Cottingham, 1307 English Court, Brookings, OR 97415;
4/4/88 (Written Testimony)

Ms. Cottingham recommended that all public drinking water sources automatically be designated Class I, and she suggested that the well head protection program be more effectively implemented.

She was also concerned that the standards set forth in the rules are too flexible because they are left to the discretion of agency heads, and the public recourse to such actions is too limited.

22. David L. Craig, Senior Environmental Analyst, Hydrogeology,
Pacific Power & Light Company, 920 S.W. 6th Avenue, Portland, OR
97204; 3/31/88 (Written Testimony)

Mr. Craig submitted the following testimony on behalf of Pacific Power and Light Company (Pacific):

Pacific supports DEQ's efforts to develop a comprehensive approach to groundwater management. The primary objective of a groundwater management plan should be to protect public health, environmental quality, and the beneficial uses of groundwater, and not to protect the groundwater solely in itself. Pacific is opposed to overprotection simply to meet arbitrary standards. An anti-degradation policy which promotes the minimization of society's impact on groundwater is a more appropriate and realistic goal than non-degradation which promotes the elimination of society's impact on groundwater. The quality of groundwater can be very variable, and therefore requires a large degree of flexibility and professional judgement to regulate.

Additional comments and suggestions included:

1. A groundwater classification system should recognize that all groundwater is not deserving of the same degree of protection. Classification applied on an aquifer-wide basis does not provide the flexibility needed where the groundwater quality is highly variable within the same aquifer.

2. The rules fail to recognize that there are some beneficial uses of groundwater, such as mining and waste treatment, which appear destructive in nature but can be conducted and managed to provide adequate protection to public health and environmental quality. A more flexible regulatory approach with less reliance on arbitrary standards and non-degradation objectives is needed.

3. The case-by-case determination of both best practical method of treatment and concentration limits apparently promotes needed flexibility and professional judgement in the rules. However, the ACL process is inflexible and does not allow for natural variability of groundwater quality.

4. While the location of the compliance point at the waste management area boundary allows for limited use of the natural characteristics of some aquifers to provide treatment for certain contaminants, the arbitrary placement of compliance points does not provide for the maximum use of natural treatment while still providing protection to the public and environment.

5. Alternate concentration limits for Class I aquifers should be allowed if they would have no effect on public health and environmental quality.

6. The rules should require the staff responsible for regulatory reviews be adequately trained in groundwater science.

7. DEQ should prepare and submit for public review a cost-benefit analysis when setting concentration limits or imposing other groundwater quality requirements.

8. The terms "aquifer" and "groundwater" should be defined in the rules. The definitions should recognize that not all "groundwater" is suitable for use, and "aquifer" designates groundwater suitable for use. The rules should be oriented toward protecting aquifers and not just groundwater in general.

9. Pacific supported the rules' approach to regulate contamination from nonpoint sources and suggested incorporating similar concepts of promoting flexibility and sound professional judgement into the point source section as well.

In conclusion, Mr. Craig stated that a groundwater quality management program should consider the not-necessarily pristine nature of groundwater, and it should allow for more flexibility and professional judgement in decision making. Steps are needed

to assure adequate protection without unnecessarily restricting economic and industrial development.

23. Phillip W. Curtis, 1440 N. Valley View Road, Ashland, OR 97520; 3/8/88 (Oral Testimony)

Mr. Curtis commended the Department staff for wanting to improve water quality. He was concerned about degradation that has been allowed to occur with time, and he felt that the proposed rules would be undermined by lack of staff and resources. Allowing enforcement to be dictated by unreliable resources would be contradictory to the principle of non-degradation of water. Mr. Curtis stated that the highest and most stringent standards available should be employed so that no degradation is allowed. A provision should be made for State assistance to victims of groundwater degradation rather than requiring victims to prove that contamination has taken place before the State gives any assistance. A groundwater sampling program should be proposed in the policy to give an understanding of the current degree of contamination, particularly from nonpoint sources.

Mr. Curtis felt that Oregon has compromised on its groundwater protection program in comparison to other states. He commented on staff and resource limitations, adding that he felt a state-of-the-art program is possible here. He encouraged the Department to avoid cost/quality trade-offs. Such compromises could essentially invite pollution-prone companies to Oregon.

In conclusion, Mr. Curtis suggested Oregon adopt a state-of-the-art program involving non-degradation of all water, include a state-wide sampling and regular monitoring program, give assistance to victims of groundwater contamination on a proactive basis, and establish a funding source by taxing agricultural chemicals and the industries that use them.

24. Jean M. Davis, 2385-8 Table Rock, Medford, OR 97501; 3/10/88 (Written Testimony)

Ms. Davis felt the proposed rules are short-sighted, and provided the following comments:

- a. Provisions should be made to encourage the development and use of alternatives to toxic substances.
- b. The rules do not discourage the use of toxic chemicals which could contaminate groundwater.
- c. All groundwater should be classified as vital and irreplaceable.
- d. The proposed classification system will provide a license to pollute groundwater.

25. Eric Dittmer, Water Quality Coordinator, Rogue Valley Council of Governments, 155 S. 2nd Street, P.O. Box 3275, Central Point, OR 97502; 3/8/88 (Written and Oral Testimony)

Mr. Dittmer strongly supported the Department's approach to protecting Oregon's groundwater resources. He stressed the importance of the availability of groundwater quality and quantity data, stating that existing data is inadequate. He suggested the following for consideration:

1. The Department of Environmental Quality, Water Resources Department, and the State Health Division should establish a consistent state-wide permit process for new well construction.

2. An aggressive program is needed to locate and seal improperly abandoned wells which act as conduits for pollutants to reach groundwater.

3. The State should computerize available well log and other groundwater data.

In addition, Mr. Dittmer supported regulation of point and nonpoint pollution sources as well as the adoption of a non-degradation goal. Procedures involving impacts on groundwater are more complex than those on surface water. He also noted that nonpoint sources of pollution will be difficult to regulate, and he predicted they will be a major problem in groundwater.

Establishing a groundwater standard using existing EPA drinking water standards is appropriate, but should remain flexible as new data is generated on the health effects of various contaminants.

The State's enforcement capabilities should be seriously considered as new rules are adopted. Resources are lacking for adequate enforcement of existing regulations by the Department.

Protection of groundwater through prevention should be emphasized in view of the fact that it is very expensive if not impossible to clean-up once contamination occurs.

26. Thomas C. Donaca, General Council, Associated Oregon Industries, P.O. Box 12519, 1149 Court Street N.E., Salem, OR 97309-0519; 4/4/88 (Written Testimony)

Mr. Donaca offered the following comments on behalf of the Associated Oregon Industries (AOI):

1. The proposed groundwater classification system does not address the difference between shallow and deep aquifers, and fails to protect those aquifers that are irreplaceable sources of drinking water. The reclassification procedure calls for the submission of information that would be difficult & time-

consuming to obtain, and it would act as a means of delaying projects.

2. The proposed rules are biased toward the regulation of point source activities, giving very specific requirements for their control. Nonpoint source controls, on the other hand, are very general even though these types of activities result in much more widespread aquifer contamination than that from point source activities.

3. The effect of establishing a de facto higher quality standard for groundwater than for surface water will require efforts by the Department that are not reasonably achievable in many cases and will place significant burdens on both the using and regulated community. The inclusion of secondary drinking water standards will place many regulated sites in immediate non-attainment.

4. It is unclear how the Department will apply both the proposed remedial action rules and these general groundwater quality protection rules, especially in reference to ACLs.

In conclusion, AOI requested that the rule-making by the Environmental Quality Commission be delayed until the remedial action rules are ready for Commission action. A new advisory committee with members who have major knowledge of groundwater should be convened to then review the current and proposed rules to make further recommendations. The AOI offers its assistance should the Department require such an effort.

27. Melba Durrant, 96061 Hulbert Lake Road, Junction City, OR 97448; 3/7/88 (Oral Testimony)

Ms. Durrant submitted testimony relating to a long-term water quality problem resulting from animal waste management practices from a dairy near her home. Dairy waste has reportedly been dumped in a nearby lake close to some wells. She detailed enforcement difficulties with various governmental agencies, including the Department of Environmental Quality, the Department of Agriculture, and local soil and water conservation agency.

Ms. Durrant was supportive of rules to protect groundwater quality, but she was concerned about the lack of enforcement and fines levied against violators as well as the lack of necessary staff and general resources. She also stated that sources should not be allowed to be self-monitoring.

28. Myra Erwin, 300 Grandview Drive, Ashland, OR 97520; 3/8/88 (Oral Testimony)

Ms. Erwin commended the Department staff on its work in drafting the proposed rules. She commented that it would be useful to collect data from wells as they are drilled throughout the state

through the water right permitting system. Also, a program should be established to seal abandoned wells.

Other comments specific to the proposed rules were:

340-41-029 (Introductory paragraph, third sentence) Insert "at least" after "...requirements must...."

(1)(b): Implementation in regard to this statement in other parts of the rules could be clarified.

(2)(b)(A)(i): Omit any reference to a "substantial population". The size of the population dependent on a drinking water supply should be irrelevant.

(2)(c): All groundwater should be considered Class I unless and until proven otherwise.

(2)(e): The information needed for reclassification proposals would place too large a burden on individual citizens.

(3)(a): "Best available technologies" would provide better protection than "highest and best practicable methods" which are subject to interpretation. Also, public health protection should be considered the most important factor, and should be mentioned first in the second sentence.

(3)(c)(v): Clarification is needed in defining existing facilities versus new facilities, particularly in cases when existing facilities expand.

(3)(c)vi)(4): This sentence could be loosely interpreted with the inclusion of the second clause. Suggest omitting ", if the assessment indicates...."

In conclusion, Ms. Erwin urged the Department to find the resources necessary for implementing the rules, and suggested a campaign to educate the public in this regard. She supported the use of a tax or fee on sources of pollution to help fund water quality protection and clean-up programs.

29. Lynn Fox, P.O. Box 15056, Portland, OR 97215; 3/1/88 (Oral Testimony)

Ms. Fox submitted testimony as a concerned private citizen with a background in wildlife biology, environmental science, and public health. She expressed concern about the use of agricultural chemicals, stating that contamination of groundwater by pesticides and nitrates will become a major environmental problem in the future. In many cases, not enough is known about the toxicity of pesticides and their degradation products. Stricter regulations for their use and distribution need to be adopted. Ms. Fox suggested that further research on pesticides be conducted to

determine their toxicity. The rules should provide vigorous protection of groundwater that is used for drinking water from substances that are derived from nonpoint sources of contamination such as agriculture and silviculture.

Ms. Fox urged the department to adopt rules that:

1. Contain mandatory standards for ubiquitous chemicals such as nitrate, pesticides and pesticide degradation products. These standards should provide both a precise definition of whether or not groundwater is polluted and an avenue to mitigate the causes of the pollution.

2. Clearly define and rank best management practices and alternatives currently available to achieve stated quality goals.

3. Provide realistic incentives and technical assistance for the implementation of those practices and alternatives.

30. Olga A. Freeman, 1431 E. 22nd Avenue, Eugene, OR 97403; 3/7/88
(Written Testimony)

Ms. Freeman expressed opposition to the proposed rules, stating that no groundwater contamination is acceptable. She was concerned about the occurrence of pesticides, fertilizers, and various toxic chemicals in Oregon's groundwater.

31. Barry Geiken, Friends of Cathedral Forest, P.O. Box 3499, Eugene, OR 97403; 3/7/88 (Oral Testimony)

Mr. Geiken testified as a representative of the Friends of Cathedral Forest, a non-profit organization with over a thousand contributing supporters based in Eugene. He felt the Department was not taking adequate measures to assure the people of Oregon of groundwater that will be safe to drink or use for domestic purposes.

He felt the proposed aquifer classification would allow degradation. All groundwater should be classified as vital and irreplaceable. It is not wise to classify aquifers for management goals because we cannot predict future uses.

Mr. Geiken expressed concern over contamination of groundwater by agricultural chemicals. The rules do not encourage the development and use of alternatives to toxic substances used by agriculture, industry and others. They should discourage the use of toxic chemicals that pollute groundwater.

The rules set allowable degradation levels and assume that adequate research has been conducted on toxic contaminants and their effects on people. Mr. Geiken stated that critical information on toxic chemicals has been withheld from the public by the U.S. Environmental Protection Agency and the American Paper

Institute. He doubted the Department's ability to make responsible management decisions based on this lack of available data.

The rules should allow the public to address enforcement problems, and the proof of significant contamination would be overly expensive for private citizens to undertake. Any contamination by toxic substances should be considered significant, and polluters should be required to show that their use of toxics will not contaminate groundwater. Mr. Geiken also suggested that toxic chemicals should be taxed to fund programs that ensure safe groundwater supplies.

The Friends of Cathedral Forest supports the use of a non-degradation policy such as Iowa's as a model for the development of Oregon's program. Mr. Geiken went on record supporting the testimony given by Norma Grier of the Northwest Coalition for Alternatives to Pesticides, and Ron McMullen.

32. Lucie Giampaoli, P.O. Box 419, Brookings, OR 97415; 3/8/88 (Oral Testimony)

Ms. Giampaoli expressed concern that the requirements for demonstrating the presence of Class I groundwater are too stringent. The reclassification process requires too much time and money, and it places the burden of proof on the petitioner. Also, it is believed that the Commission could reject the petition on the basis that insufficient data has been presented. It is feared that by the time a groundwater aquifer is designated Class I, the resource could be lost. All groundwater resources should automatically be designated as irreplaceable until proven otherwise. Ms. Giampaoli stressed the need for preventing groundwater contamination. She suggested the amendment include a provision for special Class I study areas.

33. Andrew R. Gigler, 4230 S. 6 Street, Klamath Falls, OR 97603; 3/14/88 (Oral Testimony)

Mr. Gigler commented in detail on the problems he has experienced with the DEQ and U.S. EPA. His complaints about contamination have not been acted upon as he felt they should. He felt that state and federal regulatory agencies have acted as adversaries rather than advocates of environmental protection. He stated that while the proposed rules sound good, they alone are inadequate for protecting groundwater from contamination. Enough regulations already exist to protect the environment, but because proper enforcement is lacking, these regulations have failed.

Mr. Gigler stated that the accelerated rate of groundwater contamination by toxics since World War II has not been acknowledged. He urged the regulatory agencies to take a more proactive role in testing for pesticides, and he expressed concern about the inadequacy of such testing to date.

The proper siting of waste disposal facilities away from geologic hazards and major aquifers, as well as adequate monitoring of such facilities, is very important. Mr. Gigler is disturbed about disposal practices that have taken place at Alkali Lake, Lakeview, and Arlington. He stated that Oregon has become a dumping ground for all the poison chemicals for all states west of the Mississippi.

The environmental regulatory agencies should be considered stewards of human health and welfare, and groundwater should be protected for future generations. The EPA is derelict in setting drinking water standards. No amount of pesticide or hazardous waste contamination should be considered safe. Habitat destruction, well closures, fish kills, and many human diseases, including cancer, may be linked to exposure to groundwater contaminated by nitrates, pesticides, and other hazardous chemicals.

Mr. Gigler suggested the Department adopt approaches to groundwater protection similar to Iowa and California's laws. No amount of contamination should be allowed and alternatives to the use of toxic chemicals should be encouraged.

Mr. Gigler submitted two articles from the March, 1988 issue of Water Technology which discuss problems the U.S. EPA has had complying with the 1974 Safe Drinking Water Act and the issue of nitrates in groundwater. Another article he submitted was one he wrote for the Fall, 1980 issue of NCAP News about the disposal of hazardous waste at Alkali Lake. He also presented as part of his testimony an Environmental Defense Fund newsletter and copies of two reports (Ida Honorof's Report to the Consumer) which cite problems associated with pollution from and regulation of toxic dumpsites.

34. Diana E. Godwin, Attorney at Law, Oregon Sanitary Service Institute, 1880 Lancaster Drive N.E., Suite 112, Salem, OR 97305; 3/1/88 (Written and Oral Testimony)

Ms. Godwin submitted the following testimony in reference to the proposed amendments on behalf of the Oregon Sanitary Service Institute (OSSI), an association of private waste haulers and landfill operators:

1. The language in Section (3)(b) is too vague and offers no objective guidance to the Department's solid waste division enforcement staff.

2. Under Section (2), the authority and responsibility for reclassifying groundwater is given to the EQC, and any person may ask the EQC to reclassify an area's groundwater. This provision could impede the siting of new solid waste disposal facilities because no time-lines are provided in the rules. OSSI also was concerned that the decision whether to site a landfill could be

based on the Department's Water Quality Division considerations rather than on solid waste disposal needs, land use, and other general environmental considerations.

3. The use of numerical standards for non-toxic, secondary public health standards will place the majority of existing landfills out of compliance. OSSI was concerned about the expense to both the Department and the solid waste industry of obtaining ACLs and/or cleaning up the groundwater when a non-toxic standard had been violated.

35. David L. Goodman, Vice President, Public Affairs and Marketing Services, The Clorox Company, 1221 Broadway, Oakland, CA 94612-1888; 4/8/88 (Written Testimony)

Mr. Goodman provided testimony on behalf of the Clorox Company which operates a facility in Springfield employing approximately 90 people. His comments are as follows:

1. The proposed amendments create an administrative burden without a real improvement to Oregon's groundwater quality.

2. The Department should convene a task force with members from academia, environmental groups, industry, and regulatory agencies, including a broad representation from the Department, to provide more guidance with regard to the significant financial impact and technological constraints of the proposed amendments.

3. The amendments should be replaced with a comprehensive policy that incorporates the requirements of State programs for Superfund, pesticide use and disposal, underground storage tanks, agriculture and industrial uses for aquifers, and all other programs related to groundwater use and protection.

4. The Department is to be commended for its in-depth analysis of the State's groundwater quality protection program. However the proposed amendments are extremely complex, inefficient and costly without the proven benefit of groundwater quality improvement in Oregon.

In conclusion, the Clorox Company urged revisions of the proposed amendments.

36. Janet Gregory, 8232 Wagner Creek Road, Talent, OR 97540; 4/6/88 (Written Testimony)

Ms. Gregory expressed concern over frequent spraying that takes place at the neighboring Bear Creek orchard. She was concerned about the potential for pesticide contamination of the groundwater in her domestic well.

She urged the Department to adopt a water policy that prevents degradation of groundwater.

37. Norma Grier, Director, Northwest Coalition for Alternatives to Pesticides (NCAP), P.O. Box 1393, Eugene, OR 97440; 4/1/88
(Written and Oral Testimony)

Ms. Grier submitted written testimony on behalf of NCAP and also gave oral comments at the public hearing in Eugene, Oregon.

NCAP urges the Commission to reject the proposed changes to the groundwater policy and consider a non-degradation approach that emphasizes funding and incentives to implement alternatives to toxic chemicals that threaten groundwater. NCAP opposes the proposed amendments for three reasons:

1. The proposal relies on numbers that are unsubstantiated. Oregon lacks information about the groundwater resource it is trying to manage and protect. Information is also lacking on the quantities of pesticides being used, their effects on human and environmental health, and their ultimate fate in the environment.

2. A standards-driven approach to protecting groundwater quality will provide a license to pollute, and Departmental funding of the current groundwater program is inadequate for limited sampling efforts.

3. The proposed regulations will be difficult to enforce. Using standards to limit pollution is expensive and awkward, and it does not lend itself to preventing nonpoint source contamination. In addition, the Department currently lacks adequate resources to implement such a standards-driven policy.

In conclusion, Ms. Grier expressed support for a non-degradation policy that emphasizes funding and incentives to implement alternatives to toxins. NCAP advocates the approach that Iowa has adopted for groundwater protection legislation.

38. Annette Gurdjian, 95 West 30th Avenue, Eugene, OR 97405; 3/9/88
(Written Testimony)

Ms. Gurdjian testified in opposition to the proposed amendments. She stated they would allowed further degradation of groundwater and do not fully address the issue of toxic chemicals.

She suggested the proposed rules should give citizens the right to enforce the rules in court and should require the Department to act in response to groundwater quality problems.

She recommended that the Department work toward passing legislation similar to the Iowa Groundwater Protection Act.

39. Neva Hassanein, 573 Hayden Bridge Way, Springfield, OR 97477; 4/4/88 (Written and Oral Testimony)

Ms. Hassanein commented that the proposed rules allow continued, unacceptable contamination of Oregon's groundwater.

She expressed concern over the presence of pesticides in Oregon's groundwater, and she questioned the ability of federal and state agencies to determine safe levels of toxic substances in drinking water. It was suggested that the Department encourage the development of alternatives to agricultural chemicals and discourage the use of toxic chemicals.

She asked if the Department would be able to enforce compliance with the proposed amendments, and she noted that the rules do not provide for citizen enforcement.

Ms. Hassanein also wanted to go on record as supporting the testimony of L. Quincy Sugarman, Norma Grier, Lynn Coody, Ron McMullen, and Roger Brinkerhoff.

40. R. J. Hess, Manager, Environmental Sciences Department, Portland General Electric Company, 121 S.W. Salmon Street, Portland, OR 97204; 3/18/88 (Written Testimony)

Mr. Hess submitted comments on behalf of Portland General Electric (PGE) as follows:

1. FINANCIAL IMPACTS: The Fiscal and Economic Impact (Attachment E) is inadequate and incomplete.
2. LAND USE CONSISTENCY: Under Land Use Consistency (Attachment F), Goal #6 is mutually exclusive of Goal #11 if numerical standards are promulgated.
3. REMEDIAL ACTIONS: The stated goal of the Groundwater Protection Policy is to protect groundwater, not provide a remedial action program, but the proposed rules set up a program defining such a program (Section (3)(B)(vi)).
4. GROUNDWATER QUALITY: Much of the groundwater in the United States cannot meet drinking water standards, and only a very small fraction of groundwater is actually consumed, yet the public believes that groundwater in general is of good quality. The scope of the proposed problem is not clearly defined.
5. CLASSIFICATION: The evidence of groundwater contamination does not warrant a classification system equally stringent for all groundwaters, both shallow and deep aquifers.
6. STANDARDS: There are concerns about how numerical standards will be applied after the rule is in effect. Numerical standards based on the background water quality and uses of the aquifer would be more appropriate than those based on a single set of numbers for all groundwaters of the state.

7. DRINKING WATER STANDARDS: If numerical standards are used, only chemicals that are National Primary Drinking Water Standards should be used and then only in sole-source aquifers.

8. CHEMICAL PARAMETERS/ANALYSES: Turbidity, viruses, bacteria, and Giardia are questionable tests for groundwater quality.

9. WATER RIGHTS: Requiring groundwaters in Critical Areas of short supply to be pumped, treated, and discharged to surface water as a means of remedial action would be poor management of a resource. The Department needs to consider the possible wasting or mining of groundwater in the name of a numerical standard.

In conclusion, PGE supports reasonable rules for the protection of deep aquifers, sole-source aquifers and drinking water aquifers.

41. Mary Hornig, 3320 Videra Drive, Eugene, OR 97405; 3/7/88 (Written Testimony)

Ms. Hornig, a civil engineer with post-graduate work in water resources, made comments based on her observations of the public hearing held in Eugene, Oregon. Points made by those giving testimony that she supported included adopting a non-degradation policy as opposed to a standards-driven policy, and solving the problem of obtaining state agency review and local enforcement only in response to citizen complaints related to groundwater problems. She suggested better public relations might be an effective means of alleviating public misunderstandings.

42. Lucille Houston, P.O. Box 635, Cannon Beach, OR 97110; 4/5/88 (Written Testimony)

Ms. Houston requested that adoption of any groundwater protection rules be postponed until groundwater legislation is passed. She suggested that such legislation should include a provision for funding of groundwater protection programs and should stress prevention rather than regulation.

43. Nancy Hull, 2055 Myrtle Avenue N.E., Salem, OR 97303; 3/14/88 (Written testimony)

Ms. Hull suggested that strong legislation such as that adopted by the state of Iowa is needed in Oregon. She expressed concern about the use of pesticides and toxins which enter groundwater.

44. Wayne Hunter, Cathedral Forest Action Group, 87380 Cedar Flats Road, Springfield, OR 97478; 3/7/88 (Oral Testimony)

Mr. Hunter expressed concern about the use of pesticides that may threaten groundwater quality. He referred to the Iowa Groundwater Protection Act and suggested the Department follow its example, employing a non-degradation policy, finding alternatives to polluting practices, and acquiring funding through fees levied

against toxic substances. He also felt the Department currently lacks adequate monitoring staff to handle the present workload.

45. Linda Johns, 1401 Filbert, Forest Grove, OR 97116; 3/16/88
(Written Testimony)

Ms. Johns encouraged the Department to adopt rules that would provide incentives to develop alternatives to practices which pollute the groundwater. No groundwater contamination is acceptable, and groundwater data should be public information.

She suggested the Department follow Iowa's example, employing research, demonstration projects, and education.

46. Frank Josselson, The Law Offices of Josselson, Potter & Roberts, 53 S.W. Yamhill Street, Portland, OR 97204; 4/4/88 (Written Testimony)

Mr. Josselson submitted the following testimony on the proposed rules:

(1)(k): The proposed rules would, by implication, prohibit "degradation" except it would enable the EQC to allow "short-term continued degradation" under limited circumstances. The standards in the proposed rules are too strict.

The economic impact statement (Appendix E) is inadequate.

The proposed non-degradation language does not consider economics, does not agree with other parts of the proposed rules, is in many cases impossible to achieve, makes the rules inflexible, is bad public policy, and should be eliminated.

(2)(a)(A): The proposed classification system is ambiguous inasmuch as many aquifers could be classified in all three classes, and it does not address natural aquifer variability.

(2)(b): The following terms require further definition and clarification:

- Restore
- Appropriate beneficial use
- Recognized beneficial use
- Standard treatment
- Such use (2)(b)(B)
- Extensive treatment

(3): The proposed rules give the agency the discretion to require abatement actions without regard to costs or benefits.

(3)(c)(B)(vii)(3): An additional subsection should read:
"n. There is no reasonable relationship between the economic and social costs of attaining the concentration limit and the

benefits to be obtained, but there is a reasonable relationship between the costs and benefits of the alternate concentration limit."

Definition of Point Source: The term "point source pollution", which is never used in the text of the proposed rules but is listed in the definitions section at the end of the rules, is ill-defined. The term "point source" has a well-established meaning in water pollution law.

(3)(c)(B)(iii): The phrase, "ensure immediate detection of waste discharged" sounds like a leak detection system is being required rather than a groundwater monitoring system. Better phrasing for the requirement would be: "reasonably determine if the groundwater quality downgradient of the waste management area has exceeded the concentration limits specified in the permit."

(3)(c)(B)(vi): No standards for establishing a compliance point beyond the perimeter of the landfill have been outlined, nor has a cost-benefit analysis for such a measure been proposed.

(3)(c)(B)(v) and (vii): The contamination of a shallow aquifer may not affect the public or the owner of the surface rights above it if there is a deeper hydraulically-isolated aquifer which has not been contaminated. Decisions to allow alternate concentration limits in shallow aquifers may therefore be affected by the existence of other hydraulically-isolated aquifers and the quality of their groundwater.

(5)(c) and (d): The stated purpose of the numerical groundwater standards "is to indicate when groundwater is not suitable for human consumption." Included among the numerical standards are some that are classified as secondary contaminants. These should not be included in the rules because they do not pose a substantial hazard to human health.

47. Loren D. Koller, DMV, PhD, Dean of the College of Veterinary Medicine, Oregon State University, Corvallis, OR 97331-4802; 3/31/88 (Written Testimony)

Dr. Koller believes the rules, as proposed, would be detrimental to the operation of the Veterinary Medical Animal Isolation Laboratory (VMAIL) located on the Oregon State University Campus. He stated that mandatory analysis of groundwater would be cost prohibitive to the College of Veterinary Medicine to continue to operate the research facility.

48. Fred J. Kupel, President, Spencer Creek Regional Homeowners Association, P.O. Box 609, Eugene, OR 97440-0609; 4/6/88 (Written Testimony)

Mr. Kupel submitted the following testimony on behalf of the Spencer Creek Regional Homeowners Association:

1. Nonpoint sources of contamination should be regulated. The Department should work with land use authorities and the legislature to limit agricultural activities permitted on small acreages, particularly those located in transitional, marginal areas adjacent to zoned Rural Residential areas. In addition, public participation should be provided for.
2. All facilities should be required to control discharges so as not to degrade water quality.
3. Permit applications should cover the cost of studies needed to make determinations.
4. The arbitrary assignment of all groundwater to Class II places an unreasonable burden on the individual citizen where there is probable cause to predict that groundwater should be reclassified as Class I.
5. Allowing the permittee to be both regulator and monitor undermines the integrity of the groundwater protection program.
6. A provision should be made to force DEQ to take action.
7. Fines and penalties for infractions should be both punitive and revenue-generating. Without funds there is no enforcement. Without enforcement there is neither integrity nor credibility.

49. Karen J. Kupel, 85488 Appletree Court, Eugene, OR 97405; 3/7/88 (Oral Testimony)

Ms. Kupel expressed concern about a land use problem involving a commercial pig breeding operation located in the Spencer Creek Road/Apple Tree Court area outside Eugene. The pig farm in question is located in an area zoned Rural Residential. It has a shallow water table and is also within a flood zone. Ms. Kupel stated that it is a threat to surface and ground water quality, and enforcement difficulties have been encountered. Citizen pressure through the Spencer Creek Regional Homeowners Association has been aimed at the Lane County Board of Commissioners and the Land Use Board of Appeals to correct the procedural error in the Department of Land Management.

50. Leo B. Lightle, Engineering Technician, City of Brookings, 898 Elk Drive, Brookings, OR 97415; 3/8/88 (Written and Oral Testimony)

Mr. Lightle submitted testimony that outlined the concerns of the City of Brookings, Oregon, in protecting the source of its public water supply. He detailed problems due to a travel-trailer park's septic system that is situated near the city's public water supply intakes. He expressed support for a consolidated approach to sewage waste disposal, surface water and groundwater management.

Mr. Lightle commented on the use of numerical standards. The fact that they will not necessarily protect existing high quality water should be noted in the rules where numerical standards are first mentioned rather than later in the document.

Some aquifers should require maximum protection as proposed in the draft rules. Public drinking water supplies should receive this protection and automatically be classified as Class I.

Mr. Lightle urged the Department to give public water suppliers the right to comment on proposals for alternate concentration limits, and to give them equal standing as applicants and permit holders who discharge into the groundwater in reference to proposing alternate concentration limits. He also suggested a lot of thought be put into the rules to avoid erosion of their authority later on by the existence of loopholes.

51. Sharon Little, President, and Janet Adkins & Jean Kamps, Water Quality Co-Chairs, League of Women Voters of Oregon, 189 Liberty Street N.E., Room 307, Salem, OR 97301; 4/5/88 (Written Testimony)

The League of Women Voters of Oregon strongly supported the efforts to create a groundwater quality protection program and approved of the public participation that has been sought in the process so far. However, the League believes that the public should be more involved in the proposed rules' implementation.

It was suggested that all Oregon groundwater be classified as Class I because of the difficulty encountered in reclassification by individual citizens.

52. Conny Lindley, 1000 Rock Creek Road, Williams, OR 97544; 3/21/88 (Written Testimony)

Ms. Lindley commented that no amount of groundwater contamination is acceptable.

53. Fran Mackey, 1041 N. Park, Eugene, OR 97404; 3/7/88 (Oral Testimony)

Ms. Mackey urged the strict enforcement of the highest groundwater standards. There cannot be too much protection since toxic contamination of groundwater is often irreversible and results in

harm to all living things. There are no economic gains to justify risks and losses to groundwater purity.

She stated that Oregon should maintain integrity, using foresight and long-term planning in their decision making process, and should not allow the blind abuse of watersheds and groundwater as has historically been allowed in the eastern United States. Oregon should maintain its ecosystems intact and it must strictly monitor existing industrial businesses, dealing with violations strongly. With the current lack of enforcement and monitoring staff available to the State, perhaps a campaign to turn in offenders would be appropriate. Ms. Mackey felt that having industries monitor themselves is highly questionable in terms of producing reliable data. No toxins or marginal standards are acceptable, and the destruction of the environment should be prevented.

54. Lucy Marrs, P.O. Box 85, 20791 Honeygrove Road, Alsea, OR 97324; 3/14/88 (Written Testimony)

Mrs. Marrs commented that no groundwater contamination is acceptable and expressed concern about the presence of toxic substances in groundwater.

55. Betty McArdle, 3740 S.W. Comus Street, Portland, OR 97219; 4/1/88 (Written Testimony)

Ms. McArdle believed the proposed rules would not adequately protect groundwater quality.

She suggested that they should encourage the development and use of alternatives to current practices which employ toxic substances. The rules should also discourage the use of toxics rather than regulate them according to a numerical standard, and all groundwater should be classified as vital and irreplaceable.

She urged the Department to model its groundwater protection program after Iowa's groundwater legislation.

56. Ron McMullen, 610 East 8th Avenue, #3, Eugene, OR 97401; 3/7/88 (Written and Oral Testimony)

Mr. McMullen, an intern and volunteer at the Northwest Coalition for Alternatives to Pesticides, suggested adopting a non-degradation policy and expressed opposition to adoption of the proposed rules.

He commented in detail on ways in which more public involvement in rule development and implementation is needed. This public participation could be included in such things as determining alternate concentration limits, nonpoint source control issues, development and appeals of standards, enforcement provisions, and education aimed at reducing the use of groundwater contaminants.

He also stated that under the proposed rules, the burden of proof for justifying stronger protection classifications is placed on the public, while the state does not have to justify weaker classifications. The proposed regulations require far stricter standards for protecting groundwater than they do for contaminating groundwater.

57. Ted Molinari, Chairman, Environmental and Occupational Health Committee, American Electronics Association/Oregon Council (Oregon AEA), 707 13th Street S.E., Suite 118, Salem, OR 97301; 4/4/88
(Written Testimony)

Mr. Molinari submitted comments on behalf of the Oregon AEA which represents approximately 97 operations and employs approximately 29,000 persons within the State of Oregon.

The Oregon AEA requests that the Department's proposed rules track the federal groundwater protection program and not prematurely establish positions/standards which may subsequently have to be revised as federal groundwater regulations are adopted.

There is concern that the Department lacks the necessary resources to uniformly enforce the proposed rules.

The proposed rules should be merged with the proposed Superfund "Clean-Up" rules so that only one set of rules is promulgated.

The Fiscal and Economic Impact statement is not adequate, and the Oregon AEA supports the statements submitted by Mr. R. J. Hess, Portland General Electric, which discuss these impacts in greater detail.

The following terms need further definition for clarification:

- Aquifer
- Reasonable alternative
- Substantial population
- Valuable habitat
- Beneficial uses
- Local flow systems
- Water table aquifer
- Ambient monitoring program
- Standard treatment
- Extensive treatment
- No reasonable alternative source
- Substantially impair a valuable habitat

The Oregon AEA expressed opposition to the use of drinking water standards for wastewater effluent discharges.

Reclassification of Class II groundwater to a Class I or Class III designation by anyone is too difficult.

In conclusion, the Oregon AEA requests that adoption of the proposed rules be postponed. Mr. Molinari stated that the Oregon AEA offers its assistance in establishing groundwater protection rules which protect the public health and the environment while maintaining a climate which allows for a stable economic base.

58. Ashley J. Molk, 842 Foxglen Avenue, Eugene, OR 97405; 4/1/88
(Written Testimony)

Ms. Molk expressed concern that the classification of Oregon's groundwater would allow degradation to occur. Groundwater quality should be held to the highest possible standards.

59. Anthony R. Morrell, Assistant to the Administrator for Environment, U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208-3621; 4/7/88
(Written Testimony)

Mr. Morrell commented that the proposed rules allow a great deal of discretion and flexibility for enforcement by the Department, and discussed the potential increased burden placed upon the regulated community in complying with the proposed rules.

Key industries or practices which may contaminate groundwater should be identified in an effort to educate groundwater users about the need for improved practices before a permit system is needed. A periodic newsletter similar to "Tankline" might be helpful in informing affected parties of groundwater quality program trends.

It was unclear how strong an anti-degradation policy is being proposed, or how its effectiveness would be measured. Also of concern was the issue of reconciling potential overlaps between the various groundwater programs in the state.

The following comments and questions reflect the BPA's uncertainty over the proposed rules' implementation and effect on BPA's facilities.

Section 1(e): How will the rules be implemented when numerical standards do not exist for a pollutant of concern?

Section 1(h) & (j): How will the various state agencies identify areas of the state where groundwater contamination may affect beneficial uses, and how will this information be made available?

Section 1(k): Will problem abatement plans be developed after the beginning of the ambient monitoring program or will they be developed at the expense of dischargers on a case by case basis, regardless of the State's aquifer characterization program?

Section 2(g)(C): How will the State determine that a discharge will or will not impair a beneficial use or the ecosystems influenced by groundwater, and who will bear the burden of proof? There is some concern that large numbers of monitoring wells installed around the State will increase the risk of contamination.

Section 3(c)(B): How will the Department evaluate new and existing permitted sources and determine the potential for adverse impacts to beneficial uses? Also, the meaning of "waste management area located" needs clarification.

Section 3(d): The first statement under this section implies that at any facility which has experienced a spill or release or which has employed practices directing possible contaminants into the ground may be required to initiate studies, install monitoring wells, and implement remedial actions. Against what specific criteria will each of these instances be measured?

60. Douglas S. Morrison, Legislative/Public Affairs Analyst, Northwest Pulp & Paper Association, 1300 114th Avenue S.E., Suite 110, Bellevue, WA 98004; 4/4/88 (Written Testimony)

Mr. Morrison submitted comments on behalf of the Northwest Pulp and Paper Association (NWPPA) which represents the majority of pulp and paper manufacturers in Oregon.

In principle, NWPPA expects regulations which:

1. Address an identifiable environmental or health problem in the state;
2. Are consistent with available or known Departmental staffing and resources to implement and enforce the regulations;
3. Are based on sound scientific and technical grounds; and
4. Will result in some real environmental or health benefits to the State.

NWPPA's primary request is that the Department postpone adoption of the proposed rules until concerns such as pending federal legislation, the need for interagency coordination, and the need for substantial additional resources to support the program are addressed first. In addition, NWPPA urges the Department to reappoint an Advisory Committee representing the scientific and technical community, and draft new rules using their assistance.

Specific comments on the proposed rules are as follows.

Maximum Contaminant Levels (MCLs): Secondary drinking water standards are not based on human health concerns but rather, aesthetic concerns, and should only be used as guidelines for case-by-case consideration.

Non-degradation: As a standard, non-degradation will be too unwieldy, unrealistic and unworkable.

Monitoring: There is a potential for a very costly monitoring requirement associated with point sources. Discretion on the Department's part is advised. Additionally, how will statistical significance be determine?

Waste Management Area and Compliance Points: The definition of "waste management area" should be further clarified so as not to preclude any new areas from being established to receive wastes. How will the "compliance point" be determined?

Numerical Groundwater Quality Standards: Language in the proposed rules should indicate that groundwater samples to be analyzed for metals be field-filtered using a method that does not expose the samples to air or to vacuum conditions.

61. William A. Mullen, Chief, Office of Groundwater, U.S. Environmental Protection Agency (EPA), Region 10, 1200 6th Avenue, Seattle, WA 98101; 4/19/88 (Written Testimony)

Mr. Mullen submitted testimony representing a compilation of comments from pertinent programs in the U.S. EPA Region 10, and in general he supported the proposed rules.

There are questions and concerns of how the proposed rules will effect the Superfund program. Employing background water quality in the rules as the cleanup standard may require more expensive and complex remedial actions than the maximum contaminant levels used for Superfund cleanups. It is not clear when in the remedial process the Department will set these cleanup limits. Additionally, EPA recommends that a provision for institutional controls be added for public protection.

Other comments by section and paragraph number of the rules are:

(1)(c): A list of potential beneficial uses of groundwater would be helpful.

(1)(d): More specific guidelines are needed on the conditions under which permits may allow contaminant concentrations higher than background as provided under (3)(c)(B)(v)(1).

(1)(i): First sentence - Does the Department concentrate its efforts where both of these criteria are met, or either one or the other? It is important to prioritize efforts recognizing that

resources are limited, but it could be too restrictive to include these priorities in the rules.

(1)(k): A definition of "in a timely fashion" in reference to the development of abatement plans is needed. Also, "problem" needs to refer to quality, not quantity concerns.

(2)(b)(B): The term "standard treatment" needs to be defined. There is concern that classifying all groundwater as Class II may allow groundwater that currently does not need "standard treatment" to be degraded to the point of needing treatment.

(2)(e)(B): Recharge and discharge parameters should include quantities, geographic location, and seasonality (if applicable). Other aquifer characteristics that should be included are hydraulic conductivity, transmissivity (including aquifer thickness), and storage. The geologic description should include the immediately overlying and underlying geologic formations.

(3)(a): What is "highest" practicable method? Is it best available technology.

(3)(c)(A)(i): The definition of waste management area is too broad not to qualify the term in this sentence. Flexibility should be built-in in case of space limitations.

(3)(c)(B)(iii): More than one downgradient monitoring point should be required. Additionally, some pollutants can migrate upgradient, depending on site-specific conditions, so changes in pollutant concentration at upgradient monitoring points should be considered significant. Suggest inserting "into the groundwater" after discharged.

(3)(c)(B)(vi): Suggest changing "point" to "location," and in the second sentence adding "point will be the permit applicant's management..."

(3)(c)(B)(v)(1): Suggest inserting "water quality" after "background" in both uses.

(3)(c)(B)(v - vi): It may not always be desirable that phase one actions to prevent further release of pollutants must always occur before phase two actions for containment and treatment actions as implied. Suggest rewording for clarification. Also, the Department appears to have no ability to order remedial actions, but only the ability to approve them. Suggest this be changed.

(3)(c)(B)(vi)(1): The meaning of the first sentence needs clarification.

(3)(c)(B)(vi)(3): For reasons cited above, the word "downgradient" should be omitted from this paragraph.

(3)(c)(B)(vii)(3)(h): Add "livestock."

(3)(d)(A): The term "rate of contamination" needs clarification.

(4)(c): To assure that best management practices (BMPs) for nonpoint source activities are approvable after development, the regulating agencies involved in their development should be included. In addition, "EPA Office of Pesticides" should be changed to "U.S. Environmental Protection Agency."

(5): A provision should be made in this section to update the groundwater quality standards as EPA adopts new drinking water standards.

(5)(c): If there is no quick way to amend the rules in the case of maximum contaminant levels (MCLs) that are in the process of being changed to a stricter level (such as with lead), it may be prudent to adopt the stricter, proposed standard in the first place.

Some of the compounds listed under "Synthetic Organic Compounds" are generally considered to be volatile organic compounds and are analyzed as part of the volatile fraction. Also, "chlorodane" should be "chlordanne."

Unless there is a specific reason to include a turbidity standard, it should be eliminated.

Definitions section: As mentioned previously, some contaminants can travel upgradient. This should be taken into account in determining where "background" concentration is measured.

The definition of waste management area makes any area in the state a waste management area. Suggest rewording "material that could become waste."

62. John C. Neely, Jr., 1600 Horn Lane, Eugene, OR 97404; 3/14/88
(Written and Oral Testimony)

Mr. Neely submitted detailed comments in reference to a sewage issue in the Santa Clara-River Road area and animal waste management activities in the Spencer Creek Road-Appletree Court area, both near Eugene.

He was concerned that the proposed classification system would allow existing groundwater quality to deteriorate, declaring that this would conflict with federal standards which dictate that

groundwater pollution should be prevented, reduced, or eliminated.

In view of the fact that the direction of groundwater flow can be variable, he suggested a method for allowing flexibility in the determination of downgradient monitoring points.

63. Nancy L. Nesevich, 2373 N.W. Johnson, Portland, OR 97210; 4/1/88
(Written Testimony)

Ms. Nesevich submitted testimony outlining the following concerns:

1. Classifying all groundwater as Class II will allow degradation to occur.
2. Contamination problems deserve immediate notification of the Department and prompt attention in terms of remedial action.
3. The rules should require the Department to act promptly and unilaterally in response to contamination problems and to promptly order remedial action.
4. The use of numerical standards institutionalizes groundwater contamination if the they are implemented as acceptable levels of pollution.
5. The rules should address practices which presently cause pollution, such as the use of agricultural chemicals.
6. The adoption of any rules should be postponed until groundwater protection legislation is passed. Such legislation should include a well-funded program which stresses prevention of contamination, not merely regulation.

64. Mr. & Mrs. W. B. Newby, 604 Draper Valley Road, Selma, OR 97538;
4/15/88 (Written Testimony)

Mr. & Mrs. Newby expressed concern about the presence of pesticides, fertilizers and toxic chemicals in the groundwater. They suggested that the Department encourage the research and development of alternatives to practices and contaminants that pollute groundwater. They were distressed over the lack of funds and resources available to the Department for enforcement measures.

65. Bruce M. Niss, Deputy Director, Water Quality & Environmental
Policy Division, City of Portland, Oregon, Bureau of Water Works,
1120 S.W. 5th Avenue, Portland, OR 97204-1926; 4/4/88

Mr. Niss submitted comments on behalf of the Portland Water Bureau. He indicated that the Bureau supports the general direction of the draft rules, but stated that a higher level of definition, monitoring and contamination prevention for Class I

areas should be developed. Detailed comments in reference to specific sections are as follows:

(1)(b): The rule should read "...and to control direct or indirect waste discharges to the groundwater..."

(1)(i): The Department should adopt criteria for determining "greatest adverse impact on beneficial uses."

(2)(general): The rules should make it clear that all groundwater areas that are or may be hydraulically connected can receive only one classification.

(2)(b)(B): "Standard treatment" needs to be defined.

(2)(c): All groundwater should be classed as Class I unless substantial reasons are presented.

(2)(e): If a proposal is accepted to lower the classification of a groundwater area, that lower classification should apply to the entire area that is hydraulically connected.

(3)(c)(B)(general): Some monitoring of the unsaturated zone beneath facilities should be conducted in order to identify the sources most likely to contaminate groundwater before the contamination reaches the saturated zone.

(3)(c)(B)(i): The amount and type of groundwater monitoring and type of statistical procedures used must be capable of determining the effects of incremental additions of low-level wastes to higher level background conditions.

(3)(c)(B)(iii): In Class I areas, sampling should be required in all aquifers that may possibly be hydraulically connected. Sampling should also take place at appropriate vertical levels determined according to the nature of the suspected contaminants.

(3)(d)(C): For activities that could result or have resulted in pollution of groundwater, the Department should be required to accomplish the tasks outlined in this paragraph.

(5)(b): Remedial action capable of restoring groundwater to background levels should be required in Class I aquifers.

66. Catherine B. Nollenberger, 1026 Henry Street, #8, Ashland, OR 97520; 3/15/88 (Written Testimony)

Ms. Nollenberger urged the Department not to allow groundwater pollution and expressed concern about standards for toxic chemicals. She suggested Iowa's groundwater legislation be used as a model.

67. David L. Pickering, 2499 N. North Bank Road, Otis, OR 97368; 3/30/88 (Written Testimony)

Mr. Pickering expressed opposition to the proposed amendments because they sanction groundwater degradation through their classification system, numerical standards, and groundwater management plans. His comments on specific sections of the proposed rules are as follows.

(1) General Policies: The policy is geared toward the regulation rather than the prevention of pollution. The setting of numerical standards will sanction groundwater contamination. Additionally, in the event that contamination is detected, the policy lacks an adequate public notification procedure.

(2) Groundwater Quality Management Classification System: Citizens should not be forced to fight for their right to pure groundwater by providing information necessary for upgrading their groundwater classification to Class I. All groundwater should be designated as Class I. The degradation of groundwater in any classification should not be allowed.

(3) Point Source Control Rules: Facilities should not do their own monitoring or be trusted to notify the Department of problems that occur. As noted above, the rules should provide for notification of affected citizens. Alternate concentrations limits should not be allowed if prevention of pollution is the rules' goal. Who will determine when a pollutant is or is not a "substantial hazard..." or what the "potential affects of the contamination" are?

(4) Nonpoint Source Control: "Best management practices" do not prevent groundwater contamination by nonpoint source activities such as the use of agricultural pesticides. The Department should work with other government agencies to find alternative practices that prevent degradation.

(5) Groundwater Quality Standards: Numerical standards should only be used for cleanup or action levels, not to decide questions of acceptable risks.

68. Sandy Reed, 85139 Appletree Drive, Eugene, OR 97405; 3/7/88 (Oral Testimony)

Ms. Reed expressed irritation about perceived resistance on the part of the Lane County Board of Commissioners concerning a proposed commercial pig breeding operation in the Spencer Creek area near Eugene. Citizens in the area have petitioned the county officials, stating that water quality will be affected by this farm and that it is located in a flood zone. She stated that surface water quality had been impacted by an establishment that was shut down several years ago in the same vicinity. The water table fluctuates seasonally in this area, and she was concerned

that domestic wells would be contaminated. She felt monitoring of the groundwater near the pig farm should begin immediately.

69. Larry Rice, Public Works Director, Deschutes County, and Member, DEQ Remedial Action Advisory Committee (RAAC), 61150 S.E. 27th, Bend, OR 97702; 4/4/88 (Written and Oral Testimony)

Mr. Rice recommends that adoption of the proposed rules be postponed until the draft RAAC rules are completed so that differences between the two sets of rules may be resolved. He stated that the proposed groundwater rules are lacking in ensuring economics, legal considerations, and an identified process of implementation. Mr. Rice commented in detail on ways in which the groundwater rules could be merged with the proposed RAAC rules. He suggested that both sets of rules be subject to legal review by qualified, experienced environmental and regulatory attorneys to ensure that State goals are met.

70. Rich Rohde, 124 Ohio, Ashland, OR 97520; 3/8/88 (Oral Testimony)

Mr. Rohde objected to the automatic classification of all groundwater as Class II, and he was concerned about the burden of proof being placed on communities and individual citizens for upgrading the classification to Class I. He also felt that citizen participation should be built into the general policies and rules, and that this was lacking in the proposed amendments.

71. Carol Scherer, 28408 Spencer Creek Road, Eugene, OR 97405; 3/31/88 (Written and Oral Testimony)

Ms. Scherer expressed concern over a proposed pig farming operation in the Spencer Creek Road area and addressed a number of concerns she had with the proposed rules. These are as follows:

1. Characterization of background data should be made by the Department prior to issuance of permits. All facilities or disposal systems requiring permits should be considered possible sources of degradation.
2. Permit application fees, stiff fines and penalties levied against violators should cover background characterization and regulatory costs.
3. The burden of proof required for justifying a change to a higher groundwater classification should not be placed on individual citizens.
4. Proper monitoring and enforcement should be by an entity independent from the permittee.
5. The contaminator should bear the burden of proof for justifying higher alternate concentration limits.

6. Some animal waste management practices should be considered point sources. Citizens should have the right to participate in deciding these issues.

7. A provision for citizens to force the Department to take action should be included in the rules.

Ms. Scherer wanted to go on record as supporting the testimony of John C. Neely, Jr., Karen Kupel, Sandy Reed, and Tim Scherer.

72. Timothy J. Scherer, 28408 Spencer Creek Road, Eugene, OR 97405; 4/6/88 (Written and Oral Testimony)

Mr. Scherer asked to go on record as supporting the testimony of John C. Neely, Jr., Karen Kupel, Sandy Reed, and Carol Scherer. He expressed concern about the groundwater classification plan included in the proposed rules, stating that all sole source groundwater for human and animal consumption should be Class I.

Other suggestions he outlined include basing classification on studies that consider sole source aquifers and areas where human populations are relatively high; examining past practices of facilities when a new permit is sought; requiring individuals to pay for a downgrade in classification; providing for public participation when new applications for permits are made; and requiring facility operators to be licensed.

73. Lisa Quincy Sugarman, 549 West Broadway, Eugene, OR 97401; 3/7/88 (Written and Oral Testimony)

Ms. Sugarman is a graduate student in environmental studies at the University of Oregon. She believes the proposed amendments should not be adopted for the following reasons:

1. Compliance points should not be placed anywhere but at the source of contamination because too little is known about how contaminants behave in the subsurface.

2. Numerical standards should not be used because they allow degradation, too little is known about contaminant fate and transport in the subsurface, future water needs are unknown, and information about the interaction of different chemical contaminants is inadequate.

3. A standards-driven classification system which makes all groundwater Class II could allow degradation to occur. Future needs cannot be accurately predicted, and once polluted, groundwater cleanup is almost impossible. A non-degradation policy was strongly suggested.

4. Provisions should be made to fund research and development of alternatives to practices that pollute groundwater.

The rules should discourage the use of pollutants and provide financial incentives for developing alternatives.

5. The State currently lacks adequate funding for groundwater studies and problem response.

In conclusion, Ms. Sugarman asked to go on record supporting the testimony of Neva Hassanein, Norma Grier, Lynn Coody, and Ron McMullen.

74. Dr. Leon Swartzberg, Jr., Member, Oregon Environmental Council, P.O. Box 661, Ashland, OR 97520; 4/11/88 (Written Testimony)

Dr. Swartzberg asked that adoption of any rules be postponed until new groundwater protection legislation is passed and a well-funded program is created which stresses prevention over regulation.

He felt the proposed rules are contradictive in that the classification system proposed does not support prevention of groundwater contamination. He was also concerned that immediate reporting of contamination and the prompt submittal of a remedial action plan was not required.

Other areas of concern were that numerical standards would institutionalize groundwater degradation, control strategies for nonpoint sources are ineffective and unenforceable, and the rules do not require the Department to take prompt, unilateral action when violations occur.

75. H. Randy Sweet, President/Principal Hydrogeologist, Sweet-Edwards/EMCON, Inc. (SE/E), 506 Royal, P.O. Drawer B, Kelso, WA 98626-3409; 4/4/88 (Written Testimony)

While SE/E recognizes the need for workable practical regulations, Mr. Sweet questioned the State's ability to systematically and uniformly apply the proposed rules. The inclusion of secondary drinking water standards and a non-degradation policy will result in many existing facilities being in violation of the rules. The requirements to bring such facilities into compliance will impact both public and private resources. Other comments on specific areas of the proposed rules are as follows:

Groundwater Quality Management Classification System: The implementation of such a classification system will be confusing, expensive, and could be a tool for special interest groups to block or delay siting of controversial projects. Designating an area Class III may allow remedial actions to be avoided and conflict with federal programs. In addition, it is difficult to define the boundary of an aquifer as required for reclassification.

Point Source Control Rules: For new facilities, cleaning up to background levels after contamination has occurred will be

impossible, requiring too many variances be granted. The non-toxic, secondary standards will put most existing facilities out of compliance. The workload for the Department and the Commission associated with reviewing facility permits and granting waivers, etc., will be enormous.

Alternate Concentration Limits: The ACL process will be expensive and difficult to grant and the Department lacks the resources for the number expected to apply for variances, resulting in no benefit to public health and the environment.

Nonpoint Source Control: As a major source of contamination, nonpoint sources will be difficult to manage. Education is the best method to minimize impacts associated with nonpoint source activities.

Groundwater Standards: The U.S. EPA's procedure for making decisions regarding cleans-ups is not entirely consistent with that suggested in the proposed rules. The implementation of numerical standards will result in a loss of flexibility to the Department in realizing cost-effective remediation.

In conclusion, SE/E recommends the rules be changed to a guidance document with respect to numerical standards. Secondary standards should be dropped from the policy. ACL applications and others variances should be at the discretion of the Director as opposed to the Commission unless the Director feels it is necessary that it go to the Commission. The rules should also allow Department staff the latitude to make decisions which provide for a cost-effective cleanup while protecting health and the environment.

76. Livia Szekely, 543 West D Street, Springfield, OR 97477; 3/28/88
(Written Testimony)

Ms. Szekely commented that incentives are needed in the rules to encourage the research and development of alternatives to toxic chemicals that threaten groundwater. Citizens need to be given the right to enforce the rules in court. She supported a non-degradation policy and suggested Iowa's groundwater legislation be used as a model for its development.

77. Steven Tichenor, P.O. Box 1874, Grants Pass, OR 97524; 3/21/88
(Written Testimony)

Mr. Tichenor advocated the adoption of a non-degradation policy and expressed concern about the presence of toxins in the environment. Too little is known about future beneficial uses and the movement of groundwater to manage the resource as proposed. He suggested Iowa's groundwater legislation be used as a model for the development of a non-degradation policy.

78. Terrence T. Virnig, P.E., District Engineer, Chem-Security Systems, Inc. (CSSI), 200 S.W. Market Street, Suite 925, Portland, OR 97201; 4/6/88 (Written Testimony)

Mr. Virnig submitted comments regarding the proposed rule amendments on behalf of Waste Management of North America and its affiliate, Chemical Waste Management. Waste Management is a solid waste disposal firm which operates an Oregon subsidiary known as Oregon Waste Systems. Chemical Waste Management is a chemical waste disposal firm whose operating Oregon subsidiary is Chem-Security Systems, Inc. (CSSI).

Waste Management, Inc. believes that the hazardous waste management subprogram should be exempt from application of the proposed rules. A summary of the detailed comments submitted in support of this position is as follows:

In General: The current hazardous waste management program fully implements the policy of the proposed rules. The current groundwater program included in the hazardous waste program meets and exceeds the goals of the revised groundwater quality rules. Hazardous waste management facilities should not be subject to any additional groundwater requirements as proposed in the rules.

(3)(b): The statement "activities that could result in the disposal of waste onto or into the ground in a manner which allows potential movement of pollutants to groundwater" is overly broad.

(3)(c)(B)(i)(2)(f): Waste Management, Inc. submitted a draft copy of "Method Detection Limits" dated February 15, 1988, to assist the Department in defining what constitutes minimum detection limits.

(3)(c)(B)(iii & iv): The terms "compliance point" and "downgradient monitoring point" defined and used in the proposed rules are confusing and contradictory to the hazardous waste rules.

The rules neither set forth standards to clearly state what is considered a proper downgradient monitoring point nor do they state what "waste" is to be immediately detected at such a point. The suggested revision for the requirements for a downgradient monitoring point, (3)(c)(B)(iii), is:

"The permittee shall monitor the uppermost aquifer hydraulically downgradient from the limit of the waste management area(s) to detect any material released from the waste management areas. This shall be known as the downgradient monitoring point."

Compliance monitoring should be performed in the aquifer being protected since anything above that level ignores the attenuation afforded by the geology, and negates the value and purpose of the

location criteria. The location of compliance points should be determined on a case by case basis. The suggested revision of (3)(c)(B)(iv) is as follows:

"The Department shall specify the point at which the groundwater quality concentration limits specified in the permit must be met. The groundwater quality monitoring point may coincide with the downgradient monitoring point. However, the permittee may demonstrate that the groundwater quality monitoring points can be located further downgradient of the waste management area without impacting human health and the environment."

(3)(c)(B)(v)(1&2): The rules need to consider the natural variability of groundwater chemical concentrations which can occur spatially as well as temporally.

(3)(c)(B)(vi): The rules should include assessment monitoring and risk identification in addition to the action requirements already set forth. Waste Management, Inc. provided the Department with an excerpt from the National Solid Waste Management Association's Model Rule for solid waste management as an example of a program for action to be taken when a release occurs at non-hazardous waste management facilities.

(3)(c)(B)(vi)(1): It is recommended that the last sentence in this section on resampling be amended as follows: "...unless otherwise specified by the Department or as outlined in any existing permit."

(3)(c)(B)(vi)(3): This section should be deleted because groundwater quality changes and groundwater movement are relatively minimal and a resampling effort can often be done in less time than it would take to set up a phase one remedial program.

(3)(d): Activities described in this section are regulated by the hazardous waste management rules and conflict with them. It is suggested that the statement "except as provided under statutory or administrative authorities" be revised to clarify that hazardous waste facilities are exempt from the provisions of this section.

(5)(c): The rules should allow the filtering of samples prior to analysis to avoid obtaining artificially high levels of metals due to the high solids in the sample. It should be noted that the proposed standards for the following seven compounds are close to or below their analytical detection limits and should be revised:

Vinyl Chloride
Benzene
p-Dichlorobenzene

Aldicarb
Cis-1,2-Dichloropropane
Toxaphene
Total Coliforms

Definitions: Because of the way terms are defined in this section, there is concern that additional monitoring requirements may apply to hazardous waste management facilities.

The definition of a waste management area is too broad and should be revised as follows:

"Waste management area means any area where final placement of a material occurs and the material, if released to the groundwater, will impact that groundwater source. Upon Department approval, the permittee may develop groundwater monitoring programs for either individual waste management areas or may group adjacent waste management areas to more effectively monitor the groundwater."

79. Eileen F. Ward, 28528 Spencer Creek Road, Eugene, OR 97405; 4/6/88 (Written Testimony)

Ms. Ward stated that allowing permittees to be self-regulating and self-monitoring negates the credibility of the groundwater protection program as proposed. She advocates a proactive approach to protecting the environment, and suggested that some sort of users fee would pay for Departmental regulation and monitoring.

80. John A. Ward, 28528 Spencer Creek Road, Eugene, OR 97405; 3/25/88 (Written Testimony)

Mr. Ward commented that the rules need to better address nonpoint source activities for which he feels the proposed rules are biased. He specifically requested the rules deal with small, agricultural operations frequently located in areas adjacent to rural residentially zoned property. He suggested that the Department work with land use authorities and the legislature to more strictly limit the activities permitted on small acreages.

81. E. Jack Weathersbee, 10802 S.E. Mill Court, Portland, OR 97216; 2/10/88 (Written Testimony)

Mr. Weathersbee expressed opposition to the classification system set forth in the proposed rules, stating that it would start a process of systematic degradation of Oregon's groundwater. He also felt that numerical standards would promote degradation in unpolluted groundwater. A non-degradation policy was recommended. He suggested the rules specifically recognize and protect potential as well as present beneficial uses of groundwater.

82. Jan Wroncy, Residents of Oregon Against Deadly Sprays (R.O.A.D.S.), P.O. Box 1101, Eugene, OR 97440; 4/6/88 (Written Testimony)

Ms. Wroncy commented that the rules should maintain the highest groundwater quality. She supported a non-degradation policy and the stringent enforcement of penalties and clean-up measures. Contamination should not be allowed on the basis of economic profit. Artificially manufactured chemicals should be taxed to the degree that it is not cost effective to choose their use over natural processes that could replace them. The rules should stress research into alternatives to toxic substances that pollute groundwater as well as encourage changes in the way people farm, harvest trees, manage pests, and travel. Ms. Wroncy suggested numerous ways in which human impacts on the environment could be minimized.

Ms. Wroncy's submitted a list of suggestions for a new groundwater protection law which included strict rules for fixing financial responsibility on the manufacturers of hazardous substances for any and all damages associated with their products; taxing all toxic chemicals; establishing a tracking system for all toxic chemicals; and establishing an environmental protection fund.

Also presented with her testimony was a paper giving R.O.A.D.'s position on OAR 629-24-203 (Forest Practice Rule) and a booklet entitled Standards and Guidelines for Oregon and Washington Tilth Certified Organically Grown.

83. William H. Young, Director, Oregon Water Resources Department (WRD), 3850 Portland Road NE, Salem, OR 97310; 3/22/88 (Written Testimony)

Mr. Young submitted testimony on behalf of the Oregon Water Resources Department. He expressed general support for the Department's proposed rules amendments, and he stated that the format gives the rules clear direction. More detailed comments by section number were prepared by Mr. Fred Lissner and are as follows.

(1)(j): The WRD advocates continued interagency cooperation with respect to ground water studies.

(2)(b)(B): The meaning of "standard treatment" need clarification in the context of this section. Also, the term, "recognized beneficial use" needs further definition.

(2)(b)(C) & (2)(g)(C): If Class III aquifer management plans are intended to improve water quality either to natural water quality or to a point where water quality is suitable for

beneficial uses for which the natural quality is suitable, then the following sentence should be added at the end of (2)(g)(C):

"The aquifer management plan for Class III groundwater areas whose natural water quality would support one or more beneficial uses for which existing water quality is unsuitable shall include provisions designed to restore natural water quality. (Or optionally: "...designed to improve water quality sufficiently that the water can be used for all beneficial uses that the natural water quality would have supported.")

(2)(e): In view of the responsibilities and authorities involved, it is strongly suggested that language be added to make it clear that no aquifer will be designated Class III without the concurrence of the Water Resource Commission.

(3)(c)(B)(iv), line two: The word "parameters" should follow "quality."

(3)(c)(B)(vii): Language should be included that restricts the setting of ACL's that will reduce the number of, or eliminate one or more types of, beneficial use for which natural water quality is suitable.

(3)(d): Current language states: "...the Department may require...." The rules need language to suggest under what conditions "...the Department will require...", or at least what factors will be considered in making the decision.

Definitions: The definition of "Background Water Quality" should have the following phrase added on at the end: "...that is not affected by the source."

84. Ralph Zusman, 5903 S.E. Insley, Portland, OR 97206-5542; 4/5/88
(Written Testimony)

Mr. Zusman stated that the highest possible quality of groundwater should be maintained. He stressed the need for immediate reporting of contamination and prompt submittal of remedial action plans. Effective and enforceable management practices should be established. Mr. Zusman requested the Department postpone rule adoption pending the passage of groundwater protection legislation which emphasizes the prevention of groundwater contamination and creates a well-funded program.



DEPARTMENT OF JUSTICE

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October 5, 1989

Lucinda Bidleman
Water Quality Specialist
Department of Environmental Quality
811 S.W. 6th Avenue
Portland, Oregon 97204

Re: Authority Over Groundwater
DOJ File No. 340-310-P0101-89

Dear Ms. Bidleman::

You have requested our advice regarding the legal authority of the Department of Environmental Quality (DEQ) and the Environmental Quality Commission (EQC) over groundwater. Your inquiry calls for a comparison of legislation adopted during the 1989 session, 1989 Or Laws, ch 833 (HB 3515) with the previously existing statutory authority of the agency. Specifically, you ask whether the 1989 legislation supercedes the existing statutes or otherwise provides the exclusive means for regulation of groundwater. For the reasons set forth below, the answer is no.

Analysis

The authority of the DEQ and EQC to prevent pollution of groundwater predates the 1989 legislative session. The state's primary water quality statutes are concerned with preventing pollution of "the waters of the state." ORS 468.710. The waters of the state are defined to include "lakes, bays, ponds impounding reservoirs, springs, well, rivers, streams, creeks, estuaries, marshes, inlets, canals . . . and all other bodies of surface or underground waters" ORS 468.700(8) (emphasis added). The EQC has specific authority to adopt standards of quality for the waters of the state. ORS 468.735. The EQC also has general rulemaking authority to carry out the water quality statutes. ORS 468.020.

Lucinda Bidleman
October 5, 1989
Page 2

The 1989 legislature enacted a significant, new initiative with the express goal "to prevent contamination of Oregon's ground water resource while striving to conserve and restore this resource and to maintain the high quality of Oregon's ground water resource for present and future uses." 1989 Or Laws, ch 833, § 18. (The new legislation is found in its entirety at sections 17 through 66 of HB 3515.) This legislation has several key components. First, it directs the Strategic Water Management Group to implement a groundwater resource protection strategy, which includes developing programs designed to reduce impacts on groundwater, promoting public awareness of groundwater issues, and awarding grants for research, demonstration and other projects. As part of the strategy, the group is also directed to "[c]oordinate projects approved by the group with activities of other agencies." Second, the legislation includes a rulemaking process by which the EQC is to adopt rules establishing maximum measurable levels for contaminants in groundwater. 1989 Or Laws, ch 833, §§ 25-26. Third, DEQ and the Oregon State University Agricultural Experiment Station are directed to conduct an "ongoing state-wide monitoring and assessment program of the quality of the ground water resource of this state." 1989 Or Laws, ch 833, § 29. Fourth, DEQ is authorized to declare an "area of ground water concern" or a "ground water management area" when the agency confirms the presence of contaminants suspected to be the result, at least in part, of non-point source activities. 1989 Or Laws, ch 833, §§ 31-38. Such a declaration triggers a number of remedial actions that either local governments or the Strategic Water Management Group are to take. 1989 Or Laws, ch 833, §§ 34-35, 39-44.

With this statutory background in mind, we turn to the question of the relationship between these two statutes. In interpreting statutes, our objective is to ascertain and give effect to the legislature's purpose. State v. Parker, 299 Or 534, 540-41, 704 P2d 1144 (1985); Sunshine Dairy v. Peterson, 183 Or 305, 316-17, 193 P2d 543 (1948); Fullerton v. Lamm, 177 Or 655, 670-71, 163 P2d 941 (1946). When the legislature adopts multiple statutes on the same subject, one does not supercede the others unless the legislature manifests its intent toward this end. Rather, in the absence of contrary legislative direction, all applicable statutes are to be given effect and to be construed in harmony with each other. In re Holmlund's Estate, 232 Or 49, 67, 374 P2d 393 (1962); Gilbertson v. Culinary Alliance & Bartenders Union, Local No. 643, 204 Or 326, 340, 282 P2d 632 (1955).

We find no indication that the 1989 groundwater legislation was intended to supercede the existing water quality statutes. To the contrary, the 1989 legislation expressly recognizes the operation of other state agency programs. See 1989 Or Laws, ch 833, § 20(1). The only overriding directive is that "[a]ll state agencies' rules and programs affecting ground water quality shall be consistent with the overall intent of the goal . . . of this Act." 1989 Or Laws, ch 833, § 19(2). Given the broadly stated goal of the 1989 legislation, as set forth above, this is not a very limiting proscription.

Nonetheless, there may be one additional limitation that arises from the 1989 legislation. To the extent that the 1989 legislation imposes specific responsibilities on the DEQ or EQC, those responsibilities cannot be contravened through the auspices of the general water quality statutes. Put very simply, an agency cannot use one statute to violate another statute. To this limited extent, the specific provisions of the 1989 legislation may proscribe the DEQ's and EQC's discretion under the general water quality statutes.

We hasten to emphasize that conflicts between the two statutes should not be too quickly presumed. As a legal matter, it is entirely possible that both the Strategic Water Management Group and the DEQ or EQC could take action on the same subject. Should the agencies' actions truly conflict, it appears that the EQC's authority may actually prevail. ORS 468.705(1) (providing that the water quality statutes are controlling in the case of inconsistency with other laws or agency authority). Obviously, the safer legal approach is for the DEQ and EQC to act, whenever possible, in concert with both sets of statutes and with decisions of the Strategic Water Management Group.

Participants in the recent legislative deliberations tell us that a major purpose of 1989 legislation was to deal in particular with groundwater problems caused by non-point sources. There is some support for this suggestion in the language chosen by the legislature. As previously indicated, the involvement of non-point sources is required in the process for declaring problem areas. 1989 Or Laws, ch 833, §§ 31-38. At the same time, we note that many provisions of the 1989 legislation, including the goal of the act, are not explicitly limited to non-point sources. It is also true that nothing in