

Part 2 of 2
OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 12/01/1989

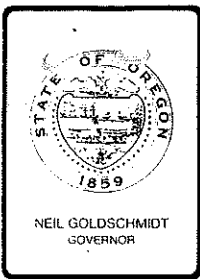


State of Oregon
Department of
Environmental
Quality

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Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: December 1, 1989
Agenda Item: K
Division: Water Quality
Section: Planning

SUBJECT:

Proposed Adoption of Rules Requiring Permanent Stormwater Quality Control Facilities and Modifying Existing Rules for Erosion Control Plans for New Development in the Tualatin and Oswego Lake Subbasins OAR 340-41-455(3) and OAR 340-41-006.

PURPOSE:

The proposed rules will require new development in the Tualatin and Oswego Lake subbasins to provide stormwater quality control facilities.

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 C
 - Public Notice Attachment D
- 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 ___

Meeting Date: December 1, 1989
Agenda Item: K
Page 2

DESCRIPTION OF REQUESTED ACTION:

Adopt rules that would:

1. Require jurisdictions in the Tualatin and Oswego Lake subbasins to require permanent stormwater quality control facilities on all new development beginning June 1, 1990. The proposed rules allow jurisdictions to collect a fee in lieu of on-site stormwater quality control facilities being constructed. The stormwater from the exempted development would be treated at an off-site facility intended to serve a larger area and financed, in part, by the in-lieu fee.
2. Allow jurisdictions to permit the use of sediment control devices other than settling ponds to control erosion in the Tualatin and Oswego Lake subbasins.

AUTHORITY/NEED FOR ACTION:

| | | |
|--|------------|----------|
| ___ Required by Statute: _____ | Attachment | ___ |
| ___ Enactment Date: _____ | | |
| <u>X</u> Statutory Authority: <u>ORS 468.020 & 468.715</u> | Attachment | <u>E</u> |
| <u>X</u> Pursuant to Rule: <u>OAR 340-41-470(3)</u> | Attachment | <u>F</u> |
| ___ Pursuant to Federal Law/Rule: _____ | Attachment | ___ |
| ___ Other: _____ | Attachment | ___ |
| <u>X</u> Time Constraints: The Department believes that the rules should be adopted as soon as practicable so that as little new development as possible is allowed in the two subbasins without some provisions for reducing phosphorus levels in the resulting urban runoff. | | |

DEVELOPMENTAL BACKGROUND:

| | | |
|---|------------|----------|
| ___ Advisory Committee Report/Recommendation | Attachment | ___ |
| <u>X</u> Hearing Officer's Report/Recommendations | Attachment | <u>G</u> |
| ___ Response to Testimony/Comments | Attachment | ___ |
| ___ Prior EQC Agenda Items: (list) | Attachment | ___ |
| ___ Other Related Reports/Rules/Statutes: | Attachment | ___ |
| <u>X</u> Supplemental Background Information | Attachment | ___ |
| a. Background Report | Attachment | <u>H</u> |
| b. NEDC Rules Proposed at July 1989 Meeting | Attachment | <u>I</u> |

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The proposed rules, if adopted would impose additional requirements on developers and builders that will add to

their costs of development. The rules will also add to the existing codes already required for new development. This may, at least initially, add confusion and delay in receiving building permits and site plan approvals from local jurisdictions.

Local jurisdictions will be affected because they will be charged with applying the rules at the local level. This will add to their costs and burden their resources which will probably cause some additional delay in approving developments.

PROGRAM CONSIDERATIONS:

The proposed rules place the major responsibility for applying the rules upon the local jurisdictions. This is proposed primarily so that builders and developers would only have to go to the jurisdiction's building and planning offices in order to get approval of their developments. It also, however, has the benefit of minimizing the resources required of the Department in implementing the rules. There will, however, be some additional effort on the part of the Department to help the jurisdictions implement the rules.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Require each new development to obtain an individual permit directly from the Department. The permit would prescribe the stormwater requirements for the new development.

This alternative would require each developer to deal with the jurisdiction for existing development and building requirements and the Department for stormwater quality control facility requirements.

2. Do not adopt rules, but rely upon the local jurisdictions to address the permanent stormwater quality control facilities in the program plans that are due in March 1990.

The Commission's rules for the Tualatin River and Oswego Lake subbasins require each jurisdiction to provide a program plan for controlling phosphorus in their urban runoff. It is intended that this be a comprehensive evaluation and strategy for addressing urban runoff and should, but may not, include provisions for stormwater quality from new development.

3. Adopt rules as proposed that require jurisdictions to require permanent stormwater quality controls for new development.

The proposed rules would require each jurisdiction to require stormwater quality facilities for new development for

which complete applications are submitted to the jurisdiction beginning June 1, 1990.

4. Adopt rules as proposed, but with the provision that fees can be collected in-lieu of stormwater quality control facilities only if the location of the off-site stormwater quality control facilities has been identified.

The Department expects the program plans to provide a time schedule for identifying locations of off-site or area-wide stormwater quality control facilities. If locations have not been identified at the time development is proposed, this alternative would either force developers to install facilities or delay construction.

5. Adopt rules as proposed, but with additional requirements that: (a) the program plans submitted by each jurisdiction include ordinances for implementing the rules, and (b) the requirements of the proposed rules be placed in permits issued to each jurisdiction.

This alternative would assure that each jurisdiction's programs for stormwater controls for new development are identical to the proposed rules and permits would be the enforcement mechanism for assuring their implementation.

6. Adopt rules as proposed, but with an effective day of April 1, 1990, instead to June 1, 1990.

This would allow jurisdictions about 4 months to adopt implementing ordinances instead of about 6 months allowed by the June 1, 1990 date.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends alternative No. 3. This option assures that, beginning June 1, 1990, new development proposals submitted to jurisdictions will include stormwater quality control facilities. It utilizes the jurisdictions' building and planning resources that are already established thereby minimizing the inconvenience to developers and builders.

It is believed that the amount of phosphorus loading available from the total maximum daily load (TMDL) to each jurisdiction for urban run-off will be very small. It is prudent to reduce future, additional phosphorus sources to the lowest possible level in order to maximize the remaining allowable loading that is available for new growth. Minimizing phosphorus loads from new development will also reduce the amount to be removed from existing sources and

allow more flexibility in developing the overall strategy for meeting the phosphorus total maximum daily load for the Tualatin River.

The Department's proposed rules do allow jurisdictions to collect fees in-lieu of stormwater quality control facilities as long as the jurisdiction is complying with its approved schedule for identifying sites for area-wide treatment systems. Alternative No. 4 is not recommended because the Department believes the time schedule for identifying these sites should be laid out in the comprehensive analysis of alternatives that the program plans would provide. Unilateral imposition by the Commission of a time schedule for identifying the sites presumes the program plans will be inadequate and is inappropriate at this time. Further, this alternative could force construction of otherwise undesirable or infeasible stormwater control systems or delay development even though schedules in approved program plans were being met. The Commission will ultimately approve the program plan. If the time schedule for identifying off-site locations is too liberal, the program plan would not have to be approved.

Department staff believe the program plans should address new development, but the rules should not close the door on other approaches that could be considered in the program plans. Alternative No. 5 presumes part of the answer to controlling urban runoff is controlling new development with these rules. This is probably the case, but this determination should be made in the program plan. Further, the Department is reviewing whether the approved program plans should be reflected in a permit issued to the jurisdictions or in a memorandum of agreement with the jurisdiction as is currently the practice for nonpoint source programs. This will be decided at a later date and, therefore should not be mandated in this rule.

Finally, the June 1, 1990, effective date is preferred. While an effective date of April 1, 1990 would capture more development than the June 1, 1990 date, Washington County has a requirement in its charter that prohibits land use ordinances to be enacted between November 1 and March 1 of each year. A June 1, 1990 effective date will give the county sufficient time to enact ordinances after March 1, 1990.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The proposed rules are consistent with the Department's antidegraditon requirements which states that "highest and

best practicable treatment and/or control of wastes, activities, and flows shall in every case be provided so as to maintain dissolved oxygen and overall water quality at the highest possible levels and water temperatures, coliform bacteria concentrations, dissolved chemical substances, toxic materials, radioactivity, turbidities, color, odor, and other deleterious factors at the lowest possible levels."

ISSUES FOR COMMISSION TO RESOLVE:

1. Are the proposed rules necessary or should the Department rely on the program plans to define a comprehensive strategy that may or may not include requirements on new development as suggested in alternative No. 2?
2. Should the proposed rules not allow fees to be collected in-lieu of stormwater quality control facilities if the location of off-site or area-wide treatment systems has not been identified as suggested in alternative No. 4?
3. Should the Department require the program plans to contain specific ordinances adopting the proposed rules and should the proposed rules require that each jurisdiction be under a permit as suggested in alternative No. 5?
4. Should the rules have an effective date of June 1, 1990, or an earlier date?

INTENDED FOLLOWUP ACTIONS:

1. Provide jurisdictions with copies of the proposed rules, if adopted.
2. Provide technical assistance to local jurisdictions as necessary.

Approved:

Section:

Division:

Director:

Aid J. Mullaney
Lydia Taylor
Jill Hamm

Report Prepared By: Dick Nichols

Phone: 229-6804

Date Prepared: October 25, 1989

Nichols:hs

PM\WH3735

November 16, 1989

PROPOSED RULES

NOTE:

The underlined and bold portions of text represent proposed additions made to the rules.

The [bracketed] portions of text represent proposed deletions made to the rules.

DEFINITIONS

340-41-006

Definitions applicable to all basins unless context requires otherwise:

- (1) "BOD" means 5-day 20°C Biochemical Oxygen Demand.
- (2) "DEQ" or "Department" means the Oregon State Department of Environmental Quality.
- (3) "DO" means dissolved oxygen.
- (4) "EQC" means the Oregon State Environmental Quality Commission.
- (5) "Estuarine waters" means all mixed fresh and oceanic waters in estuaries or bays from the point of oceanic water intrusion inland to a line connecting the outermost points of the headlands or protective jetties.
- (6) "Industrial waste" means any liquid, gaseous, radioactive, or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade, or business, or from the development or recovery of any natural resources.
- (7) "Marine waters" means all oceanic, offshore waters outside of estuaries or bays and within the territorial limits of the State of Oregon.
- (8) "mg/l" means milligrams per liter.
- (9) "Pollution" means such contamination or other 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 radioactive or other substance into any waters of the state which either by itself or in connection with any other substance present, will or can reasonably be expected to create a public nuisance or 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.

- (10) "Public water" means the same as "waters of the state".
- (11) "Sewage" means the water-carried human or animal waste from residences, buildings, industrial establishments, or other places together with such groundwater infiltration and surface water as may be present. The admixture with sewage as herein defined of industrial wastes or wastes, as defined in sections (6) and (13) of this rule, shall also be considered "sewage" within the meaning of this division.
- (12) "SS" means suspended solids.
- (13) "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.
- (14) "Waters of the state" include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.
- (15) "Low flow period" means the flows in a stream resulting from primarily groundwater discharge or baseflows augmented from lakes and storage projects during the driest period of the year. The dry weather period varies across the state according to climate and topography. Wherever the low flow period is indicated in the Water Quality Management Plans, this period has been approximated by the inclusive months. Where applicable in a waste discharge permit, the low flow period may be further defined.
- (16) "Secondary treatment" as the following context may require for:
 - (a) "Sewage wastes" means the minimum level of treatment mandated by EPA regulations pursuant to Public Law 92-500.
 - (b) "Industrial and other waste sources" imply control equivalent to best practicable treatment (BPT).
- (17) "Nonpoint Sources" refers to diffuse or unconfined sources of pollution where wastes can either enter into -- or be conveyed by the movement of water to -- public waters.
- (18) Loading Capacity (LC): The greatest amount of loading that a water can receive without violating water quality standards.

- (19) Load Allocation (LA): The portion of a receiving water's loading capacity that is attributed either to one of its existing or future non-point sources of pollution or to natural background sources. Load allocations are best estimates of the loading, which may range from reasonably accurate estimates to gross allotments, depending on the availability of data and appropriate techniques for predicting loading. Wherever possible, natural and nonpoint source loads should be distinguished.
- (20) Wasteload Allocation (WLA): The portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. WLAs constitute a type of water quality-based effluent limitation.
- (21) Total Maximum Daily Load (TMDL): The sum of the individual WLAs for point sources and LAs for nonpoint sources and background. If a receiving water has only one point source discharger, the TMDL is the sum of that point source WLA plus the LAs for any nonpoint sources of pollution and natural background sources, tributaries, or adjacent segments. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. If Best Management Practices (BMPs) or other nonpoint source pollution controls make more stringent load allocations practicable, then wasteload allocations can be made less stringent. Thus, the TMDL process provides for nonpoint source control tradeoffs.
- (22) "Land Development" refers to any human induced change to improved or unimproved real estate, including but not limited to construction, installation or expansion of a building or other structure, land division, drilling, and site alteration such as that due to land surface mining, dredging, grading, construction of earthen berms, paving, improvements for use as parking or storage, excavation or clearing.
- (23) "Jurisdiction" refers to any city or county agency in the Tualatin River and Oswego Lake subbasins that regulates land development activities within its boundaries by approving plats, site plans or issuing permits for land development.
- (24) "Erosion Control Plan" shall be a plan containing a list of best management practices to be applied during construction to control and limit soil erosion.
- (25) "Public Works Project" means any land development conducted or financed by a local, state, or federal governmental body.
- (26) "Stormwater Quality Control Facility" refers to any structure or drainage way that is designed, constructed, and maintained to collect and filter, retain, or detain surface water runoff during and after a storm event for the purpose of water quality improvement. It may also include, but not be limited to, existing features such as wetlands, water quality swales, and ponds which are maintained as stormwater quality control facilities.

(27) "Water Quality Swale" is a natural depression or wide shallow ditch used to temporarily store, route, or filter runoff for the purpose of improving water quality.

(28) "In lieu fee" means a fee collected by a jurisdiction in lieu of requiring construction of on-site stormwater quality control facilities.

MINIMUM DESIGN CRITERIA FOR TREATMENT AND CONTROL OF WASTES

340-41-455

Subject to the implementation program set forth in rule 340-41-120, prior to discharge of any wastes from any new or modified facility to any waters of the Willamette River Basin, such wastes shall be treated and controlled in facilities designed in accordance with the following minimum criteria (In designing treatment facilities, average conditions and a normal range of variability are generally used in establishing design criteria. A facility once completed and placed in operation should operate at or near the design limit most of the time, but may operate below the design criteria limit at times due to variables which are unpredictable or uncontrollable. This is particularly true for biological treatment facilities. The actual operating limits are intended to be established by permit pursuant to ORS 468.740 and recognize that the actual performance level may at times be less than the design criteria.):

(1) Sewage wastes:

(a) Willamette River and tributaries except Tualatin River Subbasin:

(A) During periods of low stream flows (approximately May 1 to October 31): Treatment resulting in monthly average effluent concentrations not to exceed 10 mg/l of BOD and 10 mg/l of SS or equivalent control.

(B) During the period of high stream flows (approximately November 1 to April 30): A minimum of secondary treatment or equivalent control and unless otherwise specifically authorized by the Department, operation of all waste treatment and control facilities at maximum practical efficiency and effectiveness so as to minimize waste discharges to public waters.

(b) Main stem Tualatin River from mouth to Gaston (river mile 0 to 65):

(A) During periods of low stream flows (approximately May 1 to October 31): Treatment resulting in monthly average effluent concentrations not to exceed 10 mg/l of BOD and 10 mg/l of SS or equivalent control.

- (B) During the period of high stream flows (approximately November 1 to April 30): Treatment resulting in monthly average effluent concentrations not to exceed 20 mg/l of BOD and 20 mg/l of SS or equivalent control.
- (c) Main stem Tualatin River above Gaston (river mile 65) and all tributaries to the Tualatin River: Treatment resulting in monthly average effluent concentrations not to exceed 5 mg/l of BOD and 5 mg/l of SS or equivalent control.
- (d) Tualatin River Subbasin: The dissolved oxygen level in the discharged effluents shall not be less than 6 mg/l.
- (e) Main stem Columbia River:
 - (A) During summer (May 1 to October 31): Treatment resulting in monthly average effluent concentrations not to exceed 20 mg/l of BOD and 20 mg/l of SS or equivalent control.
 - (B) During winter (November 1 to April 30): A minimum of secondary treatment or equivalent control and unless otherwise specifically authorized by the Department, operation of all waste treatment and control facilities at maximum practicable efficiency and effectiveness so as to minimize waste discharges to public waters.
- (f) Effluent BOD concentrations in mg/l, divided by the dilution factor (ratio of receiving stream flow to effluent flow) shall not exceed one (1) unless otherwise specifically approved by the Environmental Quality Commission.
- (g) Sewage wastes shall be disinfected, after treatment, equivalent to thorough mixing with sufficient chlorine to provide a residual of at least 1 part per million after 60 minutes of contact time unless otherwise specifically authorized by permit.
- (h) Positive protection shall be provided to prevent bypassing raw or inadequately treated sewage to public waters unless otherwise approved by the Department where elimination of inflow and infiltration would be necessary but not presently practicable.
- (i) More stringent waste treatment and control requirements may be imposed where special conditions may require.
- (2) Industrial wastes:
 - (a) After maximum practicable inplant control, a minimum of secondary treatment or equivalent control (reduction of suspended solids and organic material where present in significant quantities, effective disinfection where

bacterial organisms of public health significance are present, and control of toxic or other deleterious substances).

(b) Specific industrial waste treatment requirements shall be determined on an individual basis in accordance with the provisions of this plan, applicable federal requirements, and the following:

- (A) the uses which are or may likely be made of the receiving stream;
- (B) The size and nature of flow of the receiving stream;
- (C) The quantity and quality of wastes to be treated; and
- (D) The presence or absence of other sources of pollution on the same watershed.

(c) Where industrial, commercial, or agricultural effluents contain significant quantities of potentially toxic elements, treatment requirements shall be determined utilizing appropriate bioassays.

(d) Industrial cooling waters containing significant heat loads shall be subjected to offstream cooling or heat recovery prior to discharge to public waters.

(e) Positive protection shall be provided to prevent bypassing of raw or inadequately treated industrial wastes to any public waters.

(f) Facilities shall be provided to prevent and contain spills of potentially toxic or hazardous materials and a positive program for containment and cleanup of such spills should they occur shall be developed and maintained.

(3) Non-point source pollution control in the Tualatin River sub-basin and lands draining to Oswego Lake [~~to be provided after~~ January 1, 1990]:

(a) [~~The following~~] [s] Subsection[s] (b) shall apply to any new land development within the Tualatin River and Oswego Lake sub-basins, except those developments with application dates prior to January 1, 1990. The application date shall be the date on which a complete application for development approval is received by the local jurisdiction in accordance with the regulations of the local jurisdiction.

(b) For land development, no preliminary plat, site plan, permit or public works project shall be approved by any jurisdiction in these sub-basins unless the conditions of the plat permit or plan approval includes an erosion control plan containing

methods and/or interim facilities to be constructed or used concurrently with land development and to be operated during construction to control the discharge of sediment in the stormwater runoff. The erosion control plan shall utilize:

(A) Protection techniques to control soil erosion and sediment transport to less than one (1) ton per acre per year, as calculated using the Soil Conservation Service Universal Soil Loss Equation or other equivalent methods. See Figures 1 to 6 in APPENDIX I for examples. The erosion control plan shall include temporary sedimentation basins or other sediment control devices when, because of steep slopes or other site specific considerations, other on-site sediment control methods will not likely keep the sediment transport to less than one (1) ton per acre per year. The local jurisdictions may establish additional requirements for meeting an equivalent degree of control. Any sediment basins constructed shall be sized using 1.5 feet minimum sediment storage depth plus 2.0 feet storage depth above for a settlement zone. The storage capacity of the basin shall be sized to store all of the sediment that is likely to be transported and collected during construction while the erosion potential exists. When the erosion potential has been removed, the sediment basin, or other sediment control facilities, can be removed and the site restored as per the final site plan. All sediment basins shall be constructed with an emergency overflow to prevent erosion or failure of the containment dike, or

(B) A soil erosion control matrix derived from and consistent with the universal soil loss equation approved by the jurisdiction or the Department.

(c) The Director may modify Appendix I as necessary without approval from the Environmental Quality Commission. The Director may modify Appendix I to simplify it and to make it easier for people to apply.

(d) ~~[As local jurisdictions adopt a Department approved program plan, as required by OAR 340-41-470(3)(g), these requirements will no longer apply to development in that jurisdiction.]~~
Subsection (e) shall apply to any new land development within the Tualatin River and Oswego Lake sub-basins, except:

(A) Those developments with application dates prior to June 1, 1990. The application date shall be the date on which a complete application for development approval is received by the local jurisdiction in accordance with the regulations of the local jurisdiction.

(B) One (1) and two (2) family dwellings on existing lots of record.

(C) Sewer lines, water lines, utilities or other land development that will not directly increase nonpoint source pollution once construction has been completed and the site is either restored to or not altered from its approximate original condition.

(D) If the Environmental Quality Commission determines that a jurisdiction does not need to require stormwater quality control facilities for new development.

(E) When a jurisdiction adopts ordinances that provide for a stormwater quality program equivalent to subsection (e). Ordinances adopted to implement equivalent programs shall:

(i) Encourage on-site retention of stormwater, require phosphorus removal equivalent to the removal efficiency required by subsection (e), provide for adequate operation and maintenance of stormwater quality control facilities, and require financial assurance, or equivalent security that assures construction of the stormwater quality control facilities required by the ordinance.

(ii) If the ordinances provide for exemptions other than those allowed for by paragraphs (B) and (C) of this subsection, the ordinances shall provide for collection of in-lieu fees or other equivalent mechanisms that assure financing for and construction of associated, off-site stormwater quality control facilities. No exemption shall be allowed if the jurisdiction is not meeting an approved schedule for identifying location of the off-site stormwater quality control facility to serve the development requesting an exemption.

(e) For new development, no plat, site plan, building permit or public works project shall be approved by any jurisdiction in these subbasins unless the conditions of the plat, permit or plan approval require permanent stormwater quality control facilities to control phosphorus loadings associated with stormwater runoff from the development site. Permanent stormwater quality control facilities for phosphorus shall meet the following requirements:

(A) The stormwater quality control facilities shall be designed to achieve a phosphorus removal efficiency as calculated from the following equation:

$$R_p = 100 - 24.5/R_v$$

Where:

R_p = Required phosphorus removal efficiency

R_v = Average site runoff coefficient

The average site runoff coefficient can be calculated from the following equation:

$$R_v = \frac{(0.7 \times A_1) + (0.3 \times A_2) + (0.7 \times A_3) + (0.05 \times A_4) + (A_5 \times 0.0)}{A_1 + A_2 + A_3 + A_4 + A_5}$$

Where:

A₁ = fraction of total area that is paved streets with curbs and that drain to storm sewers or open ditches.

A₂ = fraction of total area that is paved streets that drain to water quality swales located on site.

A₃ = fraction of total area that is building roof and paved parking that drains to storm sewers.

A₄ = fraction of total area that is grass, trees and marsh areas.

A₅ = fraction of total area for which runoff will be collected and retained on site with no direct discharge to surface waters.

(B) A jurisdiction may modify the equation for R_v to allow the application of additional runoff coefficients associated with land surfaces not identified in this subsection. The Department shall be notified in writing whenever an additional runoff coefficient is used. The use of additional runoff coefficients shall be based on scientific data. The jurisdiction shall discontinue use of an additional runoff coefficient if the Department objects to its use in writing within 10 days of receiving notification.

(C) The stormwater quality control facilities shall be designed to meet the removal efficiency specified in paragraph (A) of this subsection for a mean summertime storm event totaling 0.36 inches of precipitation with an average return period of 96 hours.

(D) The removal efficiency specified in paragraph (A) of this subsection specify only design requirements and are

not intended to be used as a basis for performance evaluation or compliance determination of the stormwater quality control facility installed or constructed pursuant to this subsection.

(E) Stormwater quality control facilities required by this subsection shall be approved by a jurisdiction only if the following are met:

(i) For developments larger than one acre, the plat or site plan shall include plans and a certification prepared by an Oregon registered, professional engineer that the proposed stormwater control facilities have been designed in accordance with criteria expected to achieve removal efficiencies for total phosphorus required by paragraph (A) of this subsection.

(ii) The plat or site plan shall be consistent with the areas and associated runoff coefficients used to determine the removal efficiency required in paragraph (A) of this subsection.

(iii) A financial assurance, or equivalent security acceptable to the jurisdiction, shall be provided by the developer with the jurisdiction that assures that the stormwater control facilities are constructed according to the plans established in the plat or site plan approval. Where practicable, the jurisdiction shall combine the financial assurance required by this rule with other financial assurance requirements imposed by the jurisdiction.

(iv) Each jurisdiction which constructs or authorizes construction of permanent stormwater quality control facilities, shall file with the Department, an operation and maintenance plan for the stormwater quality control facilities within its jurisdiction. The operation and maintenance plan shall allow for public or private ownership, operation, and maintenance of individual permanent stormwater quality control facilities. The jurisdiction or private operator shall operate and maintain the permanent stormwater control facilities in accordance with the operation and maintenance plan.

(f) Except as required by paragraph (D) of this subsection, the jurisdiction may grant an exception to subsection (e) of this section if the jurisdiction chooses to adopt and, on a case-by-case basis, impose a one time in-lieu fee. The fee will be an option where, because of the size of the development,

topography, or other factors, the jurisdiction determines that the construction of on-site permanent stormwater treatment systems is impracticable or undesirable.

- (A) The in-lieu fee shall be based upon a reasonable estimate of the current, prorated cost for the jurisdiction to provide stormwater quality control facilities for the land development being assessed the fee. Estimated costs shall include costs associated with off-site land and rights-of-way acquisition, design, construction and construction inspection.
- (B) The jurisdiction shall deposit any in-lieu fees collected pursuant to this paragraph in an account dedicated only to reimbursing the jurisdiction for expenses related to off-site land and rights-of-way acquisition, design, construction and construction inspection of stormwater quality control facilities.
- (C) The ordinance establishing the in-lieu fee shall include provisions that reduce the fee in proportion to the ratio of the site's average runoff coefficient (R_v), as established according to the equation in subparagraph (A), to 0.70.
- (D) No new development shall be granted an exemption if the jurisdiction is not meeting an approved time schedule for identifying the location for the off-site stormwater quality control facilities that would serve that development.
- (g) The Department may approve other mechanisms that allow jurisdictions to grant exemptions to new development. The Department shall only approve those mechanisms that assure financing for off-site stormwater quality control facilities and that encourage or require on-site retention where feasible.
- (h) Subsection (b) shall apply until a jurisdiction adopts ordinances that provide for a program equivalent to subsection (b), or the Environmental Quality Commission determines such a program is not necessary when it approves the jurisdiction's program plan required by OAR 340-41-470(3)(g).

STATEMENT OF NEED FOR RULEMAKING(1) Legal Authority

ORS 468.020 requires the Environmental Quality Commission to adopt such rules and standards as it considers necessary and proper in performing the functions vested to it by law. ORS 469.715 requires that action be taken for preventing new pollution and abating existing pollution by requiring the use of all available and reasonable methods as necessary to meet water quality standards.

(2) Need for the Rule

There is an excessive amount of nutrient in the Tualatin River. These excessive nutrients (the most critical is phosphorus) allows the creation of high levels of algae in the river which is aesthetically displeasing and often odorous. Algae can also depress dissolved oxygen and increase pH levels in the river. Low dissolved oxygen and high pH can be harmful to aquatic life in the river. One source of phosphorus is stormwater runoff from urbanized areas. Jurisdiction have been ordered by rule of the Commission to develop plans to reduce and control phosphorus levels in the runoff from their cities. The plans are not required until March of 1990 and, at best, will probably not be implemented for several months after that. These proposed rules will require stormwater quality control facilities during the interim period until the jurisdictions' plans can provide equivalent control over new development. This would assure that increased phosphorus loadings into the Tualatin River are minimized.

(3) Principal Documents Relied Upon in this Rulemaking

ORS Chapter 468 "Pollution Control"

OAR 340-41-470 "Special Policies and Guidelines"

Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs

The above documents are available for review during normal business hours at the Department's office, 811 SW Sixth, Portland, Oregon.

LAND USE COMPATIBILITY STATEMENT

The proposed rule will affect both goals 6 and 11.

Goal 6 (Air, Water and Land Resources Quality): This proposal is designed to improve water quality in the area by reducing the discharge of nutrients and sediment and is consistent with the goal.

Goal 11 (Public Facilities and Services): This proposal will require much greater attention to stormwater control by local jurisdictions. In many cases, the cost of managing stormwater jurisdiction will increase. The proposal, however, encourages on-site controls for new development. On-site controls will help reduce the impact of storm runoff events which would reduce the necessary size of stormwater collection and conveyance systems and, thereby, reduce costs.

FISCAL AND ECONOMIC IMPACT OF PROPOSED STORMWATER REGULATIONS

Overall Impact

Except for one or two family residences on existing Lots of Record, and for development that does not alter the natural terrain and vegetation (such as buried water lines, sewers, etc.), permanent stormwater quality control facilities would be required for new developments in the Tualatin and Oswego Lake subbasins. The permanent stormwater treatment systems must be designed to remove a maximum of 65% of the phosphorus from a 0.36 inch summertime storm event. The required phosphorus removal efficiency can be reduced if the average runoff coefficient of the development is less than 0.70. Reducing the coefficient can be accomplished by reducing the amount of development that is paved or roofed or by retaining runoff on-site with the use of infiltration basins or trenches. An exception to the construction of permanent stormwater control facilities can be allowed if the jurisdiction chooses to require a one-time in-lieu fee to assist in construction of area-wide stormwater control facilities.

These permanent stormwater control systems will have some financial impacts not only to businesses and residents, but also to the local jurisdictions within the subbasins. Jurisdictions such as city and county governments would be charged with assuring that the new developments are provided with stormwater quality control facilities or that a suitable in-lieu fee is collected. Since there are many jurisdictions within the subbasins, and since property values vary significantly between jurisdictions and categories, it is impracticable to determine the financial impact within each jurisdiction of the region.

This analysis evaluates costs and impacts on typical types of development in the Beaverton area. The type of stormwater quality control facility best suited for a particular type of development will vary greatly with the type and extent of development, i.e. the amount of impervious surface versus the amount of landscaped terrain. It will also vary due to soil and slope conditions of the piece of property being developed.

In order to demonstrate the potential financial impacts to the developer(s) and individual(s), three hypothetical developments in the Beaverton area were analyzed. These were: a) a 24-unit apartment on two (2) acres of land, b) a 120-unit apartment on ten (10) acres of land, and c) a commercial development on thirty (30) acres.

For the two apartment scenarios, the construction costs varied between \$150.90 and \$324.95 per unit depending on the type of stormwater quality control facility used. Annual maintenance costs for each system varied between \$2.02 and \$39.84 per unit. For the commercial development scenario, the construction costs were estimated to be between \$176,000 and \$334,000 or \$0.13 and \$0.26 per square foot, respectively, also depending on the stormwater quality control facility used. Please note that much of the cost for constructing these facilities for the commercial development was

attributed to land costs. Because many jurisdictions require a percentage of a development to be landscaped and because many of the stormwater quality control facilities can be made part of the landscaping, the land costs could probably be deducted from these estimates. If this was done, the capital costs would vary between \$31,000 and \$45,000, respectively. Annual maintenance costs were estimated to be between \$802.00 and \$845.00 per year.

Stormwater quality control facilities may not be feasible for some building lots due to steep slopes or other site limitations. In such cases, construction of area-wide treatment and control systems would be more practical and, perhaps, less costly per acre. The proposed rules would allow the jurisdiction to charge the developer a one-time in-lieu-of fee rather than require the construction of the permanent stormwater treatment system. The fee money would be put in escrow until such time as the jurisdiction could construct the area-wide system. The Department believes that the in-lieu fees would not be higher than the costs associated with providing stormwater quality control facilities for similar development on sites with no site limitations. Consequently, the costs shown above for providing stormwater quality control facilities should be representative of the costs of the in-lieu fees.

A property owner could experience a fiscal impact if they were unable to develop a piece of property because the local jurisdiction required it to be set aside for an area-wide stormwater treatment system. It is likely that the price they would receive from the property would be far less than if it was developable. Fortunately, much of the property which is suitably located for area-wide stormwater treatment systems is within the flood plain and is not developable to any great extent.

Impact on Small Business

The Department does not believe that the proposed rules will have a significant impact upon small business. There will be some minor effect on small developers and builders. One and two family residences have been exempted from the rules and should reduce some of the impact. Other than the additional costs of construction of the stormwater quality control facilities, there are costs associated with designing the facilities. Most jurisdictions already require facilities for stormwater to control flooding. The additional engineering costs for considering stormwater quality should not present significant additional costs.

Impact on the Local Jurisdiction

The City of Beaverton was selected to demonstrate the potential financial impacts caused by the proposed rules. Currently, there are 328.27 gross acres of multi-family development sites within the urban growth boundary of the city. Because of some physical site characteristics, such as steep slope, flood plain, or wetlands, only 296.5 net acres are suitable for immediate development. Assuming there were ten drainage ways serving the developable acreage, and if each drainage way required the setting aside of 0.85 acres for permanent stormwater control systems, there would be total net loss of 8.5 acres of developable properties. This would be equivalent

to a loss of approximately 0.75 million dollars of property revenue to the property owners. At a property tax rate of about \$4.40 per thousand of assessed value, the loss of property tax revenue to the city would be about \$3,200 per year on property alone. When considering the value of the developed property, the property tax revenue loss would be more like \$24,000 per year. This projected financial impact to the property owner and the local jurisdiction could be less if those undevelopable sites (i.e., flood plains, etc.) could be utilized for the permanent stormwater control systems. This analysis also assumes that the stormwater quality control facilities would be deeded to the local jurisdiction and thereby lost to the property tax rolls. Many systems will, in fact, remain private property and will not be untaxed.

Other financial impacts of the rules to local jurisdictions is the cost of administering the requirements of the rules. Some additional criteria must be evaluated during preliminary plat or plan review and during final plat or plan review. For the larger jurisdictions or those with the most construction activity, one additional plan review person may be required. For the smaller cities, the plan review function may be contracted out to another jurisdiction.

| SCENARIO | LAND AREA SQ. FT. | SYSTEM VOLUME CUBIC FEET | CONST. COST (1985 DOLLARS) | CONTINGENCY (25%) | ANNUAL O&M COST | LAND COST | GRAND TOTAL ADJ. TO 1989 \$ | CAPITAL COST PER UNIT | CAPITAL COST PER ACRE | MAINTENANCE COST PER UNIT |
|--|----------------------|-----------------------------|-------------------------------|----------------------|--------------------|--------------|--------------------------------|-----------------------------|-----------------------------|---------------------------------|
| ***** | | | | | | | | | | |
| 24 Unit Apartment Complex on 2 acres | | | | | | | | | | |
| Infiltration Trench | 700 | 4200 | \$5,099.51 | \$1,274.88 | \$956.16 | \$770.00 | \$7,798.87 | \$324.95 | \$3,899.44 | \$39.84 |
| Infiltration Basin | 3431 | 1715.5 | \$1,824.37 | \$456.09 | \$114.02 | \$3,774.10 | \$6,609.21 | \$275.38 | \$3,304.61 | \$4.75 |
| | | | | | | | | | | |
| 120 Unit Apartment Complex on 10 Acres | | | | | | | | | | |
| Wet Pond | 12100 | 33200 | \$7,037.51 | \$1,759.38 | \$439.84 | \$13,310.00 | \$24,132.05 | \$201.10 | \$2,413.21 | \$3.67 |
| Infiltration Basin | 10672 | 5120 | \$3,879.54 | \$969.88 | \$242.47 | \$11,739.20 | \$18,108.27 | \$150.90 | \$1,810.83 | \$2.02 |
| | | | | | | | | | | |
| 30 Acre Commercial Development | | | | | | | | | | |
| Wet Pond | 28900 | 94400 | \$13,520.83 | \$3,380.21 | \$845.05 | \$289,000.00 | \$333,924.00 | N/A | \$33,392.40 | N/A |
| Infiltration Basin | 14500 | 29000 | \$12,836.26 | \$3,209.06 | \$802.27 | \$145,000.00 | \$175,798.35 | N/A | \$17,579.84 | N/A |

GENERAL ADMINISTRATION

468.005 Definitions. As used in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter, unless the context requires otherwise:

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

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

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

(4) "Order" has the same meaning as given in ORS 183.310.

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

(6) "Rule" has the same meaning as given in ORS 183.310.

(7) "Standard" or "standards" means such measure of quality or purity for air or for any waters in relation to their reasonable or necessary use as may be established by the commission pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter. [Formerly 449.001]

468.010 Environmental Quality Commission; appointment; confirmation; term; compensation and expenses. (1) There is created an Environmental Quality Commission. The commission shall consist of five members, appointed by the Governor, subject to confirmation by the Senate as provided in ORS 171.562 and 171.565.

(2) The term of office of a member shall be four years, but the members of the commission may be removed by the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor to assume the duties of the Governor on July 1 next following. A member shall be eligible for reappointment, but no member shall serve more than two consecutive terms. In case of a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(3) A member of the commission is entitled to compensation and expenses as provided in ORS 292.495. [Formerly 449.016]

468.015 Functions of commission. It is the function of the commission to establish the policies for the operation of the department in a manner consistent with the policies and purposes of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter. In addition, the commission shall perform any other duty vested in it by law. [1973 c.835 §4]

468.020 Rules and standards. (1) In accordance with the applicable provisions of ORS 183.310 to 183.550, the commission shall adopt such rules and standards as it considers necessary and proper in performing the functions vested by law in the commission.

(2) Except as provided in ORS 183.335 (5), the commission shall cause a public hearing to be held on any proposed rule or standard prior to its adoption. The hearing may be before the commission, any designated member thereof or any person designated by and acting for the commission. [Formerly 449.173; 1977 c.38 §1]

468.030 Department of Environmental Quality. There is hereby established in the executive-administrative branch of the government of the state under the Environmental Quality Commission a department to be known as the Department of Environmental Quality. The department shall consist of the director of the department and all personnel employed in the department. [Formerly 449.032]

468.035 Functions of department. (1) Subject to policy direction by the commission, the department:

(a) Shall encourage voluntary cooperation by the people, municipalities, counties, industries, agriculture, and other pursuits, in restoring and preserving the quality and purity of the air and the waters of the state in accordance with rules and standards established by the commission.

(b) May conduct and prepare, independently or in cooperation with others, studies, investigations, research and programs pertaining to the quality and purity of the air or the waters of the state and to the treatment and disposal of wastes.

(c) Shall advise, consult, and cooperate with other agencies of the state, political subdivisions, other states or the Federal Government, in respect to any proceedings and all matters pertaining to control of air or water pollution or for the formation and submission to the legislature of interstate pollution control compacts or agreements.

(d) May employ personnel, including specialists, consultants and hearing officers, pur-

private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction. [Formerly 449.075]

468.705 Authority of commission over water pollution; construction. (1) Except as otherwise provided in ORS 469.300 to 469.570, 469.590 to 469.621 and 469.930, in so far as the authority of the commission over water pollution granted by ORS 448.305, 454.010 to 454.040, 454.205 to 454.225, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter is inconsistent with any other law, or authority granted to any other state agency, the authority of the commission shall be controlling.

(2) The water pollution control laws of this state shall be liberally construed for the accomplishment of the purposes set forth in ORS 468.710. [Formerly 449.070]

468.710 Policy. Whereas pollution of the waters of the state constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of water, and whereas the problem of water pollution in this state is closely related to the problem of water pollution in adjoining states, it is hereby declared to be the public policy of the state:

(1) To conserve the waters of the state;

(2) To protect, maintain and improve the quality of the waters of the state for public water supplies, for the propagation of wildlife, fish and aquatic life and for domestic, agricultural, industrial, municipal, recreational and other legitimate beneficial uses;

(3) To provide that no waste be discharged into any waters of this state without first receiving the necessary treatment or other corrective action to protect the legitimate beneficial uses of such waters;

(4) To provide for the prevention, abatement and control of new or existing water pollution; and

(5) To cooperate with other agencies of the state, agencies of other states and the Federal Government in carrying out these objectives. [Formerly 449.077]

468.715 Prevention of pollution. (1) Pollution of any of the waters of the state is declared to be not a reasonable or natural use of such waters and to be contrary to the public policy of the State of Oregon, as set forth in ORS 468.710.

(2) In order to carry out the public policy set forth in ORS 468.710, the department shall take such action as is necessary for the prevention of new pollution and the abatement of existing pollution by:

(a) Fostering and encouraging the cooperation of the people, industry, cities and counties, in order to prevent, control and reduce pollution of the waters of the state; and

(b) Requiring the use of all available and reasonable methods necessary to achieve the purposes of ORS 468.710 and to conform to the standards of water quality and purity established under ORS 468.735. [Formerly 449.095]

468.720 Prohibited activities. (1) Except as provided in ORS 468.740, no person shall:

(a) Cause pollution of any waters of the state or place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means.

(b) Discharge any wastes into the waters of the state if the discharge reduces the quality of such waters below the water quality standards established by rule for such waters by the commission.

(2) No person shall violate the conditions of any waste discharge permit issued under ORS 468.740.

(3) Violation of subsection (1) or (2) of this section is a public nuisance. [Formerly 449.079]

468.725 Effluent limitations. In relation to the waters of the state, the commission by rule may establish effluent limitations, as defined in Section 502 of the Federal Water Pollution Control Act, as amended by Public Law 92-500, October 18, 1972, and other minimum requirements for disposal of wastes, minimum requirements for operation and maintenance of disposal systems, and all other matters pertaining to standards of quality for the waters of the state. The commission may perform or cause to be performed any and all acts necessary to be performed by the state to implement within the jurisdiction of the state the provisions of the Federal Water Pollution Control Act of October 18, 1972, and Acts amendatory thereof or supplementary thereto, and federal regulations and guidelines issued pursuant thereto. [Formerly 449.081]

468.730 Implementation of Federal Water Pollution Control Act. The commission may perform or cause to be performed any and all acts necessary to be performed by the state to implement within the jurisdiction of the state

SPECIAL POLICIES AND GUIDELINES

340-41-470

- (1) In order to preserve the existing high quality water for municipal water supplies and recreation, it is the policy of the EQC to prohibit any further waste discharges to the waters of:
- (a) The Clackamas River Subbasin;
 - (b) The McKenzie River Subbasin above the Hayden Bridge (river mile 15);
 - (c) The North Santiam River Subbasin.
- (2) The Environmental Quality Commission shall investigate, together with any other affected state agencies, the means of maintaining at least existing minimum flow during the summer low flow period.
- (3) In order to improve water quality within the Tualatin River subbasin to meet the existing water quality standard for dissolved oxygen, and the 15 ug/l chlorophyll a action level stated in OAR 340-41-150, the following special rules for total maximum daily loads, waste load allocations, load allocations, and implementation plans are established.
- (a) After completion of wastewater control facilities and implementation of management plans approved by the Commission under this rule and no later than June 30, 1993, no activities shall be allowed and no wastewater shall be discharged to the Tualatin River or its tributaries without the specific authorization of the Commission that cause the monthly median concentration of total phosphorus at the mouths of the tributaries listed below and the specified points along the mainstem of the Tualatin River, as measured during the low flow period between May 1 and October 31*, of each year, unless otherwise specified by the Department, to exceed the following criteria:

| Mainstem (RM) | ug/l | Tributaries | ug/l |
|------------------------|------|--------------|------|
| Cherry Grove (67.8) | 20 | Scoggins Cr. | 60 |
| Dilley (58.8) | 40 | Gales Cr. | 45 |
| Golf Course Rd. (52.8) | 45 | Dairy Cr. | 45 |
| Rood Rd. (38.5) | 50 | McKay Cr. | 45 |
| Farmington (33.3) | 70 | Rock Cr. | 70 |
| Elsner (16.2) | 70 | Fanno Cr. | 70 |
| Stafford (5.4) | 70 | Chicken Cr. | 70 |

- (b) After completion of wastewater control facilities and implementation of management plans required approved by the Commission under this rule and no later than June 30, 1993, no activities shall be allowed and no wastewater shall be discharged

to the Tualatin River or its tributaries without the specific authorization of the Commission that cause the monthly median concentration of ammonia-nitrogen at the mouths of the tributaries listed below and the specified points along the mainstem of the Tualatin River, as measured between May 1 and November 15*, of each year, unless otherwise specified by the Department, to exceed the following target concentrations:

| Mainstem (RM) | ug/l | Tributaries | ug/l |
|------------------------|------|--------------|------|
| Cherry Grove (67.8) | 30 | Scoggins Cr. | 30 |
| Dilley (58.8) | 30 | Gales Cr. | 40 |
| Golf Course Rd. (52.8) | 40 | Dairy Cr. | 40 |
| Rood Rd. (38.5) | 50 | McKay Cr. | 40 |
| Farmington (33.3) | 1000 | Rock Cr. | 100 |
| Elsner (16.2) | 850 | Fanno Cr. | 100 |
| Stafford (5.4) | 850 | Chicken Cr. | 100 |

- (c) The sum of tributary load allocations and waste load allocations for total phosphorus and ammonia-nitrogen can be converted to pounds per day by multiplying the instream criteria by flow in the tributary in cfs and by the conversion factor 0.00539. The sum of load allocations waste load allocations for existing or future nonpoint sources and point source discharges to the mainstem Tualatin River not allocated in a tributary load allocation or waste load allocation may be calculated as the difference between the mass (criteria multiplied by flow) leaving a segment minus the mass entering the segment (criteria multiplied by flow) from all sources plus instream assimilation.
- (d) The waste load allocation (WLA) for total phosphorus and ammonia-nitrogen for Unified Sewerage Agency of Washington County is determined by subtracting the sum of the calculated load at Rood Road and Rock Creek from the calculated load at Farmington.
- (e) Subject to the approval of the Environmental Quality Commission, the Director may modify existing waste discharge permits for the Unified Sewerage Agency of Washington County and allow temporary additional waste discharges to the Tualatin River provided the Director finds that facilities allowed by the modified permit are not inconsistent and will not impede compliance with the June 30, 1993 date for final compliance and the Unified Sewerage Agency is in compliance with the Commission approved program plan.
- (f) Within 90 days of the adoption of these rules, the Unified Sewerage Agency of Washington County shall submit a program** plan and time schedule to the Department describing how and when the Agency will modify its sewerage facilities to comply with this rule. The program plan shall include provisions and time schedule for developing and implementing a management plan under an agreement with the Lake Oswego Corporation for addressing nuisance algal growths in Lake Oswego.

- (g) Within 18 months after the adoption of these rules, Washington, Clackamas, Multnomah Counties and all incorporated cities within the Tualatin River and Oswego Lake subbasins shall submit to the Department a program plan** for controlling the quality of urban storm runoff within their respective jurisdictions to comply with the requirements of sections (a) and (b) of this rule.
- (h) After July 1, 1989, Memorandums of Agreements between the Departments of Forestry and Agriculture and the Department of Environmental Quality shall include a time schedule for submitting a program plan** for achieving the requirements of sections (a) and (b) of this rule. The program plans shall be submitted to the Department within 18 months of the adoption of this rule.
- (i) Within one hundred twenty (120) days of submittal of the program plan** and within sixty (60) days of the public hearing, the Environmental Quality Commission shall either approve or reject the plan. If the Commission rejects the plan, it shall specify a compliance schedule for resubmittal for approval and shall specify the reasons for the rejection. If the Commission determines that an agency has not made a good faith effort to provide an approvable plan within a reasonable time, the Commission may invoke appropriate enforcement action as allowed under law. The Commission shall reject the plan if it determines that the plan will not meet the requirements of this rule within a reasonable amount of time. Before approving a final program plan, the Commission shall reconsider and may revise the June 30, 1993 date stated in sections (a), (b), and (e) of this rule. Significant components of the program plans shall be inserted into permits or memorandums of agreement as appropriate.
- (j) For the purpose of assisting local governments in achieving the requirements of this rule, the Department shall:
- (A) Within 90 days of the adoption of these rules, distribute initial waste load allocations and load allocations among the point source and nonpoint source management agencies in the basin. These allocations shall be considered interim and may be redistributed based upon the conclusions of the approved program plans.
 - (B) Within 120 days of the adoption of these rules, develop guidance to nonpoint source management agencies as to the specific content of the programs plans.
 - (C) Within 180 days of the adoption of these rules, propose additional rules for permits issued to local jurisdictions to address the control of storm water from new development within the Tualatin and Oswego Lake subbasins. The rules shall consider the following factors:

- (i) Alternative control systems capable of complying with sections (a) and (b) of this rule;
 - (ii) Maintenance and operation of the control systems;
 - (iii) Assurance of erosion control during as well as after construction.
- (D) In cooperation with the Department of Agriculture, within 180 days of the adoption of this rule develop a control strategy for addressing the runoff from container nurseries.
- (4) In order to improve water quality within the Yamhill River subbasin to meet the existing water quality standard for pH, the following special rules for total maximum daily loads, waste load allocations, load allocations and program plans are established.
- (a) After completion of wastewater control facilities and program plans approved by the Commission under this rule and no later than June 30, 1994, no activities shall be allowed and no wastewater shall be discharged to the Yamhill River or its tributaries without the authorization of the Commission that cause the monthly median concentration of total phosphorus to exceed 70 ug/l as measured during the low flow period between approximately May 1 and October 31*** of each year.
 - (b) Within 90 days of adoption of these rules, the Cities of McMinnville and Lafayette shall submit a program plan and time schedule to the Department describing how and when they will modify their sewerage facility to comply with this rule.
 - (c) Final program plans shall be reviewed and approved by the Commission. The Commission may define alternative compliance dates as program plans are approved. All proposed final program plans shall be subject to public hearing prior to consideration for approval by the Commission.
 - (d) The Department shall within 60 days of adoption of these rules distribute initial waste load allocations and load allocations to the point and nonpoint sources in the basin. These allocations shall be considered interim and may be redistributed based upon the conclusions of the approved program plans.

* Precise dates for complying with this rule may be conditioned on physical conditions (i.e., flow, temperature) of the receiving water and shall be specified in individual permits or memorandums of understanding issued by the Department. The Department shall consider system design flows, river travel times, and other relevant information when establishing the specific conditions to be inserted in the permits or memorandums of understanding. Conditions shall be consistent with Commission-approved program plans** and the intent of this rule.

** For the purpose of this section of the rules, program plan is defined as the first level plan for developing a waste water management system and describes the present physical and institutional infrastructure and the proposed strategy for changes including alternatives. A program plan should also include intergovernmental agreements and approvals, as appropriate, time schedules for accomplishing goals, including interim objectives, and a financing plan.

*** Precise dates for complying with this rule may be conditioned on physical conditions (i.e., flow, temperature) of the receiving water and shall be specified in individual permits or memorandums of understanding issued by the Department. The Department shall consider system design flows, river travel times, and other relevant information when establishing the specific conditions to be inserted in the permits or memorandums of understanding.

HEARING OFFICER'S REPORT

**Proposed New Rules Requiring Permanent Stormwater Quality
Control Facilities for New Development in the Tualatin River and
Oswego Lake Subbasins and Modifying Existing Rules that Require Erosion
Control Facilities for New Development in the
Tualatin River and Oswego Lake Subbasins**

On October 16, 1989, at 9:00 a.m., in Room 4A at 811 SW 6th Avenue, Portland Oregon, and on October 18, 1989 at 7:00 p.m., Room 402, Washington County Administration Building at 150 N. First Avenue, Hillsboro, Oregon, the Department of Environmental Quality held hearings concerning proposed new rules requiring permanent stormwater quality control facilities for new development in the Tualatin River and Oswego Lake subbasins and modifying existing rules that require erosion control facilities for new development in those subbasins.

The hearings officer was Neil J. Mullane.

The following text is a summary of the testimony received at the two hearings and response to the issues raised by the testimony:

Issue:

Many testifiers felt that the proposed interim rules were premature and "put the cart before the horse." The jurisdictions are in the process of identifying various sources of phosphorus and alternatives for reducing phosphorus levels. Nonpoint sources, including forestry and agriculture, only contribute about 15 percent of the current phosphorus loading. The phosphorus that would be contributed by new development will only be a fraction of the total load. The Department, according to the testifiers, should allow the program plans to identify the sources and strategies to deal with phosphorus. If new development is a significant source, then the program plans can address them in a comprehensive manner. This should allow the water quality problem in the Tualatin River to be solved in the most cost effective manner. DEQ should not impose its own perception of one component of the problem and force a solution that may not be appropriate.

Some testifiers felt that the total maximum daily load and associated load allocations for phosphorus establishes the overall objective for the local jurisdictions. It is then their role to determine the best way to achieve the goal. If the Commission believes, by adopting the stormwater quality rules, that it knows the best way to achieve the goal, the Commission should then be accountable for whether or not the overall objective is met. The Commission should not set both the objectives and the means for meeting the objectives and still hold the jurisdictions accountable for the objective.

Response:

The Department recognizes that the program plans will provide a more comprehensive strategy for achieving phosphorus reductions in the Tualatin and Oswego Lake subbasins. As development in the basin continues, even small quantities of phosphorus control will be important. The Department, therefore, believes that, in most cases, controls on new development will be necessary at least until an approved program plan demonstrates that such controls are, in fact, not necessary. The proposed rules have been changed to allow exempt jurisdictions from the proposed rules when the jurisdiction adopts ordinances that implement an equivalent program or when the Commission determines from the program plan that such a program is not necessary.

While it is true that the Department is dictating one component of the means for meeting the total maximum daily loads (TMDL), there are also many other components from which the jurisdiction can choose and implement as part of its program plan. Therefore, the Department does not view that the proposed rules usurp the ability of the jurisdiction to consider various, additional alternatives for meeting the TMDL. In addition, the proposed rules for new development also assure that water quality is maintained at the highest possible levels as required by the Commission's rules (OAR 340-41-445(1)) and would be appropriate regardless of the need to meet a TMDL. As stated above, if the program plan shows that controls on new development is not necessary, then the proposed rules would no longer apply.

Issue:

Other testifiers felt that the proposed interim rules will lead to confusion and inefficiency because of the possibility that the approaches for new development adopted by the jurisdictions will be much different than DEQ's. Administering two different approaches during a transition phase will be confusing to everyone involved. One testifier indicated that Unified Sewerage Agency had authority over storm water in Washington County and would effectively deal with new development by the 1991 construction season which is as much as DEQ's interim rules can accomplish. This testifier felt that USA's rules were very similar to DEQ's and would be based on average runoff coefficients and allow for on-site retention.

Response:

The Department agrees that potential confusion could be eliminated if DEQ relied on the program plans to deal with stormwater quality control requirements for new development. The Department, however, also believes that without DEQ rules, some jurisdictions may not address new development as quickly as they should. The Department has changed the proposed rules to allow jurisdictions to adopt ordinances establishing requirements on new development equivalent to the requirements in these proposed rules. If these

ordinances are approved by the Department, then the jurisdiction would be exempt from the proposed rules.

Issue:

Many testifiers felt the interim rules would be unnecessary because they cannot be applied to the 1990 construction season and that the jurisdictions' programs will be in effect for the following seasons. There is no benefit to the DEQ rules.

Response:

The Department recognizes that the proposed rules will miss much of the 1990 construction season. The Department believes, however, that the proposed rules are necessary in case the program plans fail to adequately address new development. With the proposed rules, the Department is assured of catching the 1991 construction season regardless of the adequacy of the program plans.

Issue:

Most, if not all, testifiers stated that the erosion control rules previously adopted by the Commission were timely and necessary. Many, however, did not view the proposed interim rules as timely or necessary.

Response:

The Department believes that the proposed rules are necessary to assure that stormwater quality control facilities are required of new development if the program plans are inadequate.

Issue:

USA believes they will need at least 120 days in order to adopt implementing ordinances once the interim rules are adopted by the Commission. March 1, 1990, effective date for the rules, cannot be met. Washington County stated that its charter prevents it from adopting land use ordinances between November 1 and March 1. This would mean that implementing ordinances could not be adopted until June 1, 1990, at the earliest. Another testifier felt, however, that extending the effective date would just encourage more developers and builders to speed development plans in order to avoid needed stormwater quality control facility requirements.

Response:

The Department has changed the effective date to June 1, 1990, which gives jurisdictions about 150 days to adopt ordinances. The Department recognizes that, by extending the effective date, there

is the opportunity for more development application to be approved before the deadline. In discussion on this issue with Washington County and the City of Portland, the Department was told that most of the 1990 development projects will have applications submitted well before April 1, 1990 or even March 1, 1990. Those projects that come in after March 1, 1990, and propose to construct in 1990, will be mostly small projects. The Department, therefore, believes that at least some of the development in the 1990 construction season will be captured as will all subsequent construction seasons.

Issue:

Concerning alternative language for in-lieu fees, most testifiers preferred DEQ's proposal to that suggested by Northwest Environmental Defense Center/Tualatin Riverkeepers (NEDC/TR). The prime reason for preferring DEQ's language was the concern that identifying locations for area-wide treatment sites could take some time to complete. Further, even if sites could be identified, there would be no guarantee that the sites would be the ones that are ultimately chosen and acquired. Many testifiers thought that the NEDC/TR proposal would, in effect, require on-site controls for all development. Others testified in support of NEDC/TR's proposed language stating that the "jurisdictions, before imposing in-lieu fees on new developments, should be required to produce some evidence of capability to provide the subsequent off-site or area-wide storm water treatment for which the in-lieu fee is imposed."

NOTE:

The proposed rules that were taken to hearing contained two versions of the section dealing with in-lieu fees: one suggested by the NEDC/TR, the other suggested by the Department. One of the testifiers asked that the proposed rules brought to the Commission contain both versions.

Response:

The Department expects the program plans to include a schedule for identifying the sites for regional stormwater quality control facilities. The Department believes the proposed rules should not override the program plans. To assure that the schedules in the program plans are adhered to, the Department has changed the proposed rules to not allow exemptions or use of the in-lieu fees if the time schedule in the program plan is not being met. The Department believes it has addressed the concern by amending its proposed language and does not intend to provide two different versions for the Commission's consideration.

Issue:

Some testifiers felt that NEDC/TR language requiring O&M costs to be included in the in-lieu fees would violate state law concerning limitations on systems development charges.

Response:

The Department does not propose to use NEDC/TR's proposed language so this issue is no longer relevant.

Issue:

Some testifiers suggested that the local jurisdictions be given the authority to add new runoff coefficients.

Response:

The proposed rules have been changed to allow this. It does require the jurisdiction to inform DEQ in writing when a new coefficient is used, however, and does require the jurisdiction to discontinue the use of a new runoff coefficient if the Department objects to its use within 10 days.

Issue:

Some thought that the new rules added flexibility by allowing on-site retention as an alternative. The previous proposed rules did not consider this as an option. At least one testifier stated that the concept embodied in DEQ's rules was good.

Response:

The Department concurs.

Issue:

One testifier felt that jurisdictions should not be tied to in-lieu fees as the only financing mechanism for area-wide systems. One jurisdiction already as a drainage utility in place and charges a monthly drainage fee plus system development charges. This jurisdiction could use the authority of the utility to construct area-wide systems.

Response:

The proposed rules are changed to allow an alternative to in-lieu fees provided the alternative approach is approved in writing by the DEQ, assures financing of the off-site stormwater quality facilities and either requires or encourages on-site retention.

Issue:

Many testifiers were in favor of the portion of the rules that exempted single and two-family dwellings.

Response:

No comments were received other than those in support. This portion of the proposed rules will remain.

Issue:

Many testifiers supported the portion of the rules that void DEQ's storm water rules once a jurisdiction has an approved program plan. Northwest Environmental Defense Center (NEDC), however, believed that the rule should require that jurisdiction program contain ordinances, adopted by the jurisdiction, that implement the interim rules. They also asked that, as program plans are approved by the Department, that the requirements of this rules be replaced by specific conditions in a permit issued to the jurisdiction. NEDC believes that permits are necessary to comply with the Department's rules for the Tualatin River that states "within 180 days of the adoption of these rules (the Department will) propose additional rules for permits issued to local jurisdictions to address the control of storm water from new developments..." The suggested language for the rules was in the original proposal that NEDC submitted to the Commission at their July meeting (Attachment I).

Response:

The issues seems to be the concern that the program plans will not adequately address new development. To address this concern, the Department has added language that requires the program plans to contain provisions equivalent to the Commission's rules on permanent stormwater quality control facilities and erosion control plans unless the Commission determines that such provisions are unnecessary.

While it is possible that federal requirements will mandate that permits be issued to the jurisdictions in the Tualatin subbasin, this has not been fully determined. The Department may, instead, decide to use Memorandum of Agreement with the jurisdictions as the mechanism to regulate implementation of the program plans. Consequently, the rule does not require the issuing of permits to each of the jurisdictions in the Tualatin and Oswego Lake subbasins.

Issue:

Some testifiers felt that in-lieu fees were unfair because it put the responsibility of treating storm water on new development while existing

development escaped. This put new development at an unfair competitive advantage.

Response:

At least initially, existing development would not be obligated to pay for stormwater quality control facilities. The program plans will ultimately require area-wide stormwater quality control facilities for existing development. At that time, existing development will have to pay their share.

Issue:

Others felt that jurisdictions were not ready to implement DEQ's rules and that time and effort necessary for developing acceptable program plans would be diverted away to working on implementing DEQ's rules for new development. This was inefficient and a waste of time. One testifier felt that with DEQ's rules, jurisdictions could be faced with implementing two different set of rules at the same time.

Response:

The Department believes these proposed rules should not conflict with the future programs to be developed by the jurisdictions. The proposed rules have been changed to allow jurisdictions to develop their own ordinances dealing with new development. Further, the Department has changed the proposed rules such that the jurisdictions are not required to have requirements for new development when and if the Commission-approved program plans determine that such requirements are not necessary.

Issue:

One testifier stated that treatment of run-off was needed now and that development should be put on hold until storm facilities were available. This person stated that the whole watershed should be considered in the rules and that everybody should help to pay the costs.

Response:

The Department believes that permanent stormwater quality control facilities for new development are necessary to limit further degradation of water quality and help reduce the ultimate cost of reducing phosphorus levels in the urban runoff. The problem, however, is not a matter of preventing permanent damage to beneficial uses or is it causing a serious public health concern. Therefore, the Department does not believe that development should be completely curtailed until permanent, area-wide stormwater quality controls are available.

Issue:

One person felt that the interim rules may not relate to the actual WQ needs of the individual basins. Another stated that there was no assurance that the stormwater quality control facilities required by the interim rules would be sufficient to meet the final requirements in the program plans.

Response:

The Department recognizes these concerns. The proposed rules would require a minimum level of treatment and control of stormwater from new development regardless of the actual needs to the basin. This may mean that facilities would be installed when they would not be necessary in order to meet the load allocations required from the total maximum daily load established for the Tualatin River. The Department believes, however, this is prudent action because the available phosphorus load in the Tualatin is very small and that future sources of phosphorus should be reduced as much as possible. Otherwise, the available loading will be quickly used up and further development in the subbasins would be prevented. Further, it is consistent with the Commission's policy to maintain water quality at the highest possible levels. As previously stated, the Department has changed the proposed rules such that the jurisdictions are not required to have requirements for new development when and if the Commission-approved program plans determine that such requirements are not necessary.

Issue:

One person was concerned that stormwater control systems required by DEQ rules may not be necessary under approved program plans.

Response:

The Department believes that all program plans should have a component dealing with controlling stormwater quality from new development. This is to assure that future loadings on the river are kept to the lowest practicable level thereby preserving available loadings as much as practicable for future development. The rules have been changed, however, to allow a jurisdiction to not require stormwater quality control facilities for new development if the approved program plan submitted by the jurisdiction shows that such facilities are not necessary.

Issue:

Stormwater quality control facilities may be interpreted by EPA and others as "wetlands" and be subject to wetland requirements, essentially removing control of the facilities from the owner/operator.

Response:

The Department has conferred with Oregon's Division of State Lands. They have informed DEQ that wetlands formed as part of a stormwater quality control facility would not be subject to federal or state wetland regulations.

Issue:

One testifier felt that the rules had a statewide impact and should be drafted so they could be applied statewide. This testifier did not advocate that the rules be applied statewide, however.

Response:

The Department believes that the proposed rules could be applied statewide, if desired.

Issue:

One person felt that the rules provided no basis for establishing in-lieu fees and, as a result, there would not be any uniformity of fees between jurisdictions and was undesirable.

Response:

The Department does not believe it should establish the basis for setting the interim fees. Each jurisdiction is best able to determine the costs it will bear in providing stormwater quality control. Because of the competing nature of the jurisdictions in the subbasin, it is unlikely, in DEQ's opinion, that in-lieu fees will be significantly different between jurisdictions. Physical limitations in some of the jurisdictions, such as steep slopes, could increase the costs and, consequently, the fees in some jurisdictions, but the Department believes this would be appropriate.

Issue:

One person was concerned about DEQ's impatience in arriving at a solution for the Tualatin. The solution should not be driven by piece meal actions by DEQ rule, but by a comprehensive review and analysis of alternatives. This would assure that the most cost effective solution could be employed. Further, DEQ has not done a comprehensive evaluation of the costs of cleaning up the Tualatin River. The cost analysis offered in the fiscal impact statement with the proposed rules only looks at the costs on new development, but not that imposed on existing development.

Response:

DEQ agrees that the Department has not done a comprehensive cost evaluation for cleaning up the Tualatin River. Such an analysis

should be part of the program plans. DEQ did evaluate the fiscal impact of the rules. Since the rules only apply to new development, the costs that will eventually be imposed on existing development was not considered nor, in the opinion of the Department, should it have been considered. The Department believes that stormwater quality controls for new development should be a component of any comprehensive effort to reduce phosphorus levels in urban runoff unless the program plan can show that stormwater quality control facilities for new development is not necessary for achieving the jurisdiction's load allocation.

Issue:

One testifier suggested that, instead of adopting rules, the Department should enter in to a Memorandum of Agreement with Unified Sewerage Agency. This would allow the requirements of stormwater treatment and control to be modified on an on-going basis as more detailed information is gathered. Rules are too inflexible and restrict originality and special solutions being applied to unique problems.

Response:

The Department believes that a Memorandum of Agreement with other jurisdictions might be useful for assuring implementation of the proposed rules. A memorandum, however, does not have the power or authority to compel that stormwater quality facilities be provided. Only rules can accomplish this.

Issue:

A couple of testifiers felt that the fiscal impact statement was in error because it stated that the City of Beaverton would be affected by losing tax revenue from property being taken off the property tax rolls and placed in stormwater treatment and control facilities. One testifier stated that the amount of revenue the City of Beaverton would receive is dependent upon its tax base, not the valuation of property in the city.

Response:

The Department agrees that this was an error in the fiscal impact statement. The error, however, would over estimate the fiscal impact upon the City and consequently, the actual impact upon city government would be less than the statement predicts.

Issue:

One testifier felt that stormwater quantity issues also needed to be addressed. The proposed rules may not be the best solution if quantity issues must also be considered.

Response:

The Department agrees that stormwater quantity issues should be addressed, but, except for quantity factors that affect water quality, the Department has no authority for rules to deal with quantity. Fortunately, in this regard, the passive types of stormwater quality facilities generally used to control stormwater quality also help reduce flooding and excessive flows during large storm events.

Issue:

One person felt that the rules were too complex for people to understand and comply. Further, the additional cost for complying with these proposed rules will affect low cost housing most severely because the margin of profit for builders and developers is so small. This person was also concerned about the requirement in the proposed rules that would require a certification from a registered, professional engineer.

Response:

The Department agrees that the rules are relatively complex and will be hard for some people to understand and use. The Department believes that jurisdictions will have to assist some people in applying the rules to the smaller projects where a registered professional engineer is not required. The Department has changed the proposed rules so that a certification by an engineer is not necessary for projects smaller than one acre. As is occurring for the erosion control requirements, the Department expects jurisdictions will develop a guidance document to help people with these rules. The Department would intend to assist jurisdictions in this endeavor.

While the costs for permanent stormwater quality control facilities will add to the cost of construction, the Department does not believe that the increased costs will preclude building or sale of low-cost housing.

Issue:

One person was concerned that on-site systems would create mosquito breeding areas that could become nuisances.

Response:

In some cases this could be a problem. Mosquito problems can be minimized by proper design, by keeping drain down times to less than three days and, for permanent pond structure, by using natural mosquito predators such as fathead minnows and other fish.

Issue:

One person felt that use of biofiltration systems such as wetlands might be a better approach than those resulting from the proposed rules.

Response:

The proposed rules do not prevent jurisdictions or developers from using any specific technology for reducing phosphorus in urban runoff. If biofiltration can be shown to provide sufficient phosphorus removal as required to meet the required removal efficiency, it could be used.

Issue:

Some testifiers believe that these rules should encourage local on-site, instead of area-wide solutions to storm water pollution problems. These testifiers also believe that on-site controls is the clear direction given to the Department by the Commission and, further, that on-site controls are required by policy of the U.S. Environmental Protection Agency. Others do not agree that on-site controls are the preferable alternative for storm water quality control. A couple of testifiers stated that on-site systems were not effective and that area-wide approaches would be more effective. These people cite the poor performance of smaller stormwater systems that have been installed historically in Washington County. These people support not adopting DEQ's proposed interim rules, and suggest that the Department wait for the program plans to address the problems on a subbasin basis.

Response:

The Department believes that there are advantages to on-site controls that should be considered in addressing stormwater quality from new development. On-site controls cannot be used in each and every development, but, where feasible, their use will help reduce the size and cost of the area-wide facilities that the Department believes will also be necessary. The Department does not believe the total answer is exclusively with either on-site or off-site controls; it should be a combination of both. The proposed rules do not prevent use of both off-site and on-site stormwater quality controls.

Issue:


One person questioned whether or not on-site retention would reduce the flows into the Tualatin River thereby exacerbating the river's water quality problem.

Response:

On-site retention will reduce the amount of direct runoff that enters the tributaries that discharge into the Tualatin River.

This will have its most apparent effect on reducing peak flows that cause erosion and flooding. The stormwater that is retained on site will enter the groundwater system and will ultimately discharge back into the Tualatin River or its tributaries. The Department believes that there will be no resulting impact on Tualatin River flows. The stormwater will eventually make its way to the Tualatin River, but will be minus its pollutant load.

Respectively submitted,



Neil J. Mullane
Hearings Officer
Oregon Department of Environmental Quality

BACKGROUND REPORTINTERIM RULES REQUIRING PERMANENT STORM WATER QUALITY CONTROL FACILITIES IN THE TUALATIN AND OSWEGO LAKE SUBBASINS

The Tualatin River does not meet water quality standards established to protect the beneficial uses of the river. Specifically, the river often fails to meet the standard for dissolved oxygen. Further, in the summertime, the river routinely exceeds a chlorophyll a level of 15 micrograms per liter. Chlorophyll a is an indirect measure of algal growth and 15 micrograms per liter has been established as the level above which nuisance conditions exist. After an intensive study of the Tualatin River, the Department determined that phosphorus levels in the river would have to be reduced in order to reduce the high chlorophyll a levels caused by the algae. Although dissolved oxygen standard violations were determined to be caused primarily by excessive ammonia in the river, excessive algae also contributes to reduced dissolved oxygen levels at night.

Phosphorus in the Tualatin River has many sources including the sewage treatment plants, and runoff from agricultural and silvicultural activities and urban development. The following is an excerpt from Phosphorus: A Summary of Information Regarding Lake Water Quality written by Gayle D. Garman, Gregory B. Good, and Linda M. Hinsman of Illinois Environmental Protection Agency, 1986. It states: "Urban runoff can be defined as the water that comes off lawns, rooftops, streets and other paved areas during and after a rainstorm or as snowmelt (Fratoni et al. 1982). As the runoff travels, it picks up contaminants, including nutrients, sediments, metals, litter and organic and bacterial wastes in its path. Through natural or man-made drainage systems, urban runoff travels across urban areas and into receiving waters. Atmospheric deposition, fertilizers, construction site erosion and plant materials are common sources of phosphorus found in urbanized areas. Urbanization accelerates erosion through alteration of the land surface. Disturbing the land cover, altering natural drainage patterns and increasing impervious area all increase the quantity and rate of runoff, thereby increasing both erosion and flooding potential (USEPA, NURP Final Report, 1983)."

According to Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs, "pollutants accumulate rapidly on impervious surfaces and are easily washed off. The primary source of most pollutants is from the atmosphere, in the form of wetfall and dryfall. Once deposited, up to 90 percent of the atmospheric pollutants deposited on impervious surfaces are delivered to receiving waters (Oberts, 1985).

"Other sources of pollutants that accumulate and subsequently wash off impervious surfaces include pet droppings, vegetative matter, litter and debris. Several studies suggest that as neighborhoods become mature, some of these sources can become very important (BRPC, 1986). Litter generation and pet dropping rates increase, and the general level of "urban housekeeping" often declines as neighborhoods grow older (Syrek, 1981; BRPC,

1986a). Poor housekeeping is easier to define than to control. For example, heavy use creates bare spots that erode, dumpsters are overloaded, out of sight alleyways and service areas are not kept up, used motor oil is dumped into storm sewers, homeowners apply excessive quantities of pesticides and fertilizers, and so on. Older neighborhoods tend to become more impervious over time, as each new deck, patio, driveway, infill development and road improvement is constructed. Also, as both intended landscaping and 'weed' trees grow older and become more widespread, their leaves and pollen (which would normally be slowly converted to humus on the forest floor) are more likely to fall on impervious surfaces and be washed into the channel. During the growing season, nutrients leach from tree leaves and stems during storms, and are quickly conveyed to the stream if the trees' drip line extends over an impervious area."

In September 1988, the Environmental Quality Commission adopted rules establishing in-stream criteria for a total maximum daily load (TMDL) for phosphorus in the Tualatin and Oswego Lake subbasins. In addition, the rules provided requirements for the Department and local and state jurisdictions to meet in achieving the TMDL. Local jurisdictions were required in the rules to develop program plans showing how they would control urban runoff to meet load allocations for phosphorus established specifically for each jurisdiction.

One of the requirements imposed upon the Department was to develop and propose additional rules to control storm water quality from new development until local jurisdictions could develop and implement their own plans for controlling storm water quality from urban runoff. Interim rules by the Department were believed necessary because of the rapid growth occurring in the subbasins. There was also the belief that, because storm water quality controls would be necessary to meet the Tualatin TMDL, costs could be reduced if the controls were provided during development and not afterward.

Rules were proposed to the Commission in March 1989. At the Commission's July 1989, meeting, the Department requested adoption of rules pertaining only to erosion control for new development. Northwest Environmental Defense Center and Tualatin Riverkeepers (NEDC/TR) testified at this Commission meeting that interim rules for permanent stormwater quality control facilities were also necessary. NEDC/TR also submitted proposed language that would require permanent stormwater quality facilities for new development. The Commission requested the Department to convene a work group of interested parties in the Tualatin and Oswego Lake subbasins, and with NEDC/TR representation, evaluate NEDC/TR's proposal. If the proposal was acceptable as presented or, perhaps with some revision, the Department was authorized to hold hearings on the proposed rules and return to the Commission.

The Department met twice with a group of people including representatives of NEDC/TR, local jurisdictions, consultants and developers. As a result, NEDC's proposal was modified and an acceptable set of rules were taken to hearing in mid-October 1989.

The rules, as revised after hearing, contain the following major points:

1. The proposed rules would require all new development in the Tualatin and Oswego Lake subbasins with complete applications submitted beginning June 1, 1990, to provide permanent storm water quality control facilities.
2. The stormwater quality control facilities must meet a phosphorus removal efficiency defined by an equation specified in the rules that is dependent upon the average runoff coefficient of the development after construction. For development with all parking lot or roof, the required removal efficiency would be 65 percent. If the average runoff coefficient is reduced by vegetated areas or by retaining some of the runoff on site, the removal efficiency would be less than 65 percent.
3. Jurisdictions could not approve new development larger than one acre unless the stormwater control facilities were certified by a professional engineer as meeting the necessary removal efficiency.
4. Jurisdictions could not approve new development unless the financial assurance was provided to assure construction of the stormwater control facilities.
5. Jurisdictions would be required to file an operation and maintenance plan for stormwater quality control facilities with the Department.
6. The proposed rules allow jurisdictions to collect a fee in-lieu of requiring stormwater quality control facilities unless jurisdictions are not meeting the schedule in their approved program plans for identifying the location of the off-site or area-wide stormwater quality control facilities.
7. Single and two family dwellings on lots of record would be exempted as would construction of utilities, such as underground water lines, where the site would remain essentially unchanged after construction.
8. The erosion control requirements would be modified to allow sediment control devices other than sediment basins.
9. The requirements in the proposed rules would no longer apply to a jurisdiction when the jurisdiction adopts Department-approved ordinances equivalent to the rules or if the Commission-approved program plans required of a jurisdiction shows that stormwater quality controls for new development are unnecessary.
10. The proposed rules would allow a jurisdiction to use of additional runoff coefficients in applying the equation for R_v which defines the necessary phosphorus removal efficiency. The Department would have the right to object to the new coefficient if necessary.
11. The proposed rules would allow the Department to approve alternative mechanisms (besides in-lieu fees) that would allow a jurisdiction to grant exemption to new developments. Such mechanisms, however, must assure financing for off-site stormwater quality control facilities and encourage or require on-site retention where feasible.

12. The proposed rules require that the permanent stormwater quality control facilities be designed to accommodate a 0.36 inch rain event with a 96 hour return time. This criteria should capture most of the rainfall events that occur during the period when phosphorus controls are necessary in the Tualatin River.

ADDITIONS TO PROPOSED RULE: SUBMITTED BY NORTHWEST ENVIRONMENTAL DEFENSE CENTER AND TUALATIN RIVERKEEPERS. JULY 21, 1989

DELETE PROPOSED SUBSECTIONS (c) AND (d) AND ADD THE FOLLOWING:

(c) For land development, no preliminary plat, site plan, permit or public works project shall be approved by any jurisdiction in these subbasins unless the conditions of the plat permit or plan approval include a requirement for permanent control of phosphorus and sediment loadings associated with stormwater runoff from the development site. Permanent phosphorus and sediment control requirements shall include the following:

(A) The site plan and stormwater quality control facilities shall be designed to achieve a combined 65% removal of phosphorus and 85% removal of sediment from the respective phosphorus and sediment loads that would otherwise be associated with the runoff from a mean summertime storm event totaling 0.36 inches of precipitation with an average return period of 96 hours and an average site runoff coefficient of 0.85. Criteria specified in APPENDIX II shall be used for sizing of stormwater quality control facilities.

(i) For the purpose of this rule, the combined site plan and stormwater quality control facilities removal of phosphorus or sediment is expressed:

$$[100-R_p] = [100-R_c][100-R_v]/100$$

$$\text{or: } [100-R_p] = [100-R_c]R_v/0.85$$

where:

- R_p = combined phosphorus or sediment removal, %
- R_v = reduction of runoff volume from site, %
- R_c = reduction of phosphorus or sediment concentration in site runoff, %
- R_v = runoff coefficient for site plan design.

The runoff coefficient for the site plan design is calculated as:

$$R_v = C_s[f_s + C_1 f_1 f_c] + C_p[1 - f_s - f_1(1 - C_1(1 - f_c))]$$

where:

- C_s = runoff coefficient for roads and streets,
- C_1 = runoff coefficient for impervious areas other than roads and streets,
- C_p = runoff coefficient for pervious areas,
- f_s = fraction of development area in streets,
- f_1 = impervious area fraction of development,
- f_c = fraction of impervious area runoff connected to street drainage system.

For the purpose of this calculation:

$C_s = 0.95$ for paved streets, curbs and storm sewers,

$C_s = 0.80$ for paved streets, open ditch drainage,

$C_s = 0.70$ for graveled roads, open ditch drainage,

$C_1 = 0.95$ for building roofs and paved parking areas,

$C_p = 0.20$ for grass, trees and marsh areas.

(ii) The developer or jurisdiction may choose an alternative design criteria for permanent control of phosphorus and sediment loadings not found in APPENDIX II or in subsection (i) of this paragraph. When doing so the applicant shall provide the necessary technical documentation, certified by a professional engineer registered in Oregon, which supports that the proposed alternative system has been designed to provide phosphorus and sediment removal efficiencies at least equivalent to those required by this rule.

(B) No final plat or final site plan shall be approved in these subbasins unless the following conditions are met:

(i) The final plat or site plan proposed by the developer shall include plans and a certification prepared by a professional engineer registered in Oregon that the proposed site plan design and stormwater quality control facilities have met the design criteria for phosphorus and sediment removal in paragraph (A) of this rule.

(ii) A financial assurance, or equivalent security acceptable to the jurisdiction, shall be provided by the developer to the jurisdiction that assures that the site plan design and stormwater quality control facilities are constructed according to the plans established in the final plat or site plan approval.

(iii) Each jurisdiction that constructs or authorizes construction of permanent stormwater quality control facilities shall have approved by the Department an operation and maintenance plan for the stormwater quality control facilities under its jurisdiction and shall operate and maintain such facilities in accordance with the approved plan.

(d) Any stormwater quality control facilities required under subsection (c) of this rule may be provided on the development site or at an off-site location. If the jurisdiction chooses to authorize or provide off-site stormwater quality control facilities for the development, the jurisdiction shall designate and have approved by the Department the necessary off-site land area and stormwater transmission route from the development site to the off-site location of the stormwater

(i) If the off-site land area and transmission route rights-of-way have not been acquired and dedicated by the jurisdiction or the developer for the purpose of this rule, before any approval of final plat or final site plan, the jurisdiction shall cause to have placed in a reserve stormwater quality control trust account the funds necessary and sufficient for acquisition of the off-site land area and transmission route rights-of-way.

(ii) As a condition of approval of final plat or final site plan, the jurisdiction may assess the developer for a one time in-lieu-of fee for off-site stormwater quality control facilities to be provided by the jurisdiction. The in-lieu-of fee shall be at least equivalent to the total present value of the estimated costs of off-site land and rights-of-way acquisition, engineering design, construction, and annual operation and maintenance of the necessary off-site stormwater quality control facilities. Costs of construction, operation and maintenance shall be estimated in accordance with procedures provided in APPENDIX II, or equivalent procedures submitted by the jurisdiction and approved by the Department.

(e) Construction of one (1) and two (2) family dwellings on existing Lots of Record are exempt from the requirements of subsection (c) of this rule.

(f) As each jurisdiction adopts a Department approved program plan, as required under OAR 340-41-470(3)(g), the requirements of this rule will be replaced by specific stormwater quality control permit conditions for new developments in that jurisdiction.

(g) The program plans submitted by each jurisdiction to the Department under OAR 340-41-470(3)(g) shall include ordinances adopted by the jurisdiction to implement this rule.

(h) The Director may modify APPENDIX I as necessary for clarification and to provide additional information without approval from the Environmental Quality Commission. The Director may add or delete Best Management Practices (BMPs) and associated design and cost estimating criteria to and from APPENDIX II, after providing an opportunity for review and comment by the public and affected jurisdictions.

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

PROPOSED STORMWATER TREATMENT AND CONTROL RULES NOTICE OF PUBLIC HEARING

Hearing Dates: October 16, 1989
October 18, 1989
Comments Due: October 20, 1989
5:00P.M.

**WHO IS
AFFECTED:**

Most new construction activity in the Tualatin River and Oswego Lake sub-basins will be affected.

**WHAT IS
PROPOSED**

Regulations adopted by the Environmental Quality Commission require the jurisdictions in the Tualatin and Oswego Lake subbasins to develop plans to reduce the pollutants in the storm runoff from their respective urban areas. Because these plans have not yet been developed, the Commission has requested the Department of Environmental Quality to propose rules that would require new development to install stormwater quality control facilities. The rules would assure that additional pollutant discharges caused by new development would be minimized until the jurisdictions' plans are approved and implemented.

**WHAT ARE THE
HIGHLIGHTS:**

One and two family residences would be excluded from the requirements of the rules if they are on existing Lots of Record.

The rules apply only to the Tualatin River and Oswego Lake Sub-basins.

Instead of requiring the developer to construct the permanent control facilities, the local jurisdiction may require the developer to pay a fee. The local jurisdiction would hold the funds in escrow until the jurisdiction could build an area-wide runoff treatment system.

The proposed rules would establish phosphorus removal efficiencies for the stormwater quality control facilities based upon the type and extent of ground surface proposed for the development. Development with more vegetated land surface would require a lower phosphorus removal efficiency than a development with more parking lot and roof area.

The proposed rules would also allow erosion control plans to include sediment control devices other than settling ponds.

**INFORMATION
AVAILABLE**

The proposed rules were drafted by the Department in consultation with representatives of local jurisdictions, consulting engineers, and the Northwest Environmental Defense Center. Included with the proposed rules are alternative paragraphs (F) one which was offered by representatives of the Northwest Environmental Defense Center at the July 21, 1989, Environmental Quality Commission meeting and the other containing language suggested by the Department. Comments are invited on either or both paragraphs. In addition to the proposed rules, a Fiscal and Economic Impact Report is available upon request.

FOR FURTHER INFORMATION:

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



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

11/1/86

A CHANCE TO COMMENT

HOW TO COMMENT:

Copies of the proposed rules and Fiscal and Economic Impact Report can be obtained from: The Department of Environmental Quality, Water Quality Division, 811 S.W. Sixth Avenue, Portland, Oregon, 97204. Written comments can be submitted to the same office. For further information contact Dick Nichols at (503) 229-6804.

Public Hearings will be held as follows:

WHERE: DEQ offices, Conference Room 4A
811 SW 6th, Portland, Oregon

DATE: October 16, 1989

TIME: 9:00 a.m.

AND

WHERE: Room 402, Washington County Administration Building,
150 N. First Avenue,
Hillsboro, Oregon

DATE: October 18, 1989

TIME: 7:00 p.m.

Oral and written comments will be accepted at the hearings. Additional written comments will be accepted until 5:00 P.M., October 20, 1989.

WHAT IS THE NEXT STEP:

Testimony received during this public participation process will be evaluated and a final draft of rules will be prepared to take to the Environmental Quality Commission for adoption at their regular meeting to be held on December 1, 1989.

PM\WC5533 (9/19/89)

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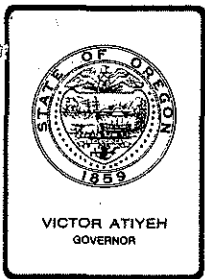
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PM\WC5533 (9/19/89)



Environmental Quality Commission

Mailing Address: BOX 1760, PORTLAND, OR 97207

522 SOUTHWEST 5th AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5696

REQUEST FOR EQC ACTION

Meeting Date: December 1, 1989
Agenda Item: L, Action Item
Division: Hazardous & Solid Waste
Section: Hazardous Waste Management

SUBJECT:

Hazardous Waste Fee Rules: Revision of Compliance Fees for Generators and Treatment, Storage and Disposal Facilities (TSDFs)

PURPOSE:

During the last biennium (1987-89), the hazardous waste program anticipated a \$490,000 revenue shortfall. In response, on April 29, 1988, the Environmental Quality Commission (EQC) amended the fee schedule rules to permanently increase the base fee rate by 25% and to add a one-time surcharge for the 1988 billing.

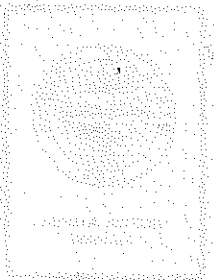
In order to avoid an anticipated revenue shortfall and to stabilize funding for the 1989-91 biennium, the hazardous waste program worked with the Hazardous Waste Advisory Committee and the Hazardous Waste Funding Committee over the last biennium to revise the base fee schedule. In cooperation with representatives of the regulated community, the Department of Environmental Quality (DEQ or Department) proposes to amend the rules to maintain the 1988 fee schedule.

The proposed rule amendment was adopted as a temporary rule in July, 1989, allowing the 1989 billing to be conducted under the same fee schedule as the 1988 billing. Adoption of the proposal as a final rule will serve to stabilize program funding for this biennium. Without adoption, the 1990 billing will be conducted under a decreased fee schedule. The hazardous waste program would again be faced with the possibility of a budget shortfall for the 1989-91 biennium, and a likely deficit in the 1991-93 biennium.

The proposed rule amendments also include the following house-keeping changes:

- a. change the words "fee period" to "billing cycle" and other minor wording changes for clarification,
- b. delete interest charges on overdue payments.

Meeting Date: 12/1/89
Agenda Item: L
Page 2



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 C

- 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: Haz. Waste Advisory Committee Attachment F,G
Haz. Waste Funding Committee

DESCRIPTION OF REQUESTED ACTION:

Adopt as a final rule, proposed amendments to OAR 340-105-110 (Permit fees), OAR 340-105-113 (Fee schedule) and OAR 340-102-065 (Hazardous waste generator fees).

The proposed amendments are shown in Attachment A. Notice of the public hearing and the proposed rule amendments were mailed to known interested persons and published in newspapers of general circulation in Oregon. The public hearing was held on October 10, 1989 and the hearing officer's report and response to comments are provided in Attachments D and E.

AUTHORITY/NEED FOR ACTION:

- Required by Statute: _____ Attachment _____
Enactment Date: _____
- Statutory Authority: ORS 466.165 & ORS 183.335 Attachment _____
- Pursuant to Rule: OAR340-105-110 & 340-102-065 Attachment A
- Pursuant to Federal Law/Rule: _____ Attachment _____

___ Other: Attachment ___

___ Time Constraints: (explain)

DEVELOPMENTAL BACKGROUND:

| | | |
|--|------------|----------|
| ___ Advisory Committee Report/Recommendation | Attachment | ___ |
| <u>X</u> Hearing Officer's Report/Recommendations | Attachment | <u>D</u> |
| <u>X</u> Response to Testimony/Comments | Attachment | <u>E</u> |
| <u>X</u> Prior EQC Agenda Items: <u>Item O, April 29, 1988</u> | Attachment | <u>H</u> |
| ___ Other Related Reports/Rules/Statutes: | Attachment | ___ |
| ___ Supplemental Background Information | Attachment | ___ |

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The proposed amendments would make the 1988 fee billing schedule permanent, rather than allowing fees billed in 1990 to decrease to a prior base level. This proposal is supported by the Hazardous Waste Funding Committee, which is comprised of industry representatives (see Attachment F for a list of members).

Because the 1988 surcharge was expected to be one-time only, some representatives of the regulated community may object to continuing the higher fee schedule. We expect our Hazardous Waste Funding Committee members to support the higher fees among their peers.

Notice of the proposed fee increase was developed with the assistance of Funding Committee members, and sent to the affected regulated community prior to the July 21 EQC meeting. A "Chance to Comment" was sent to the regulated community and other interested parties, and notice was published in newspapers of general circulation prior to the October 10 public hearing for the final rule. This gave business managers time to prepare for the 1989 billing under the temporary rule, and to comment on the proposed final rule.

Three businesses and an Oregon Representative provided testimony (see Attachments D and E). The comments were primarily opposed to the amendments because of two main concerns about the fee schedule structure. The first concern is that as some companies reduce their waste and, therefore, their fees, the Department will continue to ask remaining generators to pay more to make up for the lost revenue. The second main concern is that companies shipping waste to a reclaimer or recycler are assessed fees at the same rate as those sending it to a disposal facility.

Meeting Date: 12/1/89
Agenda Item: L
Page 4

PROGRAM CONSIDERATIONS:

The proposed fee schedule is necessary to maintain the Hazardous Waste Program at the current level (35 FTE), but does not provide for program enhancement in the 1989-91 biennium. The proposal in combination with an increased number of fee-paying generators will alleviate the projected shortfall for this biennium.

The staff report for the temporary rule amendment projected a \$75,000-200,000 shortfall even with the proposed fee schedule. The fee revenue figures used in these projections were calculated assuming a 96% fee collection rate, and the same 550 generators and TSD facilities as were invoiced in 1988.

Now that the 1989 billing has been prepared, the number of fee paying generators has increased to approximately 600. If this number of generators and the amount of waste generated is maintained for the 1990 billing, the budget requirements will be met.

There is continued concern, however, over funding for the next biennium and beyond. The reasons for this are discussed further below. Therefore, the hazardous waste program will work with a new Hazardous Waste Advisory Committee during the coming year to stabilize program funding.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. For fee schedule changes:

A. Amend the rules to delete the surcharge, allowing fees to be billed at the base fee rate in place prior to 1988.

Billings for 1989 and 1990 at the lower, pre-1988 rates would result in a shortfall of approximately \$400,000 at the end of the biennium.

B. Amend the rules to maintain the 1988 fee schedule.

Maintaining the 1988 fee schedule will eliminate the projected biennial shortfall. This is due in part to the discovery of an increased number of fee-paying generators.

There is still concern over long term funding stability and the program funding options will be a priority issue to be addressed by the new Hazardous Waste Advisory Committee over the coming year.

2. For the housekeeping changes:

A. Implement housekeeping changes, including changing the words "fee period" to "billing cycle" and deleting interest charges on late payments.

The change of the words "fee period" to "billing cycle" clarifies that while fees are assessed according to the amount of waste generated in the previous calendar year, the billing and collections cycle used by the Department for administrative purposes is based on a fiscal year.

The changes relating to penalties, interest and collection fees are to clarify the rule and to delete daily compounded interest on late fees. Delinquent payments are currently assessed interest and a late charge of \$200 every 90 days the invoice is overdue. In most cases, the late charge is the more significant incentive for payment. Interest charges are insignificant for the smaller fee amounts relative to the penalty charge, and it often costs the Department more to collect the interest than is received.

The proposed amendments do not change the 20 percent surcharge added to any delinquent invoice referred to the Department of Revenue for collection.

B. Leave the existing rules about the interest charges as they are.

This would continue higher costs to the Department of collecting overdue fee payments.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends amending the rules to maintain the 1988 fee schedule (Alternative 1B).

The effect on the regulated community will be that future billings will be based on the same fee rates as the 1988 billing (see Attachment B, Fiscal and Economic Impact Statement) as long as this rule remains in effect. The Hazardous Waste Funding Committee will support this alternative among their peers. As long as the number of facilities and the amount of waste generated remains close to the 1989 estimate, the funding shortfall for this biennium will be eliminated under the proposed rule.

The Department also recommends incorporating the housekeeping

Meeting Date: 12/1/89
Agenda Item: L
Page 6

changes stated in Alternative 2A. These changes will reduce the cost to the Department of pursuing overdue payments.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

Department policy has been to actively seek delegation of federal programs, to develop state programs in the absence of federal programs, and to help fund these programs with fees from the regulated community.

Fees from the regulated community support approximately one half of the hazardous waste program budget, which is consistent with overall Department funding. These annual fees are collected from generators who are required to notify and manifest their waste (small quantity and fully regulated), and from treatment, storage and disposal facilities.

Federal funding has remained at the same level for the last two years and increased slightly this biennium. Anticipated revenue from the state general fund will pay for approximately one-fourth of the program. Due to passage of a decision package, general funds increased but that increase is tied to specific increased expenditures for the activities required by the package.

If the Department is going to continue to operate the hazardous waste program at the current biennial level of approximately \$4 million and 35 FTE, and is going to seek authorization for more of the federal program, a stable funding base must be established, which will include substantial funding by the regulated community.

There is a fundamental funding problem built into the structure of the generator schedule because it is based on the amount of waste generated; the more you reduce, the less you pay. This characteristic of the schedule provides an incentive for waste reduction, especially for larger companies who pay higher fees, and it is working.

The program's expenditures or workload do not necessarily decrease as the volume of waste generated is reduced, however, and this is one reason there continues to be a threat of revenue shortfall. DEQ's workload, rather, is dependent on the number of generators and facilities regulated and on administrative requirements of the federal program.

One of the tasks of the new Hazardous Waste Advisory Committee will be to evaluate and propose changes to overall program funding with the goal of establishing long term funding stability. This will include review of the fee schedule.

Meeting Date: 12/1/89

Agenda Item: L

Page 7

As directed by the Commission at its July, 1989 meeting, the program and the Advisory Committee will also consider incorporating a recycling incentive into the fee schedule. If fees for recycled waste are reduced or eliminated, the program's revenue would decline. The workload would not decrease because the Department would maintain responsibility for regulatory oversight and tracking of these generators.

The proposed fee schedule is not a complete answer to the long term funding problem. The proposal will, however, provide sufficient revenue to meet short term budget requirements so that the Department can seek alternative solutions without facing a funding crisis this biennium.

ISSUES FOR COMMISSION TO RESOLVE:

There are no further issues for the Commission to resolve at this time. The Commission directed the Department to consider incorporating an incentive to recycle into the fee schedule. The Department intends to explore this and the following additional issues related to hazardous waste program funding over the next year:

1. Whether the program should be funded to such a great extent by the community we regulate.
2. What alternative funding sources and alternative fee schedule structure could be established to offset decreased fee revenue that will result from waste reduction. Fee revenue would be further reduced if the Commission adopts a policy to decrease or eliminate fees for recycled waste.

INTENDED FOLLOWUP ACTIONS:

- * Collect hazardous waste fees in fall of 1989 based on the fee schedule in the temporary rule, and in the summer of 1990 based on the same fee schedule adopted as a final rule.
- * Share the public testimony received during this rulemaking process with the new Hazardous Waste Advisory Committee.
- * Review the program's overall funding strategy and the fee structure with the advisory committee in order to stabilize program funding.
- * Report back to the Commission on the Department's findings and recommendations related to the fee schedule structure and overall funding strategy.

Meeting Date: 12/1/89
Agenda Item: L
Page 8

The following information was provided by the Department of Justice, Office of the Inspector General, regarding the activities of the American Bar Association (ABA) and the American College of Trial Lawyers (ACTL) in connection with the proposed changes to the rules of professional conduct. The ABA and ACTL have been identified as the primary organizations involved in the development of the proposed changes. The Department is currently reviewing the proposed changes and will be providing a report on the results of its review in the near future.

Approved:

Section: Katherine Latorick
Division: Stephanie Harlock
Director: Jul Hen

Report Prepared By: Debi Sturdevant, HSW

Phone: 229-6590

Date Prepared: November 15, 1989

(DJS:Debis:HSW)
(E:\wordp\fees89)
(11/15/89)

Before the Environmental Quality Commission
of the State of Oregon

In the Matter of Amending) Proposed Amendments
OAR 340, Divisions 102 and 105)

Unless otherwise indicated, material enclosed in brackets [] is proposed to be deleted and material that is underlined is proposed to be added.

Hazardous waste generator fees.

340-102-065 (1) each person generating hazardous waste shall be subject to an annual fee based on the weight of hazardous waste generated during the previous calendar year. The billing cycle ~~{fee-period}~~ shall be the state's fiscal year (July 1 through June 30) and shall be paid annually ~~{by-July 1}~~ within 30 days of the invoice date. A late charge in the amount of \$200~~;~~ ~~plus interest compounded daily at the rate established under ORS 305.220;~~ ~~shall also~~ shall be paid~~;~~ if the fees are not received by the due date on the invoice. An additional \$200 late charge shall also be paid each 90 days that the ~~{fees}~~ invoice remains unpaid. ~~{Fees}~~ Invoices 90 days or more overdue shall also be increased by 20 percent and referred to the state Department of Revenue for collection.

(2) For the purpose of determining appropriate fees, each hazardous waste generator shall be assigned to a category in Table 1 of this Division based upon the amount of hazardous waste generated in the calendar year identified in section (1) of this rule except as otherwise provided in section (5) of this rule.

Table 1

Hazardous Waste

| Generation Rate (Metric Tons/Year) | [Base] [-Fee] | [One-Time] [Surcharge] | [Total] Fee |
|---------------------------------------|------------------|---------------------------|----------------|
| <1..... | [125] | [105] | 230 |
| 1 but <3..... | [375] | [310] | 685 |
| 3 but <14..... | [688] | [562] | 1,250 |
| 14 but <28..... | [1,094] | [906] | 2,000 |
| 28 but <142..... | [2,469] | [2,031] | 4,500 |
| 142 but <284..... | [5,594] | [4,606] | 10,200 |
| >284..... | [7,938] | [6,542] | 14,480 |

(3) For the purpose of determining appropriate fees, hazardous waste shall be included in the quantity determinations required by section (1) of this rule as follows:

(a) Except as provided in subsection (b) of this section, all quantities of "listed" and "characteristic" hazardous waste shall be counted that are:

- (A) Accumulated on-site for any period of time prior to subsequent management;
- (B) Packaged and transported off-site;
- (C) Placed directly in a regulated on-site treatment or disposal unit;

or

(D) Generated as still bottoms or sludges and removed from product storage tanks.

(b) Hazardous wastes shall not be counted that are:

(A) Specifically excluded from regulation under 40 CFR 261.4 or 261.6;

(B) Continuously reclaimed on-site without storage prior to reclamation. (Note: Any residues resulting from the reclamation process, as well as spent filter materials, are to be counted);

(C) Managed in an elementary neutralization unit, a totally enclosed treatment unit, or a wastewater treatment unit;

(D) Discharged directly to a publicly-owned wastewater treatment works, without first being stored or accumulated (Note: Any such discharge must be in compliance with applicable federal, state and local water quality regulations); or

(E) Already counted once during the calendar month, prior to being recycled.

(4) In order to determine annual hazardous waste generation rates, the Department may use generator quarterly reports required by rule 340-102-041; treatment, storage and disposal reports required by rule 340-104-075; information derived from manifests required by 40 CFR 262.20, and any other relevant information. For wastes reported in the units of measure other than metric tons, the Department will use the following conversion factors: 1.0 metric tons = 1,000 kg = 2,200 lbs. = 35.25 cubic feet = 264 gallons = 1.10 tons (English) = 4.80 drums (55 gallon).

(5) Owners and operators of hazardous waste treatment, storage and disposal facilities shall not be subject to the fees required by section (1)

of this rule for any wastes generated as a result of storing, treating or disposing of wastes upon which an annual hazardous waste generation fee has already been paid. Any other wastes generated by owners and operators of treatment, storage and disposal facilities are subject to the fees required by section (1) of this rule.

(6) All fees shall be made payable to the Department of Environmental Quality.

~~{(7) -The fee schedule in this rule shall be reconsidered by the Environmental Quality Commission, prior to September 30, 1989.}~~

Permit fees.

340-105-110 (1) each person required to have a hazardous waste storage, treatment or disposal permit (management facility permit) shall be subject to a three-part fee consisting of a filing fee, an application processing fee and an annual compliance determination fee as listed in rule 340-105-113. The amount equal to the filing fee, application processing fee and the first year's annual compliance determination fee shall be submitted as a required part of any application for a new permit. The amount equal to the filing fee and application processing fee shall be submitted as a required part of any application for renewal or modification of an existing permit.

- (2) As used in this rule, the following definitions shall apply:
- (a) The term management facility includes, but is not limited to:
 - (A) Hazardous waste storage facility;

(B) Hazardous waste treatment facility; and

(C) Hazardous waste disposal facility.

(b) The term hazardous wastes includes any residue or hazardous wastes as defined in Division 101 or 40 CFR Part 261 handled under the authority of a management facility permit.

(c) The term license and permit shall mean the same thing and will be referred to in this rule as permit.

(3) The annual compliance determination fee shall be paid for each year a management facility is in operation and, in the case of a disposal facility, for each year that post-closure care is required. The billing cycle [fee-period] shall be the state's fiscal year (July 1 through June 30) and shall be paid annually [by-July-1] within 30 days of the invoice date. A late charge in the amount of \$200[-,plus-interest compounded-daily-at-the-rate-established-under-ORS-305.220,] shall [also] be paid[-,] if the fees are not received by the due date on the invoice. An additional \$200 late charge shall also be paid each 90 days that the [fees] invoice remains unpaid. [Fees] Invoices 90 days or more overdue shall also be increased by 20 percent and referred to the state Department of Revenue for collection. Any annual compliance determination fee submitted as part of an application for a new permit shall apply to the [fiscal] calendar year the permitted management facility is put into operation. For the first year's operation, the full fee shall apply if the management facility is permitted on or before April 1. Any new management facility permitted after April 1 shall not owe a compliance determination fee until [July-1] the invoice due date of the following year. The Director may alter the due date for the annual compliance determination fee upon receipt of a justifiable request from a permittee.

(4) For the purpose of determining appropriate fees, each management facility shall be assigned to a category in rule 340-105-113 based upon the amount of hazardous waste received and upon the complexity of each management facility. Each management facility which falls into more than one category shall pay whichever fee is higher. The Department shall assign a storage and treatment facility to a category on the basis of design capacity of the facility. The Department shall assign a new disposal facility to a category on the basis of estimated annual cubic feet of hazardous waste to be received and an existing disposal facility on the basis of average annual cubic feet of hazardous waste received during the previous three calendar years.

(5) Where more than one management facility exists on a single site, in addition to the compliance determination fee required by rules 340-105-110(3) and (4), a flat fee of \$250 shall be assessed for each additional management facility.

(6) Modifications of existing, unexpired permits which are instituted by the Department due to changing conditions or standards, receipt of additional information or any other reason pursuant to applicable statutes and do not require re-filing or review of an application or plans and specifications shall not require submission of the filing fee or the application processing fee.

(7) Upon the Department accepting an application for filing, the filing fee shall be nonrefundable.

(8) The application processing fee, except for disposal permits, may be refunded in whole or in part when submitted with an application if either of the following conditions exist:

(a) The Department determines that no permit will be required.

(b) The applicant withdraws the application before the Department has approved or denied the application.

(9) The annual compliance determination fee may be refunded in whole or in part when submitted with a new permit application if either of the following conditions exist:

(a) The Department denies the application.

(b) The permittee does not proceed to construct and operate the permitted facility.

(10) All fees shall be made payable to the Department of Environmental Quality.

~~{(11) The fee schedule in rule 340-105-113 shall be reconsidered by the Environmental Quality Commission, prior to September 30, 1989.}~~

Fee Schedule

340-105-113 (1) Filing Fee. A filing fee of \$50 shall accompany each application for issuance, reissuance or modification of a hazardous waste management facility or PCB treatment or disposal facility permit. This fee is nonrefundable and is in addition to any application processing fee or annual compliance determination fee which might be imposed.

(2) Application Processing Fee. An application processing fee shall be submitted with each hazardous waste management facility or PCB treatment or disposal facility permit application or Authorization to Proceed request, if such a request is required under OAR 340-120-005. The intent of the application processing fee is to cover the Department's costs in

investigating and processing the application. For all applications, any portion of the application processing fee which exceeds the Department's expenses in reviewing and processing the application shall be refunded to the applicant. In the case of permit reissuance, a fee is not initially required with the application. Within sixty days of receipt of the application, the Department will estimate its costs to reissue the permit and will bill the applicant for those costs, up to the amount specified in subsection (2)(b) of this rule. The application will be considered incomplete and processing will not proceed, until the fee is paid. In the event that the Department underestimates its costs, the applicant will be assessed a supplemental fee. The permit shall not be reissued until all required fees are paid. The total fees paid shall not exceed the amount specified in subsection (2)(b) of this rule. The amount of the fee shall depend on the type of facility and the required action as follows:

(a) A new permit:

- (A) Storage facility \$ 70,000
- (B) Treatment facility 70,000
- (C) Disposal facility 70,000
- (D) Disposal facility - post closure 70,000

(b) Permit Reissuance:

- (A) Storage facility 50,000
- (B) Treatment facility 50,000
- (C) Disposal facility 50,000
- (D) Disposal facility - post closure 50,000

(c) Permit Modification - major:

- (A) Storage facility No Fee

- (B) Treatment facility No Fee
- (C) Disposal facility No Fee
- (D) Disposal facility - post closure No Fee
- (d) Permit Modification - minor:
- All Categories No Fee

(3) Annual Compliance Determination Fee. Except as provided in rule 340-105-110(5), in any case where a facility fits into more than one category, the permittee shall pay only the highest fee as follows:

| | [Base] | [One-Time] | [Total] |
|---|----------------|--------------------|------------|
| | <u>[-Fee-]</u> | <u>[Surcharge]</u> | <u>Fee</u> |
| (a) Storage facility: | | | |
| (A) 5-55 gallon drums or 250 gallons total or 2,000 pounds | [1,063] | [877] | 1,940 |
| (B) 5 to 250 - 55 gallon drums or 250 to 10,000 gallons total or 2,000 to 80,000 pounds | [2,188] | [1,232] | 3,420 |
| (C) >250 - 55 gallon drums or >10,000 gallons total or >80,000 pounds | [4,375] | [3,605] | 7,980 |
| (D) Closure | [1,875] | [2,115] | 3,990 |
| (b) Treatment Facility: | | | |
| (A) <25 gallons/hour or 50,000 gallon/day or 6,000 pounds/day | [1,063] | [877] | 1,940 |

| | | | |
|---|---------|---------|---------|
| (B) 25-200 gallons/hour or 50,000 to 500,000 gallons/day or 6,000 to 60,000 pounds/day. | [2,188] | [1,232] | 3,420 |
| (C) >200 gallons/hour or >500,000 gallons/day or >60,000 pounds/day. . . . | [4,375] | [3,605] | 7,980 |
| (D) Closure. | [4,375] | [3,605] | 7,980 |
| (c) Disposal Facility: | | | |
| (A) <750,000 cubic feet/year or <37,500 tons/year. | | | 100,000 |
| (B) 750,000 to 2,500,000 cubic feet/year or 37,500 to 125,000 tons/year | | | 150,000 |
| (C) >2,500,000 cubic feet/year or >125,000 tons/year | | | 200,000 |
| (D) Closure. | [7,500] | [6,180] | 13,680 |
| (d) Disposal Facility - Post Closure: | | | |
| All categories | [7,500] | [6,180] | 13,680 |

Before the Environmental Quality Commission
of the State of Oregon

In the matter of Amending)
OAR Chapter 340,) Statement of Need for Rule
Divisions 102 and 105) Amendment and Fiscal and
Economic Impact

1. Statutory Authority

ORS 466.165 provides that fees may be required of hazardous waste generators and of owners and operators of hazardous waste treatment, storage or disposal facilities (TSDs). The fees shall be in amounts determined by the Commission to be necessary to carry on the Department's monitoring, inspection and surveillance program established under ORS 466.195 and to cover related administrative costs.

ORS 466.045 sets limits on permit application processing fees for new and existing hazardous waste treatment and disposal sites and establishes the manner in which such fees are to be assessed.

ORS 466.020 requires the Commission to adopt rules pertaining to generators of hazardous waste and to TSD facilities.

ORS 183.335 allows an agency to amend a rule without prior notice or hearing on a temporary basis, effective 180 days.

2. Statement of Need

The existing rules (OAR 340-102-065 & 340-105-110) require the Environmental Quality Commission to reconsider the fee schedule prior to September, 1989.

Maintenance of the 1988 fee schedule is needed to partially offset a projected biennial revenue shortfall of approximately \$400,000 for the Department's hazardous waste program.

Failure to amend the fee rule would leave the program with a budget shortfall during the 1989-91 biennium. Cutbacks necessitated by this shortfall could increase the threat to public health and safety and the environment from the mismanagement of hazardous waste. In addition, program cutbacks could result in the loss of the state's authorization to manage the federal hazardous waste program.

It could also result in an unstable funding situation going into the 1991-93 biennium because there would be no fee revenue carryover to fund the program until new revenue is received.

3. Principal Documents Relied Upon

- A. Oregon Revised Statutes, Chapter 466 and 183.
- B. Oregon Administrative Rules, Chapter 340, Divisions 102 and 105.
- C. The Governor's budget for the 1989-91 biennium.

4. Statement of Fiscal and Economic Impact

The proposed fee schedule would pose no fiscal impact to businesses above the amount paid in June of 1988. This amount would be higher than that expected under the existing rule, however, because the existing rule would decrease the fees to the base fee level. Therefore, there would be some fiscal impact to generators and TSD facilities by amending the fee schedule as recommended.

Under the proposed fee schedule, hazardous waste generators and TSD facilities will pay the same fees they were billed in June 1988. Under the existing rule, companies would pay the base fees without the surcharge in subsequent billings. Fee revenues generated with and without the surcharge, given the 1989 number and distribution of generators and TSD facilities, are shown in Table 1.

Table 1. Total Annual Fees Assessed
(Based on the Number and Distribution of Generators and TSD Facilities Invoiced in 1989)

| | With Surcharge (proposed rule) | Without Surcharge (existing rule) | Difference |
|---------------------|-----------------------------------|--------------------------------------|---------------|
| From 613 Generators | \$ 844,630 | \$ 462,981 | \$ 381,649 |
| From 22 TSD Fac.s | <u>451,870</u> | <u>359,251</u> | <u>92,619</u> |
| TOTAL | 1,296,500 | 822,232 | 474,268 |

The generator fee schedule categorizes businesses according to the amount of waste they generate in a year. Table 2 shows the number of generators in each of these categories and the total difference in revenue paid with and without the surcharge for that group of businesses.

Similarly, the TSD facilities pay according to the type of activity and their design capacities or the amount of waste

they accept. Table 3 shows the number of facilities invoiced under each category and the difference in revenue generated with and without the surcharge.

Table 2. Number of Generators and Annual Revenue Difference With and Without the Surcharge, by Fee Schedule Category

| <u>Category</u> | <u>No. of Generators</u> | <u>Revenue Difference</u> |
|-----------------|--------------------------|---------------------------|
| <1 MT/year | 232 | \$24,360 |
| 1 - <3 | 190 | 58,900 |
| 3 - <14 | 94 | 52,828 |
| 14 - <28 | 29 | 26,274 |
| 28 - <142 | 47 | 95,457 |
| 142 - 284 | 7 | 32,242 |
| >284 | <u>14</u> | <u>91,588</u> |
| TOTAL | 613 | \$381,649 |

Table 3. Number of Facilities and Annual Revenue Difference With and Without the Surcharge, by Fee Schedule Category

| <u>Category</u> | <u>No. of Fac.s</u> | <u>Revenue Difference</u> |
|--|---------------------|---------------------------|
| Storage: | | |
| B) 5-250 55 gal drums, 250-10,000 gal, or 2,000-80,000 lbs | 1 | \$ 1,232 |
| C) >250 55 gal drums, >10,000 gal, or >80,000 lbs | 6 | 21,630 |
| D) Closure | 7 | 14,805 |
| Treatment: | | |
| A) <25 gal/hr, 50,000 gal/day, or 6,000 lbs/day | 1 | 877 |
| C) >200 gal/hr, >500,000 gal/day, or >60,000 lbs/day | 1 | 3,605 |
| D) Closure | 2 | 7,210 |
| Disposal: | | |
| A) <750,000 cubic ft/yr or <37,500 tons/year | 1 | 0 |
| B) 750,000-2,500,000 cu ft/yr or 37,500-125,000 tons/yr | 1 | 0 |
| D) Closure | 4 | 24,720 |
| E) Post-Closure | <u>3</u> | <u>18,540</u> |
| TOTAL | 27* | \$ 92,619 |

* The total billed does not equal the sum of the categories because some facilities are invoiced for more than one category.

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

PUBLIC HEARING ON PROPOSED AMENDMENTS TO THE HAZARDOUS WASTE FEE SCHEDULES

Hearing Date: 10/10/89

Comments Due: 10/13/89

**WHO IS
AFFECTED:**

Persons who manage hazardous waste, including generators, and owners and operators of hazardous waste treatment, storage and disposal facilities (TSD facilities).

**WHAT IS
PROPOSED:**

The Department of Environmental Quality (DEQ) proposes to permanently amend rules concerning hazardous waste fees, OAR 340-102-065, OAR 340-105-110 and 340-105-113. The amendments which were adopted as a temporary rule July 21, 1989, are necessary to help offset a projected biennial revenue shortfall.

**WHAT ARE THE
HIGHLIGHTS:**

Annual fees for generators of hazardous waste and for TSD facilities are proposed to be maintained at the level of the 1988 schedule. The existing rule, adopted April 29, 1988, includes a one-time only surcharge for 1988 hazardous waste fees, and requires the Environmental Quality Commission to reconsider the fee schedule prior to September 30, 1989. Without the amendment, fees would decrease to the base fee only level.

The Hazardous Waste Funding Committee, comprised of industry representatives, has reviewed and recommended the proposed schedules for generators and treatment, storage and disposal facilities. The Department has reviewed different funding approaches with the Hazardous Waste Funding Committee and the Hazardous Waste Advisory Committee and is proposing to adopt the Funding Committee's recommendation to maintain fees at the 1988 Hazardous Waste Fee Schedule level. The Department is further proposing that interest charges on late payments be deleted.

Failure to adopt the proposed fee rule amendment would result in a reduction in compliance activities. This reduction could increase the threat to public health, safety and the environment from the mismanagement of hazardous waste and could result in a loss of the state's authorization to manage the federal hazardous waste program in Oregon.

(over)

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.

C-1



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

11/1/86

A CHANGE TO COMMENT

HOW TO COMMENT:

A public hearing is scheduled for:

9:00 a.m.
Tuesday, October 10, 1989
DEQ's Portland Office
811 S.W. Sixth Avenue
4th Floor Conference Room

Written comments should be submitted at the public hearing or sent to:
Attn: Debi Sturdevant, Hazardous Waste Program, DEQ, 811 S.W. Sixth Avenue, Portland, OR 97204 by October 13, 1989, at 5:00 p.m.

WHAT IS THE NEXT STEP:

After the public hearing, DEQ will evaluate the comments, prepare a response to comments, and make a recommendation to the Environmental Quality Commission on December 1, 1989. The Commission may adopt the amendments as proposed, adopt modified amendments as a result of the testimony received, or decline to adopt any amendments.

For more information, call the Hazardous Waste Section at (503) 229-5913 or toll-free at 1-800-452-4011, in the State of Oregon.

HWPD\ZB8387
8/21/89

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE MEMORANDUM

DATE: October 26, 1989

TO: Environmental Quality Commission

FROM: Gary Calaba, Hearing Officer

SUBJECT: Hearing Officer's Report on Proposed Amendments to OAR
340-102-065, OAR 340-105-110, and 340-105-113 to
Permanently Amend Rules Concerning Hazardous Waste Fees.

Summary of Procedure:

Pursuant to public notice, a public hearing was held at 9:00 a.m. on October 10, 1989, in the Department's offices at 811 S.W. Sixth Avenue in Portland. The purpose of the hearing was to receive testimony concerning proposed amendments to the hazardous waste fee regulations listed above. The proposal is to adopt as final rules the current temporary rules (adopted July 21, 1989). Six people attended the hearing, in addition to Department staff. The hearing record was closed at 5:00 p.m. on October 13, 1989.

Oral Testimony

Mr. Morton Michelson, President, Cascade Steel Rolling Mills, Inc., 3200 N. Highway 99E., McMinnville, Oregon, testified. Following is a verbatim transcript of his testimony

"My name is Morton Michelson. I'm the president of Cascade Steel Rolling Mills, McMinnville, Yamhill County. We employ 455 people. I have presented testimony on this subject in a slightly different form on July 21, 1989, at your meeting, I believe was in Corvallis. At that time it was presented in my absence by Mr. Al Arquatis, who is the Safety Director at Cascade Steel.

My comments this morning focus on a couple of different phases of the problem. First of all, I categorically have to state that we reject this fee increase in principle and in substance. When we as an industry cannot live within our projected or mandated budget, we have to cut back. We cannot arbitrarily pass on increases to our customers or clients or we become non-competitive. In this instance it is a state agency, it has no competitor. However, it can inject the same harm by putting

businesses out of existence and people out of work by making them noncompetitive by continually increasing and assessing fees.

One of the major problems here that really underlies this issue this morning is the funding mechanism for this entire program from the very outset. And you have alluded to in part of the staff report part of the problem but you don't address the issue with a solution. And that is, that when the legislature in its infinite wisdom instituted this program, they allowed it to be set up on a fee basis with certain amounts of inputs of federal money and state money. However, the objective of the program was to reduce the waste stream of those that are storing, or regulated or processing. And as the waste stream is reduced due to the success of the program, one would logically assume that the revenues or fees would drop, as they have. Now, we have the subject of today's hearing is with the waste stream going down, and the program being successful, let's increase the fees to those people who are remaining. Or, those people who have done a good job and tried to comply, let's hit them for more money. This is a complete illogical approach to solving this particular problem. And I agree there is a problem in the funding.

The second thing that I'd like to mention is, in our particular case, we have taken the legislation to heart, and are working not only on a regional solution with five other steel mills, but we generate a low level waste, K061. I say low level, it's marginal, it's basically krypton to the hazards and toxics list because of its lead, cadmium, chromium content that is found in some of the dust. In many instances, it is still allowable that this dust be mixed with certain acids and used as fertilizer which can be placed on people's gardens and on farms. So that gives some idea of EPA's current thinking, at least as to the toxicity of this particular element, but for whatever reason, it is on a hazardous waste list and that automatically makes it the same as a PCB or anything other commodity that would be on the higher end of that list.

Now, we have gone to great expense and have modified the dust as it comes out of our furnaces, so that it is no longer in our opinion a waste. It does not go into a landfill any longer, it does not receive stabilization and go into the ground, it is in fact now sold to thermal recovery vendors in Mexico and in Illinois. And they extract the oxides of these valuable trace metals and produce new products for the open market. So, no longer do I have a throw-away waste, now I have a commodity that is held in trade. And to place a fee on a commodity held in trade is, in our opinion, is no more than a selective sales tax. And we don't find that any of our competitors in our industry are being assessed fees on the basis of thermal recovery of material, and therefore, it makes us uncompetitive.

Let me just for a minute trace the creation of this particular commodity. First of all, I don't think that anyone would argue,

necessarily, or at least I haven't seen it on a list, that an abandoned automobile or an old rusted building sitting on a site is a hazard or toxic. Yet, if that steel from that building is taken off the building and trucked to the mill, or the old automobile is dragged in and crushed and taken to the mill, and we put that in our furnace, and we take the paint off of that old building or the paint off of that car, or some of the lead from the catalytic convertor and capture it in the most efficient baghouse in the western United States, then the dust that we have captured by thermally trying to recycle and recover the metal is now a hazardous substance.

The federal EPA has mandated that by August of 1990 you will do thermal recovery. They recognize that the only way in their opinion to properly dispose of the toxicity here is to put it in another furnace and smelt the stuff so that it goes through separation. That is, in fact, exactly what we are doing now not as of August 1990. So, we have complied with the federal objective, we have done something valuable in terms of not putting it into the environment any longer, in terms of landfill, yet we are facing a staggering increase of thousands of dollars of fees because we have complied.

Where is the incentive in this program, in this fee structure, to have a business or an industry continue to try and strive and obtain a better environment when every time you are successful you have to pay more. The entire fee structure should be looked at and the reason for the fee. Secondly, I maintain that we must come back and take a look at the fact that we have created a selective taxation here and you potentially are putting us at an uncompetitive situations relative to mills in California, Utah and the State of Washington.

With that I will conclude this testimony. If there are any questions, I would be happy to answer them or expand on them."

Summary of Written Testimony

Written testimony was received from three people during the comment period and is hereby entered into the record. Copies of the letters are attached. A summary of the written testimony follows.

1. R.J. Hess, Manager, Environmental Sciences, Portland General Electric, Portland, Oregon.

Portland General Electric suggests that DEQ keep the base fee and surcharge separate so that we have the ability to assess or not assess the surcharge as needed to meet revenue requirements. They agree that the interest charge on late fees should be dropped.

PGE also believes that DEQ should promote waste minimization and recycling through our fee schedule. He suggests a 50 percent reduction in fees for those wastes being recycled either on-site or off-site as a "Waste Minimization or Recycling Credit."

2. Richard C. Bird, Manager, Environmental Affairs, Oregon Steel Mills, Portland, Oregon.

Oregon Steel Mills strongly opposes the proposal to permanently impose the fee surcharge, stating that this penalizes hazardous waste generators. The current fee schedule discourages waste generation and has had its desired effect. The amount of waste generated in the state has declined, resulting in reduced fees paid to the state, and prompting the current proposal to increase the fees for each ton of waste generated. Generators who cannot reduce the amount of waste they produce are having to absorb an increasing amount of the financial burden.

Oregon Steel states that they may have to consider changing their raw material from recyclable scrap metal to other material that would produce less waste. "A relatively small amount of hazardous waste would be eliminated, but at the expense of creating vast new quantities of solid waste."

They also state that because their hazardous waste volume increases with the effectiveness of their air pollution control equipment, they are being penalized for having effective controls on their air emissions.

Oregon Steel feels that the proposal would make DEQ's hazardous waste program excessively reliant on fees from the industry they regulate, which should be avoided. The proposal is "at best a short term solution to DEQ's fiscal needs."

Oregon Steel also states that "The general costs of regulating hazardous waste generation should be borne to a greater degree by the public as a whole, which benefits from the products whose manufacture produces the regulated wastes."

3. Representative Mike Burton, District 17, Portland, Oregon.

Responding to Mr. Bird's letter, Rep. Burton states that it appears that Oregon Steel Mills is being penalized for having efficient air emissions equipment and using recyclable scrap. He asks that DEQ give consideration to a credit or incentive which might off-set costs for companies who take these types of positive steps.

Attachments: Hearing attendance list
three letters of testimony

ATTENDANCE LIST SIGN UP SHEET

PUBLIC HEARING: AMENDMENT OF
 RULES CONCERNING HAZARDOUS WASTE FEES
 OAR 340-105-065 340-105-110 AND 340-105-113

OCTOBER 10, 1989

| <u>NAME</u> | <u>ADDRESS</u> | <u>AFFILIATION</u> |
|---------------------|---|-------------------------------------|
| 1. Morton Michelson | 3200 N. 49th. 99E MC MINNVILLE | CASCADE STEEL |
| 2. Arthur Marx | 11330 S.W. Clay Sherwood, OR | Western Compliance Services, Inc |
| 3. Carl S. Kostol | 5285 SW Meadows Rd, Suite 120 L.O., OR 97035 | Environmental Pacific |
| 4. Tom Zelentka | PO Box 10047 Portland | Schrier Steel |
| 5. Rick Garipy | P.O. Box 83180 Portland 97283 | WELCH S. ITRONIC |
| 6. Sandy Gurkewitz | Metro | Metro |
| 7. | | |
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Portland General Electric Company

October 4, 1989
ES- 396-89L
GEN GOV REL 9

Debi Sturdevant
Hazardous Waste Program
Oregon Department of Environmental Quality
811 SW Sixth Avenue
Portland OR 97204

Dear Miss Sturdevant:

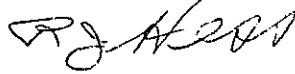
Portland General Electric Company appreciates the opportunity to comment on the proposal to permanently amend OAR 340-102-065 and OAR 340-105-110 to 113, Hazardous Waste Fees. PGE has the following comments:

1. PGE suggests that the DEQ maintain the present system of base fees and surcharges. This gives the DEQ the ability to adjust the surcharge fees each biennium to meet changes in revenue requirements. It provides the DEQ with a means to reduce the costs to the regulated community as the program matures or less hazardous waste is generated, or to increase revenues if specific years require additional funds.
2. PGE agrees that the DEQ should delete the interest rates on late fees as the DEQ has proposed in the Chance to Comment On...Public Hearing On Proposed Amendments to the Hazardous Waste Fee Schedule. Many times invoices from the DEQ are sent to the general address for a business. By the time the invoice gets to the correct department, the deadline has passed. It is not fair to penalize a company for the deficiency in the address of the invoice.
3. PGE believes the DEQ needs to promote waste minimization and recycling. As the rules now stand, the "person" who recycles pays the same fees as the "person" that starts with a new product and continues to produce equivalent amounts of waste. This approach does not send the correct message because it does not make a positive statement for the reduction of hazardous wastes. There should be an incentive in the Hazardous Generator Fees for recycling and waste minimization. Many companies have made a substantial investment in equipment and resources to recycle. The DEQ should recognize this endeavor. PGE suggests a 50 percent reduction in fees for those hazardous wastes which are recycled, either on-site or off-site. The reduction is similar to a Pollution Tax Credit and would send the correct signal to industry, however a Waste Minimization or Recycling Credit is a more appropriate term.

Page 2-Hazardous Waste Fees

If you have questions or need additional information, please contact me at 464-8521 or Lolita Carter at 464-8520.

Sincerely,



R. J. Hess, Manager
Environmental Sciences

LMC
RJH:LMC:

cc Gary Bauer, PGE
Tom Donaca, AOI

[Faint, mostly illegible text, likely bleed-through from the reverse side of the page]

OREGON STEEL MILLS

P.O. Box 2760
Portland, Oregon 97208
Phone (503) 286-9651.

October 13, 1989

Hazardous Waste Program
Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204

Attention: Debi Sturdevant

RE: Proposed increase in hazardous waste fees

Dear Ms. Sturdevant:

The Department of Environmental Quality (DEQ) has proposed to increase fees applicable to hazardous waste generators and operators of treatment, storage and disposal (TSD) facilities. DEQ proposes to do this by making permanent an existing rule that imposes a one-time only surcharge for 1988 hazardous waste fees. Oregon Steel Mills, Inc. strongly opposes this proposed action. It improperly penalizes waste generators, and is ill-considered as a matter of public policy.

The fee schedule for hazardous waste generators is a graduated one, with rates increasing sharply for increasing amounts of waste produced. One of the purposes of this rate structure is to discourage waste generation. The fee system had had its desired effect. The amount of waste generated within the state has declined since this system has been in place. This has produced a concomitant decline in fees paid to the state. This is one of the factors prompting the current proposal for higher fees for each ton of waste generated. The proposed fee schedule would substantially increase waste fees, particularly for larger generators. This will lead to further incentives to reduce the quantity of waste generated which in turn could lead to additional increases in waste fees in the future.

Some waste generators cannot reduce the amount of waste they produce without cutting production or making a wholesale change in their production methods. Such waste generators are severely affected by this proposed fee schedule. As others reduce their wastes and the DEQ fees increase, these generators must absorb an increasing amount of the financial burden imposed by this fee system.

Oregon Steel Mills and other steel producers in this state fall within this category. Oregon Steel utilizes electric arc furnaces to manufacture steel from recyclable scrap metal. Processing this scrap metal in the furnaces inherently produces electric arc furnace dust (designated as K061 waste), which Oregon Steel removes from its stream of air emissions by the use of a baghouse and associated equipment. The amount of K061 dust that Oregon Steel generates is an unavoidable by-product of its steel manufacturing process.

Imposing an increasing proportion of waste fees on generators such as Oregon Steel will have a number of adverse effects, both from an environmental and economic perspective. High fees will force a reevaluation of manufacturing techniques that inherently produce hazardous wastes. In the case of Oregon Steel, this would mean giving consideration to changing its raw material from recyclable scrap to some other material that would produce less waste. The reduction in waste would be achieved by ceasing recycling of scrap metal.

From an overall environmental viewpoint, such a result would be a very bad bargain. A relatively small amount of hazardous waste would be eliminated, but at the expense of creating vast new quantities of solid waste. The hundreds of thousands of tons of scrap metals that are currently recycled and made into new products in Oregon Steel Mills would be left littering city streets and industrial sites, or would be sent to solid waste facilities that are already close to capacity. This represents a very penny-wise and pound-foolish environmental policy.

The amount of K061 dust generated by Oregon Steel is a measure of the effectiveness of the Company's air pollution control equipment. However, the proposed fee schedule as a practical matter penalizes companies like Oregon Steel for having effective controls on air emissions. The better the company is at removing the dust from its emissions, the more waste it generates and the more it would be forced to pay under the fee schedule. In these circumstances, to discourage waste generation through higher fees would actually encourage other forms of pollution. The fees would remove incentives to go beyond minimum legal requirements in controlling air emissions. This is environmentally counterproductive.

Imposing disproportionate costs on generators such as Oregon Steel also could have adverse economic impacts. Such costs would create a competitive disadvantage for affected companies to the extent their competitors in other states were not confronted with similar costs.

Department of Environmental Quality
October 13, 1989
Page 3

The proposed fee schedule not only constitutes an unwise environmental policy, it represents poor public policy as well. The rate structure would make the DEQ hazardous waste program excessively reliant on fees from the industry that it regulates. There are many good reasons to avoid such reliance.

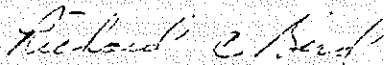
In addition, DEQ would become increasingly dependent for its revenues on only one segment of the regulated community, i.e. waste generators, even though hazardous waste problems relate more to past practices than to wastes currently being generated. This arrangement will produce declining revenues (from lower amounts of waste being produced) at the same time that the department's need for resources will be increasing (due to needed remedial action at past disposal sites, and the costs associated with additional program delegations from the federal government). The proposed fee schedule represents at best a short-term solution to DEQ's fiscal needs.

The state should approach the budgetary issues more systematically. The general costs of regulating hazardous waste generation should be borne to a greater degree by the public as a whole, which benefits from the products whose manufacture produces the regulated wastes. The approach taken in the proposed fee schedule has a disproportionate impact on companies such as Oregon Steel, represents poor public and environmental policy, and likely would be only a short-term solution to the state's fiscal problems. For these reasons, the proposed rule adopting the higher fee schedule should be rejected.

Thank you for your consideration of these points.

Sincerely,

OREGON STEEL MILLS, INC.



Richard C. Bird
Manager, Environmental Affairs

cc: Senator William McCoy
Representative Michael Burton

MIKE BURTON
DISTRICT 17

REPLY TO ADDRESS INDICATED:

- House of Representatives
Salem, Oregon 97310-1347
- 6937 N. Fiske
Portland, Oregon 97203



HOUSE OF REPRESENTATIVES
SALEM, OREGON
97310-1347

October 16, 1989

Debi Sturdevant
Hazardous Waste Program
Dept. of Environmental Quality
811 S.W. 6th
Portland, Oregon 97204

RECEIVED
OCT 17 1989
DEPARTMENT OF ENVIRONMENTAL QUALITY
HAZARDOUS WASTE DIVISION

Dear Ms. Sturdevant,

I received a copy of Richard C. Bird's thoughtful letter regarding proposed increases in hazardous waste fees (Oregon Steel Mills, Oct. 13, 1989). It would appear from what Mr. Bird states that his company is being penalized for having efficient air emissions equipment and using recyclable scrap.

If this is the case, is DEQ giving consideration to a credit or incentive which might off-set costs for companies who take positive steps such as Oregon Steel Mills? If this consideration has not been made I would ask that it be done before a permanent fee schedule is adopted.

Also, I would appreciate a copy of the effects of the temporary one-time fee schedule adopted in 1988 and the purpose behind DEQ's desire to move to a permanent schedule.

Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script that reads "Mike".

Mike Burton
Speaker Pro Tempore

cc: Richard Bird, Oregon Steel Mills

RESPONSE TO COMMENTS

1. COMMENT: There is a major problem, which is the underlying issue, and that is the funding mechanism for the entire program. As waste is reduced by generators, the state's fee revenue drops. Those remaining generators who are complying with the law are asked for increased fees. The entire fee structure should be looked at and the reason for the fee. (Cascade Steel Rolling Mills, Oregon Steel Mills)

RESPONSE: The Department agrees that this is a problem and that the hazardous waste program's total funding strategy, as well as the fee structure, need to be reviewed. This will be a priority issue for the new 1989-91 Hazardous Waste Advisory committee to address over the coming year. Resolution of this issue will take time and careful consideration, however. Meanwhile the program must meet it's fiscal needs for this biennium.

2. COMMENT: One company has gone to great expense to modify its waste so that it can be sold to thermal recovery vendors. These vendors reclaim the valuable trace metals from the dust. The company feels that because it is sold, it is a commodity, not a waste. Also, this thermal recovery process is mandated by EPA after August, 1990. We are complying with the law and the federal objective and yet are faced with a staggering increase in fees. (Cascade Steel Rolling Mills)

RESPONSE: According to the federal regulations, a by-product shipped off-site for reclamation is still a waste. By-product materials are only excluded from the definition of a waste if they are re-usable as they are when they exit the process, without treatment or recovery.

As noted, after August of 1990 thermal recovery will be the federally mandated treatment standard for K061 waste. Thermal recovery will be the minimum acceptable management method and all businesses generating K061 waste will have to meet this standard.

The issue of whether the same fees should be assessed for waste being reclaimed or recycled rather than disposed is one currently under discussion within the Department. This question will also be discussed by the Hazardous Waste Advisory Committee as it reviews the program funding strategy and fee structure. In fact, the Environmental Quality Commission, at its July 1989 meeting,

directed the hazardous waste program to consider incorporating incentives for recycling into the fee structure.

3. COMMENT: Where is the incentive in this fee structure for a business to continue to try to obtain a better environment?
(Cascade Steel Rolling Mills, Oregon Steel Mills)

RESPONSE: There is incentive in the current fee schedule to reduce waste because the fees are assessed according to the amount of waste generated. The current system of reporting and fees also provides an incentive to recycle on-site, because only waste shipped off-site is counted for fee assessments. There is no incentive in the fee schedule, however, for those who ship waste off-site for recycling rather than for treatment and/or disposal. This, again, is recognized as a problem and will be discussed over the next year within the department and with the advisory committee.

4. COMMENT: To promote waste minimization and recycling through the fee schedule, give a 50% fee reduction, or Recycling Credit, for those wastes going to on-site or off-site recycling.
(Portland General Electric)

RESPONSE: The Department appreciates specific, constructive suggestions such as this one. We will bring this proposal to the Hazardous Waste Advisory Committee for discussion as an alternative.

5. COMMENT: Some steel mills are being penalized for having efficient air emissions equipment and using recyclable scrap metal as an input product. DEQ should give consideration to a credit or incentive which might off-set costs for companies who take these types of positive steps. (Oregon Steel Mills, Cascade Steel Rolling Mills, Representative Mike Burton of District 17)

RESPONSE: There is a public benefit in having a market for recyclable scrap metal to reduce the solid waste volume. If there is no economic benefit to the company to use scrap metal rather than virgin raw input products, perhaps society should provide a benefit. If a hazardous waste is produced, however, that waste must still be properly managed and disposed and regulatory oversight by a public agency is still required.

This is an important issue, but a larger one than can be resolved within the context of the current fee proposal being submitted to meet an immediate fiscal need of the hazardous waste program. This issue will be brought to the Hazardous Waste Advisory

Committee as they consider the program funding and fee schedule over the next year, and will also be discussed with the Department's solid waste, waste reduction and air quality programs.

6. COMMENT: One commentor suggested that DEQ keep our current system of base fees and surcharges and assess the surcharge as needed to meet revenue requirements. (Portland General Electric)

RESPONSE: The hazardous waste program's budget needs are not expected to decline and, therefore, the higher fee schedule is recommended to continue until an alternative funding strategy and fee schedule are established. A surcharge is intended to be a short term solution to an unexpected budget shortfall, but because our long term budget needs are expected to stay at the current level, it would not be appropriate to continue to call the additional fee revenue assessed a surcharge.

7. COMMENT: We agree with dropping the interest charges on late fees. Sometimes the invoice is sent to a general address and by the time it gets to the correct department the deadline is passed. It is not fair to penalize a company for the deficiency in the address of the invoice. (Portland General Electric)

RESPONSE: There is still a \$200 late fee which will be assessed for every 90 days the fee is overdue. The interest was not dropped for the reason stated above. Generators should keep the hazardous waste program informed as to their most current mailing address and contact person for the invoice. If DEQ makes a mistake in the fee assessment or mailing, the late charge can be appealed on a case by case basis.

8. COMMENT: The State can make the businesses subject to its fees non-competitive. The hazardous waste fees are a selective taxation that potentially put a company in an uncompetitive situation relative to mills in California, Utah and Washington. (Cascade Steel Rolling Mills)

RESPONSE: The Department's Hazardous Waste Program administers the Resource Conservation and Recovery Act of 1984 under authorization from the Environmental Protection Agency. We minimize the costs as much as possible while carrying out the administration of this federally mandated regulatory program. The program also reduces the cost to industry by splitting the burden of funding between the general public and the regulated community.

The Hazardous Waste Program routinely works with advisory committees which include members of the regulated community to address important issues. Over the last biennium we worked with advisory committees (see members lists in Attachments F & G) to develop the current proposal, and we will continue to work with a new committee over the next biennium to reach a long term solution to the fee structure and the larger issue of adequate and equitable funding for the program.

10. COMMENT: One company strongly opposes the fee surcharge because it penalizes hazardous waste generators. "The general costs of regulating hazardous waste generation should be borne to a greater degree by the public as a whole, which benefits from the products whose manufacture produces the regulated wastes," (Oregon Steel Mills).

RESPONSE: The hazardous waste fee provides slightly less than 50 percent of the funding for the hazardous waste program. State law gives DEQ the authority to assess fees so that the cost of the program could be shared by the public and by the community requiring the regulatory oversight.

Please also refer to response number nine above.

11. COMMENT: The proposal would make DEQ's hazardous waste program excessively reliant on fees from the industry it regulates, which should be avoided. It is "at best a short term solution to DEQ's fiscal needs."

RESPONSE: The Department agrees that this is a short term solution to the fiscal needs of the hazardous waste program. The issue of the desirability of being nearly 50 percent reliant on fees from the industry we regulated will be part of the discussion of overall program funding to occur with the advisory committee over the coming year. It should be noted that almost 50 percent of the Department's entire budget is funded by fee revenue, this is not unique to the hazardous waste program.

RTC 11/15/89

HAZARDOUS WASTE FUNDING COMMITTEE MEMBERSHIP LIST

Frank Deaver
Tektronix, Inc.
Beaverton

Jason Boe
Jason Boe & Associates
Portland

Douglas Richardson
Great Western Chemical Co.
Portland

Tom Donaca
Associated Oregon Industries
Portland

Diane Stockton
Omark Industries
Milwaukie

John Pittman
Wacker Siltronic Corp.
Portland

Robert Ferguson
Rhone-Poulenc
Portland

Richard Zweig
Chem-Security Systems, Inc.
Arlington

Terry Virnig (alternate)
Chemical Waste Mgmt.
Portland

HAZARDOUS WASTE PROGRAM ADVISORY COMMITTEE
MEMBERSHIP LIST

Mr. Frank Deaver
Tektronix, Inc.
Beaverton

Ms. Diane Stockton
Omark Industries
Milwaukie

Mr. Rich Barrett
Willamette Industries - Duraflake
Albany

Mr. Jeffrey E. Detlefsen
Attorney at Law
Portland

Ms. Quincy Sugarman
OSPRIG
Portland

Ms. Jean Cameron
Oregon Environmental Council
Portland

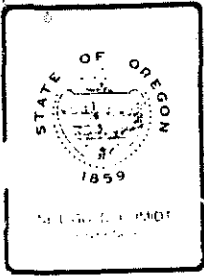
Mr. Jack Payne
CH2M-Hill
Portland

Ms. Alice Weatherford-Harper
Ione

Mr. Gary Bauer
Portland General Electric
Portland

Dr. Marshall Cronyn
Reed College
Portland

Mr. John Goss
Service Manager - Alexander Motors
Portland



Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission
From: Director
Subject: Agenda Item O, April 29, 1988, EQC Meeting

Proposed Adoption of Amendments to the Hazardous Waste Fee Rules, OAR 340, Divisions 102 and 105.

Problem Statement

The Department's Hazardous Waste Program has determined that during the 1987-1989 biennium, a fee revenue shortfall of \$490,000 will occur. The shortfall is the difference between the projected fee revenues included in the Program's proposed 1987-1989 budget, and actual fee revenues.

Background

Prior to the 1987 Legislative Session, a 9-member Hazardous Waste Program Funding Committee, made up of representatives from the regulated industries in Oregon, reviewed the overall hazardous waste program and recommended an approach for long-term funding of the program. The committee looked at the required activities and effort necessary to maintain an authorized state program and also evaluated other aspects of an effective hazardous waste program for Oregon. The committee found that the Department's current program was understaffed and underfunded to adequately cover the demands of the program.

Funding for the hazardous waste program is derived from three sources: A U.S. Environmental Protection Agency grant, State General Fund, and other funds (primarily fees from the regulated community). The committee recommended a balanced funding approach. It agreed that there should be increases in the fees paid by generators of hazardous waste and by facilities that treat, store or dispose of hazardous waste (TSD facilities). The committee also felt that an increase in state general funds was warranted. Historically, the program has received little general fund support and has primarily been funded by federal grant money and fees on industry. These recommendations were included in the Department's proposed budget for fiscal years 1988 and 1989.

In 1987, the Oregon Legislature significantly increased general fund support for the hazardous waste program, as the funding committee had recommended. The program was appropriated approximately \$761,011 in general

Agenda Item O
April 29, 1988 EQC Meeting
Page 2

funds for the current biennium. However, \$300,000 of that amount was initially held in reserve. The Department returned to the Legislative Emergency Board in January 1988 and obtained \$283,800 of the reserved amount.

As noted above, the funding committee's recommendations also included an increase in the amount of fees paid by generators of hazardous waste and by hazardous waste TSD facilities. The committee agreed that fees should be increased to provide a total of approximately \$1,510,000 in revenue for the biennium. On July 13, 1987, the Commission adopted amendments to the hazardous waste fee schedules, calculated to generate this amount of revenue. The new fees were assessed in September 1987.

The Department now finds that the fee revenues for the 1987-1989 biennium are less than anticipated. The new fee schedule did not produce the required \$755,000 (one-half of the \$1,510,000) for 1988. Only about \$510,000 has been received for 1988. Assuming that the fee revenue for 1989 will also total approximately \$510,000, a shortfall of \$490,000 is projected for the biennium:

$$\begin{array}{r} 2 \times \$510,000 = \$1,020,000 \\ \$1,510,000 - \$1,020,000 = \$490,000 \end{array}$$

The projected shortfall is the result of several factors: first, the Department was unable to accurately predict the number of new generators who would enter the system last year and where they would fit into the fee schedule; second, the Department underestimated waste minimization efforts by generators; and third, some generators dropped out of the system, for various reasons.

At the Commission's January 22, 1988 meeting, the Department informed the Commission that it intended to reconvene the funding committee to determine how to best overcome the shortfall. The Commission granted the Department authorization to conduct public hearings on the proposal to be developed by the funding committee and the Department.

The Department also proposes amendments to the rules concerning permit application filing and processing fees for hazardous waste storage facilities and for the modification of hazardous waste facility permits. The Department proposes to restore the fees for storage facilities, which were temporarily suspended while a clarification of statutory authority was being obtained. Also, for lack of clear statutory authority, the Department is now proposing to temporarily suspend the fees required for permit modification.

Public hearings on these matters were held, in Portland, on March 24 and 30, 1988. A total of 17 people attended, in addition to Department staff. Three people testified at the hearings and seven people submitted written testimony. In general, the commentators reluctantly accepted the proposed fee

increases, with the admonishment that the Department must do a better job of collecting fees from non-compliers, and that the proposed surcharge must be for one-time only. A Hearing Officer's Report and the Department's Response to Comment are attached.

The Department now proposes adoption of amendments to the hazardous waste fee rules. A Statement of Need for Rulemaking is attached. The Commission is authorized to adopt rules pertaining to hazardous waste fees by ORS 466.020, 466.045, and 466.165.

Alternatives and Evaluation

As stated previously, the hazardous waste program is funded from three sources: A Federal EPA grant, State General Fund, and Other Funds (primarily fee revenues). For the current biennium, the federal grant is \$928,875. State General Fund contribution is \$761,011. Fee revenue was projected to be \$1,510,000. However, based upon fees collected to date, only about \$1,020,000 (2 X \$510,000) will be received. This results in a shortfall in fee revenue of \$490,000.

The Hazardous Waste Program Funding Committee was reconvened on February 16, 1988 and recommended a new fee schedule to the Department on March 14, 1988. A committee membership list is attached. The funding committee recommended recovery of about 75% of the current shortfall, based upon the Department's anticipated 75% collection rate (i.e., the new fee schedule would provide 100% of the shortfall, with a 100% collection rate, but that is not expected). The committee did not recommend raising the fees to completely cover the shortfall with only a 75% collection rate.

The funding committee's final report is attached. The committee's recommendations include the following key provisions:

- The base fees for all categories, except disposal sites, should be increased by 25%;
- A surcharge should be added to all categories, except disposal sites;
- A late charge should be added for fees that are not promptly paid;
- The fee increases should be for 1988-89 only and should not be considered permanent;
- The Department should immediately initiate a program to identify additional generators; and
- A new funding method must be found for the period beyond July 1, 1989.

The Department amended the committee's proposal, in two ways, in the draft rules:

- First, the committee recommended that the rules include a late charge of 50%, if the fees were not paid within 60 days of the due date. The Department's legal counsel agreed that a late charge could be assessed, if it is tied to increased administrative costs by the Department. However, a 50% late charge exceeded administrative costs. As an alternative, the Department proposed a late charge of \$200 plus interest for overdue fees, an additional charge of \$200 for each 90 days that the fees remain unpaid, and an additional 20% increase for fees 90 days or more overdue. The \$200 represents typical costs incurred by the Department in the pursuit of unpaid bills. The 20% increase represents the amount charged by the Oregon Department of Revenue, when an overdue bill is sent to that agency for collection; and
- Second, the committee recommended that the rules contain a sunset provision, to repeal the one-time only surcharge after 1988. To do this, however, would essentially require two separate fee schedules in the rules. The Department believes that this would be confusing. Accordingly, the Department drafted the rule to simply require that the new fee schedule be reconsidered by the Commission, prior to September 30, 1989. The Department remains committed to revising the program funding method by that date. That date was selected to allow sufficient time for any necessary statutory changes that may be required for a new funding approach. In any case, the Department would not initiate fee billing under the proposed fee schedule beyond the current biennium.

The proposed fee increases are only a temporary measure to address an immediate funding problem. In the long-term, the Department must reevaluate the hazardous waste fee structure, to both encourage appropriate waste management alternatives, such as waste reduction and recycling, and to ensure a dependable and consistent source of revenue to support the program. These issues were raised by several commentators when the fee schedules were amended in July 1987. The Department is committed to reviewing the entire program funding issue with the Hazardous Waste Program Advisory Committee. This is a broader-based committee than the funding committee, in that it is comprised of representatives from industry, environmental groups and the public. The Commission may anticipate that the Department will return with a more comprehensive revision of its hazardous waste fee rules, prior to the next biennium.

In addition to proposing fee increases, to overcome a revenue shortfall, the Department is also proposing to amend the rules pertaining to permit application filing and processing fees. In December 1986, at the request of the state's Legislative Counsel Committee, the Commission temporarily suspended the permit application filing and processing fees for hazardous waste storage facilities. The Committee advised the Department that statutory authority for these fees was unclear. With the passage of Senate

Bill 116, by the 1987 Legislature, this problem has been eliminated. Accordingly, the Department now proposes to reinstate those fees, at the same level as the fees for hazardous waste treatment and disposal facilities.

Recently, the Legislative Counsel Committee informed the Department that statutory authority to assess fees for permit modification is also unclear. A copy of the Committee's report is attached. Accordingly, the Department is now proposing the temporary suspension of the fees associated with permit modification. The Department will seek clear authority to assess such fees from the 1989 Legislature.

At the public hearings concerning these proposed amendments, three people submitted oral testimony and seven people submitted written testimony. Most of the commentors accepted the proposed fee increases. One commentor requested that the fees not be raised at all. Another accepted the proposed 25% increase in the base fee, but not the proposed one-time surcharge. One commentor accepted the proposed increases for generators, but not for TSD facilities. Another requested that there be no fee for generators who recycle their wastes. In general, commentors believe that the Department must do a better job of discovering currently unregulated generators and of collecting late or unpaid fees. Most commentors supported the proposed late payment changes, but several suggested that the term "overdue" needed to be more clearly defined. The Department has revised that language accordingly. Two commentors requested that both the proposed new base fee and proposed one-time surcharge be displayed in the rules, as well as the total fee. The Department had no objection and has made that change. Two commentors requested that the Department allow fees to be paid in installments. The Department noted that this is currently allowed on a case-by-case basis, but did not agree to amend the rules. Collecting fees on an installment basis is more costly for the Department. Several commentors asked for clarification of elements of the proposed rules. One commentor requested that a table be added to the rules to better define when a permit is required. The Department believes that such a table should be in the form of a guidance document, rather than a rule, and is committed to publishing such guidance by July 1, 1988. The attached Hearing Officer's Report and Department's Response to Public Comment provide a complete listing of all comments received and the Department's responses.

Following the public hearings, the Department received an additional comment from its legal counsel. It was suggested that interest charges for late payments should more properly be assessed at the rate established in ORS 305.220, rather than at the current Internal Revenue Service late payment rate. This is the rate used by the state Department of Revenue and by the Department's Waste Tire Program. Accordingly, the Department has made this change in the proposed rule amendments.

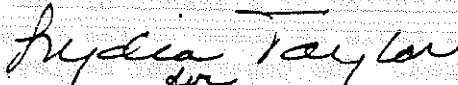
Summation

1. The Department's hazardous waste program has a current projected shortfall in fee revenue of approximately \$490,000 for the biennium.

2. The Department's Hazardous Waste Program Funding Committee has recommended a revised fee schedule to help offset this shortfall.
3. The Department views this proposal as an emergency measure only and is committed to reviewing its long-term funding approach. The proposed rules require the Commission to reconsider the fee schedule, by June 30, 1989.
4. The Department takes the Hazardous Waste Funding Committee's recommendation to initiate a program to identify additional generators very seriously and it is committed to fully implementing that recommendation.
5. Public hearings have been held and commentors generally accepted the proposed increases. The Department has made some revisions to the proposed amendments, in response to the comments received.
6. The Department requests the adoption of these proposed rule amendments.
7. The Commission is authorized to adopt rules pertaining to hazardous waste fees, by ORS 466.020, 466.045, and 466.165.

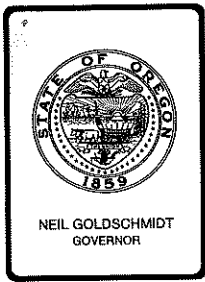
Directors Recommendation

Based upon the summation, it is recommended that the Commission adopt the proposed amendments to the hazardous waste fee rules in OAR Chapter 340, Divisions 102 and 105.


Fred Hansen

- Attachments
- | | |
|------|---|
| I: | Statement of Need for Rulemaking |
| II: | Funding Committee Membership List |
| III: | Funding Committee's Final Report |
| IV: | Report from Legislative Counsel Committee |
| V: | Hearing Officer's Report |
| VI: | Department's Response to Public Comment |
| VII: | Draft Rules; OAR Chapter 340, Divisions 102 and 105 |

Bill Dana:b
ZB7422
229-6015
March 29, 1988



Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: December 1, 1989
Agenda Item: M
Division: Hazardous & Solid Waste
Section: Underground Storage Tanks

SUBJECT:

Underground Storage Tank Annual Permit Fee

PURPOSE:

Continue the Annual Permit Fee of \$25 per underground storage tank. Adopt permanent rule.

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 ___

- 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 statute enabling the underground storage tank (UST) program was enacted in 1987. It provided for a fee, not to exceed \$25 per UST per year, to fund the UST program. This fee was to drop to a maximum of \$20 after July 1, 1989. The Environmental Quality Commission (EQC or Commission) adopted rules that set the fee at \$25 and \$20 consistent with the legislative direction.

The 1989 legislature amended the statute to allow a maximum fee of \$25 after July 1, 1989.

On July 21, 1989 the Commission adopted a temporary rule to continue the annual \$25 underground storage tank permit fee. This temporary rule is effective for 180 days. The Department of Environmental Quality (DEQ or Department) requests that the Commission adopt this temporary rule as a permanent rule.

AUTHORITY/NEED FOR ACTION:

- | | |
|--|---------------------|
| <input type="checkbox"/> Required by Statute: _____ | Attachment _____ |
| Enactment Date: _____ | |
| <input checked="" type="checkbox"/> Statutory Authority: <u>ORS 466.705 - .995</u> | Attachment <u>C</u> |
| Amended by SB 167, 1989 Session | |
| <input type="checkbox"/> Pursuant to Rule: _____ | Attachment _____ |
| <input type="checkbox"/> Pursuant to Federal Law/Rule: _____ | Attachment _____ |
| <input type="checkbox"/> Other: | Attachment _____ |
| <input checked="" type="checkbox"/> Time Constraints: (explain) | |

The permanent rule must be adopted before the 180 day limit on the temporary rule to assure that the Department can continue to collect the \$25 permit fee.

DEVELOPMENTAL BACKGROUND:

- | | |
|---|---------------------|
| <input type="checkbox"/> Advisory Committee Report/Recommendation | Attachment _____ |
| <input type="checkbox"/> Hearing Officer's Report/Recommendations | Attachment _____ |
| <input checked="" type="checkbox"/> Response to Testimony/Comments | Attachment <u>D</u> |
| <input checked="" type="checkbox"/> Prior EQC Agenda Items: Agenda Item M, 7/21/89 EQC Meeting | Attachment _____ |
| <input type="checkbox"/> Other Related Reports/Rules/Statutes: | Attachment _____ |
| <input type="checkbox"/> Supplemental Background Information | Attachment _____ |

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The regulated community has been paying the \$25 fee up to this point. It is unlikely that tank owners and operators were aware that the fee would reduce on July 1, 1989. Similarly, most are not aware that the statute was changed and that the rules must be changed to continue the \$25 maximum tank permit fee.

The regulated community has been very supportive of the technical assistance provided by the Department.

The Underground Storage Tank Advisory Committee was aware of the Department's proposal for continuing the \$25 fee and supported the request. There was particular concern that field staff support in the Bend and Pendleton offices would have to be dropped if the fee remained at \$20.

PROGRAM CONSIDERATIONS:

The Department requested the statutory change because a \$20 fee would be insufficient to continue the existing level of technical assistance to the regulated community. By amending the statute to establish the maximum fee at \$25, the legislature supported continuation of the existing program.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Propose adoption of a permanent rule.

This alternative will continue the existing fee and prevent loss of essential revenue to support the program. The rule will be consistent with the statute. This will maintain field positions in Bend and Pendleton to provide technical assistance and carry out enforcement activities in central and eastern Oregon.

2. Allow the temporary rule to lapse.

This alternative will reduce revenue by \$190,000 per biennium and adversely affect the UST program. The rule will not be consistent with the statute. Two positions, previously identified for the legislature as field positions in Bend and Pendleton would have to be vacated.

Meeting Date: December 1, 1989
Agenda Item: M
Page 4

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission:

1. Adopt the rule presented in Attachment A.

Vacating positions in Bend and Pendleton would leave some 22% of the tank owners and permittees without direct field and technical support.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The recommended action is consistent with legislative policy and with the Department's understanding of EQC direction.

ISSUES FOR COMMISSION TO RESOLVE:

None

INTENDED FOLLOWUP ACTIONS:

File the rule with the Secretary of State immediately upon EQC adoption.

The next invoice to collect this fee will be mailed in January 1990.

Approved:

Section:

Division:

Director:

Rubel P. Rint
Stephanie Hallock
Jell Hamm

Report Prepared By: Larry Frost

Phone: (503) 229-5769

Date Prepared: November 15, 1989

LDF:lf
STAF1201.rpt
November 15, 1989

**MODIFICATIONS TO OREGON ADMINISTRATIVE RULES
CHAPTER 340, DIVISION 150 - DEPARTMENT OF ENVIRONMENTAL QUALITY**

**UNDERGROUND STORAGE TANK PERMIT COMPLIANCE FEE
ORS 466.705 through ORS 466.995**

Underground Storage Tank Permit Compliance Fee

340-150-110 (1) Beginning March 1, 1989, and annually thereafter, the permittee shall pay an underground storage tank permit compliance fee of \$25 per tank per year.

(2) The underground storage tank permit compliance fee shall be paid for each calendar year (January 1 through December 30) or part of a calendar year that an underground storage tank is in operation.

(3) The compliance fee shall be made payable to the Department of Environmental Quality.

[(4) Prior to July 1, 1989 the permit compliance fee shall be \$25 per tank per year.

(5) Any compliance fee invoiced after July 1, 1989 shall not exceed \$20 per tank per year.]

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF MODIFYING)
OAR Chapter 340) STATEMENT OF NEED FOR RULES
Division 150)

Statutory Authority

ORS 466.785, as enacted by the 1987 legislature, authorizes the Commission to establish underground storage tank fees in an amount adequate to carry on the duties of the Department or the duties of a state agency or local unit of government that has contracted with the department under ORS 466.730. Such fees shall not exceed \$25 per tank per year. After July 1, 1989 these fees shall not exceed \$20 per tank per year.

Senate Bill 167 enacted by the 1989 legislature and effective July 1, 1989 modifies ORS 466.705 through ORS 466.995. In particular ORS 466.785 is modified to authorize the Commission to establish underground storage tank permit fees in an amount up to \$25 per tank per year.

Need for the Rule

The Commission adopted OAR 340-150-110, thereby establishing the underground storage tank fee at \$25 through June 30, 1989, and at \$20 after June 30, 1989.

The Commission adopted a temporary rule on July 21, 1989 establishing the permit fee at \$25 for 180 days. This rule is need to continue the permit fee at \$25. Failure to continue the underground storage tank fee at \$25 per tank per year will result in serious prejudice to the public interest, and particularly to the interests of owners of underground storage tanks in the Bend and Pendleton Regions, because reduced technical support could cause significant financial hardship to the tank owner.

Fiscal and Economic Impact

An underground storage tank fee of \$25 per tank per year is required to carry on the duties of the underground storage tank program within the Department. Tank population has reduced from 22,500 in 1987 to 19,000 in July 1989. Reducing the fee to \$20 per tank per year combined with the reduced tank population will require the Department to limit technical support to owners of underground storage tanks. Two existing and legislatively authorized positions would have to be vacated to save approximately \$190,000 over the biennium.

B-Engrossed Senate Bill 167

Ordered by the Senate July 2
Including Senate Amendments dated February 23 and July 2

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Department of Environmental Quality)

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.

Establishes limit on amount Department of Environmental Quality may recover for administrative costs for management of state insurance fund for underground storage tank owners. Establishes maximum permit fee of [~~\$30~~] **\$25** per underground storage tank per year. Establishes **\$1 expenditure limitation on moneys received by the Department of Environmental Quality for purposes of Act.**

Declares emergency, effective July 1, 1989.

A BILL FOR AN ACT

1
2 Relating to underground storage tanks; creating new provisions; amending ORS 466.785 and 466.795;
3 limiting expenditures; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 466.785, as amended by section 50, chapter 539, Oregon Laws 1987, is further
6 amended to read:

7 466.785. (1) Fees may be required of every permittee of an underground storage tank. Fees shall
8 be in an amount determined by the commission to be adequate to carry on the duties of the de-
9 partment or the duties of a state agency or local unit of government that has contracted with the
10 department under ORS 466.730. Such fees shall not exceed [~~\$20~~] **\$25** per tank per year.

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

14 **SECTION 2.** ORS 466.795 is amended to read:

15 466.795. (1) The Underground Storage Tank Insurance Fund is established separate and distinct
16 from the General Fund in the State Treasury to be used solely for the purpose of satisfying the fi-
17 nancial responsibility requirements of ORS 466.815.

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

20 (3) The State Treasurer may invest and reinvest moneys in the Underground Storage Tank In-
21 surance Fund in the manner provided by law.

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

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

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

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

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

3 **and [.]**

4 **(c) Payment of the department's costs in administering the Underground Storage Tank**
5 **Insurance Fund, which shall be limited to 15 percent of the premium collected.**

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

10 (7) Before the effective date of any regulations relating to financial responsibility adopted by the
11 United States Environmental Protection Act pursuant to P.L. 98-616 and P.L. 99-499, the department
12 shall formulate a plan of action to be followed if it becomes necessary for the Underground Storage
13 Tank Insurance Fund to become operative in order to satisfy the financial responsibility require-
14 ments of ORS 466.815. In formulating the plan of action, the department shall consult with the Di-
15 rector of the Department of Insurance and Finance, owners and permittees of underground storage
16 tanks and any other interested party. The plan of action must be reviewed by the Legislative As-
17 sembly or the Emergency Board before implementation.

18 **SECTION 3.** If House Bill 3515 becomes law, ORS 466.795, as amended by section 2 of this Act,
19 is further amended to read:

20 **466.795. (1)** The Underground Storage Tank Insurance Fund is established separate and distinct
21 from the General Fund in the State Treasury to be used solely for the purpose of satisfying the fi-
22 nancial responsibility requirements of ORS 466.815.

23 (2) *[Fees received by the department pursuant to subsection (6) of this section,]* **Moneys received**
24 **by the department under section 147, chapter _____, 1989 Oregon Laws (Enrolled House**
25 **Bill 3515), shall be deposited into the State Treasury and credited to the Underground Storage Tank**
26 **Insurance Fund.**

27 (3) The State Treasurer may invest and reinvest moneys in the Underground Storage Tank In-
28 surance Fund in the manner provided by law.

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

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

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

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

35 **and**

36 (c) Payment of the department's costs in administering the Underground Storage Tank Insurance
37 Fund, which shall be limited to 15 percent of the premium collected.

38 *[(6) The commission may establish an annual financial responsibility fee to be collected from an*
39 *owner or permittee of an underground storage tank. The fee shall be in an amount determined by the*
40 *commission to be adequate to meet the financial responsibility requirements established under ORS*
41 *466.815 and any applicable federal law.]*

42 *[(7)]* (6) Before the effective date of any regulations relating to financial responsibility adopted
43 by the United States Environmental Protection Act pursuant to P.L. 98-616 and P.L. 99-499, the
44 department shall formulate a plan of action to be followed if it becomes necessary for the Under-

1 ground Storage Tank Insurance Fund to become operative in order to satisfy the financial respon-
2 sibility requirements of ORS 466.815. In formulating the plan of action, the department shall consult
3 with the Director of the Department of Insurance and Finance, owners and permittees of under-
4 ground storage tanks and any other interested party. The plan of action must be reviewed by the
5 Legislative Assembly or the Emergency Board before implementation.

6 **SECTION 4.** Section 147, chapter _____, Oregon Laws 1989 (House Bill 3515), is amended to
7 read:

8 **Sec. 147. (1)** All moneys received by the Department of Revenue under sections 139 to 148 of
9 this Act shall be deposited in the State Treasury and credited to a suspense account established
10 under ORS 293.445. After payment of administration expenses incurred by the department in the
11 administration of sections 139 to 148 of this Act and of refunds or credits arising from erroneous
12 overpayments, the balance of the money shall be credited to the appropriate accounts as approved
13 by the Legislative Assembly to:

14 (a) Carry out the state's oil, hazardous material and hazardous substance emergency response
15 program; [and to]

16 (b) Provide up to \$1 million each year to fund the Orphan Site Account; and [.]

17 (c) **To provide funds for the Underground Storage Tank Insurance Fund in an amount**
18 **adequate to establish a program to enable owners and permittees of underground storage**
19 **tanks to satisfy the financial responsibility requirements established under ORS 466.815 and**
20 **any applicable federal law.**

21 (2) If the balance of the money is less than that approved by the Legislative Assembly, the de-
22 partment shall distribute the money to the accounts in a ratio equal to the ratio of the amounts
23 approved by the Legislative Assembly.

24 **SECTION 5.** If the Supreme Court declares that section 147, chapter _____, Oregon Laws
25 1989 (House Bill 3515), imposes a tax or excise levied on, with respect to or measured by the ex-
26 tractions, production, storage, use, sale, distribution or receipt of oil or natural gas or levied on the
27 ownership of oil or natural gas, that is subject to the provisions of section 2, Article VIII, or section
28 3a, Article IX of the Oregon Constitution, section 4 of this Act is repealed and ORS 466.795, as
29 amended by section 3 of this Act, is further amended to read:

30 466.795. (1) The Underground Storage Tank Insurance Fund is established separate and distinct
31 from the General Fund in the State Treasury to be used solely for the purpose of satisfying the fi-
32 nancial responsibility requirements of ORS 466.815.

33 (2) **Fees received by the department pursuant to subsection (6) of this section, [Moneys**
34 **received by the department under section 147, chapter _____, 1989 Oregon Laws (Enrolled House**
35 **Bill 3515),]** shall be deposited into the State Treasury and credited to the Underground Storage Tank
36 Insurance Fund.

37 (3) The State Treasurer may invest and reinvest moneys in the Underground Storage Tank In-
38 surance Fund in the manner provided by law.

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

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

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

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

1 and

2 (c) Payment of the department's costs in administering the Underground Storage Tank Insurance
3 Fund, which shall be limited to 15 percent of the premium collected.

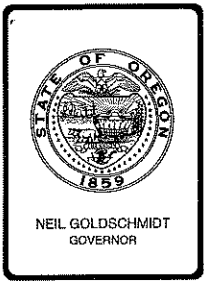
4 (6) The commission may establish an annual financial responsibility fee to be collected
5 from an owner or permittee of an underground storage tank. The fee shall be in an amount
6 determined by the commission to be adequate to meet the financial responsibility require-
7 ments established under ORS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

8 [(6)] (7) Before the effective date of any regulations relating to financial responsibility adopted
9 by the United States Environmental Protection Act pursuant to P.L. 98-616 and P.L. 99-499, the
10 department shall formulate a plan of action to be followed if it becomes necessary for the Under-
11 ground Storage Tank Insurance Fund to become operative in order to satisfy the financial respon-
12 sibility requirements of ORS 466.815. In formulating the plan of action, the department shall consult
13 with the Director of the Department of Insurance and Finance, owners and permittees of under-
14 ground storage tanks and any other interested party. The plan of action must be reviewed by the
15 Legislative Assembly or the Emergency Board before implementation.

16 **SECTION 6.** Notwithstanding any other law, the amount of \$1 is established for the biennium
17 beginning July 1, 1989, as the maximum limit for payment of expenses from fees, moneys or other
18 revenues, including Miscellaneous Receipts, excluding federal funds, collected or received by the
19 Department of Environmental Quality for the purposes of this Act.

20 **SECTION 7.** This Act being necessary for the immediate preservation of the public peace,
21 health and safety, an emergency is declared to exist, and this Act takes effect on July 1, 1989.

22



Attachment D
Agenda Item
12-1-89 EQC Meeting

Department of Environmental Quality

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

DATE: November 15, 1989

TO: Environmental Quality Commission

FROM: Larry Frost

SUBJECT: Hearing Report and Responsiveness Summary

On July 21, 1989 the Environmental Quality Commission authorized two Public Hearings on proposed modifications to the Underground Storage Tank Rules. Public hearings were held at 3:00 P.M. on:

- o September 13, 1989 in Eugene, Oregon
- o September 14, 1989 in Portland, Oregon

TESTIMONY:

There was no formal testimony at any of the hearings. One person attended the hearing in Portland but was not interested in commenting on the proposed rule modifications.

No written testimony was received.

DEPARTMENT RESPONSE:

The proposed rules were not changed.



Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: December 1, 1989
Agenda Item: 0
Division: MSD
Section: Administration

SUBJECT:

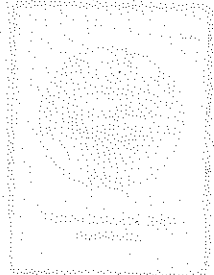
Pollution Control Tax Credit Program - Request for Hearing Authorization to modify rules.

PURPOSE:

To conduct a public hearing on proposed amendments to administrative rules based on statutory revisions from the 1989 State Legislature, and, to clarify existing rule provisions.

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 and Summary Attachment A
 - Rulemaking Statements Attachment B
 - Fiscal and Economic Impact Statement Attachment C
 - Public Notice Attachment D
- 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 rules contain the following modifications:

1. Deletes all provisions relating to preliminary certification, in accord with statutory change.
2. Adds minor corrective language under definition of spill or unauthorized release.
3. Adds language to provide staff technical assistance upon request of applicant.
4. Adds language to clarify that Department may reject an application if the applicant fails to provide additional requested information within 180 days.
5. Adds language that a taxpayer's cash investment in a facility partially funded with federal funds is eligible for tax credit, in accord with statutory changes.
6. Adds language to clarify that the portion of facility costs to be certified is not determined until an application is considered filed.
7. Adds language that facilities must be certified before December 31, 1995, in accord with statutory changes.
8. Adds language to clarify that a facility must be in compliance with DEQ rules, statutes, orders or permit conditions.
9. Adds language to clarify the application of principle purpose and sole purpose.
10. Adds language to clarify that facilities which detect, deter, or prevent spills or unauthorized releases are eligible except if the facility is for the cleanup of a spill or release that has already occurred.
11. Expands list of items not eligible for tax credit to apply to all facilities, in accord with statutory change. Includes asbestos abatement as ineligible facility.
12. Adds language to clarify current policy that requires CPA documentation of facility costs over \$20,000.
13. Adds language to clarify that any savings resulting from a facility is considered part of the facility's gross annual income.
14. Adds language to clarify that Department may require additional documentation or information for gross annual income estimates for further evaluation purposes.
15. Adds language which states that the Department may require additional processing fees, which reflect actual costs, when circumstances require a more extensive analysis of the facility and its costs.

A public hearing will be held in January 1990 to receive public comment on the proposed rule modifications.

AUTHORITY/NEED FOR ACTION:

- Required by Statute: _____ Attachment _____
 Enactment Date: _____
 Statutory Authority: ORS 468.150-468.220 Attachment _____
 Pursuant to Rule: OAR 340 Division 16 Attachment _____
 Pursuant to Federal Law/Rule: _____ Attachment _____
 Other: _____ Attachment _____
 Time Constraints: (explain)

It is the Department's intent to revise the tax credit administrative rules as expediently as possible in order to provide the public with current program information.

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:
 HB 2178 Attachment E
 Supplemental Background Information Attachment _____

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The removal of mandatory preliminary certification presents potentially positive and negative consequences for the affected public. The new application process is streamlined and requires less of the applicant in that only one application must be filed. The penalties associated with the preliminary filing requirements have been removed, and, filing is not required before facility construction. There is, however, increased responsibility placed on the applicant to be informed of certification requirements prior to submitting an application. The applicant must request staff assistance if there is uncertainty regarding the requirements and application process.

PROGRAM CONSIDERATIONS:

The proposed rules reflect changes enacted by the Oregon Legislature and provide clarification of key provisions that have posed interpretative problems.

There is no anticipated change in program staffing needs.

Meeting Date: December 1, 1989
Agenda Item: 0
Page 4

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

The Department considered drafting temporary or emergency rules because the new legislative changes became effective October 3, 1989. However, Department legal counsel advised staff that the nature of the changes do not warrant emergency action or rulemaking.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends the Environmental Quality Commission grant authorization to hold a public hearing on the proposed rules.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The proposed rule is consistent with the agency's current program policy and, will carry out the intent of recent legislative revisions.

ISSUES FOR COMMISSION TO RESOLVE:

None.

INTENDED FOLLOWUP ACTIONS:

1. File a hearing notice with the Secretary of State.
2. Provide notice of public hearing and public comment period.
3. Incorporate public input from the public hearing into the proposed rule based on Department's evaluation.
4. Request Environmental Quality Commission adoption of final rules at its February, 1990 meeting.

Approved:

Section: _____

Division: _____

Director: Julius Hansen

Report Prepared By: Roberta Young

Phone: 229-6408

Date Prepared: October 26, 1989

RY:y
MY8979
November 16, 1989

PROPOSED ADMINISTRATIVE RULE SUMMARY
CHAPTER 340, DIVISION 16

Page A-1

340-16-010 (2): Proposed deletion of preliminary certification provisions because the preliminary certification requirement has been statutorily removed.

Page A-2

(11) Proposed deletion - relates to preliminary certification which was statutorily removed.

(10) (b) Minor editing corrections in the definition of unauthorized spill or release.

Page A-3

340-16-015: Proposed deletion - relates to preliminary certification which was statutorily removed.

Page A-4

340-16-015: Proposed deletion of "final"; with elimination of the preliminary certification process there is a single application process.

(1): Proposed language which states that preapplication or technical assistance is available upon request.

Page A-5

(2) (a)-(i): Reorganization and expansion of text to clarify filing requirements; no textual revisions.

(2) (h): Clarification that the Department can reject an application if the applicant does not submit requested additional information within 180 days of the request.

Page A-6

(3) (b) (B): Proposed language to address statute amendment which allows taxpayers to apply for tax credit for their own cash investment in a facility if federal funding is provided.

(3) (b) (C): Proposed language to clarify that certified costs are determined after an application is filed which is the time the application is considered complete and ready for processing.

(2) (b) (E): Amends effective date for certification per statutory amendment; program was extended to December 31, 1995.

Page A-7

(4) Proposed language to clarify that appeals process applies to those applications rejected by the Commission. Applications can be rejected by the Department if requested additional information is not submitted within a timeframe of 180 days.

340-16-020 (1): Clarifies that facilities are to achieve compliance before certification. This section was amended in 1984 to require compliance before certification. The intent, however, was not clearly stated in the rule.

Page A-8

The application of principal and sole purpose are clarified because of staff's past difficulty with interpretation. In 1983, the definition of "substantial purpose" was believed to have been too broad in that: facilities did not have to be required by DEQ; facilities did not have to produce significant environmental benefit; and, pollution control did not have to be a major purpose of the facility. Consequently, the Department proposed to separate and narrow the definition of purpose by stating that a facility is eligible if it is required by DEQ, the federal EPA, or regional air pollution authority; or, a facility installed voluntarily is eligible if its sole function is pollution control and it results in significant environmental benefit. The Legislature adopted the Department's recommendations with the terms "principle" and "sole" purpose.

Under principle purpose, a facility is eligible if it is an acceptable solution to a compliance requirement and if the most important or primary function or use of the facility is pollution control or material recovery. If there are non pollution control benefits, such as savings from increased processing efficiencies or creation of a new salable product, these benefits are removed through the return on investment calculation which determines the amount that is allocable to pollution control.

Under the "sole purpose" definition, the entire or exclusive function or use of the facility must be pollution control or material recovery. "Sole purpose" can be applied to facilities that also provide non pollution control benefits, which are addressed in the ROI calculation, if the function test is met. The "sole purpose" provision is intended to provide an incentive for voluntary pollution control and material resource recovery.

Page A-9

(2)(g): Deletion proposed. Proposed clarification that facilities which detect, deter, or prevent spills or unauthorized releases are eligible for tax credit certification except when the facility applies to a spill or unauthorized release which has already occurred.

(3)(d): In accordance with statutory amendment, items that are not considered to be pollution control facilities for solid waste, hazardous waste or used oil are expanded to apply to all media facilities.

Page A-10

(3)(f): In accordance with statutory amendment, proposes "asbestos abatement" as item that is not considered a pollution control facility.

Page A-11

(5) (A): Deletes statutory cite that relates to preliminary certification.

Page A-12

340-16-025 (1)(c): Insert language that claimed facility costs over \$20,000 must be certified by an independent Certified Public Accountant. This is an existing requirement that is identified in the tax credit application.

(1) (d): Addition of language to clarify that savings that result from the facility are considered part of the gross annual income.

Page A-13

(4): Proposed OAR cite revision in accord with elimination of preliminary certification.

(5)(a): Expands to specify that the Department may require additional information on gross annual income estimates. This applies to higher cost facilities where a more detailed evaluation of income estimates may be needed.

Page A-16

340-16-040: Proposed minor correction as result of statutory elimination of preliminary certification.

(6): Proposed language which allows the Department to require processing fees beyond the maximum \$5000 when circumstances require an unusually extensive evaluation or analysis of the application. This may apply to cases where the Department may opt to have an outside consultant review facility costs, or, where there is an exceptionally complex application.

OREGON ADMINISTRATIVE RULES
FOR POLLUTION CONTROL TAX CREDITS
CHAPTER 340, DIVISION 16

340-16-005 PURPOSE

The purpose of these rules is to prescribe procedures and criteria to be used by the Department and Commission for issuance of tax credit for pollution control facilities. These rules are to be used in connection with ORS 468.150 to 468.190 and apply only to facilities on which construction has been completed after December 31, 1983, except where otherwise noted herein.

340-16-010 DEFINITIONS

- (1) "Circumstances beyond the control of the applicant" means facts, conditions and circumstances which applicant's due care and diligence would not have avoided.
- ~~{(2)}~~ ~~"Commencement of erection, construction or installation"~~ means ~~the beginning of a continuous program of on-site construction, erection or modification of a facility which is completed within a reasonable time, and shall not include site clearing, grading, dredging, landfilling or similar physical change made in preparation for the facility.~~
- ~~{(3)}~~ (2) "Commission" means Environmental Quality Commission.
- ~~{(4)}~~ (3) "Department" means Department of Environmental Quality.
- ~~{(5)}~~ (4) "Facility" means a pollution control facility.
- ~~{(6)}~~ (5) "Like-for-like replacement cost" means the current price of providing a new facility of the same type, size and construction materials as the original facility.
- ~~{(7)}~~ (6) "Material recovery process" means any process for obtaining from solid waste, hazardous waste or used oil, by presegregation or otherwise, materials which still have useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled for the same or other purpose. This does not include any process in which the major purpose is the production of fuel from solid waste, hazardous waste or used oil which can be utilized for heat content or other forms of energy. It does not include any type of process which burns waste to produce energy or to reduce the amount of waste. However, it does not eliminate from eligibility a pollution control device associated with a process which burns waste if such device is otherwise eligible for pollution control tax credit under these rules.

- {(8)} (7) "Principal purpose" means the most important or primary purpose. Each facility may have only one principal purpose.
- {(9)} (8) "Reconstruction or replacement" means the provision of a new facility with qualities and pollution control characteristics equivalent to the original facility. This does not include repairs or work done to maintain the facility in good working order.
- {(10)} (9) "Sole purpose" means the exclusive purpose.
- {(11)} "Special circumstances" means emergencies which call for immediate erection, construction or installation of a facility, cases where applicant has relied on incorrect information provided by Department personnel as demonstrated by letters, records of conversations or other written evidence, or similar adequately documented circumstances which directly resulted in applicant's failure to file a timely application for preliminary certification. Special circumstances shall not include cases where applicant was unaware of tax credit certification requirements or applied for preliminary certification in a manner other than that prescribed in 340-16-015(1).-
- {(12)} (10) (a) "Spill or unauthorized release" means the discharge, deposit, injection, dumping, spilling, emitting, releasing, leakage or placing of oil, hazardous materials or other polluting substances into the air or into or on any land or waters of the state, as defined in ORS 468.700, except as authorized by a permit issued under ORS Chapter 454, 459, 468 or 469, ORS 466.005 to 466.385, 466.880(1) and (2), 466.890 and 466.995(1) and (2) or federal law while being stored or used for its intended purpose.
- (b) For purposes of determining eligibility for tax credits under these rules, polluting substances released into the environment in conjunction with operation of a previously approved facility or activity where such facility or activity was operated in compliance with requirements imposed by the Department or [of] the Federal Environmental Protection Agency, and where the polluting substances which must now be cleaned up [is] are determined by the Department to have been an unanticipated result of the approved facility or activity and [is] are not deemed to be a "spill or unauthorized release".
- {(13)} (11) "Substantial Completion" means the completion of erection, installation, modification, or construction of all elements of the facility which are essential to perform its purpose.
- {(14)} (12) "Useful life" means the number of years the claimed facility is capable of operating before replacement or disposal.

(1) Filing of Application:

- (a) Any person proposing to apply for certification of a pollution control facility pursuant to ORS 468.165, shall file an application for preliminary certification with the Department of Environmental Quality 30 days before the commencement of erection, construction or installation of the facility. The application shall be made on a form provided by the Department. The preliminary certificate need not be issued prior to construction for compliance with this requirement.
- (b) If the application is filed less than 30 days before commencement of construction, the application will be rejected as incomplete due to failure to comply with ORS 465.175(1) and OAR 340-16-015(a).
- (c) The Commission may waive the filing of the application if it finds the filing inappropriate because special circumstances render the filing unreasonable and if it finds such facility would otherwise qualify for tax credit certification pursuant to ORS 468.150 to 468.190.
- (d) If the Department reviews the application within 30 days of filing, and finds it complete, the Department shall notify the applicant in writing that the application is complete and ready for processing, and that the applicant may proceed with construction without waiting 30 days and without being rejected as incomplete.
- (d) Within 30 days of the filing of an application the Department shall request any additional information that applicant needs to submit in order for the application to be considered complete. After examination thereof, the Department may request corrections and revisions to the plans and specifications. The Department may, also, require any other information necessary to determine whether the proposed construction is in accordance with Department statutes, rules and standards.
- (e) The application shall not be considered complete until the Department receives the information requested and notifies the applicant in writing that the application is complete and ready for processing. However, if the Department does not make a timely request pursuant to subsection (d) above, the application shall be deemed complete 30 days after filing.
- (E) Notice of the Department's recommended action to deny an application shall be mailed at least seven days before the Commission meeting where the application will be considered unless the applicant waives the notice requirement in writing.

(2) Approval of Preliminary Certification:

- (a) If the Department determines that the proposed facility is eligible it shall issue a preliminary certificate approving the erection, construction or installation within 60 days of receipt of a completed application. It is not necessary for this certificate to include a determination of the full extent a facility is eligible for tax credit.
- (b) If within 60 days of the receipt of a completed application, the Department fails to issue a preliminary certificate of approval and the Commission fails to issue an order denying certification, the preliminary certificate shall be considered to have been issued. The construction must comply with the plans, specifications and any corrections or revisions thereto, if any, previously submitted.
- (c) Issuance of a preliminary tax credit certification does not guarantee final tax credit certification.

(3) Denial of Preliminary Certification: - If the Department determines that the erection, construction or installation does not comply with the Department statutes, rules and standards, the Commission shall issue an order denying certification within 60 days of receipt of a completed application.

(4) - Appeal: - Within 20 days from the date of mailing of the order the applicant may demand a hearing. The demand shall be in writing, shall state the grounds for hearing and shall be mailed to the Director of the Department. The hearing shall be conducted in accordance with the applicable provisions of ORS 183.310 to 183.550.]

[(340-16-020)] 340-16-015 PROCEDURES FOR RECEIVING [FINAL] TAX CREDIT CERTIFICATION

(1) Preapplication technical assistance by Department staff is available upon request. Technical assistance is provided to better ensure the facility can be expected to comply with DEQ regulations.

(2) Filing of Application:

(a) A written application for [final] tax credit certification shall be submitted to the Department on a form provided by the Department.

[(d)] (b) The application shall be filed within two years of substantial completion of construction of the facility. Failure to file a timely application shall make the facility ineligible for tax credit certification.

~~[(e)]~~ (c) The Commission may grant an extension of time to file an application if circumstances beyond the control of the applicant would make a timely filing unreasonable.

~~[(f)]~~ (d) An extension shall only be considered if applied for within two years of substantial completion of construction of the facility. An extension may be granted for no more than one year. Only one extension may be granted.

~~[(b)]~~ (e) Within 30 days of receipt of an application, the Department shall request any additional information that applicant needs to submit in order for the application to be considered complete. The Department may also require any other information necessary to determine whether the construction is in accordance with Department statutes, rules and standards.

~~[(e)]~~ (f) An application shall not be considered filed until all requested information is furnished by the applicant, and the Department notifies the applicant in writing that the application is complete and ready for processing.

(g) An application may be withdrawn and resubmitted by applicant at any time within two years of substantial completion of construction of the facility without paying an additional processing fee, unless the cost of the facility has increased. An additional processing fee shall be calculated by subtracting the cost of the facility on the original application from the cost of the facility on the resubmitted application and multiplying the remainder by one-half of one percent.

(h) If the Department determines the application is incomplete for processing and the applicant fails to submit requested information within 180 days of the date when the Department requested the information, the application will be rejected~~[-]~~ by the Department unless applicant requests in writing additional time to submit requested information.

(i) If the application is submitted after the two year period following substantial completion and the applicant has not filed an extension request, the application will be rejected by the Department.

~~[(2)]~~ (3) Commission Action:

(a) Notice of the Department's recommended action on the application shall be mailed at least seven days before the Commission meeting where the application will be considered unless the applicant waives the notice requirement in writing. The Commission shall act on an

application for certification before the 120th day after the filing of a complete application. The Commission may consider and act upon an application at any of its regular or special meetings. The matter shall be conducted as an informal public informational hearing, not a contested case hearing, unless ordered otherwise by the Commission.

(b) Certification:

(A) If the Commission determines that the facility is eligible, it shall make appropriate findings and certify the actual cost of the facility and the portion of the actual cost properly allocable to pollution control, material recovery or recycling as set forth in ORS 468.190. Each certificate shall bear a separate serial number for each such facility.

(B) The actual cost or portion of the actual cost certified shall not exceed the taxpayer's own cash investment in the facility or portion of the facility.

~~(B)~~ (C) No determination of the proportion of the actual cost of the facility to be certified shall be made until a complete application is filed. ~~[receipt of the application.]~~

~~(G)~~ (D) If two or more facilities constitute an operational unit, the Commission may certify such facilities under one certificate.

~~(D)~~ (E) A certificate is effective for purposes of tax relief in accordance with ORS 307.405, 316.097 and 317.116 if erection, construction or installation of the facility was completed and certified before December 31, ~~[1990.]~~ 1995.

~~(E)~~ (F) Certification of a pollution control facility qualifying under ORS 468.165(1) shall be granted for a period of 10 consecutive years. The 10-year period shall begin with the tax year of the person in which the facility is certified under this section. However, if ad valorem tax relief is utilized by a corporation organized under ORS Chapter 61 or 62 the facility shall be exempt from ad valorem taxation, to the extent of the portion allocable, for a period of 20 consecutive years, or 10 years if construction is commenced after June 30, 1989 and completed before December 31, 1990, from the date of its first certification by the Commission.

~~[(F)]~~ (G) Portions of a facility qualifying under ORS 468.165(1)(c) may be certified separately under this section if ownership of the portions is in more than one person. Certification of such portions of a facility shall include certification of the actual cost of the portion of the facility to the person receiving the certification. The actual cost certified for all portions of a facility separately certified under this subsection shall not exceed the total cost of the facility that would have been certified under one certificate. The provisions of ORS 316.097(8) or 317.116 whichever is applicable, shall apply to any sale, exchange or other disposition of a certified portion of a facility.

(c) Rejection: If the Commission rejects an application for certification, or certifies a lesser actual cost of the facility or a lesser portion of the actual cost properly allocable to pollution control, material recovery or recycling than was claimed in the application for certification, the Commission shall cause written notice of its action, and a concise statement of the findings and reasons therefore, to be sent by registered or certified mail to the applicant.

(4) Appeal: If the application is rejected by the Commission for any reason, or if the applicant is dissatisfied with the certification of actual cost or portion of the actual cost properly allocable to pollution control, resource recovery or recycling, the applicant may appeal from the rejection as provided in ORS 468.110. The rejection of the certification is final and conclusive on all parties unless the applicant takes an appeal therefrom as provided in ORS 468.110 before the 30th day after notice was mailed by the Commission.

[340-16-025] 340-16-020 QUALIFICATION OF FACILITY FOR TAX CREDITS

(1) "Pollution control facility" or "facility" shall include any land, structure, building, installation, excavation, machinery, equipment or device, or alternative methods for field sanitation and straw utilization and disposal as approved by the Field Burning Advisory Committee and the Department, or any addition to, reconstruction of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device reasonably used, erected, constructed or installed by any person, which will achieve compliance with Department statutes and rules or Commission orders or permit conditions before certification, where applicable, if:

(a) The principal purpose of the facility is to comply with a requirement imposed by the Department, the Federal Environmental Protection Agency or regional air pollution authority to prevent, control or reduce air,

water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil[; -or].

To meet the definition of principal purpose, the facility must be established to comply with the environmental requirements specified in this subsection for the control, reduction, or prevention of pollution, or for the material recovery of solid waste, hazardous waste or used oil. Other benefits of economic value that are a result of the facility, are not eligible for tax credit and must be eliminated through the return on investment calculation; or

- (b) The sole purpose of the facility is to prevent, control or reduce a substantial quantity of air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil.

In order to meet the definition of sole purpose, the only function or use of the facility must be the control, reduction, or prevention of pollution, or, for the material recovery of solid waste, hazardous waste or used oil. Sole purpose is not applicable where the facility is established in response to the environmental requirements identified in (a) of this subsection. Other benefits of economic value which result from the facility are not eligible for tax credit and must be eliminated through the return on investment calculation.

- (2) Such prevention, control or reduction required by this subsection shall be accomplished by:

- (a) The disposal or elimination of or redesign to eliminate industrial waste and the use of treatment works for industrial waste as defined in ORS 468.700;
- (b) The disposal or elimination of or redesign to eliminate air contaminants or air pollution or air contamination sources and the use of air cleaning devices as defined in ORS 468.275;
- (c) The substantial reduction or elimination of or redesign to eliminate noise pollution or noise emission sources as defined by rule of the Commission;
- (d) The use of a material recovery process which obtains useful material that would otherwise be solid waste as defined in ORS 459.005, hazardous waste as defined in ORS 466.005, or used oil as defined in ORS 468.850;

- (e) The treatment, substantial reduction or elimination of or redesign to treat, substantially reduce or eliminate hazardous waste as defined in ORS 466.005; or
- (f) Approved alternative field burning methods and facilities which shall be limited to:
 - (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) Propane flammers or mobile field sanitizers which are alternatives to open field burning and reduce air quality impacts; and
 - (C) Drainage tile installations which will result in a reduction of grass seed acreage under production.
- (g) Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases. This does not include any facility installed, constructed or used for cleanup after a spill or unauthorized release has occurred.

(3) "Pollution control facility" or "facility" does not include:

- (a) Air conditioners;
- (b) Septic tanks or other facilities for human waste;
- (c) Property installed, constructed or used for moving sewage to the collecting facilities of a public or quasi-public sewerage system;
- (d) Any distinct portion of a pollution control [~~solid waste, hazardous waste or used oil~~] facility that makes an insignificant contribution to the principal or sole purpose of [~~utilization of solid waste, hazardous waste or used oil~~] the facility including the following specific items:
 - (A) Office buildings and furnishings;
 - (B) Parking lots and road improvements;
 - (C) Landscaping;
 - (D) External lighting;
 - (E) Company or related signs; and
 - ~~(F) -- Artwork; -- and~~

(e) Facilities not directly related to the operation of the industry or enterprise seeking the tax credit;

(f) Asbestos abatement; or

~~{(f)}~~ (g) Replacement or reconstruction of all or a part of any facility for which a pollution control facility certificate has previously been issued under ORS 468.170, except:

(A) If the cost to replace or reconstruct the facility is greater than the like-for-like replacement cost of the original facility due to a requirement imposed by the Department, the Federal Environmental Protection Agency or a regional air pollution authority, then the facility may be eligible for tax credit certification up to an amount equal to the difference between the cost of the new facility and the like-for-like replacement cost of the original facility; or

(B) If a facility is replaced or reconstructed before the end of its useful life then the facility may be eligible for the remainder of the tax credit certified to the original facility.

(h) Property or facilities installed, constructed or used for cleanup of emergency spills or unauthorized releases. This includes any facility installed, constructed or used for cleanup after a spill or unauthorized release has occurred.

(4) Any person may apply to the Commission for certification under ORS 468.170 of a pollution control facility or portion thereof erected, constructed or installed by the person in Oregon if:

(a) The air or water pollution control facility was erected, constructed or installed on or after January 1, 1967.

(b) The noise pollution control facility was erected, constructed or installed on or after January 1, 1977.

(c) The solid waste facility was under construction on or after January 1, 1973, or the hazardous waste, used oil, material recovery, or recycling facility was under construction on or after October 3, 1979, and if:

(A) The facility's principal or sole purpose conforms to the requirements of ORS 468.155(1);

(B) The facility will utilize material that would otherwise be solid waste as defined in ORS 459.005, hazardous waste as defined in ORS 466.005 or used oil as defined in ORS 468.850:

(i) By mechanical processing or chemical processing; or

(ii) Through the production, processing, presegregation, or use of:

(I) Materials which have useful chemical or physical properties and which may be used for the same or other purposes; or

(II) Materials which may be used in the same kind of application as its prior use without change in identity;

(C) The end product of the utilization is an item of real economic value;

(D) The end product of the utilization, is competitive with an end product produced in another state; and

(E) The Oregon law regulating solid waste imposes standards at least substantially equivalent to the federal law.

(d) The hazardous waste control facility was erected, constructed or installed on or after January 1, 1984 and if:

(A) The facility's principal or sole purpose conforms to the requirements of ORS 468.155(1); and

(B) The facility is designed to treat, substantially reduce or eliminate hazardous waste as defined in ORS 466.005.

(5) The Commission shall certify a pollution control, solid waste, hazardous waste or used oil facility or portion thereof, for which an application has been made under ORS 468.165, if the Commission finds that the facility:

(A) Was erected, constructed or installed in accordance with the requirements of ORS 468.165(1); [and 468.175;]

(B) Is designed for, and is being operated or will operate in accordance with the requirements of ORS 468.155; and

(C) Is necessary to satisfy the intents and purposes of and is in accordance with the applicable Department statutes, rules and standards.

[340-16-030] 340-16-025 DETERMINATION OF PERCENTAGE OF CERTIFIED FACILITY COST ALLOCABLE TO POLLUTION CONTROL

(1) Definitions:

(a) "Annual operating expenses" means the estimated costs of operating the claimed facility including labor, utilities, property taxes, insurance, and other cash expenses, less any savings in expenses attributable to installation of the claimed facility. Depreciation, interest expenses, and state and federal taxes are not included.

(b) "Average annual cash flow" means the estimated average annual cash flow from the claimed facility for the first five full years of operation calculated as follows:

(A) Calculate the annual cash flow for each of the first five full years of operation by subtracting the annual operating expenses from the gross annual income for each year; and

(B) Sum the five annual cash flows and divide the total by five. Where the useful life of the claimed facility is less than five years, sum the annual cash flows for the useful life of the facility and divide by the useful life.

(c) "Claimed facility cost" means the actual cost of the claimed facility minus the salvage value of any facilities removed from service. Certification of the actual cost of the claimed facility must be documented by a certified public accountant for facilities with a claimed facility cost over \$20,000.

(d) "Gross annual income" means the estimated total annual income from the claimed facility derived from sale or reuse of recovered materials or energy or any other means{.-}including savings that may occur as a result of the facility.

(e) "Salvage value" means the value of a facility at the end of its useful life minus what it costs to remove it from service. Salvage value can never be less than zero.

(2) In establishing the portion of costs 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 for facilities qualifying for certification under ORS 468.170, the Commission shall consider the following factors and make appropriate findings regarding their applicability:

- (a) The extent to which the facility is used to recover and convert waste products into a salable or usable commodity;
 - (b) The estimated annual percent return on the investment in the facility;
 - (c) The alternative methods, equipment and costs for achieving the same pollution control objective;
 - (d) Related savings or increase in costs which occur or may occur as a result of the installation of the facility; or
 - (e) 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.
- (3) The portion of actual costs properly allocable shall be from zero to 100 percent in increments of one percent. If zero percent, the Commission shall issue an order denying certification.
- (4) In considering the factors listed in OAR 340-16-~~{030}~~(025), the Commission may determine in its findings that one or more factors are more important than others and may assign different weights to the factors when determining the portion of costs properly allocable to pollution control.
- (5) When considering the estimated annual percent return on investment in the facility, subsection (2)(b), the following steps will be used:
- (a) Determine the claimed facility cost, average annual cash flow and useful life of the claimed facility. The Department may require additional information on or documentation of gross annual income estimates for evaluation purposes.
 - (b) Determine the return on investment factor by dividing the claimed facility cost by the average annual cash flow.
 - (c) Determine the annual percent return on investment by using Table 1. At the top of Table 1, find the number equal to the useful life of the claimed facility. In the column under this useful life number, find the number closest to the return on investment factor. Follow this row to the left until reaching the first column. The number in the first column is the annual percent return on investment for the claimed facility.

For a useful life greater than 30 years, or percent return on investment greater than 25 percent, Table 1 can be extended by utilizing the following equation:

$$I_R = \frac{1 - (1+i)^{-n}}{i}$$

Where: I_R is the return on investment factor.
 i is the annual percent return on investment.
 n is the useful life of the claimed facility.

(d) Determine the reference annual percent return on investment from Table 2. Select the reference percent return from Table 2 that corresponds with the year construction was completed on the claimed facility. For each future calendar year not shown in Table 2, the reference percent return shall be the five-year average of the rate of return before taxes on stockholders' equity for all United States manufacturing corporations for the five years prior to the calendar year of interest.

(e) Determine the percentage of actual costs properly allocable to pollution control from the following equation:

$$P_A = \frac{(RROI - ROI)}{RROI} \times 100$$

Where: P_A is the percentage of actual costs properly allocable to pollution control in percent, rounded off to the nearest whole number.

ROI is the annual percent return on investment from Table 1.

$RROI$ is the reference annual percent return on investment from Table 2.

If ROI is greater than or equal to $RROI$, then the portion of actual costs properly allocable to pollution control shall be zero percent.

[340-16-035] 340-16-030 PROCEDURE TO REVOKE CERTIFICATION

(1) Pursuant to the procedures for a contested case under ORS 183.310 to 183.550, the Commission may order the revocation of the final tax credit certification if it finds that:

(a) The certification was obtained by fraud or misrepresentation; or

(b) The holder of the certificate has failed substantially to operate the facility for the purpose of, and to the extent necessary for, preventing, controlling or reducing air, water or noise pollution or solid waste, hazardous wastes or

recycling or disposing of used oil as specified in such certificate, or has failed to operate the facility in compliance with Department or Commission statutes, rules, orders or permit conditions where applicable.

- (2) As soon as the order of revocation under this section has become final, the Commission shall notify the Department of Revenue and the county assessor of the county in which the facility is located of such order.
- (3) If the certification of a pollution control or solid waste, hazardous waste or used oil facility is ordered revoked pursuant to subsection (1)(a) of this rule, all prior tax relief provided to the holder of such certificate by virtue of such certificate shall be forfeited and the Department of Revenue or the proper county officers shall proceed to collect those taxes not paid by the certificate holder as a result of the tax relief provided to the holder under any provision of ORS 307.405, 316.097 and 317.116.
- (4) Except as provided in subsection (5) of this rule, if the certification of a pollution control or solid waste, hazardous waste or used oil facility is ordered revoked pursuant to subsection (1)(b) of this rule, the certificate holder shall be denied any further relief provided under ORS 307.405, 316.097 or 317.116 in connection with such facility, as the case may be, from and after the date that the order of revocation becomes final.
- (5) Once a determination has been made under section (1) of this rule, the Commission may revoke tax credits held for any facility or piece of equipment which is for the purpose of preventing, controlling, reducing, or eliminating pollution to the same media and which is at a location adjacent to the non-complying facility.
- (6) Upon notification by the certificate holder that the facility has been inspected by DEQ and found to be in compliance, the Commission may reinstate any revoked tax credit certification if the Commission finds the non-complying facility has been brought into compliance.
- (7) If the Commission reinstates certification, the Commission shall notify the Department of Revenue or the county assessor of the county in which the facility is located that the tax credit certification is reinstated for the remaining period of the tax credit, less the period of revocation. The period of revocation would be from the date the Commission revokes the certificate to the date the Commission reinstates the certificate.
- (8) The Commission may withhold revocation of a certificate when operation of a facility ceases if the certificate holder indicates in writing that the facility will be returned to operation within five years time. In the event that the facility is not returned to operation as indicated, the Commission shall revoke the certificate.

~~{340-16-040}~~ 340-16-035 PROCEDURES FOR TRANSFER OF A TAX CREDIT
CERTIFICATE

To transfer a tax credit certificate from one holder to another, the Commission shall revoke the certificate and grant a new one to the new holder for the balance of the available tax credit following the procedure set forth in ORS 307.405, 316.097, and 317.116.

~~{340-16-045}~~ 340-16-040 FEES FOR ~~{FINAL}~~ TAX CREDIT CERTIFICATION

- (1) An application processing fee of one-half of one percent of the cost claimed in the application of the pollution control facility to a maximum of \$5,000 shall be paid with each application. However, if the application processing fee is less than \$50, no application processing fee shall be charged. A non-refundable filing fee of \$50 shall be paid with each application. No application is complete until the filing fee and processing fee are submitted. An amount equal to the filing fee and processing fee shall be submitted as a required part of any application for a pollution control facility tax credit.
- (2) Upon the Department's receipt of an application, the filing fee becomes non-refundable.
- (3) The application processing fee shall be refunded in whole if the application is rejected.
- (4) The fees shall not be considered by the Environmental Quality Commission as part of the cost of the facility to be certified.
- (5) All fees shall be made payable to the Department of Environmental Quality.
- (6) Notwithstanding subsection (1), the Department may increase the processing fee above the maximum of \$5,000, when an application necessitates an unusually extensive evaluation or analysis to determine the portion of the facility allocable to pollution control or material recovery.

~~{(340-16-050)}~~ 340-16-045 TAXPAYERS RECEIVING TAX CREDIT

- (1) A person receiving a certificate under this section may take tax relief only under ORS 316.097 or 317.116, depending upon the tax status of the person's trade or business except if the taxpayer is a corporation organized under ORS Chapter 61 or 62, or any predecessor to ORS Chapter 62 relating to incorporation of cooperative associations, or is a subsequent transferee of such a corporation, the tax relief may be taken only under ORS 307.405.
- (2) If the person receiving the certificate is an electing small business corporation as defined in section 1361 of the Internal Revenue Code, each shareholder shall be entitled to take tax credit relief as provided in ORS 316.097, based on that shareholder's pro rata share of the certified cost of the facility.

- (3) If the person receiving the certificate is a partnership, each partner shall be entitled to take tax credit relief as provided in ORS 316.097, based on that partner's pro rata share of the certified cost of the facility.
- (4) Upon any sale, exchange or other disposition of a facility written notice must be provided to the Department of Environmental Quality by the company, corporation or individual for whom the tax credit certificate has been issued. Upon request, the taxpayer shall provide a copy of the contract or other evidence of disposition of the property to the Department of Environmental Quality.
- (5) The company, corporation or individual claiming the tax credit for a leased facility must provide a copy of a written agreement between the lessor and lessee designating the party to receive the tax credit and a copy of the complete and current lease agreement for the facility.
- (6) The taxpayer claiming the tax credit for a facility with more than one owner shall provide a copy of a written agreement between the owners designating the party or parties to receive the tax credit certificate.

TABLE 1
 RETURN ON INVESTMENT PERCENTAGE
 BASED ON R.O.I. FACTOR (FACILITY COST/AVRG. ANNUAL CASH FLOW)
 AND THE EXPECTED USEFUL LIFE OF THE NEW FACILITY
 01/06/84

| X R.O.I. | EXPECTED USEFUL LIFE IN YEARS | | | | | | | | | |
|-------------|-------------------------------|-------|-------|-------|-------|-------|-------|-------|-------|--------|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 0.00 | 1.000 | 2.000 | 3.000 | 4.000 | 5.000 | 6.000 | 7.000 | 8.000 | 9.000 | 10.000 |
| 0.25 | 0.998 | 1.993 | 2.985 | 3.975 | 4.963 | 5.948 | 6.931 | 7.911 | 8.889 | 9.864 |
| 0.50 | 0.995 | 1.985 | 2.970 | 3.950 | 4.926 | 5.896 | 6.862 | 7.823 | 8.779 | 9.730 |
| 0.75 | 0.993 | 1.978 | 2.956 | 3.926 | 4.889 | 5.846 | 6.795 | 7.737 | 8.672 | 9.600 |
| 1.00 | 0.990 | 1.970 | 2.941 | 3.902 | 4.853 | 5.795 | 6.728 | 7.652 | 8.566 | 9.471 |
| 1.25 | 0.988 | 1.963 | 2.927 | 3.878 | 4.818 | 5.746 | 6.663 | 7.563 | 8.462 | 9.346 |
| 1.50 | 0.985 | 1.956 | 2.912 | 3.854 | 4.783 | 5.697 | 6.598 | 7.486 | 8.361 | 9.222 |
| 1.75 | 0.983 | 1.949 | 2.898 | 3.831 | 4.748 | 5.649 | 6.535 | 7.405 | 8.260 | 9.101 |
| 2.00 | 0.980 | 1.942 | 2.884 | 3.808 | 4.713 | 5.601 | 6.472 | 7.325 | 8.162 | 8.983 |
| 2.25 | 0.978 | 1.934 | 2.870 | 3.785 | 4.679 | 5.554 | 6.410 | 7.247 | 8.066 | 8.866 |
| 2.50 | 0.976 | 1.927 | 2.856 | 3.762 | 4.646 | 5.503 | 6.349 | 7.170 | 7.971 | 8.752 |
| 2.75 | 0.973 | 1.920 | 2.842 | 3.739 | 4.613 | 5.462 | 6.289 | 7.094 | 7.878 | 8.640 |
| 3.00 | 0.971 | 1.913 | 2.829 | 3.717 | 4.580 | 5.417 | 6.230 | 7.020 | 7.786 | 8.530 |
| 3.25 | 0.969 | 1.907 | 2.815 | 3.695 | 4.547 | 5.373 | 6.172 | 6.946 | 7.696 | 8.422 |
| 3.50 | 0.966 | 1.900 | 2.802 | 3.673 | 4.515 | 5.329 | 6.115 | 6.874 | 7.609 | 8.317 |
| 3.75 | 0.964 | 1.893 | 2.788 | 3.651 | 4.483 | 5.285 | 6.058 | 6.803 | 7.521 | 8.213 |
| 4.00 | 0.962 | 1.886 | 2.775 | 3.630 | 4.452 | 5.242 | 6.002 | 6.733 | 7.435 | 8.111 |
| 4.25 | 0.959 | 1.879 | 2.762 | 3.609 | 4.421 | 5.200 | 5.947 | 6.664 | 7.351 | 8.011 |
| 4.50 | 0.957 | 1.873 | 2.749 | 3.588 | 4.390 | 5.158 | 5.893 | 6.596 | 7.269 | 7.913 |
| 4.75 | 0.955 | 1.866 | 2.736 | 3.567 | 4.360 | 5.117 | 5.839 | 6.529 | 7.188 | 7.816 |
| 5.00 | 0.952 | 1.859 | 2.723 | 3.546 | 4.329 | 5.076 | 5.786 | 6.463 | 7.108 | 7.722 |
| 5.25 | 0.950 | 1.853 | 2.711 | 3.525 | 4.300 | 5.035 | 5.734 | 6.393 | 7.029 | 7.629 |
| 5.50 | 0.948 | 1.846 | 2.698 | 3.505 | 4.270 | 4.996 | 5.683 | 6.335 | 6.952 | 7.538 |
| 5.75 | 0.946 | 1.840 | 2.685 | 3.485 | 4.241 | 4.956 | 5.632 | 6.272 | 6.876 | 7.448 |

| X R.O.I. | EXPECTED USEFUL LIFE IN YEARS | | | | | | | | | |
|-------------|-------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
| | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| 0.00 | 11.000 | 12.000 | 13.000 | 14.000 | 15.000 | 16.000 | 17.000 | 18.000 | 19.000 | 20.000 |
| 0.25 | 10.837 | 11.807 | 12.775 | 13.741 | 14.704 | 15.665 | 16.623 | 17.580 | 18.533 | 19.484 |
| 0.50 | 10.677 | 11.619 | 12.554 | 13.489 | 14.417 | 15.340 | 16.259 | 17.173 | 18.082 | 18.987 |
| 0.75 | 10.521 | 11.435 | 12.342 | 13.243 | 14.137 | 15.024 | 15.905 | 16.779 | 17.647 | 18.508 |
| 1.00 | 10.368 | 11.255 | 12.134 | 13.004 | 13.865 | 14.713 | 15.562 | 16.398 | 17.225 | 18.046 |
| 1.25 | 10.218 | 11.079 | 11.930 | 12.771 | 13.601 | 14.420 | 15.230 | 16.030 | 16.819 | 17.599 |
| 1.50 | 10.071 | 10.908 | 11.732 | 12.543 | 13.343 | 14.131 | 14.908 | 15.673 | 16.426 | 17.169 |
| 1.75 | 9.927 | 10.740 | 11.538 | 12.322 | 13.093 | 13.850 | 14.595 | 15.327 | 16.046 | 16.753 |
| 2.00 | 9.787 | 10.575 | 11.348 | 12.106 | 12.849 | 13.573 | 14.292 | 14.992 | 15.678 | 16.351 |
| 2.25 | 9.649 | 10.415 | 11.164 | 11.896 | 12.612 | 13.313 | 13.998 | 14.668 | 15.323 | 15.964 |
| 2.50 | 9.514 | 10.258 | 10.993 | 11.691 | 12.381 | 13.055 | 13.712 | 14.353 | 14.979 | 15.589 |
| 2.75 | 9.382 | 10.104 | 10.807 | 11.491 | 12.157 | 12.805 | 13.435 | 14.049 | 14.646 | 15.227 |
| 3.00 | 9.253 | 9.954 | 10.635 | 11.295 | 11.938 | 12.561 | 13.166 | 13.754 | 14.324 | 14.877 |
| 3.25 | 9.126 | 9.807 | 10.467 | 11.106 | 11.725 | 12.324 | 12.905 | 13.467 | 14.012 | 14.539 |
| 3.50 | 9.002 | 9.683 | 10.303 | 10.921 | 11.517 | 12.094 | 12.651 | 13.190 | 13.710 | 14.212 |
| 3.75 | 8.880 | 9.523 | 10.142 | 10.740 | 11.315 | 11.870 | 12.405 | 12.920 | 13.417 | 13.896 |
| 4.00 | 8.760 | 9.385 | 9.985 | 10.563 | 11.113 | 11.652 | 12.166 | 12.659 | 13.134 | 13.590 |
| 4.25 | 8.644 | 9.250 | 9.833 | 10.391 | 10.927 | 11.440 | 11.933 | 12.406 | 12.859 | 13.294 |
| 4.50 | 8.527 | 9.119 | 9.683 | 10.223 | 10.740 | 11.274 | 11.707 | 12.160 | 12.593 | 13.008 |
| 4.75 | 8.417 | 8.990 | 9.537 | 10.059 | 10.557 | 11.033 | 11.482 | 11.921 | 12.335 | 12.731 |
| 5.00 | 8.306 | 8.863 | 9.394 | 9.899 | 10.380 | 10.833 | 11.274 | 11.690 | 12.085 | 12.462 |
| 5.25 | 8.196 | 8.740 | 9.254 | 9.742 | 10.206 | 10.647 | 11.064 | 11.465 | 11.843 | 12.202 |
| 5.50 | 8.093 | 8.619 | 9.117 | 9.590 | 10.038 | 10.462 | 10.865 | 11.246 | 11.608 | 11.950 |
| 5.75 | 7.989 | 8.500 | 8.983 | 9.441 | 9.873 | 10.282 | 10.688 | 11.034 | 11.379 | 11.706 |

TABLE 1

RETURN ON INVESTMENT PERCENTAGE
 BASED ON P.O.I. FACTOR (FACILITY COST/AVRG. ANNUAL CASH FLOW)
 AND THE EXPECTED USEFUL LIFE OF THE NEW FACILITY
 01/30/74

| P.O.I. | EXPECTED USEFUL LIFE IN YEARS | | | | | | | | | |
|--------|-------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
| | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 |
| 0.00 | 21.000 | 22.000 | 23.000 | 24.000 | 25.000 | 26.000 | 27.000 | 28.000 | 29.000 | 30.000 |
| 0.25 | 20.433 | 21.380 | 22.324 | 23.266 | 24.205 | 25.143 | 26.077 | 27.010 | 27.940 | 28.868 |
| 0.50 | 19.888 | 20.784 | 21.676 | 22.563 | 23.446 | 24.324 | 25.198 | 26.063 | 26.933 | 27.794 |
| 0.75 | 19.363 | 20.211 | 21.053 | 21.889 | 22.719 | 23.542 | 24.359 | 25.171 | 25.976 | 26.775 |
| 1.00 | 18.857 | 19.650 | 20.456 | 21.263 | 22.023 | 22.795 | 23.560 | 24.316 | 25.066 | 25.805 |
| 1.25 | 18.370 | 19.131 | 19.832 | 20.624 | 21.357 | 22.081 | 22.795 | 23.503 | 24.200 | 24.889 |
| 1.50 | 17.900 | 18.621 | 19.331 | 20.030 | 20.720 | 21.399 | 22.068 | 22.727 | 23.376 | 24.016 |
| 1.75 | 17.448 | 18.130 | 18.801 | 19.461 | 20.109 | 20.746 | 21.372 | 21.987 | 22.592 | 23.185 |
| 2.00 | 17.011 | 17.653 | 18.292 | 18.914 | 19.523 | 20.121 | 20.707 | 21.291 | 21.864 | 22.426 |
| 2.25 | 16.590 | 17.203 | 17.803 | 18.389 | 18.962 | 19.523 | 20.072 | 20.608 | 21.132 | 21.645 |
| 2.50 | 16.185 | 16.765 | 17.332 | 17.885 | 18.424 | 18.951 | 19.464 | 19.965 | 20.454 | 20.930 |
| 2.75 | 15.793 | 16.343 | 16.879 | 17.401 | 17.908 | 18.402 | 18.883 | 19.351 | 19.806 | 20.249 |
| 3.00 | 15.415 | 15.937 | 16.444 | 16.936 | 17.413 | 17.877 | 18.327 | 18.764 | 19.188 | 19.600 |
| 3.25 | 15.050 | 15.543 | 16.024 | 16.482 | 16.938 | 17.373 | 17.795 | 18.203 | 18.599 | 18.982 |
| 3.50 | 14.698 | 15.167 | 15.620 | 16.058 | 16.482 | 16.893 | 17.285 | 17.687 | 18.036 | 18.392 |
| 3.75 | 14.358 | 14.803 | 15.232 | 15.645 | 16.043 | 16.427 | 16.797 | 17.154 | 17.498 | 17.829 |
| 4.00 | 14.029 | 14.451 | 14.857 | 15.247 | 15.622 | 15.983 | 16.330 | 16.663 | 16.984 | 17.292 |
| 4.25 | 13.712 | 14.112 | 14.496 | 14.864 | 15.217 | 15.556 | 15.881 | 16.193 | 16.492 | 16.779 |
| 4.50 | 13.405 | 13.784 | 14.148 | 14.495 | 14.828 | 15.147 | 15.451 | 15.743 | 16.022 | 16.289 |
| 4.75 | 13.108 | 13.462 | 13.812 | 14.141 | 14.454 | 14.753 | 15.039 | 15.312 | 15.572 | 15.820 |
| 5.00 | 12.821 | 13.163 | 13.489 | 13.799 | 14.094 | 14.375 | 14.643 | 14.898 | 15.141 | 15.372 |
| 5.25 | 12.544 | 12.868 | 13.176 | 13.469 | 13.747 | 14.012 | 14.263 | 14.502 | 14.723 | 14.944 |
| 5.50 | 12.275 | 12.583 | 12.875 | 13.152 | 13.414 | 13.662 | 13.895 | 14.121 | 14.333 | 14.534 |
| 5.75 | 12.015 | 12.308 | 12.584 | 12.846 | 13.093 | 13.326 | 13.547 | 13.756 | 13.954 | 14.141 |

| P.O.I. | EXPECTED USEFUL LIFE IN YEARS | | | | | | | | | |
|--------|-------------------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 6.00 | 0.943 | 1.833 | 2.673 | 3.465 | 4.212 | 4.917 | 5.582 | 6.210 | 6.802 | 7.360 |
| 6.25 | 0.941 | 1.827 | 2.661 | 3.445 | 4.184 | 4.879 | 5.533 | 6.149 | 6.728 | 7.274 |
| 6.50 | 0.937 | 1.821 | 2.648 | 3.426 | 4.156 | 4.841 | 5.485 | 6.089 | 6.656 | 7.189 |
| 6.75 | 0.937 | 1.814 | 2.636 | 3.406 | 4.128 | 4.804 | 5.437 | 6.030 | 6.585 | 7.105 |
| 7.00 | 0.935 | 1.803 | 2.624 | 3.387 | 4.100 | 4.767 | 5.389 | 5.971 | 6.515 | 7.024 |
| 7.25 | 0.932 | 1.802 | 2.612 | 3.368 | 4.073 | 4.730 | 5.343 | 5.914 | 6.447 | 6.943 |
| 7.50 | 0.930 | 1.796 | 2.601 | 3.349 | 4.046 | 4.694 | 5.297 | 5.857 | 6.379 | 6.864 |
| 7.75 | 0.928 | 1.789 | 2.589 | 3.331 | 4.019 | 4.658 | 5.251 | 5.802 | 6.312 | 6.786 |
| 8.00 | 0.926 | 1.783 | 2.577 | 3.312 | 3.993 | 4.623 | 5.206 | 5.747 | 6.247 | 6.710 |
| 8.25 | 0.924 | 1.777 | 2.566 | 3.294 | 3.967 | 4.588 | 5.162 | 5.693 | 6.182 | 6.635 |
| 8.50 | 0.922 | 1.771 | 2.554 | 3.276 | 3.941 | 4.554 | 5.119 | 5.639 | 6.117 | 6.561 |
| 8.75 | 0.920 | 1.765 | 2.543 | 3.258 | 3.915 | 4.520 | 5.075 | 5.587 | 6.057 | 6.489 |
| 9.00 | 0.917 | 1.759 | 2.531 | 3.240 | 3.890 | 4.486 | 5.033 | 5.535 | 5.995 | 6.418 |
| 9.25 | 0.915 | 1.753 | 2.520 | 3.222 | 3.865 | 4.453 | 4.991 | 5.484 | 5.935 | 6.343 |
| 9.50 | 0.913 | 1.747 | 2.509 | 3.204 | 3.840 | 4.420 | 4.950 | 5.433 | 5.875 | 6.274 |
| 9.75 | 0.911 | 1.741 | 2.498 | 3.187 | 3.815 | 4.387 | 4.909 | 5.384 | 5.817 | 6.211 |
| 10.00 | 0.909 | 1.736 | 2.487 | 3.170 | 3.791 | 4.355 | 4.868 | 5.335 | 5.759 | 6.145 |
| 10.25 | 0.907 | 1.730 | 2.476 | 3.153 | 3.767 | 4.324 | 4.829 | 5.287 | 5.702 | 6.079 |
| 10.50 | 0.905 | 1.724 | 2.465 | 3.136 | 3.743 | 4.292 | 4.789 | 5.239 | 5.646 | 6.015 |
| 10.75 | 0.903 | 1.718 | 2.454 | 3.119 | 3.719 | 4.261 | 4.751 | 5.192 | 5.591 | 5.951 |
| 11.00 | 0.901 | 1.713 | 2.444 | 3.102 | 3.696 | 4.231 | 4.712 | 5.146 | 5.537 | 5.889 |
| 11.25 | 0.899 | 1.707 | 2.433 | 3.086 | 3.673 | 4.200 | 4.674 | 5.101 | 5.484 | 5.828 |
| 11.50 | 0.897 | 1.701 | 2.423 | 3.070 | 3.650 | 4.170 | 4.637 | 5.056 | 5.431 | 5.765 |
| 11.75 | 0.895 | 1.696 | 2.412 | 3.053 | 3.627 | 4.141 | 4.600 | 5.011 | 5.379 | 5.702 |

TABLE 1

RETURN ON INVESTMENT PERCENTAGE
 BASED ON R.O.I. FACTOR (FACILITY COST/AVRG. ANNUAL CASH FLOW)
 AND THE EXPECTED USEFUL LIFE OF THE NEW FACILITY
 01/06/84

| X R.O.I. | EXPECTED USEFUL LIFE IN YEARS | | | | | | | | | |
|-------------|-------------------------------|-------|-------|-------|-------|--------|--------|--------|--------|--------|
| | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| 6.00 | 7.887 | 8.384 | 8.853 | 9.295 | 9.712 | 10.106 | 10.477 | 10.829 | 11.158 | 11.470 |
| 6.25 | 7.737 | 8.270 | 8.725 | 9.153 | 9.556 | 9.935 | 10.291 | 10.627 | 10.943 | 11.241 |
| 6.50 | 7.689 | 8.159 | 8.600 | 9.014 | 9.403 | 9.768 | 10.111 | 10.432 | 10.735 | 11.019 |
| 6.75 | 7.593 | 8.050 | 8.477 | 8.878 | 9.253 | 9.605 | 9.935 | 10.243 | 10.532 | 10.803 |
| 7.00 | 7.499 | 7.943 | 8.358 | 8.745 | 9.108 | 9.447 | 9.763 | 10.059 | 10.336 | 10.594 |
| 7.25 | 7.406 | 7.838 | 8.240 | 8.616 | 8.966 | 9.292 | 9.595 | 9.880 | 10.145 | 10.391 |
| 7.50 | 7.315 | 7.735 | 8.126 | 8.489 | 8.827 | 9.142 | 9.434 | 9.706 | 9.959 | 10.194 |
| 7.75 | 7.226 | 7.635 | 8.014 | 8.365 | 8.692 | 8.995 | 9.276 | 9.537 | 9.779 | 10.004 |
| 8.00 | 7.139 | 7.536 | 7.904 | 8.244 | 8.559 | 8.851 | 9.122 | 9.372 | 9.604 | 9.813 |
| 8.25 | 7.053 | 7.439 | 7.796 | 8.126 | 8.430 | 8.712 | 8.971 | 9.212 | 9.433 | 9.638 |
| 8.50 | 6.969 | 7.345 | 7.691 | 8.010 | 8.304 | 8.575 | 8.825 | 9.055 | 9.268 | 9.463 |
| 8.75 | 6.886 | 7.252 | 7.582 | 7.897 | 8.181 | 8.442 | 8.683 | 8.904 | 9.107 | 9.294 |
| 9.00 | 6.805 | 7.161 | 7.487 | 7.796 | 8.061 | 8.313 | 8.544 | 8.756 | 8.950 | 9.129 |
| 9.25 | 6.726 | 7.071 | 7.388 | 7.678 | 7.943 | 8.186 | 8.408 | 8.612 | 8.798 | 8.968 |
| 9.50 | 6.647 | 6.984 | 7.291 | 7.572 | 7.828 | 8.062 | 8.276 | 8.471 | 8.650 | 8.812 |
| 9.75 | 6.570 | 6.898 | 7.196 | 7.468 | 7.716 | 7.942 | 8.147 | 8.335 | 8.505 | 8.661 |
| 10.00 | 6.495 | 6.814 | 7.103 | 7.367 | 7.606 | 7.824 | 8.022 | 8.201 | 8.365 | 8.514 |
| 10.25 | 6.421 | 6.731 | 7.012 | 7.267 | 7.499 | 7.709 | 7.899 | 8.072 | 8.228 | 8.370 |
| 10.50 | 6.348 | 6.650 | 6.923 | 7.170 | 7.394 | 7.596 | 7.779 | 7.945 | 8.095 | 8.231 |
| 10.75 | 6.277 | 6.570 | 6.836 | 7.075 | 7.291 | 7.486 | 7.663 | 7.822 | 7.966 | 8.095 |
| 11.00 | 6.207 | 6.492 | 6.750 | 6.982 | 7.191 | 7.379 | 7.549 | 7.702 | 7.839 | 7.963 |
| 11.25 | 6.138 | 6.416 | 6.666 | 6.891 | 7.093 | 7.274 | 7.438 | 7.584 | 7.716 | 7.835 |
| 11.50 | 6.070 | 6.341 | 6.593 | 6.801 | 6.997 | 7.172 | 7.329 | 7.470 | 7.596 | 7.710 |
| 11.75 | 6.003 | 6.267 | 6.503 | 6.714 | 6.903 | 7.072 | 7.223 | 7.358 | 7.480 | 7.588 |

| X R.O.I. | EXPECTED USEFUL LIFE IN YEARS | | | | | | | | | |
|-------------|-------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
| | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 |
| 6.00 | 11.764 | 12.042 | 12.303 | 12.550 | 12.783 | 13.003 | 13.211 | 13.406 | 13.591 | 13.765 |
| 6.25 | 11.521 | 11.784 | 12.032 | 12.266 | 12.485 | 12.692 | 12.887 | 13.070 | 13.242 | 13.404 |
| 6.50 | 11.285 | 11.535 | 11.770 | 11.991 | 12.198 | 12.392 | 12.575 | 12.746 | 12.907 | 13.059 |
| 6.75 | 11.057 | 11.294 | 11.517 | 11.725 | 11.921 | 12.104 | 12.275 | 12.436 | 12.586 | 12.727 |
| 7.00 | 10.836 | 11.061 | 11.272 | 11.469 | 11.654 | 11.826 | 11.987 | 12.137 | 12.278 | 12.409 |
| 7.25 | 10.621 | 10.836 | 11.036 | 11.222 | 11.396 | 11.558 | 11.709 | 11.850 | 11.981 | 12.104 |
| 7.50 | 10.413 | 10.617 | 10.807 | 10.983 | 11.147 | 11.299 | 11.441 | 11.573 | 11.696 | 11.810 |
| 7.75 | 10.212 | 10.406 | 10.585 | 10.752 | 10.907 | 11.050 | 11.184 | 11.307 | 11.422 | 11.529 |
| 8.00 | 10.017 | 10.201 | 10.371 | 10.529 | 10.675 | 10.810 | 10.935 | 11.051 | 11.158 | 11.253 |
| 8.25 | 9.827 | 10.002 | 10.164 | 10.313 | 10.451 | 10.578 | 10.696 | 10.804 | 10.905 | 10.997 |
| 8.50 | 9.644 | 9.810 | 9.963 | 10.104 | 10.234 | 10.354 | 10.465 | 10.566 | 10.660 | 10.747 |
| 8.75 | 9.465 | 9.623 | 9.769 | 9.902 | 10.025 | 10.138 | 10.242 | 10.337 | 10.425 | 10.506 |
| 9.00 | 9.292 | 9.442 | 9.580 | 9.707 | 9.823 | 9.929 | 10.027 | 10.116 | 10.198 | 10.274 |
| 9.25 | 9.124 | 9.267 | 9.398 | 9.517 | 9.627 | 9.727 | 9.819 | 9.903 | 9.980 | 10.050 |
| 9.50 | 8.961 | 9.097 | 9.221 | 9.334 | 9.438 | 9.532 | 9.618 | 9.697 | 9.769 | 9.835 |
| 9.75 | 8.803 | 8.932 | 9.049 | 9.157 | 9.254 | 9.343 | 9.425 | 9.499 | 9.566 | 9.627 |
| 10.00 | 8.649 | 8.772 | 8.883 | 8.985 | 9.077 | 9.161 | 9.237 | 9.307 | 9.370 | 9.427 |
| 10.25 | 8.499 | 8.616 | 8.722 | 8.818 | 8.905 | 8.984 | 9.056 | 9.121 | 9.180 | 9.234 |
| 10.50 | 8.354 | 8.465 | 8.566 | 8.657 | 8.739 | 8.814 | 8.881 | 8.942 | 8.997 | 9.047 |
| 10.75 | 8.212 | 8.318 | 8.414 | 8.500 | 8.575 | 8.643 | 8.712 | 8.769 | 8.821 | 8.868 |
| 11.00 | 8.075 | 8.176 | 8.266 | 8.348 | 8.422 | 8.488 | 8.548 | 8.602 | 8.650 | 8.694 |
| 11.25 | 7.941 | 8.037 | 8.123 | 8.201 | 8.270 | 8.333 | 8.389 | 8.440 | 8.485 | 8.525 |
| 11.50 | 7.811 | 7.903 | 7.984 | 8.058 | 8.124 | 8.183 | 8.236 | 8.283 | 8.326 | 8.364 |
| 11.75 | 7.685 | 7.772 | 7.850 | 7.919 | 7.981 | 8.037 | 8.087 | 8.131 | 8.171 | 8.207 |

TABLE 1

RETURN ON INVESTMENT PERCENTAGE
 BASED ON R.O.I. FACTOR (FACILITY COST/AVRG. ANNUAL CASH FLOW)
 AND THE EXPECTED USEFUL LIFE OF THE NEW FACILITY
 01/06/84

| Z R.O.I. | EXPECTED USEFUL LIFE IN YEARS | | | | | | | | | |
|-------------|-------------------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 12.00 | 0.893 | 1.690 | 2.402 | 3.037 | 3.605 | 4.111 | 4.564 | 4.968 | 5.328 | 5.650 |
| 12.25 | 0.891 | 1.685 | 2.392 | 3.021 | 3.583 | 4.082 | 4.528 | 4.925 | 5.278 | 5.593 |
| 12.50 | 0.889 | 1.679 | 2.331 | 3.006 | 3.561 | 4.054 | 4.492 | 4.882 | 5.228 | 5.510 |
| 12.75 | 0.887 | 1.674 | 2.371 | 2.990 | 3.539 | 4.026 | 4.457 | 4.840 | 5.180 | 5.481 |
| 13.00 | 0.885 | 1.668 | 2.361 | 2.974 | 3.517 | 3.998 | 4.423 | 4.799 | 5.132 | 5.426 |
| 13.25 | 0.883 | 1.663 | 2.351 | 2.959 | 3.496 | 3.970 | 4.388 | 4.758 | 5.084 | 5.372 |
| 13.50 | 0.881 | 1.657 | 2.341 | 2.944 | 3.475 | 3.943 | 4.355 | 4.718 | 5.038 | 5.320 |
| 13.75 | 0.879 | 1.652 | 2.331 | 2.929 | 3.454 | 3.915 | 4.321 | 4.678 | 4.992 | 5.267 |
| 14.00 | 0.877 | 1.647 | 2.322 | 2.914 | 3.433 | 3.889 | 4.288 | 4.639 | 4.946 | 5.216 |
| 14.25 | 0.875 | 1.641 | 2.312 | 2.899 | 3.413 | 3.862 | 4.256 | 4.600 | 4.902 | 5.166 |
| 14.50 | 0.873 | 1.636 | 2.302 | 2.884 | 3.392 | 3.835 | 4.224 | 4.562 | 4.858 | 5.115 |
| 14.75 | 0.871 | 1.631 | 2.293 | 2.869 | 3.372 | 3.810 | 4.192 | 4.524 | 4.814 | 5.067 |
| 15.00 | 0.870 | 1.626 | 2.283 | 2.855 | 3.352 | 3.784 | 4.160 | 4.487 | 4.772 | 5.017 |
| 15.25 | 0.868 | 1.621 | 2.274 | 2.841 | 3.332 | 3.757 | 4.129 | 4.451 | 4.729 | 4.971 |
| 15.50 | 0.866 | 1.615 | 2.264 | 2.826 | 3.313 | 3.734 | 4.099 | 4.415 | 4.688 | 4.925 |
| 15.75 | 0.864 | 1.610 | 2.255 | 2.812 | 3.293 | 3.709 | 4.068 | 4.379 | 4.647 | 4.879 |
| 16.00 | 0.862 | 1.605 | 2.246 | 2.798 | 3.274 | 3.685 | 4.039 | 4.344 | 4.607 | 4.833 |
| 16.25 | 0.860 | 1.600 | 2.237 | 2.784 | 3.255 | 3.660 | 4.009 | 4.309 | 4.567 | 4.789 |
| 16.50 | 0.858 | 1.595 | 2.228 | 2.770 | 3.235 | 3.636 | 3.980 | 4.274 | 4.527 | 4.745 |
| 16.75 | 0.857 | 1.590 | 2.219 | 2.757 | 3.215 | 3.613 | 3.951 | 4.241 | 4.489 | 4.701 |
| 17.00 | 0.855 | 1.585 | 2.210 | 2.743 | 3.199 | 3.589 | 3.922 | 4.207 | 4.451 | 4.659 |
| 17.25 | 0.853 | 1.580 | 2.201 | 2.730 | 3.181 | 3.566 | 3.894 | 4.174 | 4.413 | 4.617 |
| 17.50 | 0.851 | 1.575 | 2.192 | 2.716 | 3.163 | 3.543 | 3.865 | 4.142 | 4.376 | 4.575 |
| 17.75 | 0.849 | 1.570 | 2.183 | 2.703 | 3.145 | 3.520 | 3.839 | 4.109 | 4.339 | 4.534 |

| Z R.O.I. | EXPECTED USEFUL LIFE IN YEARS | | | | | | | | | |
|-------------|-------------------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| 12.00 | 5.939 | 6.194 | 6.424 | 6.628 | 6.811 | 6.974 | 7.120 | 7.250 | 7.365 | 7.469 |
| 12.25 | 5.873 | 6.123 | 6.346 | 6.544 | 6.721 | 6.873 | 7.019 | 7.143 | 7.255 | 7.354 |
| 12.50 | 5.810 | 6.053 | 6.270 | 6.462 | 6.633 | 6.785 | 6.920 | 7.040 | 7.147 | 7.241 |
| 12.75 | 5.748 | 5.985 | 6.195 | 6.381 | 6.547 | 6.693 | 6.823 | 6.939 | 7.041 | 7.132 |
| 13.00 | 5.687 | 5.915 | 6.122 | 6.302 | 6.462 | 6.604 | 6.729 | 6.840 | 6.938 | 7.025 |
| 13.25 | 5.627 | 5.852 | 6.050 | 6.225 | 6.380 | 6.516 | 6.637 | 6.743 | 6.837 | 6.921 |
| 13.50 | 5.568 | 5.787 | 5.979 | 6.149 | 6.299 | 6.431 | 6.547 | 6.649 | 6.739 | 6.819 |
| 13.75 | 5.510 | 5.723 | 5.910 | 6.075 | 6.220 | 6.347 | 6.459 | 6.557 | 6.644 | 6.720 |
| 14.00 | 5.453 | 5.660 | 5.842 | 6.002 | 6.142 | 6.265 | 6.373 | 6.467 | 6.550 | 6.623 |
| 14.25 | 5.397 | 5.599 | 5.775 | 5.931 | 6.066 | 6.185 | 6.289 | 6.380 | 6.459 | 6.529 |
| 14.50 | 5.341 | 5.533 | 5.710 | 5.861 | 5.992 | 6.106 | 6.206 | 6.294 | 6.370 | 6.437 |
| 14.75 | 5.287 | 5.479 | 5.646 | 5.792 | 5.919 | 6.029 | 6.126 | 6.210 | 6.283 | 6.347 |
| 15.00 | 5.234 | 5.421 | 5.583 | 5.724 | 5.847 | 5.954 | 6.047 | 6.128 | 6.198 | 6.259 |
| 15.25 | 5.181 | 5.363 | 5.521 | 5.653 | 5.777 | 5.881 | 5.970 | 6.048 | 6.115 | 6.174 |
| 15.50 | 5.130 | 5.307 | 5.461 | 5.594 | 5.709 | 5.803 | 5.895 | 5.969 | 6.034 | 6.090 |
| 15.75 | 5.079 | 5.252 | 5.401 | 5.530 | 5.641 | 5.738 | 5.821 | 5.893 | 5.955 | 6.009 |
| 16.00 | 5.029 | 5.197 | 5.342 | 5.466 | 5.575 | 5.663 | 5.749 | 5.818 | 5.877 | 5.929 |
| 16.25 | 4.979 | 5.144 | 5.285 | 5.406 | 5.511 | 5.601 | 5.678 | 5.745 | 5.802 | 5.851 |
| 16.50 | 4.931 | 5.091 | 5.222 | 5.346 | 5.447 | 5.534 | 5.607 | 5.673 | 5.728 | 5.775 |
| 16.75 | 4.883 | 5.039 | 5.173 | 5.297 | 5.395 | 5.469 | 5.541 | 5.603 | 5.655 | 5.700 |
| 17.00 | 4.836 | 4.988 | 5.119 | 5.229 | 5.324 | 5.405 | 5.475 | 5.534 | 5.584 | 5.628 |
| 17.25 | 4.790 | 4.938 | 5.065 | 5.172 | 5.264 | 5.343 | 5.410 | 5.467 | 5.515 | 5.557 |
| 17.50 | 4.745 | 4.889 | 5.012 | 5.117 | 5.206 | 5.281 | 5.346 | 5.401 | 5.447 | 5.487 |
| 17.75 | 4.700 | 4.841 | 4.960 | 5.062 | 5.148 | 5.221 | 5.283 | 5.336 | 5.381 | 5.419 |

TABLE 1

RETURN ON INVESTMENT PERCENTAGE
 BASED ON R.O.I. FACTOR (FACILITY COST/AVRG. ANNUAL CASH FLOW)
 AND THE EXPECTED USEFUL LIFE OF THE NEW FACILITY
 01/06/84

| R.O.I. | EXPECTED USEFUL LIFE IN YEARS | | | | | | | | | |
|--------|-------------------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 |
| 12.00 | 7.562 | 7.645 | 7.718 | 7.784 | 7.843 | 7.896 | 7.943 | 7.984 | 8.022 | 8.055 |
| 12.25 | 7.442 | 7.521 | 7.591 | 7.653 | 7.709 | 7.759 | 7.803 | 7.842 | 7.877 | 7.908 |
| 12.50 | 7.326 | 7.401 | 7.467 | 7.526 | 7.579 | 7.626 | 7.667 | 7.704 | 7.737 | 7.766 |
| 12.75 | 7.212 | 7.283 | 7.347 | 7.403 | 7.453 | 7.497 | 7.536 | 7.571 | 7.602 | 7.629 |
| 13.00 | 7.102 | 7.170 | 7.230 | 7.283 | 7.330 | 7.372 | 7.409 | 7.441 | 7.470 | 7.496 |
| 13.25 | 6.994 | 7.059 | 7.116 | 7.166 | 7.211 | 7.250 | 7.285 | 7.316 | 7.343 | 7.367 |
| 13.50 | 6.889 | 6.951 | 7.005 | 7.053 | 7.095 | 7.132 | 7.165 | 7.194 | 7.219 | 7.242 |
| 13.75 | 6.787 | 6.845 | 6.897 | 6.942 | 6.982 | 7.017 | 7.048 | 7.075 | 7.099 | 7.120 |
| 14.00 | 6.687 | 6.743 | 6.792 | 6.835 | 6.873 | 6.906 | 6.935 | 6.961 | 6.983 | 7.003 |
| 14.25 | 6.590 | 6.643 | 6.690 | 6.731 | 6.766 | 6.798 | 6.825 | 6.849 | 6.870 | 6.889 |
| 14.50 | 6.495 | 6.546 | 6.590 | 6.629 | 6.663 | 6.693 | 6.718 | 6.741 | 6.761 | 6.773 |
| 14.75 | 6.403 | 6.451 | 6.493 | 6.530 | 6.562 | 6.590 | 6.615 | 6.636 | 6.654 | 6.670 |
| 15.00 | 6.312 | 6.359 | 6.399 | 6.434 | 6.464 | 6.491 | 6.514 | 6.534 | 6.551 | 6.566 |
| 15.25 | 6.225 | 6.269 | 6.307 | 6.340 | 6.369 | 6.394 | 6.415 | 6.434 | 6.450 | 6.465 |
| 15.50 | 6.139 | 6.181 | 6.217 | 6.249 | 6.276 | 6.299 | 6.320 | 6.337 | 6.353 | 6.366 |
| 15.75 | 6.055 | 6.095 | 6.130 | 6.159 | 6.185 | 6.208 | 6.227 | 6.243 | 6.259 | 6.270 |
| 16.00 | 5.973 | 6.011 | 6.044 | 6.073 | 6.097 | 6.118 | 6.136 | 6.152 | 6.166 | 6.177 |
| 16.25 | 5.893 | 5.930 | 5.961 | 5.988 | 6.011 | 6.031 | 6.048 | 6.063 | 6.076 | 6.087 |
| 16.50 | 5.815 | 5.850 | 5.880 | 5.905 | 5.927 | 5.946 | 5.962 | 5.976 | 5.988 | 5.999 |
| 16.75 | 5.739 | 5.772 | 5.801 | 5.825 | 5.846 | 5.864 | 5.879 | 5.892 | 5.903 | 5.913 |
| 17.00 | 5.665 | 5.696 | 5.723 | 5.746 | 5.766 | 5.783 | 5.798 | 5.810 | 5.820 | 5.829 |
| 17.25 | 5.592 | 5.622 | 5.648 | 5.670 | 5.689 | 5.705 | 5.719 | 5.730 | 5.740 | 5.749 |
| 17.50 | 5.521 | 5.550 | 5.574 | 5.595 | 5.613 | 5.628 | 5.641 | 5.652 | 5.661 | 5.669 |
| 17.75 | 5.452 | 5.479 | 5.502 | 5.522 | 5.539 | 5.553 | 5.565 | 5.576 | 5.584 | 5.592 |

| R.O.I. | EXPECTED USEFUL LIFE IN YEARS | | | | | | | | | |
|--------|-------------------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 18.00 | 0.847 | 1.566 | 2.174 | 2.690 | 3.127 | 3.498 | 3.812 | 4.078 | 4.303 | 4.494 |
| 18.25 | 0.846 | 1.561 | 2.166 | 2.677 | 3.110 | 3.475 | 3.785 | 4.046 | 4.267 | 4.454 |
| 18.50 | 0.844 | 1.556 | 2.157 | 2.664 | 3.092 | 3.453 | 3.758 | 4.015 | 4.232 | 4.415 |
| 18.75 | 0.842 | 1.551 | 2.148 | 2.651 | 3.075 | 3.431 | 3.732 | 3.985 | 4.198 | 4.377 |
| 19.00 | 0.840 | 1.547 | 2.140 | 2.639 | 3.058 | 3.410 | 3.706 | 3.954 | 4.163 | 4.339 |
| 19.25 | 0.839 | 1.542 | 2.131 | 2.626 | 3.041 | 3.388 | 3.680 | 3.925 | 4.130 | 4.302 |
| 19.50 | 0.837 | 1.537 | 2.123 | 2.613 | 3.024 | 3.367 | 3.655 | 3.895 | 4.096 | 4.265 |
| 19.75 | 0.835 | 1.532 | 2.115 | 2.601 | 3.007 | 3.346 | 3.629 | 3.866 | 4.063 | 4.228 |
| 20.00 | 0.833 | 1.528 | 2.106 | 2.589 | 2.991 | 3.325 | 3.605 | 3.837 | 4.031 | 4.192 |
| 20.25 | 0.832 | 1.523 | 2.099 | 2.577 | 2.974 | 3.305 | 3.580 | 3.809 | 3.999 | 4.157 |
| 20.50 | 0.830 | 1.519 | 2.090 | 2.564 | 2.958 | 3.285 | 3.556 | 3.781 | 3.967 | 4.122 |
| 20.75 | 0.829 | 1.514 | 2.082 | 2.552 | 2.942 | 3.265 | 3.532 | 3.753 | 3.936 | 4.088 |
| 21.00 | 0.826 | 1.509 | 2.074 | 2.540 | 2.926 | 3.245 | 3.508 | 3.726 | 3.905 | 4.054 |
| 21.25 | 0.825 | 1.505 | 2.066 | 2.529 | 2.910 | 3.225 | 3.484 | 3.699 | 3.875 | 4.021 |
| 21.50 | 0.823 | 1.500 | 2.058 | 2.517 | 2.895 | 3.205 | 3.461 | 3.672 | 3.845 | 3.985 |
| 21.75 | 0.821 | 1.496 | 2.050 | 2.505 | 2.879 | 3.186 | 3.438 | 3.645 | 3.815 | 3.955 |
| 22.00 | 0.820 | 1.492 | 2.042 | 2.494 | 2.864 | 3.167 | 3.416 | 3.619 | 3.786 | 3.923 |
| 22.25 | 0.819 | 1.487 | 2.034 | 2.482 | 2.848 | 3.148 | 3.393 | 3.593 | 3.757 | 3.892 |
| 22.50 | 0.816 | 1.483 | 2.027 | 2.471 | 2.833 | 3.129 | 3.371 | 3.568 | 3.729 | 3.860 |
| 22.75 | 0.815 | 1.478 | 2.019 | 2.459 | 2.818 | 3.111 | 3.349 | 3.543 | 3.701 | 3.830 |
| 23.00 | 0.813 | 1.474 | 2.011 | 2.448 | 2.803 | 3.092 | 3.327 | 3.518 | 3.673 | 3.799 |
| 23.25 | 0.811 | 1.470 | 2.004 | 2.437 | 2.789 | 3.074 | 3.306 | 3.493 | 3.646 | 3.769 |
| 23.50 | 0.810 | 1.465 | 1.996 | 2.426 | 2.774 | 3.056 | 3.284 | 3.469 | 3.619 | 3.740 |
| 23.75 | 0.808 | 1.461 | 1.989 | 2.415 | 2.760 | 3.038 | 3.263 | 3.445 | 3.592 | 3.711 |

TABLE 1

RETURN ON INVESTMENT PERCENTAGE
 BASED ON R.O.I. FACTOR (FACILITY COST/AVRG. ANNUAL CASH FLOW)
 AND THE EXPECTED USEFUL LIFE OF THE NEW FACILITY
 01/04/84

| Z R.O.I. | EXPECTED USEFUL LIFE IN YEARS | | | | | | | | | |
|-------------|-------------------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| 18.00 | 4.656 | 4.793 | 4.910 | 5.008 | 5.092 | 5.162 | 5.222 | 5.273 | 5.316 | 5.353 |
| 18.25 | 4.613 | 4.746 | 4.860 | 4.955 | 5.036 | 5.105 | 5.162 | 5.211 | 5.253 | 5.288 |
| 18.50 | 4.570 | 4.700 | 4.810 | 4.903 | 4.982 | 5.048 | 5.104 | 5.151 | 5.191 | 5.224 |
| 18.75 | 4.528 | 4.655 | 4.762 | 4.852 | 4.928 | 4.992 | 5.046 | 5.091 | 5.130 | 5.162 |
| 19.00 | 4.486 | 4.611 | 4.715 | 4.802 | 4.876 | 4.938 | 4.990 | 5.033 | 5.070 | 5.101 |
| 19.25 | 4.446 | 4.567 | 4.668 | 4.753 | 4.824 | 4.884 | 4.934 | 4.976 | 5.012 | 5.041 |
| 19.50 | 4.406 | 4.523 | 4.622 | 4.705 | 4.774 | 4.832 | 4.880 | 4.921 | 4.954 | 4.983 |
| 19.75 | 4.366 | 4.481 | 4.577 | 4.657 | 4.724 | 4.780 | 4.827 | 4.866 | 4.898 | 4.926 |
| 20.00 | 4.327 | 4.439 | 4.533 | 4.611 | 4.675 | 4.730 | 4.775 | 4.812 | 4.843 | 4.870 |
| 20.25 | 4.289 | 4.398 | 4.489 | 4.565 | 4.628 | 4.680 | 4.723 | 4.760 | 4.790 | 4.815 |
| 20.50 | 4.251 | 4.358 | 4.446 | 4.520 | 4.581 | 4.631 | 4.673 | 4.708 | 4.737 | 4.761 |
| 20.75 | 4.214 | 4.313 | 4.404 | 4.475 | 4.534 | 4.583 | 4.624 | 4.657 | 4.685 | 4.708 |
| 21.00 | 4.177 | 4.273 | 4.362 | 4.432 | 4.489 | 4.536 | 4.576 | 4.608 | 4.635 | 4.657 |
| 21.25 | 4.141 | 4.240 | 4.321 | 4.389 | 4.444 | 4.490 | 4.528 | 4.559 | 4.585 | 4.606 |
| 21.50 | 4.105 | 4.202 | 4.281 | 4.347 | 4.401 | 4.445 | 4.481 | 4.511 | 4.536 | 4.557 |
| 21.75 | 4.070 | 4.164 | 4.242 | 4.305 | 4.358 | 4.400 | 4.436 | 4.465 | 4.488 | 4.508 |
| 22.00 | 4.035 | 4.127 | 4.203 | 4.265 | 4.315 | 4.357 | 4.391 | 4.419 | 4.442 | 4.460 |
| 22.25 | 4.001 | 4.091 | 4.164 | 4.224 | 4.274 | 4.314 | 4.347 | 4.374 | 4.396 | 4.414 |
| 22.50 | 3.968 | 4.055 | 4.127 | 4.185 | 4.233 | 4.272 | 4.303 | 4.329 | 4.350 | 4.368 |
| 22.75 | 3.935 | 4.020 | 4.090 | 4.146 | 4.193 | 4.230 | 4.261 | 4.286 | 4.306 | 4.323 |
| 23.00 | 3.902 | 3.985 | 4.053 | 4.108 | 4.153 | 4.189 | 4.219 | 4.243 | 4.263 | 4.279 |
| 23.25 | 3.870 | 3.951 | 4.017 | 4.071 | 4.114 | 4.149 | 4.178 | 4.201 | 4.220 | 4.235 |
| 23.50 | 3.838 | 3.917 | 3.982 | 4.034 | 4.076 | 4.110 | 4.138 | 4.160 | 4.178 | 4.193 |
| 23.75 | 3.807 | 3.884 | 3.947 | 3.997 | 4.038 | 4.071 | 4.098 | 4.120 | 4.137 | 4.151 |

| Z R.O.I. | EXPECTED USEFUL LIFE IN YEARS | | | | | | | | | |
|-------------|-------------------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 |
| 18.00 | 5.384 | 5.410 | 5.432 | 5.451 | 5.467 | 5.480 | 5.492 | 5.502 | 5.510 | 5.517 |
| 18.25 | 5.317 | 5.342 | 5.363 | 5.381 | 5.397 | 5.409 | 5.420 | 5.429 | 5.437 | 5.444 |
| 18.50 | 5.252 | 5.276 | 5.296 | 5.313 | 5.328 | 5.340 | 5.350 | 5.359 | 5.366 | 5.372 |
| 18.75 | 5.189 | 5.212 | 5.231 | 5.247 | 5.261 | 5.272 | 5.282 | 5.290 | 5.297 | 5.303 |
| 19.00 | 5.127 | 5.149 | 5.167 | 5.182 | 5.195 | 5.206 | 5.215 | 5.223 | 5.229 | 5.235 |
| 19.25 | 5.066 | 5.087 | 5.104 | 5.119 | 5.131 | 5.141 | 5.150 | 5.157 | 5.163 | 5.168 |
| 19.50 | 5.007 | 5.026 | 5.043 | 5.057 | 5.067 | 5.078 | 5.086 | 5.093 | 5.099 | 5.104 |
| 19.75 | 4.948 | 4.967 | 4.983 | 4.996 | 5.007 | 5.017 | 5.024 | 5.031 | 5.036 | 5.041 |
| 20.00 | 4.891 | 4.909 | 4.925 | 4.937 | 4.948 | 4.956 | 4.964 | 4.970 | 4.975 | 4.979 |
| 20.25 | 4.836 | 4.853 | 4.867 | 4.879 | 4.889 | 4.897 | 4.904 | 4.910 | 4.915 | 4.919 |
| 20.50 | 4.781 | 4.797 | 4.811 | 4.823 | 4.832 | 4.840 | 4.846 | 4.852 | 4.856 | 4.860 |
| 20.75 | 4.727 | 4.743 | 4.756 | 4.767 | 4.776 | 4.783 | 4.790 | 4.795 | 4.799 | 4.802 |
| 21.00 | 4.675 | 4.690 | 4.703 | 4.713 | 4.721 | 4.728 | 4.734 | 4.739 | 4.743 | 4.746 |
| 21.25 | 4.624 | 4.638 | 4.650 | 4.660 | 4.668 | 4.674 | 4.680 | 4.685 | 4.688 | 4.691 |
| 21.50 | 4.573 | 4.587 | 4.598 | 4.608 | 4.615 | 4.622 | 4.627 | 4.631 | 4.635 | 4.638 |
| 21.75 | 4.524 | 4.537 | 4.548 | 4.557 | 4.564 | 4.570 | 4.575 | 4.579 | 4.582 | 4.585 |
| 22.00 | 4.476 | 4.488 | 4.499 | 4.507 | 4.514 | 4.520 | 4.524 | 4.528 | 4.531 | 4.534 |
| 22.25 | 4.428 | 4.440 | 4.450 | 4.458 | 4.465 | 4.470 | 4.475 | 4.478 | 4.481 | 4.484 |
| 22.50 | 4.382 | 4.393 | 4.403 | 4.410 | 4.417 | 4.422 | 4.426 | 4.429 | 4.432 | 4.434 |
| 22.75 | 4.336 | 4.347 | 4.356 | 4.364 | 4.369 | 4.374 | 4.378 | 4.381 | 4.384 | 4.386 |
| 23.00 | 4.292 | 4.302 | 4.311 | 4.318 | 4.323 | 4.328 | 4.332 | 4.335 | 4.337 | 4.339 |
| 23.25 | 4.248 | 4.258 | 4.266 | 4.273 | 4.278 | 4.282 | 4.286 | 4.289 | 4.291 | 4.293 |
| 23.50 | 4.205 | 4.214 | 4.222 | 4.228 | 4.234 | 4.238 | 4.241 | 4.244 | 4.246 | 4.248 |
| 23.75 | 4.163 | 4.172 | 4.179 | 4.185 | 4.190 | 4.194 | 4.197 | 4.200 | 4.202 | 4.203 |

TABLE 1

RETURN ON INVESTMENT PERCENTAGE
 BASED ON R.O.I. FACTOR (FACILITY COST/AVRG. ANNUAL CASH FLOW)
 AND THE EXPECTED USEFUL LIFE OF THE NEW FACILITY
 01/06/84

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EXPECTED USEFUL LIFE IN YEARS

| X R.O.I. | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|-------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| 24.00 | 0.806 | 1.457 | 1.981 | 2.404 | 2.745 | 3.020 | 3.242 | 3.421 | 3.566 | 3.682 |
| 24.25 | 0.805 | 1.453 | 1.974 | 2.393 | 2.731 | 3.003 | 3.222 | 3.398 | 3.539 | 3.653 |
| 24.50 | 0.803 | 1.446 | 1.967 | 2.383 | 2.717 | 2.986 | 3.201 | 3.375 | 3.514 | 3.625 |
| 24.75 | 0.802 | 1.444 | 1.959 | 2.372 | 2.703 | 2.968 | 3.181 | 3.352 | 3.482 | 3.596 |
| 25.00 | 0.800 | 1.440 | 1.952 | 2.362 | 2.689 | 2.951 | 3.161 | 3.329 | 3.463 | 3.571 |

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EXPECTED USEFUL LIFE IN YEARS

| X R.O.I. | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 |
|-------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| 24.00 | 3.776 | 3.851 | 3.912 | 3.962 | 4.001 | 4.033 | 4.059 | 4.080 | 4.097 | 4.110 |
| 24.25 | 3.745 | 3.819 | 3.879 | 3.926 | 3.965 | 3.996 | 4.021 | 4.041 | 4.057 | 4.070 |
| 24.50 | 3.715 | 3.787 | 3.845 | 3.892 | 3.929 | 3.959 | 3.983 | 4.003 | 4.018 | 4.031 |
| 24.75 | 3.686 | 3.756 | 3.812 | 3.858 | 3.894 | 3.923 | 3.946 | 3.965 | 3.980 | 3.992 |
| 25.00 | 3.656 | 3.725 | 3.780 | 3.824 | 3.859 | 3.887 | 3.910 | 3.928 | 3.942 | 3.954 |

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EXPECTED USEFUL LIFE IN YEARS

| X R.O.I. | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 |
|-------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| 24.00 | 4.121 | 4.130 | 4.137 | 4.143 | 4.147 | 4.151 | 4.154 | 4.157 | 4.159 | 4.160 |
| 24.25 | 4.081 | 4.089 | 4.096 | 4.101 | 4.106 | 4.109 | 4.112 | 4.114 | 4.116 | 4.118 |
| 24.50 | 4.041 | 4.049 | 4.055 | 4.060 | 4.065 | 4.068 | 4.071 | 4.073 | 4.075 | 4.076 |
| 24.75 | 4.002 | 4.009 | 4.015 | 4.020 | 4.024 | 4.028 | 4.030 | 4.032 | 4.034 | 4.035 |
| 25.00 | 3.963 | 3.970 | 3.976 | 3.981 | 3.985 | 3.988 | 3.990 | 3.992 | 3.994 | 3.995 |

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Table 2

Reference Annual Percent Return on Investment

| <u>Year Construction Completed</u> | <u>Reference Percent Return</u> |
|------------------------------------|---------------------------------|
| 1977 | 21.0 |
| 1978 | 21.9 |
| 1979 | 22.5 |
| 1980 | 23.0 |
| 1981 | 23.6 |
| 1982 | 23.4 |
| 1983 | 21.5 |
| 1984 | 19.9 |
| 1985 | 18.5 |
| 1986 | 17.4 |
| 1987 | 16.1 |
| 1988 | 17.1 |
| 1989 | 18.3 |

Calculation of the reference percent return was made by averaging the average annual percent return before taxes on stockholders' equity for all manufacturing corporations as found in the Quarterly Financial Report for Manufacturing, Mining and Trade Corporations, published by the U.S. Department of Commerce, Bureau of the Census, for the five years prior to the year shown.

RULEMAKING STATEMENTS

Statement of Need for Rulemaking.

Pursuant to ORS 183.335(7), this statement provides information on the Environmental Quality Commission's intended action to adopt and amend rules.

(1) Legal Authority.

Amendment of the Pollution Control Tax Credit Rules is consistent with enabling Legislation, ORS 468.150 to 468.190 and amendments in HB 2178 approved during the 1989 Legislature.

(2) Need for Rule Amendments.

In order to implement recent statutory changes, amendment of the current rules is necessary. Portions of the current rules are proposed for amendment to bring them within the scope of the recent legislative changes, or, to clarify existing provisions and policy.

(3) Principal Documents Relied Upon in this Rulemaking.

- ORS 468.150 to 468.190
- HB 2178.B Engrossed (1989)
- OAR 340, Division 16

(4) This proposed rule does not affect land use as defined in the Department's Land Use Coordination Program approved by the Land Conservation and Development.

FISCAL AND ECONOMIC IMPACT STATEMENT

1. The elimination of a mandatory preliminary certification may reduce the number of staff hours required to process tax credit applications. This potential decrease is expected to be offset by increased staff assistance provided to applicants before an application is submitted.
2. The legislative revision which allows tax credit for the taxpayers cash investment in facilities funded with federal dollars may result in an increase number of applications.
3. The legislative revision which extends the tax credit program until December 31, 1995 will allow a greater number of tax credits to be certified. This results in a larger amount of tax revenue diverted from the general fund.

The proposed rule modifications present no significant or adverse economic impact on the general public, small businesses, or large businesses. The rules provide for economic assistance to regulated and non-regulated sources for the prevention, control, or reduction of pollution, and, for material recovery.

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Pollution Control Tax Credit Rule Amendments Public Hearing

Date Prepared: October 31, 1989
Hearing Date: January 9, 1990
Comments Due: January 12, 1990

**WHO IS
AFFECTED:**

Amendment of the rules will affect those individuals applying for pollution control tax credits.

**WHAT IS
PROPOSED:**

The DEQ proposes to adopt amendments to the Pollution Control Tax Credit Rules (OAR 340-16-005 through 340-16-050) to reflect statutory amendments made by the 1989 Legislature and to bring current rules within the bounds of the enabling legislation.

**WHAT ARE THE
HIGHLIGHTS:**

Proposed rule amendments remove the requirement for preliminary certification. Prospective applicants may request staff technical assistance or review prior to application submittal. An application for tax credit must be submitted within two years of substantial completion of a facility.

Proposed amendments allow tax credit for the taxpayers cash investment in a facility that is partially funded with federal dollars.

The proposed amendments clarifies provisions that relate to: the application of "principal purpose" and "sole purpose"; the requirement of DEQ compliance before certification; the eligibility of facilities that are for the cleanup of unauthorized spills or releases; and, the determination of allocable costs.

**HOW TO
COMMENT:**

Copies of the proposed rule amendments can be obtained from:

Claudia Jones
Management Services Division
811 SW Sixth Avenue
Portland, OR 97204
Telephone: 229-6022
Toll-free 1-800-452-4011

MY8979.C (11/14/89)



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

11/1/86

D-1

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.

B-Engrossed House Bill 2178

Ordered by the House June 27
Including House Amendments dated May 26 and June 27

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Department of Environmental Quality)

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.

Extends pollution control tax credit to December 31, 1995. **Applies to certain pollution control facilities certified on or after September 27, 1987.** Revises list of items not included in pollution control facility for tax credit. Repeals provisions regarding preliminary certification of facilities and for offset of federal grants or tax credits against state income or excise tax credits for pollution control facilities certified on or after January 1, 1989.

[Declares emergency, effective July 1, 1989.]

A BILL FOR AN ACT

1
2 Relating to pollution control tax credits; creating new provisions; amending ORS 307.405, 316.097,
3 317.116, 468.155, 468.165, 468.170 and 468.180; and repealing ORS 314.250 and ~~468.175~~;

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 307.405 is amended to read:

6 307.405. (1) A pollution control facility or facilities which have been constructed in accordance
7 with the requirements of ORS 468.165 (1), and have been certified by the Environmental Quality
8 Commission pursuant to ORS 468.170 are exempt to the extent of the highest percentage figure
9 certified by the Environmental Quality Commission as the portion of the actual cost properly
10 allocable to the prevention, control or reduction of pollution. The exemption shall be allowed only
11 if the taxpayer is a corporation organized under ORS chapter 61 or 62, or any predecessor to ORS
12 chapter 62 relating to incorporation of cooperative associations, or is a subsequent transferee of
13 such a corporation. If the subsequent transferee is organized under other than ORS chapter 61 or
14 62, the exemption shall only be allowed if the transfer occurs after the expiration of five years from
15 the date of original certification by the commission.

16 (2) To qualify for the ad valorem tax relief:

17 (a) The pollution control facility must be erected, constructed or installed in connection with
18 the trade or business conducted by the taxpayer on Oregon property owned or leased by said tax-
19 payer.

20 (b) The taxpayer must be the owner of the trade or business that utilizes Oregon property re-
21 quiring a pollution control facility to prevent or minimize pollution or a person who, as a lessee
22 under a written lease or pursuant to a written agreement, conducts the trade or business that op-
23 erates or utilizes such property and who by the terms of such lease or agreement is obliged to pay
24 the ad valorem taxes on such property. As used in this subsection, "owner" includes a contract
25 purchaser.

26 (3) The ad valorem exemption of a facility shall expire, in any event, [.]

NOTE: Matter in **bold face** in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.

1 [(a) Twenty] 20 years from the date of its first certification for any owner or lessee by the En-
2 vironmental Quality Commission. [; or]

3 [(b) For a facility whose erection, construction or installation is commenced after June 30, 1989,
4 and completed before December 31, 1990, 10 years from the date of its first certification for any owner
5 or lessee by the Environmental Quality Commission.]

6 (4) Upon any sale, exchange, or other disposition of a facility, notice thereof shall be given to
7 the Environmental Quality Commission who shall revoke the certification covering such facility as
8 of the date of such disposition. The transferee may apply for a new certificate under ORS 468.170,
9 but the number of years of ad valorem tax exemption that may be claimed by the transferee is the
10 remainder of the exemption period specified in subsection (3) of this section.

11 (5) If the facility also functions to prevent pollution from operations conducted on other property
12 owned or leased by the taxpayer, the Environmental Quality Commission shall state in its certifi-
13 cation of the facility the percentage of the facility used to prevent pollution from such qualifying
14 trade or business conducted on such qualifying property. The exemption from ad valorem taxes un-
15 der this section shall be limited to such percentage of the value of the facility.

16 **SECTION 2.** ORS 316.097 is amended to read:

17 316.097. (1) A credit against taxes imposed by this chapter for a pollution control facility or fa-
18 cilities certified under ORS 468.170 shall be allowed if the taxpayer qualifies under subsection (4)
19 of this section.

20 (2) For a facility certified under ORS 468.170, the maximum credit allowed in any one tax year
21 shall be the lesser of the tax liability of the taxpayer or [either of the following:]

22 [(a) for a facility whose erection, construction or installation is commenced before July 1, 1989, and
23 completed before December 31, 1990,] one-half of the certified cost of the facility multiplied by the
24 certified percentage allocable to pollution control, divided by the number of years of the facility's
25 useful life. The number of years of the facility's useful life used in this calculation shall be the re-
26 maining number of years of useful life at the time the facility is certified but not less than one year
27 or more than 10 years.

28 [(b) For a facility whose erection, construction or installation is commenced after June 30, 1989,
29 and completed before December 31, 1990, one-quarter of the certified cost of the facility multiplied by
30 the certified percentage allocable to pollution control, divided by the number of years of the facility's
31 useful life. The number of years of the facility's useful life used in this calculation shall be the re-
32 maining number of years of useful life at the time the facility is certified but not less than one year or
33 more than 10 years.]

34 (3) To qualify for the credit the pollution control facility must be erected, constructed or in-
35 stalled in accordance with the provisions of ORS 468.165 (1) and must be issued certification
36 under ORS 468.170 prior to December 31, 1995.

37 (4)(a) The taxpayer who is allowed the credit must be:

38 (A) The owner of the trade or business that utilizes Oregon property requiring a pollution con-
39 trol facility to prevent or minimize pollution;

40 (B) A person who, as a lessee or pursuant to an agreement, conducts the trade or business that
41 operates or utilizes such property; or

42 (C) A person who, as an owner or lessee owns or leases a pollution control facility used for
43 resource recovery as defined in ORS 459.005. Such person may, but need not, operate such facility
44 or conduct a trade or business that utilizes property requiring such a facility. If more than one

1 person has an interest under this subparagraph in a resource recovery facility, only one may claim
2 the credit allowed under this section. The person claiming the credit as between an owner and
3 lessee under this subparagraph shall be designated in a written statement signed by both the lessor
4 and lessee of the facility; this statement shall be filed with the Department of Revenue not later
5 than the final day of the first tax year for which a tax credit is claimed. As used in this paragraph,
6 "owner" includes a contract purchaser; and

7 (b) The facility must be owned or leased during the tax year by the taxpayer claiming the credit
8 and must have been in use and operation during the tax year for which the credit is claimed.

9 (5) Regardless of when the facility is erected, constructed or installed, a credit under this sec-
10 tion may be claimed by a taxpayer:

11 (a) For a facility qualifying under ORS 468.165 (1)(a) or (b), only in those tax years which begin
12 on or after January 1, 1967.

13 (b) For a facility qualifying under ORS 468.165 (1)(c), in those tax years which begin on or after
14 January 1, 1973.

15 (c) For a facility qualifying under ORS 468.165 (1)(d), in those tax years which begin on or after
16 January 1, 1984.

17 (6) For a facility certified under ORS 468.170, the maximum total credit allowable shall not
18 exceed[.]

19 [(a)] one-half of the certified cost of the facility multiplied by the certified percentage allocable
20 to pollution control. [; or]

21 [(b) For a facility whose erection, construction or installation is commenced after June 30, 1989,
22 and completed before December 31, 1990, one-quarter of the certified cost of the facility multiplied by
23 the certified percentage allocable to pollution control.]

24 (7) The credit provided by this section is not in lieu of any depreciation or amortization de-
25 duction for the facility to which the taxpayer otherwise may be entitled under this chapter for such
26 year.

27 (8) Upon any sale, exchange, or other disposition of a facility, notice thereof shall be given to
28 the Environmental Quality Commission who shall revoke the certification covering such facility as
29 of the date of such disposition. The transferee may apply for a new certificate under ORS 468.170,
30 but the tax credit available to such transferee shall be limited to the amount of credit not claimed
31 by the transferor. The sale, exchange or other disposition of shares in an electing small business
32 corporation as defined in section 1361 of the Internal Revenue Code or of a partner's interest in a
33 partnership shall not be deemed a sale, exchange or other disposition of a facility for purposes of
34 this subsection.

35 (9) Any tax credit otherwise allowable under this section which is not used by the taxpayer in
36 a particular year may be carried forward and offset against the taxpayer's tax liability for the next
37 succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried
38 forward and used in the second succeeding tax year, and likewise, any credit not used in that second
39 succeeding tax year may be carried forward and used in the third succeeding tax year, but may not
40 be carried forward for any tax year thereafter. Credits may be carried forward to and used in a tax
41 year beyond the years specified in ORS 468.170.

42 (10) The taxpayer's adjusted basis for determining gain or loss shall not be further decreased
43 by any tax credits allowed under this section.

44 (11) If the taxpayer is a shareholder of an electing small business corporation, the credit shall

1 be computed using the shareholder's pro rata share of the corporation's certified cost of the facility.
2 In all other respects, the allowance and effect of the tax credit shall apply to the corporation as
3 otherwise provided by law.

4 **SECTION 3.** ORS 317.116 is amended to read:

5 317.116. (1) A credit against taxes imposed by this chapter for a pollution control facility or fa-
6 cilities certified under ORS 468.170 shall be allowed if the taxpayer qualifies under subsection (4)
7 of this section.

8 (2) For a facility certified under ORS 468.170, the maximum credit allowed in any one taxable
9 year shall be the lesser of the tax liability of the taxpayer or *[either of the following:]*

10 *[(a) for a facility whose erection, construction or installation is commenced before July 1, 1989, and*
11 *completed before December 31, 1990,] one-half of the certified cost of the facility multiplied by the*
12 *certified percentage allocable to pollution control, divided by the number of years of the facility's*
13 *useful life. The number of years of the facility's useful life used in this calculation shall be the re-*
14 *maining number of years of useful life at the time the facility is certified but not less than one year*
15 *or more than 10 years.*

16 *[(b) For a facility whose erection, construction or installation is commenced after June 30, 1989,*
17 *and completed before December 31, 1990, one-quarter of the certified cost of the facility multiplied by*
18 *the certified percentage allocable to pollution control, divided by the number of years of the facility's*
19 *useful life. The number of years of the facility's useful life used in this calculation shall be the re-*
20 *maining number of years of useful life at the time the facility is certified, but not less than one year*
21 *or more than 10 years.]*

22 (3) To qualify for the credit the pollution control facility must be erected, constructed or in-
23 stalled in accordance with the provisions of ORS 468.165 (1) **and must be issued certification**
24 **under ORS 468.170 prior to December 31, 1995.**

25 (4)(a) The taxpayer who is allowed the credit must be:

26 (A) The owner of the trade or business that utilizes Oregon property requiring a pollution con-
27 trol facility to prevent or minimize pollution;

28 (B) A person who, as a lessee or pursuant to an agreement, conducts the trade or business that
29 operates or utilizes such property; or

30 (C) A person who, as an owner or lessee owns or leases a pollution control facility used for
31 resource recovery as defined in ORS 459.005. Such person may, but need not, operate such facility
32 or conduct a trade or business that utilizes property requiring such a facility. If more than one
33 person has an interest under this subparagraph in a resource recovery facility, only one may claim
34 the credit allowed under this section. The person claiming the credit as between an owner and
35 lessee under this subparagraph shall be designated in a written statement signed by both the lessor
36 and lessee of the facility; this statement shall be filed with the Department of Revenue not later
37 than the final day of the first tax year for which a tax credit is claimed. As used in this paragraph,
38 "owner" includes a contract purchaser; and

39 (b) The facility must be owned or leased during the tax year by the taxpayer claiming the credit
40 and must have been in use and operation during the tax year for which the credit is claimed.

41 (5) Regardless of when the facility is erected, constructed or installed, a credit under this sec-
42 tion may be claimed by a taxpayer:

43 (a) For a facility qualifying under ORS 468.165 (1)(a) or (b), only in those tax years which begin
44 on or after January 1, 1967.

1 (b) For a facility qualifying under ORS 468.165 (1)(c), only in those tax years which begin on or
2 after January 1, 1973.

3 (c) For a facility qualifying under ORS 468.165 (1)(d), in those tax years which begin on or after
4 January 1, 1984.

5 (6) For a facility certified under ORS 468.170, the maximum total credit allowable shall not
6 exceed[.]

7 [(a)] one-half of the certified cost of the facility multiplied by the certified percentage allocable
8 to pollution control. [; or]

9 [(b) For a facility whose erection, construction or installation is commenced after June 30, 1989,
10 and completed before December 31, 1990, one-quarter of the certified cost of the facility multiplied by
11 the certified percentage allocable to pollution control.]

12 (7) The credit provided by this section is not in lieu of any depreciation or amortization de-
13 duction for the facility to which the taxpayer otherwise may be entitled under this chapter for such
14 year.

15 (8) Upon any sale, exchange, or other disposition of facility, notice thereof shall be given to the
16 Environmental Quality Commission who shall revoke the certification covering such facility as of
17 the date of such disposition. The transferee may apply for a new certificate under ORS 468.170, but
18 the tax credit available to such transferee shall be limited to the amount of credit not claimed by
19 the transferor. The sale, exchange or other disposition of a partner's interest in a partnership shall
20 not be deemed a sale, exchange or other disposition of a facility for purposes of this subsection.

21 (9) Any tax credit otherwise allowable under this section which is not used by the taxpayer in
22 a particular year may be carried forward and offset against the taxpayer's tax liability for the next
23 succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried
24 forward and used in the second succeeding tax year, and likewise, any credit not used in that second
25 succeeding tax year may be carried forward and used in the third succeeding tax year, but may not
26 be carried forward for any tax year thereafter. Credits may be carried forward to and used in a tax
27 year beyond the years specified in ORS 468.170.

28 (10) The taxpayer's adjusted basis for determining gain or loss shall not be further decreased
29 by any tax credits allowed under this section.

30 **SECTION 4.** ORS 468.155 is amended to read:

31 468.155. (1)(a) As used in ORS 468.155 to 468.190, unless the context requires otherwise, "pol-
32 lution control facility" or "facility" means any land, structure, building, installation, excavation,
33 machinery, equipment or device, or any addition to, reconstruction of or improvement of, land or
34 an existing structure, building, installation, excavation, machinery, equipment or device reasonably
35 used, erected, constructed or installed by any person if:

36 (A) The principal purpose of such use, erection, construction or installation is to comply with
37 a requirement imposed by the department, the federal Environmental Protection Agency or regional
38 air pollution authority to prevent, control or reduce air, water or noise pollution or solid or haz-
39 arduous waste or to recycle or provide for the appropriate disposal of used oil; or

40 (B) The sole purpose of such use, erection, construction or installation is to prevent, control or
41 reduce a substantial quantity of air, water or noise pollution or solid or hazardous waste or to re-
42 cycle or provide for the appropriate disposal of used oil.

43 (b) Such prevention, control or reduction required by this subsection shall be accomplished by:

44 (A) The disposal or elimination of or redesign to eliminate industrial waste and the use of

1 treatment works for industrial waste as defined in ORS 468.700;

2 (B) The disposal or elimination of or redesign to eliminate air contaminants or air pollution or
3 air contamination sources and the use of air cleaning devices as defined in ORS 468.275;

4 (C) The substantial reduction or elimination of or redesign to eliminate noise pollution or noise
5 emission sources as defined by rule of the commission;

6 (D) The use of a material recovery process which obtains useful material from material that
7 would otherwise be solid waste as defined in ORS 459.005, hazardous waste as defined in ORS
8 466.005, or used oil as defined in ORS 468.850; or

9 (E) The treatment, substantial reduction or elimination of or redesign to treat, substantially re-
10 duce or eliminate hazardous waste as defined in ORS 466.005.

11 (2) "Pollution control facility" or "facility" does not include:

12 (a) Air conditioners;

13 (b) Septic tanks or other facilities for human waste;

14 (c) Property installed, constructed or used for moving sewage to the collecting facilities of a
15 public or quasi-public sewerage system;

16 (d) Any distinct portion of a [solid waste, hazardous waste or used oil] **pollution control** facility
17 that makes an insignificant contribution to the principal or sole purpose of [utilization of solid
18 waste, hazardous waste or used oil] **the facility** including the following specific items:

19 (A) Office buildings and furnishings;

20 (B) Parking lots and road improvements;

21 (C) Landscaping;

22 (D) External lighting;

23 (E) Company or related signs; and

24 [(F) Artwork; and]

25 [(G)] (F) Automobiles;

26 (e) Replacement or reconstruction of all or a part of any facility for which a pollution control
27 facility certificate has previously been issued under ORS 468.170, except:

28 (A) If the cost to replace or reconstruct the facility is greater than the like-for-like replacement
29 cost of the original facility due to a requirement imposed by the department, the federal Environ-
30 mental Protection Agency or a regional air pollution authority, then the facility may be eligible for
31 tax credit certification up to an amount equal to the difference between the cost of the new facility
32 and the like-for-like replacement cost of the original facility; or

33 (B) If a facility is replaced or reconstructed before the end of its useful life then the facility
34 may be eligible for the remainder of the tax credit certified to the original facility; [or]

35 (f) **Asbestos abatement**; or

36 [(f)] (g) Property installed, constructed or used for clean up of emergency spills or unauthorized
37 releases, as defined by the commission.

38 **SECTION 5.** ORS 468.165 is amended to read:

39 468.165. (1) Any person may apply to the commission for certification under ORS 468.170 of a
40 pollution control facility or portion thereof erected, constructed or installed by the person in Oregon
41 if:

42 (a) The air or water pollution control facility was erected, constructed or installed on or after
43 January 1, 1967.

44 (b) The noise pollution control facility was erected, constructed or installed on or after January

1 1, 1977.

2 (c) The solid waste facility was under construction on or after January 1, 1973, the hazardous
3 waste or used oil facility was under construction on or after October 3, 1979, and if:

4 (A) The facility's principal or sole purpose conforms to the requirements of ORS 468.155 (1);

5 (B) The facility will utilize material that would otherwise be solid waste as defined in ORS
6 459.005, hazardous waste as defined in ORS 466.005 or used oil as defined in ORS 468.850 by [burn-
7 ing.] mechanical process or chemical process or through the production, processing including pre-
8 segregation [or otherwise], or use of, [materials for their heat content or other forms of energy of or
9 from the material, or the use of] materials which have useful chemical or physical properties and
10 which may be used for the same or other purposes, or materials which may be used in the same kind
11 of application as its prior use without change in identity;

12 (C) The end product of the utilization is [a usable source of power or other] an item of real
13 economic value;

14 (D) The end product of the utilization, other than a usable source of power, is competitive with
15 an end product produced in another state; and

16 (E) The Oregon law regulating solid waste imposes standards at least substantially equivalent
17 to the federal law.

18 (d) The hazardous waste control facility was erected, constructed or installed on or after Janu-
19 ary 1, 1984, and if:

20 (A) The facility's principal or sole purpose conforms to the requirements of ORS 468.155 (1); and

21 (B) The facility is designed to treat, substantially reduce or eliminate hazardous waste as de-
22 fined in ORS 466.005.

23 (2) The application shall be made in writing in a form prescribed by the department and shall
24 contain information on the actual cost of the facility, a description of the materials incorporated
25 therein, all machinery and equipment made a part thereof, the existing or proposed operational
26 procedure thereof, and a statement of the purpose of prevention, control or reduction of air, water
27 or noise pollution or solid or hazardous waste or recycling or appropriate disposal of used oil served
28 or to be served by the facility and the portion of the actual cost properly allocable to the pre-
29 vention, control or reduction of air, water or noise pollution or solid or hazardous waste or to re-
30 cycling or appropriately disposing of used oil as set forth in ORS 468.190 (2).

31 (3) The director may require any further information the director considers necessary before a
32 certificate is issued.

33 (4) The application shall be accompanied by a fee established under subsection (5) of this sec-
34 tion. The fee may be refunded if the application for certification is rejected.

35 (5) By rule and after hearing the commission may adopt a schedule of reasonable fees which the
36 department may require of applicants for certificates issued under ORS 468.170. Before the adoption
37 or revision of any such fees the commission shall estimate the total cost of the program to the de-
38 partment. The fees shall be based on the anticipated cost of filing, investigating, granting and re-
39 jecting the applications and shall be designed not to exceed the total cost estimated by the
40 commission. Any excess fees shall be held by the department and shall be used by the commission
41 to reduce any future fee increases. The fee may vary according to the size and complexity of the
42 facility. The fees shall not be considered by the commission as part of the cost of the facility to be
43 certified.

44 (6) The application shall be submitted within two years of substantial completion of construction

1 of the facility. Failure to file a timely application shall make the facility ineligible for tax credit
2 certification. An application shall not be considered filed until it is complete and ready for proc-
3 essing. The commission may grant an extension of time to file an application for circumstances be-
4 yond the control of the applicant that would make a timely filing unreasonable. If a facility is
5 completed before January 1, 1984, the application shall be submitted within two years after January
6 1, 1984.

7 **SECTION 6.** ORS 468.170 is amended to read:

8 468.170. (1) The commission shall act on an application for certification before the 120th day
9 after the filing of the application under ORS 468.165. The action of the commission shall include
10 certification of the actual cost of the facility and the portion of the actual cost properly allocable
11 to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste
12 or to recycling or properly disposing of used oil as set forth in ORS 468.190 (2). **The actual cost**
13 **or portion of the actual cost certified shall not exceed the taxpayer's own cash investment**
14 **in the facility or portion of the facility.** Each certificate shall bear a separate serial number for
15 each such facility.

16 (2) If the commission rejects an application for certification, or certifies a lesser actual cost of
17 the facility or a lesser portion of the actual cost properly allocable to the prevention, control or
18 reduction of air, water or noise pollution or solid or hazardous waste or to recycling or properly
19 disposing of used oil than was claimed in the application for certification, the commission shall
20 cause written notice of its action, and a concise statement of the findings and reasons therefor, to
21 be sent by registered or certified mail to the applicant before the 120th day after the filing of the
22 application.

23 (3) If the application is rejected for any reason, including the information furnished by the ap-
24 plicant as to the cost of the facility, or if the applicant is dissatisfied with the certification of actual
25 cost or portion of the actual cost properly allocable to prevention, control or reduction of air, water
26 or noise pollution or solid or hazardous waste or to recycling or properly disposing of used oil, the
27 applicant may appeal from the rejection as provided in ORS 468.110. The rejection or the certif-
28 ication is final and conclusive on all parties unless the applicant takes an appeal therefrom as pro-
29 vided in ORS 468.110 before the 30th day after notice was mailed by the commission.

30 (4)(a) The commission shall certify a pollution control, solid waste, hazardous waste or used oil
31 facility or portion thereof, for which an application has been made under ORS 468.165, if the com-
32 mission finds that the facility:

33 (A) Was erected, constructed or installed in accordance with the requirements of ORS 468.165
34 (1) *[and 468.175]*;

35 (B) Is designed for, and is being operated or will operate in accordance with the requirements
36 of ORS 468.155 (1) and (2); and

37 (C) Is necessary to satisfy the intents and purposes of ORS 454.010 to 454.040, 454.205 to 454.255,
38 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745, ORS chapters 459, 466 and 467 and this
39 chapter and rules thereunder.

40 (b) No determination of the proportion of the actual cost of the facility to be certified shall be
41 made until receipt of the application.

42 (c) If one or more facilities constitute an operational unit, the commission may certify such fa-
43 cilities under one certificate. A certificate under this section is effective for purposes of tax relief
44 in accordance with ORS 307.405, 316.097 and *[317.072]* 317.116 if erection, construction or installa-

1 tion of the facility was completed before December 31, [1990] 1995.

2 (5) A person receiving a certificate under this section may take tax relief only under ORS
3 316.097 or 317.116, depending upon the tax status of the person's trade or business except if the
4 taxpayer is a corporation organized under ORS chapter 61 or 62, or any predecessor to ORS chapter
5 62 relating to incorporation of cooperative associations, or is a subsequent transferee of such a
6 corporation, the tax relief may be taken only under ORS 307.405.

7 (6) If the person receiving the certificate is an electing small business corporation as defined in
8 section 1361 of the Internal Revenue Code, each shareholder shall be entitled to take tax credit re-
9 lief as provided in ORS 316.097, based on that shareholder's pro rata share of the certified cost of
10 the facility.

11 (7) If the person receiving the certificate is a partnership, each partner shall be entitled to take
12 tax credit relief as provided in ORS 316.097, based on that partner's pro rata share of the certified
13 cost of the facility.

14 (8) Certification under this section of a pollution control facility qualifying under ORS 468.165
15 (1) shall be granted for a period of 10 consecutive years which 10-year period shall begin with the
16 tax year of the person in which the facility is certified under this section, except that if ad valorem
17 tax relief is utilized by a corporation organized under ORS chapter 61 or 62 the facility shall be
18 exempt from ad valorem taxation for a period of 20 consecutive years[, or 10 years if construction
19 is commenced after June 30, 1989, and completed before December 31, 1990, from the date of its first
20 certification by the commission].

21 (9) Portions of a facility qualifying under ORS 468.165 (1)(c) may be certified separately under
22 this section if ownership of the portions is in more than one person. Certification of such portions
23 of a facility shall include certification of the actual cost of the portion of the facility to the person
24 receiving the certification. The actual cost certified for all portions of a facility separately certified
25 under this subsection shall not exceed the total cost of the facility that would have been certified
26 under one certificate. The provisions of ORS 316.097 (8) or 317.116 (8), whichever is applicable, shall
27 apply to any sale, exchange or other disposition of a certified portion of a facility.

28 **SECTION 7.** ORS 468.180 is amended to read:

29 468.180. (1) No certification shall be issued by the commission pursuant to ORS 468.170 unless
30 the facility, facilities or part thereof was erected, constructed or installed [*in accordance with the*
31 *requirements of ORS 468.175 and*] in accordance with the applicable provisions of ORS 454.010 to
32 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745, [*this chapter*
33 *and*] ORS chapters 459, 466 and 467 **and this chapter** and the applicable rules or standards adopted
34 pursuant thereto.

35 (2) Nothing in this section [*or ORS 468.175*] is intended to apply to erection, construction or
36 installation of pollution control facilities begun before October 5, 1973.

37 **SECTION 8.** (1) ORS 314.250 and 468.175 are repealed.

38 (2) The repeal of ORS 314.250 by subsection (1) of this section applies to pollution control fa-
39 cilities or portions thereof certified under ORS 468.170 on or after January 1, 1989.

40 **SECTION 9.** (1) The amendments to ORS 307.405 by section 1 of this Act relating to the period
41 of property tax exemption for certain pollution control facilities apply to facilities certified on or
42 after September 27, 1987.

43 (2) The amendments to ORS 316.097 and 317.116 by sections 2 and 3 of this Act relating to the
44 amount of cost upon which income or excise tax credit for certain pollution control facilities is

1 based apply to facilities certified on or after September 27, 1987. For all prior certifications, the law
2 applicable for those certifications shall remain applicable.
3



Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: December 1, 1989
Agenda Item: P
Division: Air Quality
Section: Planning and Development

SUBJECT:

Modifications to Oregon's Woodstove Certification Program to align it with the Environmental Protection Agency's (EPA) new emission certification program.

PURPOSE:

Accepting EPA's Woodstove Emission Certification Program as meeting Oregon requirements would eliminate duplication of effort, reduce requirements imposed on woodstove manufacturers, and reduce staff workload without a negative impact on the Department of Environmental Quality's (DEQ, Department) air pollution control efforts.

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 C
 - Fiscal and Economic Impact Statement Attachment C
 - Public Notice Attachment D
 - 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 ___

Meeting Date: December 1, 1989
Agenda Item: P
Page 2

DESCRIPTION OF REQUESTED ACTION:

Authorization to conduct a public hearing to receive public comment on the Department's proposed rule changes.

AUTHORITY/NEED FOR ACTION:

- | | |
|---|----------------|
| ___ Required by Statute: _____ | Attachment ___ |
| Enactment Date: _____ | |
| <u>X</u> Statutory Authority: <u>ORS 468.630 thru .655</u> | Attachment ___ |
| <u>X</u> Pursuant to Rule: <u>OAR 340-21-100 thru -190</u> | Attachment ___ |
| <u>X</u> Pursuant to Federal Law/Rule <u>40 CFR Part 60</u> <u>Subpart AAA</u> | Attachment ___ |
| ___ Other: _____ | Attachment ___ |
| <u>X</u> Time Constraints: | |

Public hearing(s) need to be held, comments need to be considered, and final Environmental Quality Commission (EQC, Commission) action needs to be taken by July 1, 1990 to coincide with EPA woodstove certification rule implementation.

DEVELOPMENTAL BACKGROUND:

- | | |
|--|---------------------|
| ___ Advisory Committee Report/Recommendation | Attachment ___ |
| ___ Hearing Officer's Report/Recommendations | Attachment ___ |
| ___ Response to Testimony/Comments | Attachment ___ |
| ___ Prior EQC Agenda Items: (list) | Attachment ___ |
| <u>X</u> Other Related Reports/Rules/Statutes: Federal Regulations 40 CFR Part 60, Subpart AAA | Attachment <u>B</u> |
| ___ Supplemental Background Information | Attachment ___ |

During the September 7, 1989 EQC worksession (agenda item 2), the Department requested policy direction on how Oregon's woodstove certification program should be amended to mesh with the new and similar EPA program.

The Department asked the Commission to consider:

1. Accepting EPA's emission certification program as a means of streamlining government administrative requirements.

2. Retaining current efficiency certification and labeling program to meet statutory requirements, and as a means of motivating purchase of lowest emission technology.
3. Retaining Oregon's retail enforcement authority.

The Commission concurred with these recommendations.

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

A 1983 Oregon statute directed the Department to require that all new woodstoves advertised for sale, offered for sale, or sold in Oregon to be tested in the laboratory for emissions and efficiency, meet an EQC established emission standard and be labeled for emissions and efficiency. The EQC's 1988 woodstove emission standard required approximately a 70 percent reduction in particulate emissions as compared to traditional woodstoves. This level of woodsmoke reduction was considered necessary to meet the Federal Clean Air standards in the areas of the state most heavily impacted from woodstove smoke. The majority of woodstove manufacturers accepted and participated in Oregon's certification program to promote their products in Oregon and many other states.

The EPA subsequently adopted a national woodstove certification program patterned after Oregon's program. Phase II of EPA's particulate emission performance requirements for woodstoves will become effective July 1, 1990 - making the Federal emission standards more stringent than Oregon's by requiring approximately 75 percent reduction in emissions. Accreditation of testing laboratories, labeling for emissions, and other certification program administrative procedures are at least as stringent as Oregon's program requirements.

The regulated community and environmental groups should react positively to this proposal since these groups have already participated in the EPA rule making process, generally accept EPA's national program, and support a uniform standard.

PROGRAM CONSIDERATIONS:

The workload and cost to the Department would be reduced by eliminating the need for hiring temporary staff. The reduction in cost would be passed onto the regulated community in the form of reduced certification fees.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Retain existing certification program. This would make Oregon's emission certification requirements less stringent than EPA's, resulting in duplicate emissions labeling requirements, laboratory accreditation, and administrative efforts by the Department and EPA, which in turn would place a double burden on the manufacturers who seek certification.
2. Defer Oregon's certification program to EPA. While EPA's particulate emission standards are slightly more stringent than Oregon's, and the other program standards and criteria are similar, Oregon's statutory requirements for testing and labeling for efficiency would not be met and enforcement would not be as vigorous. Industry surveys show that consumers are more likely to be influenced to purchase a woodstove based on its high overall efficiency than its low emissions. Since high efficiency and low emissions are generally related, testing and labeling for efficiency is a highly desirable consumer influence on the sale of the lowest emission certified stoves. Maintaining a retail enforcement capability is also desirable considering the number of woodstoves in the state and the magnitude of the woodsmoke problem.
3. Accept EPA's emission certification program as being at least as stringent as Oregon's, and retain the Department's efficiency certification program. This alternative satisfies the Department's statutory (ORS 468.630-468.655) requirements, promotes a uniform national emission standard, simplifies the certification process, reduces cost for the regulated community, reduces the Department's staff work load, and maintains the Department's retail enforcement authority.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission authorize a public hearing on amendments to the woodstove certification rules, which would accept EPA's emissions certification program as being at least as stringent as Oregon's, and retain the Department's efficiency certification program to satisfy statutory requirements (Alternative #3). This approach is in the best interest of the public, industry, regulatory agencies, and also satisfies the Department's statutory requirements.

Meeting Date: December 1, 1989
Agenda Item: P
Page 5

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The proposed course of action is consistent with legislative and agency policy to restore and maintain acceptable air quality statewide.

ISSUES FOR COMMISSION TO RESOLVE:

1. All pertinent major issues were resolved at the September 7, 1989 EQC worksession.

INTENDED FOLLOW UP ACTIONS:

1. File hearing notice with the Secretary of State.
2. Hold a public hearing.
3. Review oral and written testimony and revise proposed rules as appropriate.
4. Return to commission for final rule adoption.
5. As directed by the Commission during the September worksession, the Department is developing information on stress test methods and is pursuing a voluntary stress test program to promote durable stoves. The Department is also looking into the issue of using existing pollution tax credit authority for promoting durable stoves, and will present this information to the Commission at a future date.

Approved:

Section:

Division:

Director:

John F. Kawalec
Don Houscholtz
Bill Ham

Report Prepared By: Stephen D. Crane

Phone: 229-5353

Date Prepared: November 14, 1989

SDC:1
WOOD\AR1752 November 14, 1989

PROPOSED AMENDMENTS
TO
WOODSTOVE CERTIFICATION
RULES

Definitions

340-21-100 Unless otherwise required by context, as used in this Division: (1) "Accredited" means a woodstove testing laboratory holds a valid certificate of accreditation issued by the Department.

(2) "Administrator" means the administrator of the Environmental Protection Agency or the administrator's authorized representative.

~~{(2)} (3) "Audit test" means a test conducted by the Department to verify a laboratory's certification test results.~~

~~{(3) "Catalyst-equipped" means a woodstove with a catalytic combustor that is an integral component of the design and manufacture of a woodstove.}~~

~~{(4) "Certify" means the Department has acknowledged in writing that a woodstove meets Department emission standards when tested by an independent laboratory according to Department test procedures.}~~

~~{(5)} (4) "Consumer" means any person who buys a woodstove for personal use.~~

~~{(6)} (5) "Dealer" means any person engaged in selling woodstoves to retailers or other dealers for resale. A dealer which is also an Oregon retailer shall be considered to be only a retailer for purposes of these rules.~~

(6) "Department" means the Oregon Department of Environmental Quality.

(7) "EPA" means the United States Environmental Protection Agency.

(8) "Federal Regulations" means Volume 40 CFR Part 60, Subpart AAA, Sections 60.530 through 60.539b, dated February 26, 1988.

{(7)} - "Fixed-air-supply" - means - an - air - supply - system - on - a - woodstove - which has - no - adjustable - or - controllable - air - inlets - }

{(8)}] (9) "Heat output" means the heat output (Btu/hour) of a woodstove during one test run, measured under test conditions prescribed by OAR 340-21-120.

{(9)} - "Informal-Departmental-conference" - means - a - meeting - of - a manufacturer, - dealer, - retailer, - or - laboratory - representative - and - a representative - of - the - Department - to - discuss - certification - or - accreditation denial - or - revocation, - or - civil - penalties. - - An - informal - Departmental conference - is - not - part - of - a - judicial - process - or - the - formal - hearing - process as - described - in - Oregon - Administrative - Rules - Chapter - 340, - Division - 11 - }

(10) "Manufacturer" means any person who constructs a woodstove or parts for woodstoves.

(11) "New Woodstove" means any woodstove that has not been sold, bargained, exchanged, given away or has not had its ownership transferred from the person who first acquired the woodstove from the manufacturer's dealer or agency, and has not been so used to have become what is commonly known as "second hand" within the ordinary meaning of that term.

(12) "Overall efficiency (%) over the range of heat outputs tested" means the weighted average combustion efficiency (%) multiplied by the weighted average heat transfer efficiency (%) measured under test conditions (range of heat outputs) and calculated according to specific procedures prescribed by OAR 340-21-115(5). This definition is applicable to the Stack Loss Methodology. For the Calorimeter Room Method, the weighted average overall efficiency means the useful heat output released to the room, divided by the total heat potential of the fuel consumed.

(13) "Retailer" means any person engaged in the sale of woodstoves directly to consumers.

~~{(14) "Smoke emission rate (grams/hour) over the range of heat outputs tested" means the weighted average particulate emissions (grams/hour) that are produced by a woodstove under test conditions (range of heat outputs) specified in OAR 340-21-120 and calculated according to procedures specified in OAR 340-21-115(5).}~~

~~{(15)}~~ (14) "Weighted average" means the weighted average of the test results to the distribution of home heating needs ~~{in Oregon. (Refer to OAR 340-21-115(5))}~~ as prescribed in the Federal regulations, 40 CFR Part 40, Subpart AAA.

~~{(16)}~~ (15) "Woodstove"/"Woodheater" ~~{means a wood-fired appliance with a closed fire chamber which maintains an air-to-fuel ratio of less than 30 during the burning of 90 percent or more of the fuel mass consumed in the low-firing cycle. The low-firing cycle means less than or equal to 25 percent of the maximum burn rate achieved with doors closed or the minimum burn achievable, whichever is greater}~~ means an enclosed, woodburning appliance capable of and intended for space heating and domestic water heating that meets all of the following criteria:

(a) An air-to-fuel ratio in the combustion chamber averaging less than 35-to-1 as determined by the test procedure prescribed in federal regulations 40 CFR part 60, subpart AAA, §60.534 performed at an accredited laboratory.

(b) A usable firebox volume of less than 20 cubic feet.

(c) A minimum burn rate less than 5 kg/hr as determined by the test procedure prescribed in federal regulations 40 CFR part 60, subpart AAA, §60.534 performed at an accredited laboratory, and

(d) A maximum weight of 800 kg. In determining the weight of an appliance for these purposes, fixtures and devices that are normally sold separately, such as flue pipe, chimney, and masonry components that are not an integral part of the appliance or heat distribution ducting, shall not be included.

Requirements for Sale of New Woodstoves in Oregon

340-21-105 (1) On and after July 1, ~~{1986}~~ 1990 a person shall not advertise to sell, offer to sell, or sell a new woodstove in Oregon unless:

(a) The woodstove has been tested, certified and labeled for ~~{to determine-its}~~ emission performance ~~{and-heating-efficiency}~~ in accordance with criteria, emission standards, and procedures specified in ~~{OAR-340-21-120}~~ the federal regulations, 40 CFR Part 40, Subpart AAA; and

(b) The woodstove has been tested for heating efficiency and certified by the Department ~~{is-certified-by-the-Department}~~ in accordance with criteria and procedures in OAR 340-21-~~{125as-meeting-the-emission performance-standards-specified-in-OAR-340-21-115}~~120; and

(c) The woodstove is labelled for emission performance and heating efficiency as specified in OAR 340-21-135; provided, however, that section (1) of this rule shall not apply to any sale from any manufacturer or dealer; to any Oregon manufacturer or dealer; or to any out-of-state manufacturer, dealer or retailer; or to any offer or advertisement for such sale directed only to such a manufacturer, dealer or out-of-state retailer.

(2) No manufacturer, dealer or retailer shall alter ~~{either}~~ the permanent ~~{or-removable}~~ label in any way from the label approved by the ~~{Department}~~ Administrator pursuant to ~~{OAR-340-21-155}~~Federal Regulation, 40 CFR part 60, subpart AAA, § 60.538(i).

(3) No manufacturer, dealer or retailer shall alter the removable label in any way from the label approved by the Department pursuant to OAR 340-21-155.

~~{(3)}~~ (4) Violators of any of the above rules may be subject to civil penalties pursuant to OAR Chapter 340, Divisions 11 and 12 or other remedies prescribed by rule or statute.

Exemptions

340-21-110 ~~{(1)}~~ Wood-fired appliances that are not suitable for heating equipment in or used in connection with residences or commercial installations are excluded from 340-21-105. -- For example, portable camping stoves:

(2) Wood-fired forced-air furnaces that primarily heat living space or water through indirect heat transfer using forced-air duct work or pressurized water systems are excluded from 340-21-105. To be considered eligible for exemption from the requirements and standards of these rules, pellet burning appliances must be tested for air to fuel ratio in strict conformance with criteria and procedures of EPA Method 28A as set forth in the federal regulations, 40 CFR Part 40, Subpart AAA, to determine that the unit qualifies, as exempt, from the definition of a woodstove.

Emissions Performance Standards and Certification

340-21-115 ~~{(1)}~~ New woodstoves with minimum "heat output" of less than 40,000 Btu/hr advertised for sale, offered for sale, or sold in Oregon within the period July 1, 1986 to June 30, 1988, shall not exceed the following weighted-average particulate emission standards when tested to procedures in OAR 340-21-120:

(a) -15 grams per hour for a non-catalytic woodstove; -or

(b) -6 grams per hour for a catalyst-equipped woodstove.]

(1) Unless exempted under § 60.530 of the federal regulation, 40 CFR part 60, subpart AAA, new woodstoves advertised for sale, offered for sale or sold in Oregon between July 1, 1990 and June 30, 1992 shall be certified by the Administrator pursuant to federal regulation as complying with the particulate matter emission limits specified in the federal regulations, 40 CFR Part 40, Subpart AAA, § 60.532(a).

[~~(2) New woodstoves with minimum "heat output" of less than 40,000 Btu per hour advertised for sale, offered for sale, or sold in Oregon on or after July 1, 1988 shall not exceed the following weighted average particulate emission standard when tested and measured according to test procedures in OAR 340-21-120:]~~

~~[(a) -9 grams per hour for a non-catalytic woodstove; -or]~~

~~[(b) -4 grams per hour for a catalyst-equipped woodstove.]~~

(2) New woodstoves advertised for sale, offered for sale, or sold in Oregon on or after July 1, 1992 shall be certified by the Administrator pursuant to federal regulation as complying with the particulate matter emission limits specified in the federal regulations, 40 CFR Part 40, Subpart AAA, § 60.532(b).

~~[(3) New woodstoves with a minimum "heat output" of greater than 40,000 Btu per hour, advertised for sale, offered for sale, or sold in Oregon after July 1, 1986 shall not exceed an average particulate emission standard equal to the sum of 8.0 grams per hour plus 0.2 grams per hour for each thousand Btu per hour heat output when tested to procedures in OAR 340-21-120.]~~

~~[(4) -The Department will certify a woodstove as meeting the applicable woodstove emission standard after July 1, 1984 in accordance with procedures in OAR 340-21-125.]~~

~~[(5) -The weighted average particulate emission shall be calculated as set out in Exhibit 1.]~~

Efficiency Testing Criteria and Procedures

340-21-120 (1) To be considered eligible for certification, a woodstove must be tested for efficiency in strict conformance with criteria and procedures contained in the document **Standard Method for Measuring the Emissions and Efficiencies of Residential Woodstoves** dated June 8, 1984, and incorporated herein by reference and on file at the Department.

(2) All testing for certification purposes shall be conducted by a stove testing laboratory accredited by the Department in accordance with procedures specified in OAR 340-21-160.

(3) The Department may permit minor changes in the testing criteria and procedures which the Department believes does not affect its accuracy ~~[with respect to compliance with the emission standard]~~ providing such changes are approved in writing by the Department prior to the actual conducting of such tests.

General Certification Procedures

340-21-125 (1) Any woodstove manufacturer, or dealer, wishing to obtain certification of a woodstove shall file an application with the Department.

(2) An application for certification must include:

(a) ~~[An appliance description which includes the woodstove model name and design number, a copy of the appliance's operating manual and a~~

photograph of the stove] One complete copy of the EPA application and attachments as specified in the federal regulations, 40 CFR Part 40, Subpart AAA, §60.533(a,b,c,d).

(b) [Design plans of the woodstove, identified by design number, which include overall dimensions of the appliance and all dimensions and specifications of components critical to emission control and heating efficiency performance; - These components shall include combustion chamber configurations, all air inlet controls, heat exchanger design and make and model numbers of applicable purchased parts] A copy of the valid Certificate of Compliance issued by the Administrator, pursuant to federal regulation 40 CFR Part 60, Subpart AAA, §60.533.

(c) All test data and support documentation showing that the woodstove has been tested for efficiency in accordance with OAR 340-21-120 [and that it meets the emission performance standard specified in OAR 340-21-115].

(d) A non-refundable certification fee, payable to the Department at the time the application is submitted to the Department, is required for each stove model seeking certification. The fee is [:-] [(A) \$1600 for a manufacturer's first model seeking certification; and] - [(B)] \$[800] 500 for each [additional] model submitted by the manufacturer.

(3) The Department will promptly review an application for certification and:

(a) Notify the applicant in writing within 30 days of receipt of the applications, of any deficiencies in the applications that cause the application to be incomplete.

(b) Notify the applicant within 60 days of receipt of a completed

application whether certification is granted or denied pursuant to sections (4) and (7) of this rule.

(4) When all preceding requirements have been met, the Department will issue or deny a certification document to the manufacturer or dealer for the specified woodstove.

(5) If the Department grants certification, the certification status shall be effective for no longer than five years unless extended or terminated by rule or order.

(6) An application for a new document of certification shall be made by submitting a completed application including retests and fees at least 60 days prior to expiration of certification. The Department may waive the retest and fees if the applicant demonstrates the previous evidence used to certify the woodstove has not changed and remains reliable and applicable.

(7) If the Department denies certification of a woodstove, the Department will notify the manufacturer or dealer in writing of the opportunity for hearing pursuant to OAR Chapter 340, Division 11.

Changes in Woodstove Design

340-21-130 Certification of woodstoves shall be valid for only the specific model, design, plans and specifications which were originally submitted, tested and approved for certification. Any modification to the model, design, plans or specifications shall cause the certification to be ineffective and any so modified woodstoves to be uncertified, unless prior to making such modification the certification holder submits the proposed modification to the Administrator and the Department for approval, and the Administrator and the Department approve[s] it. The Department may approve the proposed modification if the holder demonstrates and the Department

finds that the proposed modification would not affect [emission-performance or] heating efficiency.

Labelling Requirements

340-21-135 Woodstoves which must be labelled pursuant to OAR 340-21-105 [and] shall have affixed to them:

(1) A permanent label, that has been [previously] approved by the [Department-in-writing] Administrator as to form, content and location, that shows the test emissions [and-heating-efficiency] for the range of heat outputs tested.

(2) A point-of-sale removable label, approved by the Department, that verifies certification and shows [how-the-appliance's-emission-test-results compare-with-the-Oregon-emission-performance-standard:-and-shows] the heating efficiency and heat output range of the appliance. The label shall be affixed to the appliance at the point-of-sale near the front and top of the stove and remain affixed until sold and delivered to the consumer.

[Permanent-Label]

[340-21-140 -All woodstoves-certified-by-the-Department-from-July-1, 1984-on,-shall-be-labelled-with-a-permanent-and-a-removable-label.]

[Contents-of-Permanent-Label]

[340-21-145 --(1)-The-permanent-label,-or-"Certified-Test-Performance" label,-shall-contain-the-following-information:

- (a) -Testing-laboratory;
- (b) -Date-tested;
- (c) -Test-procedure-used;

(d) -Manufacturer of appliance;

(e) -Model;

(f) -Design number;

(g) -The statement: -"Performance may vary from test values depending on actual home operating conditions";

(h) -A graph showing:

(A) -Smoke emission rates, in grams/hour, over the range of heat outputs tested;

(B) -Overall efficiency over the range of heat outputs tested;

(2) -The axis of the graph shall be identified as follows:

(a) -Vertical axis, left side: -"Smoke -- grams/hour", with a scale of 0 to a maximum of 20, bottom to top;

(b) -Vertical axis, right side: -"Efficiency -- %", with a scale of a minimum of 50 to a maximum of 90, bottom to top;

(c) -Horizontal axis, bottom: -"Heat Output -- Btu/hour", with a scale from 0 to a maximum of 5,000 Btu/hour higher than the highest tested heat output;

(3) -Curves describing emissions and efficiency at various heat outputs shall be printed on the graph, and will be developed by the Department as follows:

(a) -The emissions curve will be developed by the Department by fitting the emission test data to the quadratic equation:

$$y = -a_0 + a_1x + a_2x^2$$

where

(A) -y -- particulate emissions (grams/hour);

(B) -x -- heat output (Btu/hour);

(C) -a₀, a₁, a₂ -- regression coefficients;

(b) The overall efficiency curve shall be developed by the Department by fitting the efficiency test data to the quadratic equation:

$$y = -a_0 + a_1x + a_2x^2$$

where

(A) y = overall efficiency (%)

(B) x = heat output (Btu/hour);

(C) a_0, a_1, a_2 = regression coefficients;

(4) For woodstoves with a fixed air supply which have only two data points for emissions and two data points for overall efficiency the Department will:

(a) Develop the emission performance description by averaging the two emission data points and describe the performance on the graph with a single point representing the average;

(b) Develop the overall efficiency performance description by averaging the two efficiency data points and describe the performance on the graph with a single point representing the average;

(5) The curves or single points will be developed and fit on the graph by the Department and transmitted to the appliance manufacturer for printing on the label. Changes from the above criteria may be made by the Department as necessary to insure readability. Approval of the label design, layout, and location on the woodstove will be made by the Department and shall be obtained pursuant to OAR 340-21-155.

(6) The label shall be permanently secured or fixed to the appliance so that it is visibly located on the appliance and legible, and meets the following criteria:

(a) A permanent label shall be a label that cannot be removed from the

appliance without damage to the label. -- The label shall remain legible for the maximum expected useful life of the appliance in normal operation.

(b) A label shall be readily visible after installation. -- Approval of the location of the label on a woodstove will be made by the Department and shall be obtained pursuant to OR-340-21-155. -- The label may be located on:

(A) Any visible exterior surface except the bottom of the appliance; or
on

(B) Any interior surface of the appliance, within stove compartments, or under overlapping covers or doors, or at another interior location, if the label can be seen after installation and will remain legible for the life of the stove.

(c) A legible label shall be quickly and easily read.

(d) It shall be acceptable to combine the permanent label with another label, such as a safety label, if the design and integrity of the permanent label is not compromised, and if the combination label meets the approval of the Department:

(7) Physical and Material Specifications:

(a) The minimum dimensions of the label shall be at least 3-1/2" long by 2" wide.

(b) The graph on the label shall be at least 3" long by 1-1/2" wide; and any enlargement of the graph shall maintain a proportion represented by the length to width ratio of 2:1.

(c) The label must be made of a material that will satisfy the permanency rule (340-21-145(6)(a)). -- For instance, it may be made of aluminum, brass, galvanized steel, or another metal, and of a thickness that will ensure permanence of the label.

(d) The information on the label shall be applied to the label in a way that will satisfy the permanency and legibility rules (340-21-145(6)(a) and (c)). For instance, the information may be etched, silk-screened, or die-stamped onto the label.

(e) The label shall be secured to the appliance in a way that it will satisfy the permanency and visibility rules (340-21-145(6)(a) and (b)). For instance, the label may be riveted, screwed, or bolted onto the appliance.

Removable Label

340-21-150 (1) The point-of-sale removable label, [or "Emissions and Efficiency Performance" label,] shall contain the following information:

{(a)} "Smoke (Ave.) _____ grams/hour", weighted average of tested values.

{(b)} (a) "Oregon Tested Efficiency (Ave.) _____ %", weighted average of tested values.

{(c)} Summary of the applicable emissions standard.

{(d)} (b) Heat output range, tested values.

{(e)} (c) Manufacturer of appliance.

{(f)} (d) Model of appliance.

{(g)} (e) Design number of model.

{(h)} (f) A statement [verifying certification] acknowledging EPA emission certification meets Oregon emission requirements.

{(i)} (g) The statement "Performance may vary from test values depending on actual home operating conditions".

(2) The label shall be visibly located on the appliance when the appliance is available for inspection by consumers.

(3) This label may not be combined with any other label or with other information.

(4) The label shall be attached to the appliance in such a way that it can be easily removed by the consumer upon purchase. For instance, the label may be attached by adhesive, wire, or string.

Label Approval

340-21-155 ~~{(1)}~~ -Permanent label:

~~(a) The Department will provide guidance on the design of labels by supplying information that shall be placed on the label at the time certification is granted.~~

~~(b) The manufacturer or dealer shall submit to the Department:~~

~~(A) The name, phone number and address of the label manufacturer;~~

~~(B) The proof copy of the label, printed on a representative sample of the label stock, shall be submitted to the Department, if practical; if not, a sample of the label stock shall be submitted for review with a proof copy of the label. The copy shall be as representative of the intended final printed label as practical. The copy shall be actual size; and shall show the proposed label design; layout; artwork; print size; style and color; and shall show all the information required on the label, including curves or points.~~

~~(C) A drawing, diagram, or photograph that identifies the location of the permanent label on the woodstove.~~

~~(D) Information that describes or shows how the permanent label will be affixed to the woodstove. For instance, it may be description of an adhesive type, adhesive manufacturer, and performance characteristics; or rivet type, rivet manufacturer, and performance characteristics.~~

~~(e) Within 14 days of receipt of all information required in subsection (b) of this section, the Department will approve or deny use of the proposed label.~~

~~{(2)}~~ (1) Removable label:

(a) The Department will provide the manufacturer or dealer, at the time of certification with:

(A) A copy of the standardized printed removable label, with all printing specifications; and

(B) The specific information that shall be printed in the spaces on the label by the manufacturer.

(b) The manufacturer or dealer shall submit to the Department for review:

(A) A proof copy of the proposed label with the required information printed on the labels.

(B) The method of attaching the removable label to the woodstove.

(C) The name, telephone number, and address of the label printer.

(c) Within 14 days of receipt of all the information required in subsection (b) of this section, the Department will approve or deny use of the proposed label.

~~{(3)}~~ (2) The manufacturer shall submit to the Department three final printed permanent, and three final printed removable labels within one month of receiving the labels from the printer.

Laboratory Accreditation Requirements

340-21-160 A laboratory submitting test data pursuant to requirements in this rule shall have a valid certificate of accreditation issued by the Department. A laboratory may initiate application for an accreditation certificate by submitting written documentation to the Department that accreditation criteria contained in OAR 340-21-165 are met. In addition, the laboratory must demonstrate stove testing proficiency pursuant to OAR 340-21-170, in order to qualify for accreditation.

Accreditation Criteria

340-21-165 (1) All laboratories shall meet the following criteria and standards at the time of application and shall continue to meet these criteria as a condition of maintaining accreditation:

{(a) -The laboratory shall be an independent third-party testing organization with no organizational, managerial, or financial affiliation with any manufacturer, supplier or vendor of any woodstove covered under its testing programs. - For example:

(A) -The laboratory shall not be owned by any manufacturer or vendor, or own any manufacturer or vendor of woodstoves.

(B) -The management of the laboratory shall not control or be controlled by any manufacturer or vendor.

(C) -The laboratory shall not be engaged in the promotion or design of the woodstove being evaluated or tested.

(D) -The laboratory shall have sufficient diversity of clients or activity so that the loss or award of a specific contract regarding testing would not be a determinative factor in the financial well-being of the laboratory.

(E) -The employment security status of the personnel of the laboratory shall be free of influence or control on any one or more manufacturers or vendors of woodstoves tested.}

(a) Hold a valid certificate of accreditation for emission testing issued by the Administrator.

{(b) -The laboratory shall be operated in accordance with generally accepted professional and ethical business practices. - For example:

(A) -The laboratory shall accurately report values that reflect measured data.

(B) -The -laboratory -shall -limit -certification -program -test -work -to -that for -which -it -can -perform -competently;

(G) -The -laboratory -shall -immediately -respond -and -attempt -to -resolve every -complaint -contesting -test -results .]

(b) Shall meet all of the requirements as prescribed by federal regulation, 40 CFR Part 60, Subpart AAA, Section 60.535.

[(e) -The -laboratory -shall -be -staffed -by -personnel -competent -to -perform the -test -procedures -for -which -accreditation -is -sought, -for -example:

(A) -The -laboratory -shall -assure -the -competency -of -its -staff -through -the observation -or -examination -or -both -of -each -relevant -staff -member -in -the performance -of -tests, -examinations, -and -inspections -that -each -member -is assigned -to -perform. - -The -observations -must -be -conducted -at -intervals -not exceeding -one -year -by -one -or -more -individuals -judged -qualified -by -the -person who -has -technical -responsibility -for -the -operation.

(B) -The -laboratory -shall -make -available -the -description -of -its -training program -for -assuring -that -new -or -untrained -staff -will -be -able -to -perform tests -and -inspections -properly -and -uniformly -to -the -requisite -degree -of precision -and -accuracy.

(C) -The -laboratory -shall -maintain -records, -including -dates -of -the observation -or -examination -of -performance -of -all -personnel.

(d) -The -laboratory -shall -be -equipped -with -the -necessary -instrumentation and -equipment -to -test -all -appliances -in -accordance -with -the -Department's test -procedures.

(e) -The -laboratory -must -have -in -place -and -maintain -a -viable -record keeping -system. - -This -means -that -records -must -be -easily -accessible, -in -some logical -order -and -contain -complete -information -on -the -subject. - -Records

covering the following items are required and will be physically reviewed during the on-site assessment either in total or by selected sampling:

(A) - Measuring equipment: - each instrument name and description; - name of manufacturer; - model; - style and serial number; - Specifications on range or level of precision; - date and documentation of calibration; - record of maintenance and frequency of calibration:

(B) - Data systems: - samples of raw and reduced data sheets; - test report format; - method (manual or automated) of data recording; - analysis and reporting:

(C) - Staff training dates and results:

(D) - Staff competency review dates and results:

(E) - Equipment calibration (or verification) records shall include the following: - equipment name or description; - model; - style; - serial number; - manufacturer; - notation of all equipment variables requiring calibration or verification; - the range of calibration/verification; - the resolution of the instrument and allowable error tolerances; - calibration/verification date and schedule; - date and result of last calibration; - identity of the laboratory individual or external service responsible for calibration; - source of reference standard and traceability.

(F) - Test data and reports, including emissions and efficiency calculations fully documented and all other items required by the specific test method:

(G) - Sample tracking and logging records shall trace the movement of each stove through the laboratory from its receipt through all the tests performed to the final test report. - Dates; - condition of sample; - and laboratory personnel involved should be included:

~~(f) The laboratory shall maintain a quality control system to help assure the accuracy and technical integrity of its work consisting of the following:~~

~~(A) The laboratory's quality control system must include a quality control manual containing written procedures and information in response to the applicable requirements of the test procedures. - The procedures and information may be explicitly contained in the manual or may be referenced so that their location in the laboratory is clearly identified. - The written procedures and information must be adequate to guide a testing technician and inspector in conducting the tests and inspections in accordance with the test methods and procedures required for the stove testing for which accreditation is sought:~~

~~(B) The laboratory shall have a current copy of its quality control manual or laboratory operations control manual available in the laboratory for use by laboratory personnel and shall make the manual available to the Department for review and audit:~~

~~(C) The quality control manual shall consist of general guidelines for the quality control of the laboratory's method of operation. - Specific information shall be provided for portions of individual test methods whenever specifics are needed to comply with the criteria or otherwise support the laboratory's operations. }~~

~~{(g)} (c) [The laboratory shall m]Maintain an [emissions and] efficiency computer program that produces [reasonably the same] results comparable to the Department's, using a standard data set provided by the Department.~~

~~{(h)} (d) Neither the laboratory owners or business affiliates shall discriminate in management or business practices against any person or business because of race, creed, color, religion, sex, age, or national~~

origin. In addition, neither the laboratory nor its owners or operators shall be certified by any association or ~~{are}~~ members of any association that discriminates ~~{by-business-or-management}~~ in management or business practices against any person or business because of race, creed, color, religion, sex, age, or national origin.

Application for Laboratory Accreditation

340-21-170 (1) A laboratory applying for accreditation shall state in writing and demonstrate by providing documentation, that they comply with the criteria and standards in OAR 340-21-165 at the time of application, and how they will continue to meet the criteria and standards on an on-going basis.

(2) The laboratory shall notify the Department in writing within 30 calendar days should it become unable to conform to any of the criteria and standards in OAR 340-21-165.

(3) The laboratory shall demonstrate to the Department that the laboratory's ~~{emission-and}~~ efficiency computer program produces ~~{reasonably the-same}~~ results comparable to the Department's, using a standard data set provided by the Department.

(4) Deficiency in the application will be identified by the Department in writing, and must be resolved by the laboratory before further processing occurs.

(5) The application will not be considered complete for further processing until the laboratory certifies in writing that the deficiencies have been resolved. The application will be considered withdrawn if the applicant fails to certify resolution within 90 days of postmark of notification by the Department.

(6) When the application is approvable, the Department will inform the laboratory in writing and schedule an on-site laboratory inspection.

On-Site Laboratory Inspection and Stove Testing Proficiency Demonstration

340-21-175 (1) An on-site inspection [~~will~~] may be conducted by a Department representative after all laboratory information required by OAR 340-21-165, has been provided by the laboratory, reviewed and approved by the Department. The on-site visit [~~will~~] may be conducted when a laboratory initially applies for accreditation [~~and~~] or when the laboratory reapplies for a new certificate of accreditation.

(2) During the on-site inspection, the Department representative will:

(a) Observe the Stove Testing Proficiency Demonstration specified in OAR 340-21-170(3).

(b) Meet with management and supervisory personnel responsible for the testing activities for which the laboratory is seeking accreditation.

(c) Review representative samples of laboratory records. To facilitate examination of personnel competency records, the laboratory should prepare a list of names of staff members who perform the tests.

(d) Observe test demonstrations and talk with laboratory personnel to assure their understanding of the test procedures. Refer to OAR 340-21-120 and 340-21-170(3).

(e) Physically examine selected equipment and apparatus.

(f) At the conclusion of the on-site visit, the Department [~~will~~] may discuss observations with responsible members of the laboratory management pointing out any deficiencies uncovered.

(3) In order to be accredited and as a part of each on-site laboratory inspection, each laboratory [~~must~~] may be required to demonstrate to the

Department's representative its ability to successfully and proficiently conduct and report a woodstove emission and efficiency test. Each laboratory ~~will~~ may:

(a) Be required to test one woodstove provided by the Department. costs for all stove shipping, catalytic combustors, or other necessary parts will be paid by the laboratory.

(b) Be required to test the stove in accordance with testing criteria and procedures specified in OAR 340-21-120.

(c) conduct the actual ~~{emission-and}~~ efficiency testing in the presence of a Department observer.

(d) Submit all test data, observations and test results to the Department for technical evaluations.

Accreditation Application Deficiency, Notification and Resolution

340-21-180 (1) Any deficiencies noted during the on-site inspection and/or in the test data and test results submitted from the stove testing proficiency demonstration will be specifically identified in writing and mailed to the laboratory within 30 days of the on-site visit.

(2) The laboratory must respond in writing within 30 days of the date of postmark of the notification by the Department and provide documentation that the specified deficiencies have been corrected. All deficiencies must be corrected prior to accreditation being granted.

(3) Deficiencies noted for corrective action will be subject to thorough review and verification during subsequent on-site visits and technical evaluations.

(4) Any deficiencies in the test data and/or results may result in

subsequent proficiency tests being required at the laboratory with a Department representative present.

Final Department Administrative Review and Certificate of Accreditation

340-21-185 (1) When all application material has been received, including the on-site inspection and the stove testing proficiency evaluation, and there has been time for all deficiencies to be resolved, the Department will grant or deny accreditation.

(2) Accreditation can be denied for failure to comply with or fulfill any of the criteria in OAR 340-21-165, -170, and -175.

(3) When accreditation is approved, a certificate of accreditation will be issued to the laboratory. Accreditation will be granted for a period of ~~three years (36 months)~~ five years (60 months) subject to rule change or revocation for cause, pursuant to OAR 340, Division 11.

(4) A certificate of accreditation is not renewable. A holder may obtain a new certificate of accreditation by completing the application procedure in OAR Chapter 340-21-170, and demonstrating compliance with OAR 340-21-165 and 340-21-175.

(5) The Department may select and audit test one stove tested by the laboratory during ~~[its accredited status]~~ the accreditation period to verify certification test results. Any discrepancies noted will be communicated to the laboratory by certified or registered mail. The laboratory must respond in writing within 30 days of postmark of notification and provide documentation or certification by an authorized member of the laboratory management that the specified discrepancies have been corrected or the laboratory may be subject to civil penalties or revocation of accreditation.

(6) A laboratory may voluntarily terminate its accreditation by written request at any time. The certificate of accreditation must be returned with the request.

Civil Penalties, Revocation, and Appeals

340-21-190 (1) Violation of any of these rules shall constitute cause to revoke the manufacturer or dealer's woodstove certification or laboratory's certificate of laboratory accreditation, and also may be subject to civil penalties and other remedies pursuant to rule or statute.

(2) Certification of a woodstove may be revoked if the woodstove was tested at a laboratory that was found to be in violation of accreditation criteria and rules at the time the woodstove was tested for certification.

(3) When certification or accreditation has been revoked, the holder shall return the certification or accreditation document to the Department and cease to use mention of Department certification or accreditation of the stove model or laboratory on any of its test reports, correspondence or advertising.

(4) Stove certification and lab accreditation revocation shall be handled as contested cases pursuant to OAR Chapter 340, Division 11.

WOOD\AR1556

Part 60--Standards of Performance for New Stationary Sources
Subpart Aaa--Standards of Performance for New Residential Wood Heaters

s 60.530 Applicability and designation of affected facility.

(a) The affected facility to which the provisions of this subpart apply is each wood heater manufactured on or after July 1, 1988, or sold at retail on or after July 1, 1990. The provisions of this subpart do not apply to wood heaters constructed prior to July 1, 1988, that are or have been owned by a noncommercial owner for his personal use.

(b) Each affected facility shall comply with the applicable emission limits in s 60.532 unless exempted under paragraph (c), (d), (e), (f), (g) or (h) of this section.

(c)(1) Within a model line, an affected facility manufactured prior to July 1, 1990 is exempt from the emission limits in s 60.532 if that model line has been issued a valid certificate of compliance by the Oregon Department of Environmental Quality prior to January 1, 1988, and meets the Oregon 1988 standards for particulate matter emissions, provided that

(c)(1)(i) The manufacturer requests the exemption in writing from the Administrator and certifies that the information used in obtaining Oregon certification satisfied applicable requirements of the Oregon law;

(c)(1)(ii) The certification test included at least one test run at a burn rate of less than 1.25 kg/hr;

(c)(1)(iii) No changes in components that may affect emissions have been made to the model line that would require recertification under s 60.533(k);

(c)(1)(iv) The manufacturer complies with application requirements contained in s 60.533(b) (1), (2), (5), (6), (9) and (11); (c); (m); and (o)(2); and

(c)(1)(v) The manufacturer submits a copy of the certificate issued by the State of Oregon, a complete set of engineering drawings, and, at a minimum, those portions of the test report that include the emissions summary, the burn rates, and the laboratory's description of how the wood heater operates.

(c)(2) Affected facilities exempted under this paragraph may not be sold at retail on or after July 1, 1992.

(c)(3) Any certificate issued under this paragraph prior to January 1, 1988, shall be modified to reflect any modifications in Oregon certification approved by the Oregon Department of Environmental Quality prior to that date.

The manufacturer shall notify the Administrator of any such modifications within 30 days of their approval by the Oregon Department of Environmental Quality.

(c)(4) Upon denying a certificate under this paragraph the Administrator shall give written notice setting forth the basis for his determination to the manufacturer involved.

(c)(5) The Administrator may revoke a certificate issued under this paragraph if he determines that any of the conditions or determinations listed in s 60.533(1)(1) (iii), (iv), (v), and (vi) exists; or if the State of Oregon revokes its certification.

(d) An affected facility is exempt from the applicable emission limits of s 60.532, provided that

(d)(1) It was manufactured between July 1, 1988, and June 30, 1989;

(d)(2) The manufacturer was a manufacturer of wood heaters as of January 1, 1987, and manufactured (or, in the case of a foreign manufacturer, exported to the United States) fewer than 2,000 wood heaters between July 1, 1987, and June 30, 1988;

(d)(3) The manufacturer manufactures no more uncertified wood heaters between July 1, 1988 and June 30, 1989, than he manufactured (or, in the case of a foreign manufacturer, exported to the United States) between July 1, 1987 and June 30, 1988; and

(d)(4) The affected facility is sold at retail before July 1, 1991.

(d)(5) For the purposes of this paragraph, the term "manufacturer" does not include importers of wood heaters.

(e) Affected facilities manufactured in the U.S. for export are exempt from the applicable emission limits of s 60.532 and the requirements of s 60.533.

(f) A wood heater used for research and development purposes that is never offered for sale or sold is exempt from the applicable emission limits of s 60.532 and the requirements of s 60.533. No more than 50 wood heaters manufactured per model line may be exempted for this purpose.

(g) A coal-only heater is exempt from the applicable emission limits of s 60.532 and the requirements of s 60.533.

(h) The following are not affected facilities and are not subject to this subpart:

(h)(1) Open masonry fireplaces constructed on site,

(h)(2) Boilers,

(h)(3) Furnaces, and

(h)(4) Cookstoves.

(i) Modification or reconstruction, as defined in s 60.14 and s 60.15 of Subpart A, shall not, by itself, make a wood heater an affected facility under this subpart.

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601.

Source: 36 FR 24877, Dec. 23, 1971; 50 FR 36834, Sept. 9, 1985; 52 FR 37874, Oct. 9, 1987; 53 FR 2675, Jan. 29, 1988, unless otherwise noted.

Source: 53 FR 5873, Feb. 26, 1988, unless otherwise noted.

40 CFR s 60.530

END OF DOCUMENT

Citation
40 CFR s 60.531

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R 2 OF 12

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TITLE 40--PROTECTION OF ENVIRONMENT
Chapter I--Environmental Protection Agency
Subchapter C--Air Programs
Part 60--Standards of Performance for New Stationary Sources
Subpart Aaa--Standards of Performance for New Residential Wood Heaters

s 60.531 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act and Subpart A of this part.

"At retail" means the sale by a commercial owner of a wood heater to the ultimate purchaser.

"Boiler" means a solid fuel burning appliance used primarily for heating spaces, other than the space where the appliance is located, by the distribution through pipes of a gas or fluid heated in the appliance. The appliance must be tested and listed as a boiler under accepted American or Canadian safety testing codes. A manufacturer may request an exemption in writing from the Administrator by stating why the testing and listing requirement is not practicable and by demonstrating that his appliance is otherwise a boiler.

"Coal-only heater" means an enclosed, coal-burning appliance capable of space heating, or domestic water heating, which has all of the following characteristics:

- (a) An opening for emptying ash that is located near the bottom or the side of the appliance,
- (b) A system that admits air primarily up and through the fuel bed,
- (c) A grate or other similar device for shaking or disturbing the fuel bed or power-driven mechanical stoker,
- (d) Installation instructions that state that the use of wood in the stove, except for coal ignition purposes, is prohibited by law, and
- (e) The model is listed by a nationally recognized safety-testing laboratory for use of coal only, except for coal ignition purposes.

"Commercial owner" means any person who owns or controls a wood heater in the course of the manufacture, importation, distribution, or sale of the wood heater.

"Cookstove" means a wood-fired appliance that is designed primarily for cooking food and that has the following characteristics:

- (a) An oven, with a volume of 0.028 cubic meters (1 cubic foot) or greater, and an oven rack,
- (b) A device for measuring oven temperatures,
- (c) A flame path that is routed around the oven,
- (d) A shaker grate,
- (e) An ash pan,
- (f) An ash clean-out door below the oven, and
- (g) The absence of a fan or heat channels to dissipate heat from the appliance.

"Furnace" means a solid fuel burning appliance that is designed to be located outside of ordinary living areas and that warms spaces other than the space where the appliance is located, by the distribution of air heated in the

appliance through ducts. The appliance must be tested and listed as a furnace under accepted American or Canadian safety testing codes unless exempted from this provision by the Administrator. A manufacturer may request an exemption in writing from the Administrator by stating why the testing and listing requirement is not practicable and by demonstrating that his appliance is otherwise a furnace.

"Manufactured" means completed and ready for shipment (whether or not packaged).

"Manufacturer" means any person who constructs or imports a wood heater.

"Model line" means all wood heaters offered for sale by a single manufacturer that are similar in all material respects.

"Representative affected facility" means an individual wood heater that is similar in all material respects to other wood heaters within the model line it represents.

"Sale" means the transfer of ownership or control, except that transfer of control shall not constitute a sale for purposes of s 60.530(f).

"Similar in all material respects" means that the construction materials, exhaust and inlet air system, and other design features are within the allowed tolerances for components identified in s 60.533(k).

"Wood heater" means an enclosed, woodburning appliance capable of and intended for space heating and domestic water heating that meets all of the following criteria:

(a) An air-to-fuel ratio in the combustion chamber averaging less than 35-to-1 as determined by the test procedure prescribed in s 60.534 performed at an accredited laboratory,

(b) A usable firebox volume of less than 20 cubic feet,

(c) A minimum burn rate less than 5 kg/hr as determined by the test procedure prescribed in s 60.534 performed at an accredited laboratory, and

(d) A maximum weight of 800 kg. In determining the weight of an appliance for these purposes, fixtures and devices that are normally sold separately, such as flue pipe, chimney, and masonry components that are not an integral part of the appliance or heat distribution ducting, shall not be included.

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601.

Source: 36 FR 24877, Dec. 23, 1971; 50 FR 36834, Sept. 9, 1985; 52 FR 37874, Oct. 9, 1987; 53 FR 2675, Jan. 29, 1988, unless otherwise noted.

Source: 53 FR 5873, Feb. 26, 1988, unless otherwise noted.

40 CFR s 60.531

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40 CFR s 60.532

Rank(R)
R 3 OF 12

Database Mode
CFR P

TITLE 40--PROTECTION OF ENVIRONMENT
Chapter I--Environmental Protection Agency
Subchapter C--Air Programs

Part 60--Standards of Performance for New Stationary Sources
Subpart Aaa--Standards of Performance for New Residential Wood Heaters

s 60.532 Standards for particulate matter.

Unless exempted under s 60.530, each affected facility:

(a) Manufactured on or after July 1, 1988, or sold at retail on or after July 1, 1990, shall comply with the following particulate matter emission limits as determined by the test methods and procedures in s 60.534:

(1) An affected facility equipped with a catalytic combustor shall not discharge into the atmosphere any gases which contain particulate matter in excess of a weighted average of 5.5 g/hr.

(2) An affected facility not equipped with a catalytic combustor shall not discharge into the atmosphere any gases which contain particulate matter in excess of a weighted average of 8.5 g/hr.

(b) Manufactured on or after July 1, 1990, or sold at retail on or after July 1, 1992, shall comply with the following particulate matter emission limits as determined by the test methods and procedures in s 60.534:

(1) An affected facility equipped with a catalytic combustor shall not discharge into the atmosphere any gases which contain particulate matter in excess of a weighted average of 4.1 g/hr. Particulate emissions during any test run at any burn rate that is required to be used in the weighted average shall not exceed the value calculated for "C" (rounded to 2 significant figures) calculated using the following equation:

(i) At burn rates less than or equal to 2.82 kg/hr,

$C = 3.55 \text{ g/kgXBR} + 4.98 \text{ g/hr}$, where

BR=burn rate in kg/hr

(ii) At burn rates greater than 2.82 kg/hr,

$C = 15 \text{ g/hr}$.

(2) An affected facility not equipped with a catalytic combustor shall not discharge into the atmosphere any gases which contain particulate matter in excess of a weighted average of 7.5 g/hr. Particulate emissions shall not exceed 15 g/hr during any test run at a burn rate less than or equal to 1.5 kg/hr that is required to be used in the weighted average, and particulate emissions shall not exceed 18 g/hr during any test run at a burn rate greater than 1.5 kg/hr that is required to be used in the weighted average.

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601.

Source: 36 FR 24877, Dec. 23, 1971; 50 FR 36834, Sept. 9, 1985; 52 FR 37874, Oct. 9, 1987; 53 FR 2675, Jan. 29, 1988, unless otherwise noted.

Source: 53 FR 5873, Feb. 26, 1988, unless otherwise noted.

40 CFR s 60.532

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Citation
40 CFR s 60.533

Rank(R)
R 4 OF 12

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TITLE 40--PROTECTION OF ENVIRONMENT
Chapter I--Environmental Protection Agency
Subchapter C--Air Programs
Part 60--Standards of Performance for New Stationary Sources
Subpart Aaa--Standards of Performance for New Residential Wood Heaters
s 60.533 Compliance and certification.

(a) For each model line, compliance with applicable emission limits may be determined based on testing of representative affected facilities within the model line.

(b) Any manufacturer of an affected facility may apply to the Administrator for a certificate of compliance for a model line. The application shall be in writing to: Stationary Source Compliance Division (EN-341), U.S. EPA, 401 M Street, SW., Washington, DC, 20460, Attention: Wood Heater Program. The manufacturer must submit two complete copies of the application and attachments. The application must be signed by the manufacturer, or an authorized representative, and shall contain the following:

(b)(1) The model name and/or design number,

(b)(2) Two color photographs of the tested unit (or, for models being certified under s 60.530(c), photographs of a representative unit), one showing a front view and the other, a side view,

(b)(3)(i) Engineering drawings and specifications of components that may affect emissions (including specifications for each component listed in paragraph (k) of this section). Manufacturers may use complete assembly or design drawings that have been prepared for other purposes, but should designate on the drawings the dimensions of each component listed in paragraph (k) of this section. Manufacturers shall identify tolerances of components of the tested unit listed in paragraph (k)(2) of this section that are different from those specified in that paragraph, and show that such tolerances may not reasonably be anticipated to cause wood heaters in the model line to exceed the applicable emission limits.

(b)(3)(ii) A statement whether the firebox or any firebox component (other than one listed in paragraph (k)(3) of this section) will be composed of different material from the material used for the firebox or firebox component in the wood heater on which certification testing was performed and a description of any such differences.

(b)(3)(iii) For applications to certify a model line of catalytic wood heaters to meet the emission limits in s 60.532(b), a statement describing the manufacturer's program to ensure consistency in the size of any gap in the catalyst bypass mechanism. The statement shall describe, in narrative form, the components of the system that affect the size of the gap, any specifications for critical dimensions of any such components, and the

procedure the manufacturer will use to ensure consistency in the size of the catalyst bypass gap.

(b)(4) All documentation pertaining to a valid certification test, including the complete test report and, for all test runs: Raw data sheets, laboratory technician notes, calculations, and test results. Documentation shall include the items specified in the applicable test methods. Recommended formats and guidance materials are available from the Administrator.

(b)(5) For catalytic wood heaters, a copy of the catalytic combustor warranty,

(b)(6) A statement that the manufacturer will conduct a quality assurance program for the model line which satisfies the requirements of paragraph (o) of this section,

(b)(7) A statement describing how the tested unit was sealed by the laboratory after the completion of certification testing, and

(b)(8) A statement that the manufacturer will notify the accredited laboratory if the application for certification is granted, within thirty days of receipt of notification from EPA.

(b)(9) Statements that the wood heaters manufactured under this certificate will be--

(b)(9)(i) Similar in all material respects to the wood heater submitted for certification testing, and

(b)(9)(ii) Will be labeled as prescribed in s 60.536,

(b)(10) For catalytic wood heaters, a statement that the warranty, access and inspection, and temperature monitoring provisions in paragraphs (c), (d), and (m) of this section will be met,

(b)(11) A statement that the manufacturer will comply with the recordkeeping and reporting requirements in s 60.537,

(b)(12) A written estimate of the number of wood heaters that the manufacturer anticipates that he will produce annually for the first two production years. Compliance with this provision may be obtained by designating one of the following ranges:

(b)(12)(i) Less than 2,500,

(b)(12)(ii) 2,500 to 4,999,

(b)(12)(iii) 5,000 to 9,999,

(b)(12)(iv) 10,000 to 49,999, and

(b)(12)(v) 50,000 or greater; and

(b)(13) At the beginning of each test run in a certification test series, two photographs of the fuel load: One before and one after it is placed in the wood heater. One of the photographs shall show the front view of the wood load and the other shall show the side view.

(b)(14) For manufacturers seeking certification of model lines under s 60.533(e) to meet the emission limits in s 60.532(b), a statement that the manufacturer has entered into a contract with an accredited laboratory which satisfies the requirements of paragraph (g) of this section.

(c) If the affected facility is a catalytic wood heater, the warranty for the catalytic combustor shall include the replacement of the combustor and any prior replacement combustor without charge to the consumer for:

(c)(1) 2 years from the date the consumer purchased the heater for any defects in workmanship or materials that prevent the combustor from functioning when installed and operated properly in the wood heater, and

(c)(2) 3 years from the date the consumer purchased the heater for thermal crumbling or disintegration of the substrate material for heaters manufactured after July 1, 1990.

(d) The manufacturer of an affected facility equipped with a catalytic combustor shall provide for a means to allow the owner to gain access readily to the catalyst for inspection or replacement purposes and shall document in his application for certification how the catalyst is replaced.

(e)(1) The Administrator shall issue a certificate of compliance for a model line if he determines, based on all information submitted by the applicant and any other relevant information available to him, that:

(e)(1)(i) A valid certification test has demonstrated that the wood heater representative of the model line complies with the applicable particulate emission limits in s 60.532,

(e)(1)(ii) Any tolerances or materials for components listed in paragraph (k) (2) or (3) of this section that are different from those specified in those paragraphs may not reasonably be anticipated to cause wood heaters in the model line to exceed the applicable emission limits, and

(e)(1)(iii) The requirements of paragraphs (b), (c), (d), and (m) of this section have been met. The program described under paragraph (b)(3)(iii) of this section shall be deemed a tolerance specified in the certified design.

(e)(2) For the period between proposal of this subpart through June 30, 1988, an applicant may elect to have his application determined under the requirements of Subpart AAA proposed on February 18, 1987 (52 FR 4994).

(e)(3) Upon denying certification under this paragraph, the Administrator shall give written notice to the manufacturer setting forth the basis for his determination.

(f) To be valid, a certification test must be:

(f)(1) Announced to the Administrator in accordance with s 60.534(e),

(f)(2) Conducted by a testing laboratory accredited by the Administrator pursuant to s 60.535,

(f)(3) Conducted on a wood heater similar in all material respects to other wood heaters of the model line that is to be certified, and

(f)(4) Conducted in accordance with the test methods and procedures specified in s 60.534.

(g) To have a wood heater model certified under s 60.533(e) to meet the emission limits in s 60.532(b), a manufacturer must enter into a contract with the accredited laboratory that performed the certification test, under which the laboratory will:

(g)(1) Conduct the random compliance audit test at no cost to the manufacturer if EPA selects that laboratory to conduct the test, or

(g)(2) Pay the manufacturer the reasonable cost of a random compliance audit test (as determined by EPA) if EPA selects any other laboratory to conduct the test.

(h)(1)(i) The Administrator on a monthly basis between April 1, 1987, and July 1, 1990, shall determine whether an undue certification delay exists, pursuant to paragraph (h)(2) of this section. Such determinations shall be made on or about the 20th day of the month.

(ii) Any failure of the Administrator to make a required determination under paragraph (h)(1)(i) of this section by the 30th day of any month shall constitute a determination that an undue certification delay exists.

(ii)(iii) Any determination under paragraph (h)(1)(i) or (ii) of this section shall remain in effect until superseded by a subsequent determination; except that a determination under paragraph (h)(1)(ii) shall remain in effect for at least thirty (30) days.

(ii)(iv) The Administrator shall mail notice of all determinations under paragraph (h)(1)(i) or (ii) of this section to all persons who have requested in writing to receive notification.

(ii)(iv)(2) An undue certification delay exists when the sum of the average testing lead time and the certification lead time is greater than six

months.

(ii)(iv)(2)(i) The average testing lead time shall be determined from the information submitted by accredited laboratories pursuant to s 60.537(b). The average testing lead time is the simple average of lead times reported under s 60.537(b)(2) for the current month.

(ii)(iv)(2)(ii) The certification lead time shall be an estimate, as of the date of the determination, of the time likely to be required to determine whether to issue a certificate of compliance for a complete application received on that date. This estimate shall be based on factors such as past experience, the number of applications to be processed, and the resources available for processing.

(ii)(iv)(3)(i) While any determination under paragraph (h)(1) of this section that an undue certification delay exists is in effect, a manufacturer may submit an application for alternative certification.

(ii)(iv)(3)(ii) An application for alternative certification shall be in writing to: Stationary Source Compliance Division (EN-341), U. S. EPA, 401 M Street, SW., Washington, DC 20460, Attention: Wood Heater Program. The application must be in duplicate copies and signed by the manufacturer, or an authorized representative, and contain the following:

(ii)(iv)(3)(ii)(A) The documentation required under paragraphs (b) (1) through (6) and (b) (9) through (12) of this section, except that in applying paragraph (b)(4), paragraphs (f) (1) and (2) shall not apply,

(ii)(iv)(3)(ii)(B) Evidence of compliance with paragraphs (c), (d) and (m) of this section,

(ii)(iv)(3)(ii)(C) A statement that a representative affected facility for the model line in question has been tested in accordance with s 60.534(a), and meets applicable emission limits in s 60.532. Such testing may be conducted in any laboratory of the manufacturer's choice,

(ii)(iv)(3)(ii)(D) A statement identifying the month which will be the end of the manufacturer's production year for that model,

(ii)(iv)(3)(ii)(E) Evidence that the manufacturer has scheduled with an accredited laboratory the testing required for full certification under this subpart at the earliest feasible date,

(ii)(iv)(3)(ii)(F) Evidence that the manufacturer has notified the accredited laboratory that he intends to apply for alternative certification, and

(ii)(iv)(3)(ii)(G) A commitment to report the results of all valid certification tests to the Administrator.

(ii)(iv)(3)(iii) Test results not obtained under pressurized conditions may be adjusted for altitude according to the following formula:

TABULAR OR GRAPHIC MATERIAL SET AT THIS POINT IS NOT DISPLAYABLE

E (subpart A)=adjusted emissions in g/hr

E=measured emissions in g/hr at ALT (subpart L)

AAF=altitude adjustment factor where,

TABULAR OR GRAPHIC MATERIAL SET AT THIS POINT IS NOT DISPLAYABLE

ALT (subscript L)=altitude above mean sea level of laboratory in feet

(ii)(iv)(4)(i) Submission of an application for alternative certification pursuant to paragraph (h)(3) of this section automatically renders a model line certified 30 days after receipt of the application for alternative certification by the Administrator, unless alternative certification is denied sooner, on the basis that the application is not complete, or that the test results do not show compliance with the applicable emission limits in s 60.532. Except as provided in paragraphs (h)(4)(ii) through (h)(4)(iv) of this section, alternative certification shall expire on the earlier of:

(ii)(iv)(4)(i)(A) The completion of the manufacturer's production year during which the Administrator takes action under paragraph (e) of this section on an application for certification, or

(ii)(iv)(4)(i)(B) Twelve months after such action.

(ii)(iv)(4)(ii) If, in any certification tests performed pursuant to the commitment in paragraph (h)(3)(ii)(E) of this section, emissions from the affected facility exceed the applicable emission limits in s 60.532 by greater than 50 percent, alternative certification pursuant to this paragraph shall expire 72 hours after the manufacturer receives notification from the laboratory of the test results, in accordance with paragraph (h)(4)(v) of this section.

(ii)(iv)(4)(iii) If, in any certification test performed under paragraph (h)(3)(ii) of this section, emissions from the affected facility exceed the applicable emission limits in s 60.532, alternative certification pursuant to this paragraph shall expire 72 hours after the manufacturer receives notification satisfying paragraph (h)(4)(v) of this section from the laboratory of the test results, if such notification is received within 100 days of the date on which the manufacturer scheduled the certification test.

(ii)(iv)(4)(iv) Alternative certification shall expire 72 hours after the manufacturer receives notification from the Administrator that the manufacturer has--

(ii)(iv)(4)(iv)(A) Failed to meet a scheduled commitment for certification testing,

(ii)(iv)(4)(iv)(B) Failed to complete the testing, or

(ii)(iv)(4)(iv)(C) Delayed completion of the testing by more than 14 days after certification testing began by ordering additional testing.

(ii)(iv)(4)(v) Any notification under paragraph (h)(4)(ii) or (h)(4)(iii) of this section shall include a copy of a preliminary test report from the accredited laboratory. The accredited laboratory shall provide a preliminary test report to the manufacturer and to the Administrator within 10 days of the completion of testing, if a wood heater exceeds the applicable emission limits in s 60.532 in certification testing.

(ii)(iv)(4)(v)(i) An applicant for certification may apply for a waiver of the requirement to submit the results of a certification test pursuant to paragraph (b)(4) of this section, if the wood heaters of the model line are similar in all material respects to another model line that has already been issued a certificate of compliance. A manufacturer that seeks a waiver of certification testing must identify the model line that has been certified, and must submit a copy of an agreement with the owner of the design permitting the applicant to produce wood heaters of that design.

(j)(1) Unless revoked sooner by the Administrator, a certificate of compliance shall be valid:

(j)(1)(i) Through June 30, 1990, for a model line certified as meeting emissions limits in s 60.532(a), and

(j)(1)(ii) For five years from the date of issuance, for a model line certified as meeting emission limits in s 60.532(b).

(j)(2) Upon application for renewal of certification by the manufacturer, the Administrator may waive the requirement for certification testing upon determining that the model line continues to meet the requirements for certification in paragraph (e) of this section, or that a waiver of certification is otherwise appropriate.

(j)(3) Upon waiving certification testing under paragraph (j)(2) of this section, the Administrator shall give written notice to the manufacturer setting forth the basis for his determination.

(k)(1) A model line must be recertified whenever any change is made in the design submitted pursuant to s 60.533(b)(3) that is presumed to affect the particulate emission rate for that model line. The Administrator may waive this requirement upon written request by the manufacturer, if he determines that the change may not reasonably be anticipated to cause wood heaters in the model line to exceed the applicable emission limits. The grant of such a waiver does not relieve the manufacturer of any compliance obligations under this subpart.

(k)(2) Any change in the indicated tolerances of any of the following components (where such components are applicable) is presumed to affect particulate emissions if that change exceeds +/- 1/4 inch for any linear

dimension and +/-5 percent for any cross-sectional area relating to air introduction systems and catalyst bypass gaps unless other dimensions and cross-sectional areas are previously approved by the Administrator under paragraph (e)(1)(ii) of this section:

(k)(2)(i) Firebox: Dimensions,

(k)(2)(ii) Air introduction systems: Cross-sectional area of restrictive air inlets, outlets, and location, and method of control,

(k)(2)(iii) Baffles: Dimensions and locations,

(k)(2)(iv) Refractory/insulation: Dimensions and location,

(k)(2)(v) Catalyst: Dimensions and location,

(k)(2)(vi) Catalyst bypass mechanism and, for model lines certified to meet the emissions limits in s 60.532(b), catalyst bypass gap tolerances (when bypass mechanism is in closed position): Dimensions, cross-sectional area, and location,

(k)(2)(vii) Flue gas exit: Dimensions and location,

(k)(2)(viii) Door and catalyst bypass gaskets: Dimensions and fit,

(k)(2)(ix) Outer shielding and coverings: Dimensions and location,

(k)(2)(x) Fuel feed system: For wood heaters that are designed primarily to burn wood pellets and other wood heaters equipped with a fuel feed system, the fuel feed rate, auger motor design and power rating, and the angle of the auger to the firebox, and

(k)(2)(xi) Forced air combustion system: For wood heaters so equipped, the location and horsepower of blower motors and the fan blade size.

(k)(3) Any change in the materials used for the following components is presumed to affect emissions:

(k)(3)(i) Refractory/insulation or

(k)(3)(ii) Door and catalyst bypass gaskets.

(k)(4) A change in the make, model, or composition of a catalyst is presumed to affect emissions, unless the change has been approved in advance by the Administrator, based on test data that demonstrate that the replacement catalyst is equivalent to or better than the original catalyst in terms of particulate emission reduction.

(1)(1) The Administrator may revoke certification if he determines that the wood heaters being produced in that model line do not comply with the

requirements of this section or s 60.532. Such a determination shall be based on all available evidence, including:

(1)(1)(i) Test data from a retesting of the original unit on which the certification test was conducted,

(1)(1)(ii) A finding that the certification test was not valid,

(1)(1)(iii) A finding that the labeling of the wood heater does not comply with the requirements of s 60.536,

(1)(1)(iv) Failure by the manufacturer to comply with reporting and recordkeeping requirements under s 60.537,

(1)(1)(v) Physical examination showing that a significant percentage of production units inspected are not similar in all material respects to the representative affected facility submitted for testing, or

(1)(1)(vi) Failure of the manufacturer to conduct a quality assurance program in conformity with paragraph (o) of this section.

(1)(2) Revocation of certification under this paragraph shall not take effect until the manufacturer concerned has been given written notice by the Administrator setting forth the basis for the proposed determination and an opportunity to request a hearing under s 60.539.

(1)(3) Determination to revoke certification based upon audit testing shall be made only in accordance with paragraph (p) of this section.

(m) A catalytic wood heater shall be equipped with a permanent provision to accommodate a commercially available temperature sensor which can monitor combustor gas stream temperatures within or immediately downstream [within 2.54 centimeters (1 inch)] of the combustor surface.

(n) Any manufacturer of an affected facility subject under s 60.530(b) to the applicable emission limits of this subpart that does not belong to a model line certified under this section shall cause that facility to be tested in an accredited laboratory in accordance with paragraphs (f)(1), (f)(2), and (f)(4) of this section before it leaves the manufacturer's possession and shall report the results to the Administrator.

(o)(1) For each certified model line, the manufacturer shall conduct a quality assurance program which satisfies the following requirements:

(o)(2) Except as provided in paragraph (o)(5) of this section, the manufacturer or his authorized representative shall inspect at least one from every 150 units produced within a model line to determine that the wood heater is within applicable tolerances for all components that affect emissions as listed in paragraph (k)(2) of this section.

(o)(3)(i) Except as provided in paragraph (o)(3)(iii) or (o)(5) of this section, the manufacturer or his authorized representative shall conduct an emission test on a randomly selected affected facility produced within a model line certified under s 60.533(e) or s 60.533(h), on the following schedule:

TABULAR OR GRAPHIC MATERIAL SET AT THIS POINT IS NOT DISPLAYABLE

(o)(3)(ii) Emission tests shall be conducted in conformity with s 60.534(a), using either approved method for measuring particulate matter (as provided in s 60.534). The manufacturer shall notify EPA by U.S. mail that an emissions test required pursuant to this paragraph will be conducted within one week of the mailing of the notification.

(o)(3)(iii) If the manufacturer stated pursuant to paragraph (b)(3) of this section that the firebox or any firebox component would be composed of a different material than the material used in the wood heater on which certification testing was performed, the first test shall be performed before 1,000 wood heaters are produced. The manufacturer shall submit a report of the results of this emission test to the Administrator within 45 days of the completion of testing.

(o)(4) The manufacturer shall take remedial measures, as appropriate, when inspection or testing pursuant to paragraph (o) of this section indicate that affected facilities within the model line are not within applicable tolerances or do not comply with applicable emission limit. Manufacturers shall record the problem identified, the extent of the problem, the remedial measures taken, and the effect of such remedial measures as projected by the manufacturer or determined by any additional testing.

(o)(5)(i) If two consecutive passing tests are conducted under either paragraph (o) (2) or (3) of this section, the required frequency of testing under the applicable paragraph shall be modified as follows: Skip every other required test.

(o)(5)(ii) If five consecutive passing tests are conducted under the modified schedule provided for in Paragraph (o)(5)(i) of this section, the required frequency of testing under the applicable paragraph shall be further modified as follows: Skip three consecutive required tests after each required test that is conducted.

(o)(5)(iii) Testing shall resume on the frequency specified in the paragraph (o) (2) or (3), as applicable, if a test failure results during any test conducted under a modified schedule.

(o)(6) If emissions tests under paragraph (o) of this section are conducted at an altitude different from the altitude at which certification tests were conducted, and are not conducted under pressurized conditions, the results shall be adjusted for altitude in accordance with paragraph (h)(3)(iii) of this section.

(p)(1)(i) The Administrator shall after July 1, 1990, select for random

compliance audit testing certified wood heater model lines that have not already been subject to a random compliance audit under this paragraph. The Administrator shall not select more than one model line under this program for every five model lines for which certification is granted under s 60.533(e) to meet the emission limits in s 60.532(b). No accredited laboratory shall test or bear the expense of testing, as provided in the contract described in paragraph (g) of this section, more than one model line from every five model lines tested by the laboratory for which certification was granted. The Administrator shall use a procedure that ensures that the selection process is random.

(p)(1)(ii) The Administrator may, by means of a neutral selection scheme, select model lines certified under s 60.533(e) or s 60.533(h) for selective enforcement audit testing under this paragraph. Prior to July 1, 1990, the Administrator shall only select a model line for a selective enforcement audit on the basis of information indicating that affected facilities within the model line may exceed the applicable emission limit in s 60.532.

(p)(2) The Administrator shall randomly select for audit testing five production wood heaters from each model line selected under paragraph (p)(1) of this section. These wood heaters shall be selected from completed units ready for shipment from the manufacturer's facility (whether or not the units are in a package or container). The wood heaters shall be sealed upon selection and remain sealed until they are tested or until the audit is completed. The wood heaters shall be numbered in the order that they were selected.

(p)(3)(i) The Administrator shall test, or direct the manufacturer to test, the first of the five wood heaters selected under paragraph (p)(2) of this section in a laboratory accredited under s 60.535 that is selected pursuant to paragraph (p)(4) of this section.

(p)(3)(ii) The expense of the random compliance audit test shall be the responsibility of the wood heater manufacturer. A manufacturer may require the laboratory that performed the certification test to bear the expense of a random compliance audit test by means of the contract required under paragraph (g) of this section. If the laboratory with which the manufacturer had a contract has ceased business due to bankruptcy or is otherwise legally unable to honor the contract, the Administrator will not select any of that manufacturer's model lines for which certification testing has been conducted by that laboratory for a random compliance audit test.

(p)(3)(iii) The test shall be conducted using the same test method and procedure used to obtain certification. If the certification test consisted of more than one particulate sampling test method, the Administrator may use either one of these methods for the purpose of audit testing. If the test is performed in a pressure vessel, air pressure in the pressure vessel shall be maintained within 1 percent of the average of the barometric pressures recorded for each individual test run used to calculate the weighted average emission rate for the certification test. The Administrator shall notify the manufacturer at least one week prior to any test under this paragraph, and

allow the manufacturer and/or his authorized representatives to observe the test.

(p)(4)(i) Except as provided in this paragraph, the Administrator may select any accredited laboratory for audit testing.

(p)(4)(ii)(A) The Administrator shall select the accredited laboratory that performed the test used to obtain certification for audit testing, until the Administrator has amended this subpart, based upon a determination pursuant to paragraph (p)(4)(ii)(B) of this section, to allow testing at another laboratory. If another laboratory is selected pursuant to this paragraph, and the overall precision of the test method and procedure is greater than 1 gram per hour of the weighted average at laboratories below 304 meters (1,000 feet) elevation (or equivalent), the interlaboratory component of the precision shall be added to the applicable emissions standard for the purposes of this paragraph.

(p)(4)(ii)(B) With respect to each test method and procedure set out in s 60.534(a), the Administrator shall, by July 1, 1990, publish a decision, after notice of an opportunity for comment, which either

(p)(4)(ii)(B)(1) Amends this subpart based on a determination of the overall precision of the method and procedure, and the interlaboratory component thereof, or

(p)(4)(ii)(B)(2) Sets forth a determination that the available data are insufficient to determine the overall precision of the method and procedure, and the interlaboratory component thereof.

(p)(4)(iii) The Administrator shall not select an accredited laboratory that is located at an elevation more than 152 meters (500 feet) higher than the elevation of the laboratory which performed the test used to obtain certification, unless the audit test is performed in a pressure vessel.

(p)(5)(i) If emissions from a wood heater tested under paragraph (p)(3) of this section exceed the applicable weighted average emission limit by more than 50 percent, the Administrator shall so notify the manufacturer that certification for that model line is suspended effective 72 hours from the receipt of the notice, unless the suspension notice is withdrawn by the Administrator. The suspension shall remain in effect until withdrawn by the Administrator, or 30 days from its effective date (if a revocation notice under paragraph (p)(5)(ii) of this section is not issued within that period), or the date of final agency action on revocation, whichever occurs earlier.

(p)(5)(ii)(A) If emissions from a wood heater tested under paragraph (p)(3) of this section exceed the applicable weighted average emission limit, the Administrator shall notify the manufacturer that certification is revoked for that model line.

(p)(5)(ii)(B) A revocation notice under paragraph (p)(5)(ii)(A) shall

become final and effective 60 days after receipt by the manufacturer, unless it is withdrawn, a hearing is requested under s 60.539, or the deadline for requesting a hearing is extended.

(p)(5)(ii)(C) The Administrator may extend the deadline for requesting a hearing for up to 60 days for good cause.

(p)(5)(ii)(D) A manufacturer may extend the deadline for requesting a hearing for up to six months, by agreeing to a voluntary suspension of certification.

(p)(5)(iii) Any notification under paragraph (p)(5)(i) or (p)(5)(ii) of this section shall include a copy of a preliminary test report from the accredited laboratory. The accredited laboratory shall provide a preliminary test report to the Administrator within 10 days of the completion of testing, if a wood heater exceeds the applicable emission limit in s 60.532. The laboratory shall provide the Administrator and the manufacturer, within 30 days of the completion of testing, all documentation pertaining to the test, including the complete test report and raw data sheets, laboratory technician notes, and test results for all test runs.

(p)(5)(iv) Upon receiving notification of a test failure under paragraph (p)(5)(ii) of this section, the manufacturer may submit some or all of the remaining four wood heaters selected under paragraph (p)(2) of this section for testing at his own expense, in the order they were selected by the Administrator, at the laboratory that performed the emissions test for the Administrator.

(p)(5)(v) Whether or not the manufacturer proceeds under paragraph (p)(5)(iv) of this section, the manufacturer may submit any relevant information to the Administrator, including any other test data generated pursuant to this subpart. The manufacturer shall pay the expense of any testing performed for him.

(p)(5)(vi) The Administrator shall withdraw any notice issued under paragraph (p)(5)(ii) of this section if tests under paragraph (p)(5)(iv) of this section show either--

(p)(5)(vi)(A) That all four wood heaters tested for the manufacturer met the applicable weighted average emission limits, or

(p)(5)(vi)(B) That the second and third wood heaters selected met the applicable weighted average emission limits and the average of all three weighted averages (including the original audit test) was below the applicable weighted average emission limits.

(p)(5)(vii) The Administrator may withdraw any proposed revocation, if the Administrator finds that an audit test failure has been rebutted by information submitted by the manufacturer under paragraph (p)(5)(iv) of this section and/or (p)(5)(v) of this section or by any other relevant information

available to him.

(p)(5)(viii) Any withdrawal of a proposed revocation shall be accompanied by a document setting forth its basis.

[53 FR 14889, April 26, 1988]

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601.

Source: 36 FR 24877, Dec. 23, 1971; 50 FR 36834, Sept. 9, 1985; 52 FR 37874, Oct. 9, 1987; 53 FR 2675, Jan. 29, 1988, unless otherwise noted.

Source: 53 FR 5873, Feb. 26, 1988, unless otherwise noted.

40 CFR s 60.533

END OF DOCUMENT

Citation
40 CFR s 60.534

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TITLE 40--PROTECTION OF ENVIRONMENT
Chapter I--Environmental Protection Agency
Subchapter C--Air Programs

Part 60--Standards of Performance for New Stationary Sources
Subpart Aaa--Standards of Performance for New Residential Wood Heaters

s 60.534. Test methods and procedures.

Test methods and procedures in Appendix A of this part, except as provided under s 60.8(b), shall be used to determine compliance with the standards and requirements for certification under s 60.532 and s 60.533 as follows:

(a) Method 28 shall be used to establish the certification test conditions and the particulate matter weighted emission values.

(b) Emission concentrations may be measured with either:

(1) Method 5G, if a dilution tunnel sampling location is used, or

(2) Method 5H, if a stack location is used.

(c) Method 28A shall be used to determine that a wood combustion unit qualifies under the definition of wood heater in s 60.531(a). If such a determination is necessary, this test shall be conducted by an accredited laboratory.

(d) Appendix J is used as an optional procedure in establishing the overall thermal efficiency of wood heaters. (To be proposed separately.)

(e)(1) The manufacturer of an affected facility shall notify the Administrator of the date that certification testing is scheduled to begin. (A notice from the testing lab containing the information required in s 60.533(f)(1) may be used to satisfy this requirement.) This notice shall be at least 30 days before the start of testing. The notification of testing shall be in writing, and include the manufacturer's name and address, the testing laboratory's name, the model name and number (or, if unavailable, some other way to distinguish between models), and the dates of testing.

(2) Any emission testing conducted on the wood heater for which notice was delivered shall be presumed to be certification testing if such testing occurs on or after the scheduled date of testing and before a test report is submitted to the Administrator. If certification testing is interrupted for more than 24 hours, the laboratory shall notify the Administrator by telephone, as soon as practicable, and also by letter, stating why the testing was interrupted and when it is expected to be resumed.

(3) A manufacturer or laboratory may change the date that testing is scheduled to begin by notifying the Administrator at least 14 days before the start of testing. Notification of schedule change shall be made at least two working days prior to the originally scheduled test date. This notice of rescheduling shall be made by telephone or other expeditious means and shall be documented in writing and sent concurrently.

(4) A model line may be withdrawn from testing before the certification test is complete, provided the wood heater is sealed in accordance with s 60.535(g). The manufacturer shall notify the Administrator 30 days before the resumption of testing.

(5) The manufacturer or laboratory shall notify the Administrator if a test is not completed within the time allotted as set forth in the notice of testing.

The notification shall be made by the end of the allotted testing period by telephone or other expeditious means, and documented in writing sent concurrently, and shall contain the dates when the test will be resumed. Unless otherwise approved by the Administrator, failure to conduct a certification test as scheduled without notifying the Administrator of any schedule change 14 days prior to the schedule or revised test dates will result in voiding the notification. In the case of a voided notification, the manufacturer shall provide the Administrator with a second notification at least 30 days prior to the new test dates. The Administrator may waive the requirement for advance notice for test resumptions.

(f) The testing laboratory shall allow the manufacturer to observe certification testing. However, manufacturers shall not involve themselves in the conduct of the test after the pretest burn (as defined by EPA Method 28) has begun. Communications between the manufacturer and laboratory personnel regarding operation of the wood heater shall be limited to written communications transmitted prior to the first pretest burn of the certification series. Written communications between the manufacturer and laboratory personnel may be exchanged during the certification test only if deviations from the test procedures are observed that constitute improper conduct of the test. All communications shall be included in the test documentation required to be submitted under s 60.533(b)(4) and shall be consistent with instructions provided in the owner's manual required under s 60.536(k), except to the extent that they address details of the certification tests that would not be relevant to owners.

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601.

Source: 36 FR 24877, Dec. 23, 1971; 50 FR 36834, Sept. 9, 1985; 52 FR 37874, Oct. 9, 1987; 53 FR 2675, Jan. 29, 1988, unless otherwise noted.

Source: 53 FR 5873, Feb. 26, 1988, unless otherwise noted.

40 CFR s 60.534

END OF DOCUMENT

Citation
40 CFR s 60.535

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TITLE 40--PROTECTION OF ENVIRONMENT
Chapter I--Environmental Protection Agency
Subchapter C--Air Programs
Part 60--Standards of Performance for New Stationary Sources
Subpart Aaa--Standards of Performance for New Residential Wood Heaters

s 60.535 Laboratory accreditation.

(a)(1) A laboratory may apply for accreditation by the Administrator to conduct wood heater certification tests pursuant to s 60.533. The application shall be in writing to: Emission Measurement Branch (MD-13), U.S. EPA, Research Triangle Park, North Carolina 27711, Attn: Wood Heater Laboratory Accreditation.

(a)(2) For the period between proposal of this subpart through June 30, 1988, an applicant may elect to have his application determined under the requirements of Subpart AAA proposed on February 18, 1987 (52 FR 4994).

(a)(3) If accreditation is denied under this section, the Administrator shall give written notice to the laboratory setting forth the basis for his determination.

(b) In order for a test laboratory to qualify for accreditation the laboratory must:

(b)(1) Submit its written application providing the information related to laboratory equipment and management and technical experience of laboratory personnel. Applications from laboratories shall establish that:

(b)(1)(i) Laboratory personnel have a total of one year of relevant experience in particulate measurement, including at least three months experience in measuring particulate emissions from wood heaters,

(b)(1)(ii) The laboratory has the equipment necessary to perform testing in accordance with either s 60.534(b) (1) or (2), and

(b)(1)(iii) Laboratory personnel have experience in test management or laboratory management.

(b)(2) Have no conflict of interest and receive no financial benefit from the outcome of certification testing conducted pursuant to s 60.533,

(b)(3) Agree to enter into a contract as described in s 60.533(g) with each wood heater manufacturer for whom a certification test has been performed.

(b)(4) [Reserved],

(b)(5) Demonstrate proficiency to achieve reproducible results with at least one test method and procedure in s 60.534(b), by:

(b)(5)(i) Performing a test consisting of at least eight test runs (two in each of the four burn rate categories) on a wood heater identified by the Administrator,

(b)(5)(ii) Providing the Administrator at least 30 days prior notice of the test, to afford the Administrator the opportunity to have an observer present, and

(b)(5)(iii) Submitting to the Administrator all documentation pertaining to the test, including a complete test report and raw data sheets, laboratory technical notes, and test results for all test runs,

(b)(6) Be located in the continental United States,

(b)(7) Agree to participate annually in a proficiency testing program conducted by the Administrator,

(b)(8) Agree to allow the Administrator access to observe certification testing,

(b)(9) Agree to comply with a reporting and recordkeeping requirements that affect testing laboratories, and

(b)(10) Agree to accept the reasonable cost of an RCA test (as determined by the Administrator) if it is selected to conduct the RCA test of a model line originally tested for certification at another laboratory.

(c) Laboratories accredited by the State of Oregon prior to January 1, 1988, may be accredited by the Administrator without regard to the requirements in paragraphs (b)(1) and (b)(5) of this section, provided that the laboratory requests the accreditation in writing and, in addition to other applicable requirements, certifies under penalty of law that the information used in obtaining Oregon accreditation satisfied applicable requirements of Oregon law.

(d) [Reserved]

(e)(1) The Administrator may revoke EPA laboratory accreditation if he determines that the laboratory:

(e)(1)(i) No longer satisfies the requirements for accreditation in paragraph (b) or (c),

(e)(1)(ii) Does not follow required procedures or practices,

(e)(1)(iii) Had falsified data or otherwise misrepresented emission data,

(e)(1)(iv) [Reserved]

(e)(1)(v) Failed to participate in a proficiency testing program, in

accordance with its commitment under paragraph (b)(5) of this section, or

(e)(1)(vi) Failed to seal the wood heater in accordance with paragraph (g) of this section.

(e)(2) Revocation of accreditation under this paragraph shall not take effect until the laboratory concerned has been given written notice by the Administrator setting forth the basis for the proposed determination and an opportunity for a hearing under s 60.539. However, if revocation is ultimately upheld, all tests conducted by the laboratory after written notice was given may, at the discretion of the Administrator, be declared invalid.

(f) Unless revoked sooner, a certificate of accreditation granted by the Administrator shall be valid:

(f)(1) For five years from the date of issuance, for certificates issued under paragraph (b) of this section, or

(f)(2) Until July 1, 1990, for certificates issued under paragraph (c) of this section.

(g) A laboratory accredited by the Administrator shall seal any wood heater on which it performed certification tests, immediately upon completion or suspension of certification testing, by using a laboratory-specific seal.

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601.

Source: 36 FR 24877, Dec. 23, 1971; 50 FR 36834, Sept. 9, 1985; 52 FR 37874, Oct. 9, 1987; 53 FR 2675, Jan. 29, 1988, unless otherwise noted.

Source: 53 FR 5873, Feb. 26, 1988, unless otherwise noted.

40 CFR s 60.535

END OF DOCUMENT

Citation
40 CFR s 60.536

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TITLE 40--PROTECTION OF ENVIRONMENT
Chapter I--Environmental Protection Agency
Subchapter C--Air Programs

Part 60--Standards of Performance for New Stationary Sources
Subpart Aaa--Standards of Performance for New Residential Wood Heaters

s 60.536 Permanent label, temporary label, and owner's manual.

(a)(1) Each affected facility manufactured on or after July 1, 1988, or offered for sale at retail on or after July 1, 1990, shall have a permanent label affixed to it that meets the requirements of this section.

(a)(2) Except for wood heaters subject to s 60.530 (e), (f), or (g), the permanent label shall contain the following information:

(a)(2)(i) Month and year of manufacture,

(a)(2)(ii) Model name or number, and

(a)(2)(iii) Serial number.

(a)(3) The permanent label shall:

(a)(3)(i) Be affixed in a readily visible or accessible location,

(a)(3)(ii) Be at least 3 1/2 inches long and 2 inches wide,

(a)(3)(iii) Be made of a material expected to last the lifetime of the wood heater,

(a)(3)(iv) Present required information in a manner so that it is likely to remain legible for the lifetime of the wood heater, and

(a)(3)(v) Be affixed in such a manner that it cannot be removed from the appliance without damage to the label.

(a)(4) The permanent label may be combined with any other label, as long as the required information is displayed, and the integrity of the permanent label is not compromised.

(b) If the wood heater belongs to a model line certified under s 60.533, and has not been found to exceed the applicable emission limits or tolerances through quality assurance testing, one of the following statements, as appropriate, shall appear on the permanent label:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Certified to comply with July, 1988, particulate emission standards.

Not approved for sale after June 30, 1992.

or

U.S. ENVIRONMENTAL PROTECTION AGENCY

Certified to comply with July, 1990, particulate emission standards.

(c)(1) If compliance is demonstrated under s 60.530(c), the following statement shall appear on the permanent label:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Certified under 40 CFR 60.530(c). Not approved for sale after June 30, 1992.

(2) If compliance is demonstrated under s 60.533(h), one of the following statements, as appropriate, shall appear on the permanent label:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Certified under 40 CFR 60.533(h) to comply with July, 1988 particulate emissions standards. Not approved for sale after June 30, 1992.

or

U.S. ENVIRONMENTAL PROTECTION AGENCY

Certified under 40 CFR 60.533(h), to comply with July, 1990 particulate emissions standards.

(d) Any label statement under paragraph (b) or (c) of this section constitutes a representation by the manufacturer as to any wood heater that bears it:

(1) That certification was in effect at the time the wood heater left the possession of the manufacturer,

(2) That the manufacturer was, at the time the label was affixed, conducting a quality assurance program in conformity with s 60.533(o),

(3) That as to any wood heater individually tested for emissions by the manufacturer under s 60.533(o)(3), that it met the applicable emissions limits, and

(4) That as to any wood heater individually inspected for tolerances under s 60.533(o)(2), that the wood heater is within applicable tolerances.

(e) If an affected facility is exempt from the emission limits in s 60.532 under the provisions of s 60.530(d), the following statement shall appear on the permanent label:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Not certified. Approved for sale until June 30, 1991.

(f)(1) If an affected facility is manufactured in the U.S. for export, the following statement shall appear on the permanent label:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Export stove. May not be operated within the United States.

(2) If an affected facility is manufactured for use for research and development purposes as provided in s 60.530(f), the following statement shall appear on the permanent label:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Not certified. Research Stove. Not approved for sale.

(3) If an affected facility is a coal-only heater as defined in s 60.530, the following statement shall appear on the permanent label:

U.S. ENVIRONMENTAL PROTECTION AGENCY

This heater is only for burning coal. Use of any other solid fuel except for coal ignition purposes is a violation of Federal law.

(g) Any affected facility that does not qualify for labeling under any of paragraphs (b) through (f) of this section shall bear one of the following labels:

(1) If the test conducted under s 60.533(n) indicates that the facility does not meet applicable emissions limits:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Not certified. Does not meet EPA particulate emission standards. IT IS AGAINST THE LAW TO OPERATE THIS WOOD HEATER.

(2) If the test conducted under s 60.533(n) indicates that the facility does meet applicable emissions limits:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Not certified. Meets EPA particulate emission standards.

(3) If the facility has not been tested as required by s 60.533(e):

U.S. ENVIRONMENTAL PROTECTION AGENCY

Not certified. Not tested. Not approved for sale. IT IS AGAINST THE LAW TO OPERATE THIS WOOD HEATER.

(h) For affected facilities equipped with catalytic combustors, the following statement shall appear on the permanent label:

This wood heater contains a catalytic combustor, which needs periodic inspection and replacement for proper operation. Consult owner's manual for further information. It is against the law to operate this wood heater in a manner inconsistent with operating instructions in the owner's manual, or if the catalytic element is deactivated or removed.

(i) An affected facility permanently labeled under paragraph (b) or (c) of this section shall have attached to it a temporary label that shall contain only the following:

(1) A statement indicating the compliance status of the model. The statement shall be one of the statements provided in Appendix I, Section 2.2.1.

Instructions on the statement to select are provided in Appendix I.

(2) A graphic presentation of the composite particulate matter emission rate as determined in the certification test, or as determined by the Administrator if the wood heater is certified under s 60.530(c). The method for presenting this information is provided in Appendix I, Section 2.2.2.

(3) A graphic presentation of the overall thermal efficiency of the model. The method for presenting this information is provided in Appendix I, Section 2.2.3. At the discretion of the manufacturer, either the actual measured efficiency of the model or its estimated efficiency may be used for purposes of this paragraph. The actual efficiency is the efficiency measured in tests conducted pursuant to s 60.534(d). The estimated efficiency shall be 72 percent if the model is catalyst-equipped and 63 percent if the model is not catalyst equipped, and 78 percent if the model is designed to burn wood pellets for fuel. Wood heaters certified under s 60.530(c) shall use these estimated efficiencies.

(4) A numerical expression of the heat output range of the unit, in British thermal units per hour (Btu/hr) rounded to the nearest 100 Btu/hr.

(i) If the manufacturer elects to report the overall efficiency of the model based on test results pursuant to paragraph (i)(3) of this section, he shall report the heat output range measured during the efficiency test. If an accessory device is used in the certification test to achieve any low burn rate criterion specified in this subpart, and if this accessory device is not sold as a part of the wood heater, the heat output range shall be determined using the formula in paragraph (i)(4)(ii) of this section based upon the lowest sustainable burn rate achieved without the accessory device.

(ii) If the manufacturer elects to use the estimated efficiency as provided in paragraph (i)(3) of this section, he shall estimate the heat output of the

model as follows:

HO (subscript E) = (19,140) X (Estimated overall efficiency/100) X BR, where

HO (subscript E) = Estimated heat output in Btu/hr

BR = Burn rate in dry kilograms of test fuel per hour

(5) Statements regarding the importance of operation and maintenance.

(Instructions regarding which statements must be used are provided in Appendix I, Section 2.), and

(6) The manufacturer and the identification of the model.

(j)(1) An affected facility permanently labeled under paragraph (e), (f)(3), or (g) of this section have attached to it a temporary label that shall contain only the information provided for in Appendix I, section 2.3, 2.4, or 2.5, as applicable.

(j)(2) The temporary label of an affected facility permanently labeled under paragraph (b), (c), (e), (f)(3), or (g) of this section shall:

(j)(2)(i) Be affixed to a location on the wood heater that is readily seen and accessible when the wood heater is offered for sale to consumers by any commercial owner;

(j)(2)(ii) Not be combined with any other label or information;

(j)(2)(iii) Be attached to the wood heater in such a way that it can be easily removed by the consumer upon purchase, except that the label on wood heaters displayed by a commercial owner may have an adhesive backing or other means to preserve the label to prevent its removal or destruction;

(j)(2)(iv) Be printed on 90 pound bond paper in black ink with a white background except that those for models that are not otherwise exempted which do not meet the applicable emission limits, or have not been tested pursuant to this subpart, shall be on a red background as described in Appendix I, section 2.5;

(j)(2)(v) Have dimensions of five inches by seven inches as described in Appendix I, section 2.1;

(j)(2)(vi) Have wording, presentation of the graphic data, and typography as presented in Appendix I.

(k)(1) Each affected facility offered for sale by a commercial owner must be accompanied by an owner's manual that shall contain the information listed in paragraph (k)(2) of this section (pertaining to installation), and paragraph (k)(3) of this section (pertaining to operation and maintenance) of this section. Such information shall be adequate to enable consumers to achieve optimal emissions performance. Such information shall be consistent with the operating instructions provided by the manufacturer to the laboratory for operating the wood heater during certification testing, except for details of the certification test that would not be relevant to the ultimate purchaser.

(2) Installation information: Requirements for achieving proper draft.

(3) Operation and maintenance information:

(i) Wood loading procedures, recommendations on wood selection, and warnings on what fuels not to use, such as treated wood, colored paper, cardboard, solvents, trash and garbage,

(ii) Fire starting procedures,

(iii) Proper use of air controls,

(iv) Ash removal procedures,

(v) Instructions on gasket replacement,

(vi) For catalytic models, information on the following pertaining to the catalytic combustor: Procedures for achieving and maintaining catalyst activity, maintenance procedures, procedures for determining deterioration or failure, procedures for replacement, and information on how to exercise warranty rights, and

(vii) For catalytic models, the following statement--

This wood heater contains a catalytic combustor, which needs periodic inspection and replacement for proper operation. It is against the law to operate this wood heater in a manner inconsistent with operating instructions in this manual, or if the catalytic element is deactivated or removed.

(4) Any manufacturer using EPA model language contained in Appendix I to satisfy any requirement of this paragraph shall be in compliance with that requirement, provided that the particular model language is printed in full, with only such changes as are necessary to ensure accuracy for the particular model line.

(1) Wood heaters that are affected by this subpart, but that have been owned and operated by a noncommercial owner, are not subject to paragraphs (j) and (k) of this section when offered for resale.

[53 FR 12009, April 12, 1988]

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601.

Source: 36 FR 24877, Dec. 23, 1971; 50 FR 36834, Sept. 9, 1985; 52 FR 37874, Oct. 9, 1987; 53 FR 2675, Jan. 29, 1988, unless otherwise noted.

Source: 53 FR 5873, Feb. 26, 1988, unless otherwise noted.

40 CFR s 60.536

END OF DOCUMENT

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| Citation | Rank(R) | Database | Mode |
| 40 CFR s 60.537 | R 8 OF 12 | CFR | P |

TITLE 40--PROTECTION OF ENVIRONMENT
Chapter I--Environmental Protection Agency
Subchapter C--Air Programs

Part 60--Standards of Performance for New Stationary Sources
Subpart Aaa--Standards of Performance for New Residential Wood Heaters

s 60.537. Reporting and recordkeeping.

(a)(1) Each manufacturer who holds a certificate of compliance under s 60.533(e) or s 60.533(h) for a model line shall maintain records containing the information required by this paragraph with respect to that model line. Each manufacturer of a model line certified under s 60.530(c) shall maintain the information required by paragraphs (a)(3) and (a)(5) of this section for that model line.

(a)(2)(i) All documentation pertaining to the certification test used to obtain certification, including the full test report and raw data sheets, laboratory technician notes, calculations, and the test results for all test runs.

(a)(2)(ii) Where a model line is certified under s 60.533(h) and later certified under s 60.533(e), all documentation pertaining to the certification test used to obtain certification in each instance shall be retained.

(a)(3) For parameter inspections conducted pursuant to s 60.533(o)(2), information indicating the extent to which tolerances for components that affect emissions as listed in s 60.533(k)(2) were inspected, and at what frequency, the results of such inspections, remedial actions taken, if any, and any follow-up actions such as additional inspections,

(a)(4) For emissions tests conducted pursuant to s 60.533(o)(3), all test reports, data sheets, laboratory technician notes, calculations, and test results for all test runs, the remedial actions taken, if any, and any follow-up actions such as additional testing,

(a)(5) The number of affected facilities that are sold each year, by certified model line,

(b)(1) Each accredited laboratory shall maintain records consisting of all documentation pertaining to each certification test, including the full test report and raw data sheets, technician notes, calculations, and the test results for all test runs.

(b)(2) Each accredited laboratory shall report to the Administrator by the 8th day of each month between April 1, 1987 and July 1, 1990:

(b)(2)(i) The number and identification of wood heaters scheduled for testing and the type of testing (e.g., EPA certification, Oregon certification, research and development testing),

(b)(2)(ii) The estimated date on which certification testing could commence for a wood heater, if such a test were requested on the first day of that month

(b)(2)(iii) The identification of the wood heaters tested during the previous month.

(b)(3) Each accredited laboratory shall report to the Administrator within 24 hours whenever a manufacturer which has notified the laboratory that it intends to apply for alternative certification for a model line fails to submit on schedule a representative unit of that model line for certification testing.

(c) Any wood heater upon which certification tests were performed based upon which certification was granted under s 60.533(e) shall be retained (sealed and unaltered) at the manufacturer's facility for as long as the model line in question is manufactured. Any such wood heater shall be made available upon request to the Administrator for inspection and testing.

(d) [Reserved]

(e) Any manufacturer seeking exemption under s 60.530(d) shall:

(e)(1) Report to the Administrator by August 1, 1988, the number of wood heaters manufactured between July 1, 1987 and June 30, 1988, and evidence that he was a manufacturer of wood heaters as of January 1, 1987,

(e)(2) Report to the Administrator by September 1, 1989, the number of uncertified wood heaters manufactured that were subject to paragraph s 60.530(d), between July 1, 1988, and June 30, 1989,

(e)(3) Maintain wood heater production records covering the period July 1, 1987 to July 1, 1989,

(e)(4) Report to the Administrator by July 1, 1988, that the manufacturer intends to apply for this exemption.

(f) Each manufacturer of an affected facility certified under s 60.533 shall submit a report to the Administrator every 2 years following issuance of a certificate of compliance for each model line. This report shall certify that no changes in the design or manufacture of this model line have been made that require recertification under s 60.533(k).

(g) Each manufacturer shall maintain records of the model and number of wood heaters exempted under s 60.530(f).

(h) Each commercial owner of a wood heater previously owned by a noncommercial owner for his personal use shall maintain records of the name and address of the previous owner.

(i)(1) Unless otherwise specified, all records required under this section shall be maintained by the manufacturer or commercial owner of the affected facility for a period of no less than 5 years.

(i)(2) Unless otherwise specified, all reports to the Administrator required under this subpart shall be made to: Stationary Source Compliance Division (EN-341), U.S. EPA, 401 M Street SW., Washington, DC, 20460. Attention: Wood Heater Program.

(i)(3) A report to the Administrator required under this subpart shall be deemed to have been made when it is properly addressed and mailed, or placed in the possession of a commercial courier service.

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601.

Source: 36 FR 24877, Dec. 23, 1971; 50 FR 36834, Sept. 9, 1985; 52 FR 37874, Oct. 9, 1987; 53 FR 2675, Jan. 29, 1988, unless otherwise noted.

Source: 53 FR 5873, Feb. 26, 1988, unless otherwise noted.

40 CFR s 60.537

END OF DOCUMENT

Citation
40 CFR s 60.538

Rank(R)
R 9 OF 12

Database Mode
CFR P

TITLE 40--PROTECTION OF ENVIRONMENT
Chapter I--Environmental Protection Agency
Subchapter C--Air Programs

Part 60--Standards of Performance for New Stationary Sources
Subpart Aaa--Standards of Performance for New Residential Wood Heaters

s 60.538 Prohibitions.

(a) No person shall operate an affected facility that does not have affixed to it a permanent label pursuant to s 60.536 (b), (c), (e), (f)(2), (f)(3), or (g)(2).

(b) No manufacturer shall advertise for sale, offer for sale, or sell an affected facility that--

(b)(1) Does not have affixed to it a permanent label pursuant to s 60.536, and

(b)(2) Has not been tested when required by s 60.533(n).

(c) On or after July 1, 1990, no commercial owner shall advertise for sale, offer for sale, or sell an affected facility that does not have affixed to it a permanent label pursuant to s 60.536 (b), (c), (e), (f)(1), (f)(3), (g)(1) or (g)(2). No person shall advertise for sale, offer for sale, or sell an affected facility labeled under s 60.536(f)(1) except for export.

(d)(1) No commercial owner shall advertise for sale, offer for sale or sell an affected facility permanently labeled under s 60.536 (b) or (c) unless:

(d)(1)(i) The affected facility has affixed to it a removable label pursuant to s 60.536 of this subpart,

(d)(1)(ii) He provides any purchaser or transferee with an owner's manual pursuant to s 60.536(k) of this subpart, and

(d)(1)(iii) He provides any purchaser or transferee with a copy of the catalytic combustor warranty (for affected facilities with catalytic combustors).

(d)(2) No commercial owner shall advertise for sale, offer for sale, or sell an affected facility permanently labeled under s 60.536 (e), (f)(3), or (g), unless the affected facility has affixed to it a removable label pursuant to s 60.536 of this subpart. This prohibition does not apply to wood heaters affected by this subpart that have been previously owned and operated by a noncommercial owner.

(d)(3) A commercial owner other than a manufacturer complies with the requirements of paragraph (d) of this section if he--

(d)(3)(i) Receives the required documentation from the manufacturer or a previous commercial owner and

(d)(3)(ii) Provides that documentation unaltered to any person to whom the wood heater that it covers is sold or transferred.

(e) In any case in which the Administrator revokes a certificate of compliance for the knowing submission of false or inaccurate information, or other fraudulent acts, he may give notice of that revocation and the grounds for it to all commercial owners. From and after the date of receipt of that notice no commercial owner may sell any wood heater covered by the revoked certificate (other than to the manufacturer) unless:

(e)(1) The wood heater has been tested as required by s 60.533(n) and labeled as required by s 60.536(g) or

(e)(2) The model line has been recertified in accordance with this subpart.

(f) No person shall install or operate an affected facility except in a manner consistent with the instructions on its permanent label and in the owner's manual pursuant to s 60.536(l) of this subpart.

(g) No person shall operate an affected facility which was originally equipped with a catalytic combustor if the catalytic element is deactivated or removed.

(h) No person shall operate an affected facility that has been physically altered to exceed the tolerance limits of its certificate of compliance.

(i) No person shall alter, deface, or remove any permanent label required to be affixed pursuant to s 60.536 of this subpart.

[53 FR 14889, April 26, 1988]

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601.

Source: 36 FR 24877, Dec. 23, 1971; 50 FR 36834, Sept. 9, 1985; 52 FR 37874, Oct. 9, 1987; 53 FR 2675, Jan. 29, 1988, unless otherwise noted.

Source: 53 FR 5873, Feb. 26, 1988, unless otherwise noted.

40 CFR s 60.538

END OF DOCUMENT

Citation
40 CFR s 60.539

Rank(R)
R 10 OF 12

Database Mode
CFR P

TITLE 40--PROTECTION OF ENVIRONMENT
Chapter I--Environmental Protection Agency
Subchapter C--Air Programs

Part 60--Standards of Performance for New Stationary Sources
Subpart Aaa--Standards of Performance for New Residential Wood Heaters

s 60.539 Hearing and appeal procedures.

(a)(1) In any case where the Administrator--

(a)(1)(i) Denies an application under s 60.530(c) or s 60.533(e),

(a)(1)(ii) Issues a notice of revocation of certification under s 60.533(1),

(a)(1)(iii) Denies an application for laboratory accreditation under s 60.535, or

(a)(1)(iv) Issues a notice of revocation of laboratory accreditation under s 60.535(e), the manufacturer or laboratory affected may request a hearing under this section within 30 days following receipt of the required notification of the action in question.

(a)(2) In any case where the Administrator issues a notice of revocation under s 60.533(p), the manufacturer may request a hearing under this section with the time limits set out in s 60.533(p)(5).

(b) Any hearing request shall be in writing, shall be signed by an authorized representative of the petitioning manufacturer or laboratory, and shall include a statement setting forth with particularity the petitioner's objection to the Administrator's determination or proposed determination.

(c)(1) Upon receipt of a request for a hearing under paragraph (a) of this section, the Administrator shall request the Chief Administrative Law Judge to designate an Administrative Law Judge as Presiding Officer for the hearing. If the Chief Administrative Law Judge replies that no Administrative Law Judge is available to perform this function, the Administrator shall designate a Presiding Officer who has not had any prior responsibility for the matter under review, and who is not subject to the direct control or supervision of someone who has had such responsibility.

(c)(2) The hearing shall commence as soon as practicable at a time and place fixed by the Presiding Officer.

(c)(3)(i) A motion for leave to intervene in any proceeding conducted under this section must set forth the grounds for the proposed intervention, the position and interest of the movant and the likely impact that intervention will have on the expeditious progress of the proceeding. Any person already a party to the proceeding may file an answer to a motion to intervene, making

specific reference to the factors set forth in the foregoing sentence and paragraph (c)(3)(iii) of this section within ten (10) days after service of the motion for leave to intervene.

(c)(3)(ii) A motion for leave to intervene in a proceeding must ordinarily be filed before the first prehearing conference or, in the absence of a prehearing conference, prior to the setting of a time and place for a hearing. Any motion filed after that time must include, in addition to the information set forth in paragraph (c)(3)(i) of this section, a statement of good cause for the failure to file in a timely manner. The intervenor shall be bound by any agreements, arrangements and other matters previously made in the proceeding.

(c)(3)(iii) A motion for leave to intervene may be granted only if the movant demonstrates that his presence in the proceeding would not unduly prolong or otherwise prejudice the adjudication of the rights of the original parties, and that movant may be adversely affected by a final order. The intervenor shall become a full party to the proceeding upon the granting of leave to intervene.

(c)(3)(iv) Persons not parties to the proceeding may move for leave to file amicus curiae briefs. The movant shall state his interest and the reasons why the proposed amicus brief is desirable. If the motion is granted, the Presiding Officer or Administrator shall issue an order setting the time for filing such brief. An amicus curia may participate in any briefing after his motion is granted, and shall be served with all briefs, reply briefs, motions, and orders relating to issues to be briefed.

(c)(4) In computing any period of time prescribed or allowed in this subpart, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included. When a stated time expires on a Saturday, Sunday or legal holiday, the stated time period shall be extended to include the next business day.

(d)(1) Upon his appointment the Presiding Officer shall establish a hearing file. The file shall consist of the notice issued by the Administrator under ss 60.530(c), 60.533(e), 60.533(l), 60.533(p), 60.535(a), or 60.535(e), together with any accompanying material, the request for a hearing and the supporting data submitted therewith, and all documents relating to the request for certification or accreditation, or the proposed revocation of either.

(d)(2) The hearing file shall be available for inspection by any party, to the extent authorized by law, at the office of the Presiding Officer, or other place designated by him.

(e) Any party may appear in person, or may be represented by counsel or by any other duly authorized representative.

(f)(1) The Presiding Officer upon the request of any party, or at his discretion, may order a prehearing conference at a time and place specified by

him to consider the following:

- (f)(1)(i) Simplification of the issues,
- (f)(1)(ii) Stipulations, admissions of fact, and the introduction of documents,
- (f)(1)(iii) Limitation of the number of expert witnesses,
- (f)(1)(iv) Possibility of agreement disposing of all or any of the issues in dispute,
- (f)(1)(v) Such other matters as may aid in the disposition of the hearing, including such additional tests as may be agreed upon by the parties.

(f)(2) The results of the conference shall be reduced to writing by the Presiding Officer and made part of the record.

(g)(1) Hearings shall be conducted by the Presiding Officer in an informal but orderly and expeditious manner. The parties may offer oral or written evidence, subject to the exclusion by the Presiding Officer of irrelevant, immaterial and repetitious evidence.

(g)(2) Witnesses will not be required to testify under oath. However, the Presiding Officer shall call to the attention of witnesses that their statements may be subject to penalties under title 18 U.S.C. 1001 for knowingly making false statements or representations or using false documents in any matter within the jurisdiction of any department or agency of the United States.

(g)(3) Any witness may be examined or cross-examined by the Presiding Officer, the parties, or their representatives.

(g)(4) Hearings shall be recorded verbatim. Copies of transcripts of proceedings may be purchased by the applicant from the reporter.

(g)(5) All written statements, charts, tabulations, and similar data offered in evidence at the hearings shall, upon a showing satisfactory to the Presiding Officer of their authenticity, relevancy, and materiality, be received in evidence and shall constitute a part of the record.

(h)(1) The Presiding Officer shall make an initial decision which shall include written findings and conclusions and the reasons or basis therefor on all the material issues of fact, law, or discretion presented on the record. The findings, conclusions, and written decision shall be provided to the parties and made a part of the record. The initial decision shall become the decision of the Administrator without further proceedings unless there is an appeal to the Administrator or motion for review by the Administrator. Except as provided in paragraph (h)(3) of this section, any such appeal shall be taken within 20 days of the date the initial decision was filed.

(h)(2) On appeal from or review of the initial decision the Administrator shall have all the powers which he would have in making the initial decision including the discretion to require or allow briefs, oral argument, the taking of additional evidence or the remanding to the Presiding Officer for additional proceedings. The decision by the Administrator shall include written findings and conclusions and the reasons or basis therefor on all the material issues of fact, law, or discretion presented on the appeal or considered in the review.

(h)(3) In any hearing requested under paragraph (a)(2) of this section the Presiding Officer shall render his initial decision within 60 days of that request. Any appeal to the Administrator shall be taken within 10 days of the initial decision, and the Administrator shall render his decision in that appeal within 30 days of the filing of the appeal.

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601.

Source: 36 FR 24877, Dec. 23, 1971; 50 FR 36834, Sept. 9, 1985; 52 FR 37874, Oct. 9, 1987; 53 FR 2675, Jan. 29, 1988, unless otherwise noted.

Source: 53 FR 5873, Feb. 26, 1988, unless otherwise noted.

40 CFR s 60.539

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| Citation | Rank(R) | Database | Mode |
| 40 CFR s 60.539a | R 11 OF 12 | CFR | P |

TITLE 40--PROTECTION OF ENVIRONMENT
 Chapter I--Environmental Protection Agency
 Subchapter C--Air Programs
 Part 60--Standards of Performance for New Stationary Sources
 Subpart Aaa--Standards of Performance for New Residential Wood Heaters

s 60.539a Delegation of Authority

(a) In delegating implementation and enforcement authority to a State under section 111(c) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities that shall not be delegated to States:

(b)(1) Section 60.530(c), granting of exemptions for Oregon-certified wood heaters,

(b)(2) Section 60.531, Determinations of applicability,

(b)(3) Section 60.533, Compliance and certification,

(b)(4) Section 60.534, Test methods and procedures,

(b)(5) Section 60.535, Laboratory accreditation,

(b)(6) Section 60.536(i)(2), determination of emission rates for purposes of labeling wood heaters certified under s 60.530(c),

(b)(7) Section 60.537, Reporting and recordkeeping,

(b)(8) Section 60.538(e), revocation of certification, and

(b)(9) Section 60.539, Hearings and appeals procedures.

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601.

Source: 36 FR 24877, Dec. 23, 1971; 50 FR 36834, Sept. 9, 1985; 52 FR 37874, Oct. 9, 1987; 53 FR 2675, Jan. 29, 1988, unless otherwise noted.

Source: 53 FR 5873, Feb. 26, 1988, unless otherwise noted.

40 CFR s 60.539a

END OF DOCUMENT

Citation
40 CFR s 60.539b

Rank(R)
R 12 OF 12

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CFR P

TITLE 40--PROTECTION OF ENVIRONMENT
Chapter I--Environmental Protection Agency
Subchapter C--Air Programs
Part 60--Standards of Performance for New Stationary Sources
Subpart Aaa--Standards of Performance for New Residential Wood Heaters

s 60.539b General provisions exclusions.

The following provisions of Subpart A of Part 60 do not apply to this subpart:

- (a) Section 60.7,
- (b) Section 60.8(a), (c), (d), (e), and (f), and
- (c) Section 60.15(d).

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601.

Source: 36 FR 24877, Dec. 23, 1971; 50 FR 36834, Sept. 9, 1985; 52 FR 37874, Oct. 9, 1987; 53 FR 2675, Jan. 29, 1988, unless otherwise noted.

Source: 53 FR 5873, Feb. 26, 1988, unless otherwise noted.

40 CFR s 60.539b

END OF DOCUMENT

*** COST OF PRINTOUT: \$36.14 ***

RULE MAKING STATEMENTS FOR
PROPOSED AMENDMENTS TO THE WOODSTOVE
CERTIFICATION PROGRAM

STATEMENT OF NEED FOR RULE MAKING

Pursuant to ORS 183.335(7), this statement provides information on the intended action to amend a rule.

(1) Legal Authority

This proposal amends Oregon Administrative Rules (OAR) 340, division 21, sections 100 through 190. It is proposed under the authority of Oregon Revised Statutes (ORS) Chapter 468, including 468.630, 468.635, 468.640, and 468.655.

(2) Need for these Rules

In 1983 the Oregon Department of Environmental Quality was directed to control, reduce, and prevent air pollution caused by woodstove emissions in the interest of public health and welfare. In response to this directive, the Department implemented a woodstove certification program in 1986 designed to bring about a significant reduction in particulate emissions from woodheating appliances.

Recognizing the success of Oregon's program and the need for a national program to regulate the emissions from woodheating appliances, the U.S. Environmental Protection Agency promulgated standards of performance limiting emissions of particulate matter from new residential woodheaters.

The new EPA program was patterned after and in some cases duplicated Oregon's program. The rules proposed here, are intended to eliminate the duplication of effort and reduce the cost of certification by adopting EPA's emission certification program.

(3) Principal Documents Relied Upon

- ° Oregon Administrative Rules, OAR 340, Division 21, Section 100 through 190.
- ° Oregon Revised Statutes, Chapter 468, Statutes 468.630 through 468.655
- ° Federal Regulations, 40 CFR Part 60, Subpart AAA, Sections 60.530 through 60.539, dated February 26, 1988.

All documents referenced may be inspected at the Department of Environmental Quality, 811 SW 6th Ave., Portland, OR, during normal business hours.

LAND USE CONSISTENCY STATEMENT

The proposed rules do not affect land use.

FISCAL AND ECONOMIC IMPACT STATEMENT

Adopting these rules would decrease the cost of testing and certifying a woodstove in Oregon. The manufacturer would save \$1,100 in certification fees for the first model certified and \$300 for each additional model. This reduction in certification fees directly reflects the Departments cost savings do to reduced workload.

Currently, testing laboratories have to deal with two separate regulatory agencies requiring additional time and cost to resolve problems, prepare reports, and meet two independent accreditation requirements. Accepting EPA's emission certification requirements would save the manufacturer approximately \$200 per model.

Both EPA and the Department require permanent and removable labels. Eliminating the Department's permanent label and accepting the EPA's permanent label as being equivalent, manufacturers could realize a savings of approximately \$2.50 per stove.

The Department estimates that 30 woodstove models are certified and approximately 1,000 units of each model are sold in Oregon annually resulting in a total cost savings, to the regulated industry, in excess of \$100,000.

WOOD\AR1846

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

NOTICE OF PUBLIC HEARING

Hearing Date:

Comments Due:

- WHO IS AFFECTED:** Woodstove manufacturers, dealers and retailers, and woodstove testing laboratories.
- WHAT IS PROPOSED:** The Department of Environmental Quality is proposing to amend OAR 340-21-100 to 340-21-190 to accept EPA's emission certification program as being equivalent to Oregon's program.
- WHAT ARE THE HIGHLIGHTS:** The Department proposes to accept EPA's particulate emissions certificate of compliance, permanent label, and laboratory emissions accreditation as equivalent to Oregon's requirements, and reduce certification fees. The Department will continue to require efficiency certification and labelling to fulfill statutory requirements.
- HOW TO COMMENT:** Copies of the complete proposed rule package may be obtained from the Air Quality Division in Portland 811 S.W. Sixth Avenue or the regional office nearest you. For further information contact Stephen Crane at (503) 229-5353.
- A public hearing will be held before a hearings officer at:
- (TIME)
(DATE)
(PLACE)
- Oral and written comments will be accepted at the public hearing. Written comments may be sent to the DEQ, but must be received by no later than _____.
- WHAT IS THE NEXT STEP:** After public hearing the Environmental Quality Commission may adopt rule amendments identical to the proposed amendments, adopt modified rule amendments on the same subject matter, or decline to act. The adopted rules will be submitted to the U. S. Environmental Protection Agency as part of the State Clean Air Act Implementation Plan. The Commission's deliberation should come in _____ as part of the agenda of a regularly scheduled Commission meeting.

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



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

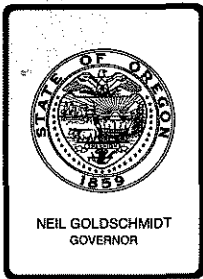
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FOR FURTHER INFORMATION:

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.



Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: December 1, 1989
Agenda Item: 0
Division: HSW
Section: SW

SUBJECT:

Solid Waste Rules -- Adding a 50 cent per ton disposal fee on domestic solid waste.

PURPOSE:

The purpose of the fee is to comply with legislation passed by the 1989 Legislature.

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 C
 - Public Notice Attachment D

- 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 1989 Oregon Legislature passed House Bill 3515, one of the provisions of which was to require a new fee on domestic solid waste. This fee is in addition to the annual compliance fee and annual recycling program fee now required of solid waste permittees. The proposed rule deals only with how the fee is to be collected, and not with the activities it will be used for.

A hearing authorization is requested to receive comment on the proposed changes in the solid waste regulations. Notice of the public comment period will be mailed to known interested persons and published in newspapers of general circulation in Oregon.

The proposed amendments:

1. Establish a 50 cent per ton fee on domestic solid waste generated in Oregon, beginning July 1, 1990.
2. Require submittal of the fee by solid waste disposal site permittees at least quarterly, except for small landfills (accepting under 1000 tons of solid waste annually) which would submit once a year.
3. Establish a procedure for determining estimated annual tonnage of solid waste in order to determine what fees should be.

The fee is expected to generate about \$1 million a year, beginning in fiscal year 1990-91. It is to be used for the following purposes:

1. Household hazardous waste collection activities;
2. Department waste reduction programs;
3. Department ground water monitoring and enforcement;
4. Local government solid waste planning activities;
5. Grants to local governments for recycling;
6. Department expenses in administering the above.

AUTHORITY/NEED FOR ACTION:

X Required by Statute: 1989 HB 3515 Attachment E

Meeting Date: December 1, 1989
Agenda Item: Q
Page 3

Enactment Date: 1989
___ Statutory Authority: _____ Attachment ___
___ Pursuant to Rule: _____ Attachment ___
___ Pursuant to Federal Law/Rule: _____ Attachment ___
___ Other: Attachment ___
___ Time Constraints: (explain)

- House Bill 3515 requires the Environmental Quality Commission to establish a new schedule of fees to begin on July 1, 1990 for all disposal sites receiving domestic solid waste. The rule needs to be adopted sufficiently in advance of that date to allow garbage rates to be adjusted and administrative procedures to be established.

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:

Generators of solid waste and ratepayers may be affected by the proposed regulation.

1. Fiscal and Economic Impacts are anticipated. See Fiscal and Economic Impact Statement, Attachment C.
2. The 50 cent per ton fee is expected to amount to a five cent per month increase in an average residential customer's garbage bill.
3. The impact on businesses will be proportionately greater than for residents, but the rate increase to businesses will still be relatively insignificant (less than 2%).
4. Landfill operators are allowed by the statute to pass through the amount of the additional fee to generators of solid waste. Thus the impact on landfill operators

will be negligible. They must already keep records of the tonnage of garbage brought to their facility.

5. Garbage haulers are also allowed to pass through to their customers additional charges the hauler must pay at landfills due to the fee. Thus the impact on haulers will also be negligible.
6. Small landfills (under 1000 tons of solid waste annually) would be allowed to submit the fee once a year, rather than quarterly. The annual fee from such landfills would be \$500 or less. Such landfills would also be required to submit an estimate of the population served, unless they are already subject to Department reporting requirements. Annual submittal would ease administrative costs for the small landfills and for the Department.

The Solid Waste Advisory Committee has actively participated in the development of the proposed rule. The Department has revised the proposed rule to incorporate Committee concerns, including their recommendation on the technical issue of how to estimate solid waste tonnage at landfills with no scales.

PROGRAM CONSIDERATIONS:

The proposed rule specifies that the fee be submitted to the Department on the same schedule as the waste volume reports, or quarterly, whichever is more frequent. At issue is how frequently the fee should be collected: monthly, quarterly or annually. The Department's goal is to balance the administrative burden of collection with the need to begin collecting the fee in a timely manner to fund the tasks specified in the statute. The Department recommends that the fee be submitted with the waste volume reports, or quarterly, whichever is more frequent, with the exception for small landfills discussed above.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Submit for public comment the proposed draft rule, with payment of fees on the same schedule as solid waste reports, but at least quarterly, except for small landfills which would pay annually.
- ✓

The draft rule follows the recommendation of the Solid Waste Advisory Committee, and incorporates requirements from the statute.

2. Redraft the rule to specify annual payment of fees.

This would simplify payment for some landfills, and collection by the Department. However, fees would not be collected until after July 1, 1991, delaying until that time implementation of the activities to be funded by this fee.

3. Redraft the rule to remove the exception for smaller landfills.

This would treat all landfills equally. However, some smaller landfills have no attendants and thus do not record the amount of solid waste brought in. They have few resources to run the landfill, and quarterly fee submittal would be an additional burden for them. In addition, the Department's administrative costs in processing small quarterly fees (less than \$125) would be disproportionately high.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends Alternative 1. This alternative implements the statute, and provides resources to carry out the purposes established in the statute in a timely manner. It offers administrative relief to small landfills. The total amount of revenue deferred by allowing small landfills to pay annually is estimated to be about \$30,000.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The proposed rule changes are consistent with Department and legislative policy. Specifically, they provide resources in a timely manner to carry out programs which are an important part of the Department's environmental mandate, such as waste reduction and ground water protection. They also provide resources to local governments for these purposes.

ISSUES FOR COMMISSION TO RESOLVE:

1. Should fees be assessed on an annual rather than quarterly basis?

Meeting Date: December 1, 1989
Agenda Item: Q
Page 6

2. Should small landfills be allowed to submit the fee on an annual basis?

INTENDED FOLLOWUP ACTIONS:

Publish notice of intent to conduct hearings in the Secretary of State's Bulletin and in newspapers of general circulation in Oregon in January. Mail the notice to known interested persons.

Conduct a public hearing in Portland, Pendleton, Bend and Medford on January 4, 9, 10 and 11, respectively, and accept public comment through February 2, 1990.

Prepare a hearings officer's report for final rule adoption by the Commission at its April, 1990 meeting.

Approved:

Section: She Greenwood
Division: Stephanie Hallock
Director: Jed Hen

Report Prepared By: Deanna Mueller-Crispin

Phone: 229-5808

Date Prepared: November 13, 1989

dmc
eqcfee.rpt
11/13/89

Proposed Amendments to OAR 340-61

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
ADMINISTRATIVE RULES
DIVISION 61 - SOLID WASTE MANAGEMENT
10/27/89

Proposed additions to rule are underlined.
Proposed deletions are in brackets [].

Permit Fees

340-61-115 (1) Beginning July 1, 1984, each person required to have a Solid Waste Disposal Permit shall be subject to a three-part fee consisting of a filing fee, an application processing fee and an annual compliance determination fee as listed in OAR 340-61-120. In addition, each disposal site receiving domestic solid waste shall be subject to an annual recycling program implementation fee as listed in Table 1, and a per-ton fee on domestic solid waste as specified in Section 5 of this rule. The amount equal to the filing fee, application processing fee, the first year's annual compliance determination fee and, if applicable, the first year's recycling program implementation fee shall be submitted as a required part of any application for a new permit. The amount equal to the filing fee and application processing fee shall be submitted as a required part of any application for renewal or modification of an existing permit.

(2) As used in this rule unless otherwise specified, the term "domestic solid waste" includes, but is not limited to, residential, commercial and institutional wastes; but the term does not include:

- (a) Sewage sludge or septic tank and cesspool pumpings;
- (b) Building demolition or construction wastes and land clearing debris, if delivered to disposal sites that are not open to the general public;
- (c) Yard debris, if delivered to disposal sites that receive no other residential wastes.

(3) The annual compliance determination fee and, if applicable, the annual recycling program implementation fee must be paid for each year a disposal site is in operation. The fee period shall be the state's fiscal year (July 1 through June 30) and shall be paid annually by July 1. Any annual compliance determination fee and, if applicable, any recycling program implementation fee submitted as part of an application for a new permit shall apply to the fiscal year the permitted disposal site is put into operation. For the first year's operation, the full fee(s) shall apply if the disposal site is placed into operation on or before April 1. Any new disposal site placed into operation after April 1 shall not owe a compliance determination fee and, if applicable, a recycling program implementation fee until July 1. The Director may alter the due date for the annual compliance determination fee and, if applicable, the recycling program implementation fee upon receipt of a justifiable request from a permittee.

(4) For the purpose of determining appropriate fees, each disposal site shall be assigned to a category in Table 1 based upon the amount of solid waste received and upon the complexity of each disposal site. Each disposal site which falls into more than one category shall pay whichever fee is the basis of estimated annual tonnage or gallonage of solid waste received unless the actual amount received is known. Estimated annual tonnage for domestic waste disposal sites will be based upon 300 pounds per cubic yard of uncompacted waste received, 700 pounds per cubic yard of compacted waste received, or, if yardage is not known, one ton per resident in the service area of the disposal site, unless the permittee demonstrates a more accurate estimate. Loads of solid waste consisting exclusively of soil, rock, concrete, rubble or asphalt shall not be included when calculating the annual amount of solid waste received.

(5) Modifications of existing, unexpired permits which are instituted by the Department due to changing conditions or standards, receipt of additional information or any other reason pursuant to applicable statutes and do not require refiling or review of an application or plans and specifications shall not require submission of the filing fee or the application processing fee.

(6) Upon the Department accepting an application for filing, the filing fee shall be non-refundable.

(7) The application processing fee may be refunded in whole or in part when submitted with an application if either of the following conditions exist:

- (a) The Department determines that no permit will be required;
- (b) The applicant withdraws the application before the Department has granted or denied preliminary approval or, if no preliminary approval has been granted or denied, the Department has approved or denied the application.

(8) All fees shall be made payable to the Department of Environmental Quality.

Permit Fee Schedule

340-61-120 (1) Filing Fee. A filing fee of \$50 shall accompany each application for issuance, renewal, modification, or transfer of a Solid Waste Disposal Permit. This fee is non-refundable and is in addition to any application processing fee or annual compliance determination fee which might be imposed.

(2) Application Processing Fee. An application processing fee varying between \$100 and \$2,000 shall be submitted with each application. The amount of the fee shall depend on the type of facility and the required action as follows:

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

- (A) Major facility¹\$2,000
- (B) Intermediate facility²\$1,000
- (C) Minor facility³\$ 300

¹Major Facility Qualifying Factors:

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

²Intermediate Facility Qualifying Factors:

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

³Minor Facility Qualifying Factors:

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

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

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

| | |
|--|---------|
| (A) Major facility | \$1,200 |
| (B) Intermediate facility | \$ 600 |
| (C) Minor facility | \$ 200 |
| (c) Permit renewal (including new operational plan, closure plan or improvements): | |
| (A) Major facility | \$ 500 |
| (B) Intermediate facility | \$ 250 |
| (C) Minor facility | \$ 125 |
| (d) Permit renewal (without significant change): | |
| (A) Major facility | \$ 250 |
| (B) Intermediate facility | \$ 150 |
| (C) Minor facility | \$ 100 |
| (e) Permit modification (including new operational plan, closure plan or improvements): | |
| (A) Major facility | \$ 500 |
| (B) Intermediate facility | \$ 250 |
| (C) Minor facility | \$ 100 |
| (f) Permit modification (without significant change in facility design or operation): All categories | \$ 100 |
| (g) Permit modification (Department initiated) All categories | No fee |

Attachment A

- (h) Letter authorizations, new or renewal:.....\$ 100
- (3) Annual Compliance Determination Fee (In any case where a facility fits into more than one category, the permittee shall pay only the highest fee):
 - (a) Domestic Waste Facility:
 - (A) A landfill which received 500,000 tons or more of solid waste per year:\$60,000
 - (B) A landfill which received at least 400,000 but less than 500,000 tons of solid waste per year:\$48,000
 - (C) A landfill which received at least 300,000 but less than 400,000 tons of solid waste per year:\$36,000
 - (D) A landfill which received at least 200,000 but less than 300,000 tons of solid waste per year:\$24,000
 - (E) A landfill which received at least 100,000 but less than 200,000 tons of solid waste per year:\$12,000
 - (F) A landfill which received at least 50,000 but less than 100,000 tons of solid waste per year:\$ 6,000
 - (G) A landfill which received at least 25,000 but less than 50,000 tons of solid waste per year:\$ 3,000
 - (H) A landfill which received at least 10,000 but less than 25,000 tons of solid waste per year: \$ 1,500
 - (I) A landfill which received at least 5,000 but not more than 10,000 tons of solid waste per year: \$ 750
 - (J) A landfill which received at least 1,000 but not more than 5,000 tons of solid waste per year: \$ 200
 - (K) A landfill which received less than 1,000 tons of solid waste per year: \$ 100
 - (L) A transfer station which received more than 10,000 tons of solid waste per year:\$ 500
 - (M) A transfer station which received less than 10,000 tons of solid waste per year:\$ 50
 - (N) An incinerator, resource recovery facility, composting facility and each other facility not specifically classified above which receives more than 100,000 tons of solid waste per year:.....\$8,000
 - (O) An incinerator, resource recovery facility, composting facility and each other facility not specifically classified above which receives at least 50,000 tons but less than 100,000 tons of solid waste per year:\$4,000
 - (P) An incinerator, resource recovery facility, composting facility and each other facility not specifically classified above which receives less than 50,000 tons of solid waste per year:.....\$2,000
 - (b) Industrial Waste Facility:
 - (A) A facility which received 10,000 tons or more of solid waste per year:\$1,500
 - (B) A facility which received at least 5,000 tons but less than 10,000 tons of solid waste per year:\$ 750
 - (C) A facility which received less than 5,000 tons of solid waste per year:\$ 150
 - (c) Sludge Disposal Facility:

Attachment A

- (A) A facility which received 25,000 gallons or more of sludge per month:\$ 150
- (B) A facility which received less than 25,000 gallons of sludge per month: \$ 100
- (d) Closed Disposal Site: Each landfill which closes after July 1, 1984:.....10% of fee which would be required, in accordance with subsections (3)(a), (3)(b), and (3)(c) above, if the facility was still in operation or \$50 whichever is greater.
- (e) Facility with Monitoring Wells: In addition to the fees described above, each facility with one or more wells for monitoring groundwater or methane, surface water sampling points, or any other structures or locations requiring the collection and analysis of samples by the Department, shall be assessed a fee. The amount of the fee shall depend on the number of wells (each well in a multiple completion well is considered to be a separate well) or sampling points as follows:
.....\$250
for each well or sampling point.
- (4) Annual Recycling Program Implementation Fee. An annual recycling program implementation fee shall be submitted by each domestic waste disposal site, except transfer stations and closed landfills. This fee is in addition to any other permit fee which may be assessed by the Department. The amount of the fee shall depend on the amount of solid waste received as follows:
 - (a) A disposal site which received 500,000 tons or more of solid waste per year\$20,000
 - (b) A disposal site which received at least 400,000 but less than 500,000 tons of solid waste per year:.....\$18,000
 - (c) A disposal site which received at least 300,000 but less than 400,000 tons of solid waste per year:..... \$14,000
 - (d) A disposal site which received at least 200,000 but less than 300,000 tons of solid waste per year:..... \$ 9,000
 - (e) A disposal site which received at least 100,000 but less than 200,000 tons of solid waste per year: \$ 4,600
 - (f) A disposal site which received at least 50,000 but less than 100,000 tons of solid waste per year: \$ 2,300
 - (g) A disposal site which received at least 25,000 but less than 50,000 tons of solid waste per year: \$ 1,200
 - (h) A disposal site which received at least 10,000 but less than 25,000 tons of solid waste per year: \$ 450
 - (i) A disposal site which received at least 5,000 but less than 10,000 tons of solid waste per year:..... \$ 225
 - (j) A disposal site which received at least 1,000 but less than 5,000 tons of solid waste per year: \$ 75
 - (k) A disposal site which received less than 1,000 tons of solid waste per year: \$ 50

(5) Per-ton fee on domestic solid waste. Each solid waste disposal site that receives domestic solid waste, except transfer stations, shall

Attachment A

submit to the Department of Environmental Quality a fee of 50 cents per ton of domestic solid waste received at the disposal site.

(a) This per-ton fee shall apply to all domestic solid waste received after June 30, 1990.

(b) Submittal schedule:

(A) This per-ton fee shall be submitted to the Department on the same schedule as the waste volume reports required in the disposal permit, or quarterly, whichever is more frequent. Quarterly remittals shall be due on the 15th day of the month following the end of the calendar quarter.

(B) Disposal sites receiving less than 1,000 tons of solid waste per year shall submit the fee annually on July 1, beginning in 1991. If the disposal site is not required by the Department to monitor and report volumes of solid waste collected, the fee shall be accompanied by an estimate of the population served by the disposal site.

(c) As used in this section, the term "domestic solid waste" does not include:

(A) Sewage sludge or septic tank and cesspool pumpings;

(B) Building demolition or construction wastes and land clearing debris, if delivered to a disposal site that is limited to those purposes;

(C) Source separated recyclable material, or material recovered at the disposal site;

(D) Waste going to an industrial waste facility;

(E) Waste received at an ash monofill from a resource recovery facility; or

(F) Domestic solid waste which is not generated within this state.

(d) For solid waste generated within the boundaries of a metropolitan service district, the 50 cent per ton disposal fee established in this section shall be levied on the district, not on the disposal site.

ATTACHMENT B

RULEMAKING STATEMENTS
for
Proposed Revisions to Existing Rules
Pertaining to Fees on Domestic Solid Waste

OAR Chapter 340, Division 61

Pursuant to ORS 183.335, these statements provide information on the intended action to adopt a rule.

STATEMENT OF NEED:

Legal Authority

ORS 459.045(1) and (3) require the Environmental Quality Commission to adopt reasonable and necessary rules governing the management of solid wastes to prevent pollution of the air, ground and surface waters. The 1989 Oregon Legislature passed House Bill 3515 which requires the Commission to establish a schedule of fees for all disposal sites that receive domestic solid waste.

Need for the Rule

HB 3515 requires the Commission to set fees sufficient to assist in the funding of programs to reduce the amount of domestic solid waste generated in Oregon, and to reduce environmental risks at domestic waste disposal sites. The fees are to be used to fund activities in the following areas:

1. Household hazardous waste education program. Disposal of household hazardous waste and exempt small quantity generator hazardous waste in solid waste disposal sites and sewage facilities presents a potential hazard to the public health and the environment, because these facilities may not be designed for the disposal of hazardous waste. Funding is to provide information about alternatives for management of hazardous waste and household hazardous waste, and methods of reusing and recycling such waste.

2. Department of Environmental Quality (DEQ) and local government waste reduction and recycling programs. Landfill space is becoming more limited and expensive. Programs to reduce and recycle wastes reduce the impact of waste disposal on the environment, and lengthen the effective life of landfills.

3. DEQ activities for ground water monitoring and enforcement of ground water protection standards at domestic solid waste landfills. Leachate from improperly designed or managed landfills may enter and pollute ground water, causing serious and long-lasting environmental problems. Monitoring programs provide

an "early warning" system so steps may be taken to prevent such ground water pollution.

4. Solid waste planning activities by counties. Local governments often have insufficient funds to properly plan for environmentally sound solid waste disposal. Funding would enhance their capability to plan for such things as special waste disposal, landfill closure and regional solid waste issues.

The proposed rule will implement the legislation, and provide resources for the above-stated purposes.

Principal Documents Relied Upon

- a. Oregon Revised Statutes 459.045.
- b. 1989 House Bill 3515.
- b. Oregon Administrative Rules, Chapter 340, Division 61.

LAND USE CONSISTENCY STATEMENT:

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

Goal 6 (Air, Water and Land Resources Quality): This proposed rule is designed to further the protection of surface and groundwater quality throughout the state, and to promote waste reduction and recycling. It is consistent with this Goal.

Goal 11 (Public Facilities and Services): The proposed rule would contribute to the disposal of solid waste in an environmentally sound manner and is consistent with this Goal.

The proposed rule does not appear to conflict with other Goals.

Public comment on any land use issue involved is welcome and may be submitted in the manner described in the accompanying NOTICE OF PUBLIC HEARING.

The Department requests 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 its attention by local, state or federal authorities.

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ATTACHMENT C

FISCAL AND ECONOMIC IMPACT STATEMENT

I. Introduction

Proposed Actions:

1989 House Bill 3515 requires the Environmental Quality Commission to adopt a fee schedule for all disposal sites receiving domestic solid waste, effective July 1, 1990. It states that the fee shall not be more than 50 cents per ton on domestic solid waste generated within Oregon and received at the landfill. It requires the fee to be sufficient to assist in the funding of programs to reduce the amount of domestic solid waste generated in Oregon and to reduce environmental risks at domestic waste disposal sites.

The proposed rule establishes a fee of 50 cents per ton of domestic solid waste, payable at least quarterly to the Department of Environmental Quality (DEQ). Small landfills (receiving less than 1000 tons per year of solid waste) are allowed to pay the fee annually. This fee is in addition to already established permit fees.

Overall Economic Impacts:

DEQ estimates that about \$1 million in fees will be generated annually by this action. These funds are to be deposited into a special account, and used for the purposes stated in HB 3515: household hazardous waste education program, DEQ and local government waste reduction and recycling programs, ground water monitoring and enforcement, and local solid waste planning activities. Up to 10 percent of the monies collected may be used for DEQ's expenses in accomplishing those purposes.

The statute allows landfill operators and garbage haulers to pass the cost of the fee through to their customers. As it is anticipated that most owners or operators would do this, the major impact of the fee will fall on solid waste generators and ratepayers.

The recordkeeping and reporting requirements in the proposed rule are not expected to require significant additional resources. Some administrative expense would be incurred in gaining approval to raise rates, and implementing any resulting new fee structure, perhaps a maximum of one and one-half person-weeks of staff time. At \$20/hour, that impact totals \$1,200.

II. General Public

The general public will be directly affected by increased rates for disposal of solid waste. It is anticipated that increased

rates would go into effect on July 1, 1990. As noted above, landfill operators and garbage haulers are allowed to pass through the effect of the fee increase to their ratepayers. DEQ assumes that each person generates about one ton of garbage a year, which would result in a monthly garbage fee increase of about five cents per capita for all Oregonians. However, some of these funds will be returned to local governments for recycling programs, which would increase the opportunities for the general public to reduce the amount of waste they generate.

III. Small Business

Small businesses would be affected in the same way as the general public. However, the impact on businesses will be proportionately greater than for residential garbage customers, but the rate increase to businesses will still be relatively insignificant (less than 2%). Those landfill operators and garbage haulers that are small businesses would experience some increased administrative costs in keeping track of the tonnage of domestic solid waste collected and submitting fees to DEQ. Fees would be submitted at the same time as waste volume reports, but at least quarterly. Small landfills (collecting less than 1000 tons of solid waste a year) would be allowed to submit the fee annually.

IV. Large Business

Large businesses would also be affected in the same way as the general public and small businesses, except that waste going to an industrial waste facility is exempt from the fee.

V. Local Governments

Local governments would be affected in the same way as the general public and as small or large businesses which own or operate landfills or garbage hauling companies.

Local governments will also receive economic benefits from the fee, although the proposed rules do not deal with how the fee is to be used. The statute specifies that funds from the fee be used for activities in disposal, reduction and recycling of household hazardous waste and solid waste. The Department's 89-91 budget includes the following benefits to local governments: \$400,000 for management of household hazardous wastes, and \$200,000 for recycling and solid waste activities.

VI. Other State Agencies

DEQ has received authority for one new position to carry out activities funded by the fee. Other state agencies would be affected in the same way as the general public if responsible for disposal of domestic solid waste.

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Attachment D

CHANCE TO COMMENT

Hearing Dates: 1/4/90
1/9/90
1/10/90
1/11/90

Comments Due: 2/2/90

WHO IS General public disposing of solid waste, other generators of solid waste, owners and operators of solid waste landfills, garbage haulers, local governments.

WHAT IS The Department proposes to adopt a new rule establishing a 50 cent per ton fee on domestic solid waste, as required by 1989 HB 3515. The fee will be used for waste reduction, recycling and other solid waste activities.

WHAT ARE The proposed amendments would:

- o establish a 50 cent per ton fee on domestic solid waste generated in Oregon;
- o require that the fee be submitted as least quarterly, except for small landfills which could submit annually;
- o establish a way to estimate tonnage of solid waste if the landfill has no scale.

HOW TO A public hearing will be held before a hearings officer at:

9:30 a.m.
January 4, 1990
DEQ Headquarters
Conference Room 4-A
811 S.W. Sixth Avenue
Portland, OR

7:00 p.m.
January 9, 1990

Pendleton, OR

7:00 p.m.
January 10, 1990

7:00 p.m.
January 11, 1990

Bend, OR

Medford, OR

Written or oral comments may be presented at the hearing. Written comments may also be sent to the

Department of environmental Quality, Solid Waste Section, Hazardous and Solid Waste Division, 811 S.W. 6th Avenue, Portland, OR 97204, and must be received no later than 5:00 p.m., February 2, 1990.

Copies of the Complete proposed rule package may be obtained from the DEQ Hazardous and Solid Waste Division. For further information, contact Steve Greenwood at 229-5782, or toll-free at 1-800-452-4011.

WHAT IS THE

The Environmental Quality Commission may adopt new rules identical to the ones proposed, adopt modified rules as a result of testimony received, or may decline to adopt rules. The Commission will consider the proposed new rule and rule revisions at its meeting on April 6, 1990.

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B-Eng. HB 3515

1 **SECTION 148.** The fee imposed by section 140 of this Act is in addition to all other state,
2 county or municipal fees on a petroleum product.

3 **SECTION 149.** Sections 150 to 153 of this Act are added to and made a part of ORS 459.205 to
4 459.355.

5 **SECTION 150.** As used in sections 150 to 153 of this 1989 Act:

6 (1) "Domestic solid waste" includes but is not limited to residential, commercial and institutional
7 wastes generated within this state.

8 (2) "Domestic solid waste" does not include:

9 (a) Sewage sludge or septic tank and cesspool pumpings;

10 (b) Building demolition or construction wastes and land clearing debris, if delivered to a disposal
11 site that is limited to those purposes;

12 (c) Source separated recyclable material, or material recovered at the disposal site;

13 (d) Waste going to an industrial waste facility;

14 (e) Waste received at an ash monofill from a resource recovery facility; or

15 (f) Other material excluded by the commission in order to support the purposes of ORS 459.015.

16 **SECTION 151.** The Legislative Assembly finds and declares that:

17 (1) Domestic solid waste disposal capacity is a matter of state-wide concern;

18 (2) The disposal in Oregon of domestic solid waste generated both outside and within Oregon
19 will reduce the total capacity available for disposal of domestic solid waste generated in this state;

20 (3) The disposal in Oregon of domestic solid waste generated outside Oregon and within Oregon
21 will add to the level of environmental risk associated with the transportation and disposal of those
22 wastes; and

23 (4) It is in the best interest of the public health, safety and welfare of the people of Oregon to
24 reduce the amount of domestic solid waste being generated in Oregon in order to extend the useful
25 life of existing domestic solid waste disposal sites and to reduce the environmental risks associated
26 with receiving waste generated outside Oregon at those sites.

27 **SECTION 152.** (1) In addition to the permit fees provided in ORS 459.235, the commission shall
28 establish a schedule of fees to begin July 1, 1990, for all disposal sites that receive domestic solid
29 waste except transfer stations. The schedule shall be based on the estimated tonnage or the actual
30 tonnage, if known, received at the site and any other similar or related factors the commission finds
31 appropriate. The fees collected pursuant to the schedule shall be sufficient to assist in the funding
32 of programs to reduce the amount of domestic solid waste generated in Oregon and to reduce envi-
33 ronmental risks at domestic waste disposal sites.

34 (2) For solid waste generated within the boundaries of a metropolitan service district, the
35 schedule of fees, but not the permit fees provided in ORS 459.235, established by the commission in
36 subsection (1) of this section shall be levied on the district, not the disposal site.

37 (3) The commission also may require submittal of information related to volumes and sources
38 of waste or recycled material if necessary to carry out the activities in section 153 of this 1989 Act.

39 (4)(a) A local government that franchises or licenses a domestic solid waste site shall allow the
40 disposal site to pass through the amount of the fees established by the commission in subsection (1)
41 of this section to the users of the site.

42 (b) If a disposal site that receives domestic solid waste passes through all or a portion of the
43 fees established by the commission in subsection (1) of this section to a solid waste collector who
44 uses the site, a local government that franchises or licenses the collection of solid waste shall allow

1 the franchisee or licensee to include the amount of the fee in the solid waste collection service rate.

2 (5) The fees generated under subsection (1) of this section shall be sufficient to accomplish the
3 purposes set forth in section 153 of this 1989 Act but shall be no more than 50 cents per ton.

4 **SECTION 153.** (1) The fees established by the commission under section 152 of this 1989 Act
5 shall be deposited in the General Fund and credited to an account of the department. Such moneys
6 are continuously appropriated to the department to carry out the purposes set forth in subsection
7 (2) of this section.

8 (2) The fees collected under section 152 of this 1989 Act shall be used only for the following
9 purposes:

10 (a) To implement the provisions of sections 69 to 76 of this 1989 Act.

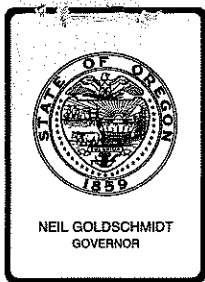
11 (b) Department of Environmental Quality programs to promote and enhance waste reduction and
12 recycling state wide, including data collection, performance measurement, education and promotion,
13 market development and demonstration projects.

14 (c) Department of Environmental Quality activities for ground water monitoring and enforce-
15 ment of ground water protection standards at domestic solid waste landfills.

16 (d) Solid waste planning activities by counties and the metropolitan service district, as approved
17 by the department, including planning for special waste disposal, planning for closure of solid waste
18 disposal sites, capacity planning for domestic solid waste and regional solid waste planning.

19 (e) Grants to local government units for recycling and solid waste planning activities.

20 (f) To pay administrative costs incurred by the department in accomplishing the purposes set
21 forth in this section, the amount allocated under this subsection shall not exceed 10 percent of the
22 fees generated under section 152 of this 1989 Act.



Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: December 1, 1989
Agenda Item: R
Division: Regional Operations
Section: Enforcement

SUBJECT:

Department Enforcement Policy and Civil Penalty Procedure:
Request for authorization to conduct rulemaking hearing.

PURPOSE:

Make revisions to the Department's current enforcement and civil penalty rules based on the experience of working with the new system in order to improve it. Also to make the field burning program subject to the same enforcement policy and procedures as the rest of the Department's programs.

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 C
 - Public Notice Attachment D

- Issue a Contested Case Order
- Approve a Stipulated Order
- Enter an Order
 - Proposed Order Attachment ___

Meeting Date: 12/1/89
Agenda Item: R
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 type="checkbox"/> Other: (specify) | Attachment <input type="checkbox"/> |

DESCRIPTION OF REQUESTED ACTION:

On March 3, 1989, the Commission adopted rules which codified the Department's enforcement policy and drastically changed the Department's civil penalty determination procedures. At that time, the Commission requested that the Department report within in six months on how the new rules were working and on the need for any changes.

On October 19, 1989, the Department reported to the Commission on the implementation of the rules and recommended changes based on the Department's experience in working with the rules.

At this time, the Department is requesting the Commission to authorize the Department to conduct a rulemaking hearing so that the Department may receive public comments and testimony concerning the proposed changes. The changes are necessary to clarify some areas of confusion, to make Division 12 applicable to the field burning program, to classify new violations in the areas of oil transport and oil spills, and to make housekeeping changes. The changes are described more fully in the an October 19, 1989, report to the Commission (Attachment G).

AUTHORITY/NEED FOR ACTION:

| | |
|---|---------------------|
| <input checked="" type="checkbox"/> Required by Statute: <u>House Bill 3493 & Senate Bill 1038 Amending ORS 468.130 & 468.140 & ORS 468.780-468.815</u> | Attachment <u>E</u> |
| Enactment Date: <u>1989</u> | |
| <input checked="" type="checkbox"/> Statutory Authority: <u>ORS 468.130 & 468.140</u> | Attachment <u>F</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) | |

Meeting Date: 12/1/89
Agenda Item: R
Page 3

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"/> |
| <input checked="" type="checkbox"/> Other Related Reports/Rules/Statutes: | Attachment | <input type="checkbox"/> |
| <input checked="" type="checkbox"/> Supplemental Background Information | Attachment | <u>G</u> <u>H</u> |

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The rule revisions do not affect the major thrust of the enforcement program and should have little or no affect on the majority of the regulated community. The regulated community is generally aware of the rules and how they work.

However, the field burning program was originally exempted from the rules. The Department is now proposing to make that program subject to the rules. Subjecting the field burning program to these rules would assure that all the members of the regulated community are treated similarly. Violation of field burning rules will result in higher penalties.

PROGRAM CONSIDERATIONS:

The Department believes that the enforcement rules have achieved much of the consistency the Department was striving for. It has helped the Department prioritize violations and its enforcement actions. However, the implementation of the rules has demonstrated the need for clarification and changes in several areas. Review of the rules demonstrates that several housekeeping changes are necessary also.

The Department believes that all programs under its jurisdiction should be enforced in a fair and consistent manner. This requires that field burning enforcement and penalties be incorporated into the rules.

With the adoption of criteria for settlement of penalties, the Department is proposing that the Commission delegate settlement authority to the Director. This change has been proposed subsequent to the Commission's October 19, 1989 workshop.

Meeting Date: 12/1/89
Agenda Item: R.
Page 4

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Revise Division 12 as proposed and repeal OAR 340-26-026 (Attachment H, Division 26, Field Burning Civil Penalty Schedule). Revising the rules as proposed would result in the current enforcement procedures being applicable to all the Department's programs. This helps the Department achieve its goal of overall consistency in enforcement. Revising the rules would also add the new areas created by the 1989 legislature and allow the Department to make necessary housekeeping changes.
2. Do not revise Division 12. If the rules are not revised, enforcement procedure governing the field burning program would be inconsistent with those governing the rest of the Department's programs. Failure to revise the rules would also limit the Department's ability to assess civil penalties under new laws passed by the 1989 legislature.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission authorize a rulemaking hearing so that the Department may receive public comments and testimony concerning the proposed revisions to Division 12.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

At the time the current enforcement rules were adopted, the Commission requested the Department to report to the Commission within six months on how the rules were working. The proposed revisions are the result of the review and are consistent with the Commission's directive.

ISSUES FOR COMMISSION TO RESOLVE:

None at this time.

INTENDED FOLLOWUP ACTIONS:

Publish notice of rulemaking hearing in the Secretary of State's Administrative Bulletin and mail notice of rulemaking hearing to Department mailing list.

Meeting Date: 12/1/89
Agenda Item: R
Page 4

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Revise Division 12 as proposed and repeal OAR 340-26-026 (Attachment H, Division 26, Field Burning Civil Penalty Schedule). Revising the rules as proposed would result in the current enforcement procedures being applicable to all the Department's programs. This helps the Department achieve its goal of overall consistency in enforcement. Revising the rules would also add the new areas created by the 1989 legislature and allow the Department to make necessary housekeeping changes.
2. Do not revise Division 12. If the rules are not revised, enforcement procedure governing the field burning program would be inconsistent with those governing the rest of the Department's programs. Failure to revise the rules would also limit the Department's ability to assess civil penalties under new laws passed by the 1989 legislature.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission authorize a rulemaking hearing so that the Department may receive public comments and testimony concerning the proposed revisions to Division 12.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

At the time the current enforcement rules were adopted, the Commission requested the Department to report to the Commission within six months on how the rules were working. The proposed revisions are the result of the review and are consistent with the Commission's directive.

ISSUES FOR COMMISSION TO RESOLVE:

None at this time.

INTENDED FOLLOWUP ACTIONS:

Publish notice of rulemaking hearing in the Secretary of State's Administrative Bulletin and mail notice of rulemaking hearing to Department mailing list.

Meeting Date: 12/1/89
Agenda Item: R
Page 5

Conduct rulemaking hearing and collect public testimony and comments.

Respond to testimony and comments.

Request adoption of revised rules at Commission's February 23, 1990, meeting.

Approved:

Section:

Van A. Kollian

Division:

Legal Services

Director:

Jul Hansen

Report Prepared By: Yone C. McNally

Phone: 229-5152

Date Prepared: October 29, 1989

YCM:b
GB9075
October 29, 1989

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>3</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>5</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>10</u> |
| <u>340-12-048 - Stipulated Penalties</u> | <u>10</u> |
| <u>340-12-049 - Civil Penalty for Damage Caused by Oil Spill</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>13</u> |
| <u>340-12-055 - Water Quality Classification of Violations</u> | <u>14</u> |
| <u>340-12-060 - On-Site Sewage Disposal Classification of Violations</u> | <u>15</u> |
| <u>340-12-065 - Solid Waste Management Classification of Violations</u> | <u>16</u> |
| <u>340-12-066 - Solid Waste Tire Management of Classification of</u> <u> Violations</u> | <u>17</u> |
| <u>340-12-067 - Underground Storage Tank Classification of Violations</u> | <u>18</u> |
| <u>340-12-068 - Hazardous Waste Management and Disposal</u> <u> Classification of Violations</u> | <u>20</u> |
| <u>340-12-069 - Oil and Hazardous Material Spill and Release</u> <u> Classification of Violations</u> | <u>22</u> |
| <u>340-12-071 - PCB Classification of Violations</u> | <u>22</u> |
| <u>340-12-073 - Environmental Cleanup Classification of Violations</u> | <u>23</u> |
| <u>340-12-080 - Scope of Applicability</u> | <u>23</u> |

7

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", [when used with respect to a result or to conduct described by a statute, rule, permit, standard or order defining a violation], means Respondent consciously and voluntarily took an action or omitted to take action and knew the probable consequences of so acting or omitting to act. [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

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

No civil penalty issued by the Director pursuant to this matrix shall be less than fifty dollars (\$50) or more than ten thousand dollars (\$10,000) for each day of each violation. This matrix shall apply to the following types of violations:

- (a) Any violation related to air quality statutes, rules, permits or orders, except for residential open burning [and field burning];
- (b) Any violation related to of ORS 468.875 to 468.899 relating to asbestos abatement projects;

13

(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

| | | | | |
|--------------------------|----------|----------|-------|-------|
| Class of Violation | Major | Moderate | Minor | |
| | Class I | \$400 | \$300 | \$200 |
| | Class II | \$300 | \$200 | \$100 |
| Class III | \$200 | \$100 | \$50 | |

No civil penalty issued by the Director pursuant to this matrix shall be less than fifty dollars (\$50) or more than five hundred dollars (\$500) for each day of each violation. This matrix shall apply to the following types of violations:

- (a) Any violation related to residential open burning;
- (b) Any violation related to noise control statutes, rules, permits and orders;

- (c) Any violation related to on-site sewage disposal statutes, rules, permits, licenses and orders;
- (d) Any violation related to solid waste statutes, rules, permits and orders; and
- (e) Any violation related to waste tire statutes, rules, permits and orders;
- (f) Any violation of ORS 164.785 relating to the placement of offensive substances into the waters of the state or on to land.
(Statutory Authority: ORS Ch. 454, 459, 466, 467 & 468)

CIVIL PENALTY DETERMINATION PROCEDURE

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 $BP + [(0.1 \times BP)(P + H + E + O + R + C)]$ 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 there is 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)]s [is] are [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;

15

(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)

CIVIL PENALTY FOR DAMAGE CAUSED BY OIL SPILL

340-12-049

In addition to any other penalty provided by law, any person who wilfully or negligently causes an oil spill shall incur a civil penalty commensurate with the amount of damage incurred. Notwithstanding OAR 340-12-042 and OAR 340-12-045, the amount of the penalty shall be determined by the Director with the advice of the Director of Fish and Wildlife. In determining the amount of the penalty, the Director may consider the gravity of the violation, the previous record of the violator and such other considerations the Director deems appropriate.

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) [(l)] 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.

(4) In addition to any other penalty provided by law, any person planting contrary to the restrictions of subsection (1) of ORS 468.465 pertaining to the open burning of cereal grain acreage shall be assessed by the Department a civil penalty of \$25 for each acre planted contrary to the restrictions.

(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 [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) Failure of any ship carrying oil to have financial assurance as required in ORS 468.780 to 468.815 or rules adopted thereunder.
 - (j) [(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) Failure by any ship carrying oil to keep documentation of financial assurance on board or on file with the Department as required by ORS 468.780 to 468.815 or rules adopted thereunder.
 - (f) [(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;]

(e) Failure to provide access to premises or records:

(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.

(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) 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;

(i)[(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 or Letter of Authorization;

(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;

(i) Violation of a Commission or Department Order;

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

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

(l)[(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 a compliance schedule contained in a solid waste disposal closure permit;] Violation of a condition or term of a Letter of Authorization;
 - (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:
[(a) Establishing, expanding or operating a waste tire storage site without first obtaining a permit;]
 - (b) Disposing of waste tires at an unauthorized site;
 - (c) [Any v] Violation of the compliance schedule or fire safety requirements of a waste tire storage site permit;
 - (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];
 - (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;]
 - (f) Failure to provide access to premises or records.
 - (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;

25

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

(c) [(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 unauthorized 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) Violation of a Commission or Department order;

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

[(b) Violation of an order requiring remedial action;]

[(c) Violation of an order requiring removal action;]

(c) [(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;]

(b) [(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 is a Class Three violation.

(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.

STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS 183.335(1), this statement provides information on Environmental Quality Commission's intended action to adopt a rule.

(1) Legal Authority:

ORS 468.130 requires the Commission to adopt civil penalty schedules in order to effectuate its civil penalty authority.

Senate Bill 1038 authorizes the Department to seek civil penalties for violations related to the failure of a ship carrying oil to have financial assurance.

House Bill 3493 authorizes the Department to seek civil penalties in the amount commensurate to damage caused by a willful or negligent oil spill.

(2) Need for Rule:

On March 3, 1989, the Commission adopted rules which codified the Department's enforcement policy and drastically changed the Department's civil penalty determination procedures. At that time, the Commission requested that the Department report within six months on how the new rules were working and on the need for any changes. The Department reported to the Commission on October 19, 1989. The proposed revisions are based on the Department's experience in working with the rules.

(3) Principal Documents Relied Upon:

Senate Bill 1038; House Bill 3493; ORS Chapters 454, 459, 466, and 468; Report to the Environmental Quality Commission, October 19, 1989. These documents are available for review at the Department of Environmental Quality, Regional Operations, 10th floor, 811 S.W. Sixth Avenue, Portland, OR 97204.

LAND USE CONSISTENCY STATEMENT

The proposed rule does not affect land use as defined in the Department's coordination program approved by the Land Conservation and Development Commission.

Yone C. McNally
229-5152
October 29, 1989
GB9075B

FISCAL AND ECONOMIC IMPACT STATEMENT

The newly proposed rules, as the current rules, would have no direct fiscal or economic impact on individuals, public entities, and small and large businesses as the adoption of these rules set forth the procedure that Department is to follow. The adoption of these rules, by itself, will not require the expenditure of funds by any group within the regulated community as these rules do not require an affirmative act in order to come into compliance. The rules do not place any additional duties on the regulated communities in order to maintain compliance. There is no fiscal or economic on small business as a result of these rules.

The fiscal and economic impact of the proposed rules will come into play when a violation occurs. The actual fiscal impact would then depend on the type of violation, its seriousness and other factors including the violator's compliance history. In many instances, a violation would result in no fiscal impact as a civil penalty would not be assessed due to advance notice requirements. Thus, the fiscal and economic impact of the proposed rules would be highly individualized depending on the type of violation and the circumstances surrounding it. Depending on the activity engaged in, the total fiscal impact would be no greater than \$500 or \$10,000 per day of violation.

The fiscal and economic impact on small business would also be individualized. A small business is treated the same as all other regulated entities, including individuals, under these rules. Thus, a small business would only be affected if a violation warranted a civil penalty. The economic condition of each entity receiving a civil penalty is taken consideration when determining the penalty amount.

Yone C. McNally
229-5152
October 29, 1989
GB9075C

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

PROPOSED REVISION OF OREGON ADMINISTRATIVE RULES
CHAPTER 340, DIVISION 12, CIVIL PENALTY RULES

NOTICE OF PUBLIC HEARING

Date Prepared: October 29, 1989
Hearing Date: January 8, 1990
Comments Due: January 16, 1990

**WHO IS
AFFECTED:**

People to whom Oregon's air quality, noise pollution, water quality, solid waste, on-site sewage disposal and hazardous waste and materials regulations may apply.

**WHAT IS
PROPOSED:**

The DEQ is proposing to revise the civil penalty rules, OAR 340-12-026 through 12-080.

**WHAT ARE THE
HIGHLIGHTS:**

1. Proposed State Rule Revisions:

- >The application of the Department's enforcement policy and civil penalty procedures to field burning violations.
- >The classification of violations related to the transporting of oil by ships which fail to obtain financial assurance as required by Senate Bill 1038.
- >The authority to assess civil penalties in the amount commensurate with damage caused by willful or negligent oil spills as authorized by House Bill 3493.

**HOW TO
COMMENT:**

Copies of the complete proposed rule package may be obtained from the Regional Operations Division, Enforcement, in Portland (811 S.W. Sixth Avenue, Tenth Floor) or the regional office nearest you. For further information, contact Van A. Kollias at 229-6232.

A public hearing will be held before a hearings officer at:

2:00 p.m.
Friday, January 8, 1990
DEQ Offices, Tenth Floor, Room 10A
811 S.W. Sixth Avenue, Portland, Oregon

Oral and written comments will be accepted at the public hearing. Written comments may be sent to the DEQ Enforcement Section, 811 S.W. Sixth Avenue, Tenth Floor, Portland, OR 97204. Written comments must be received no later than 5:00 p.m., January 16, 1990.



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

11/1/86

(over)

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.

D-1

37

MEMORANDUM TO THE COMMISSION

Attachment D
Agenda Item
12/1/89 EQC Meeting

WHAT IS THE
NEXT STEP:

After public hearing, the Environmental Quality Commission may adopt rule amendments identical to the proposed amendments, adopt modified rule amendments on the same subject matter, or decline to act. The Commission's deliberation may come on February 23, 1990, as part of the agenda of the regularly scheduled Commission meeting. A Statement of Need, Fiscal and Economic Impact Statement, and Land Use Consistency Statement are attached to this notice.

GB9075D

Attachment
1-: Van Kollas
Reg Opns

A-Engrossed House Bill 3493

Ordered by the House June 15
Including House Amendments dated June 15

Sponsored by Representatives DWYER, CEASE, AGRONS, CALHOON, CARTER, COURTNEY, DIX, DOMINY, EDMUNSON, GERSHON, HANLON, HANNEMAN, HOSTICKA, HUGO, KOTULSKI, MANNIX, MARKHAM, McTEAGUE, PICKARD, RIJKEN, ROBERTS, SCHOON, SHIPRACK, SOWA, WHITTY, Senators BRADBURY, BUNN, COHEN, McCOY

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.

Punishes persons intentionally or negligently discharging oil unlawfully into Oregon waters by making violation Class *(B felony)* A misdemeanor punishable by maximum fine of *[\$100,000]* \$2,500, maximum imprisonment for *[10 years]* one year, or both. Imposes civil penalty in addition to any other penalty provided by law, commensurate with amount of damage.

Establishes Oil Spillage Control Fund in General to receive penalties. Appropriates moneys from spillage fund to Department of Environmental Quality for cleanup and rehabilitation of affected fish and wildlife.

Declares emergency, effective July 1, 1989.

A BILL FOR AN ACT

1
2 Relating to water pollution; creating new provisions; amending ORS 468.990; appropriating money;
3 and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** Sections 2 to 5 of this Act are added to and made a part of ORS 468.780 to 468.815.

6 **SECTION 2.** The commission shall adopt rules necessary to carry out the provisions of sections
7 3 to 5 of this 1989 Act.

8 **SECTION 3.** Any person who wilfully or negligently causes or permits the discharge of oil into
9 the waters of the state shall incur, in addition to any other penalty provided by law, a civil penalty
10 commensurate with the amount of damage incurred. The amount of the penalty shall be determined
11 by the Director of the Department of Environmental Quality with the advice of the State Fish and
12 Wildlife Director after taking into consideration the gravity of the violation, the previous record of
13 the violator in complying, or failing to comply, with the provisions of sections 2 to 5 of this 1989
14 Act, and such other considerations as the director considers appropriate. The penalty provided for
15 in this section shall be imposed and enforced in accordance with ORS 468.135.

16 **SECTION 4. (1)** There is established an Oil Spillage Control Fund within the General Fund.
17 This account shall be a revolving fund, the interest of which accrues to the Oil Spillage Control
18 Fund.

19 (2) All penalties recovered under section 3 of this 1989 Act shall be paid into the Oil Spillage
20 Control Fund. Such moneys are continuously appropriated to the Department of Environmental
21 Quality for the advancement of costs incurred in carrying out cleanup activities and for the reha-
22 bilitation of affected fish and wildlife as provided under ORS 468.745.

23 (3) With the approval of the commission, the moneys in the Oil Spillage Control Fund may be
24 invested as provided by ORS 293.701 to 293.776, and earnings from such investment shall be credited

NOTE: Matter in bold face in an amended section is new; matter *(italic and bracketed)* is existing law to be omitted.

39

A-Engrossed Senate Bill 1038

Ordered by the Senate May 23
Including Senate Amendments dated May 23

Sponsored by COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

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.

Establishes financial assurance ~~[requirements]~~ provisions for ~~[person having control over]~~ ships over 300 gross tons that transport bulk oil ~~[or hazardous material transported]~~ in waters of state. Specifies methods by which assurance may be established. ~~[Requires port authority to suspend operation of ship until demonstration of proof that requirements have been met.]~~ Requires Environmental Quality Commission, by January 1, 1990, to adopt rules to carry out Act. Allows required documentation of compliance to be kept on ship or filed with Department of Environmental Quality. Requires owner or operator to maintain on ship certificate of compliance with Federal Water Pollution Control Act. Requires maritime pilot to report to department owner or operator of ship carrying oil without required financial assurances.
[Declares emergency, effective on passage.]

A BILL FOR AN ACT

1
2 Relating to oil spills; creating new provisions; and amending ORS 468.140.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** Sections 2 to 5 of this Act are added to and made a part of ORS 468.780 to 468.815.

5 **SECTION 2.** The Legislative Assembly finds that oil spills, hazardous material spills and other
6 forms of incremental pollution present serious danger to the fragile marine environment of the state.
7 Therefore, it is the intent of sections 2 to 5 of this 1989 Act to establish financial assurance for ships
8 that transport oil and other hazardous material in the waters of the state.

9 **SECTION 3.** (1) Any ship over 300 gross tons, that transports oil in bulk as cargo, using any
10 port or place in this state or the waters of the state shall establish, under rules adopted by the
11 Environmental Quality Commission, evidence of financial assurance in the amount of the greater of:

12 (a) \$1 million; or

13 (b) \$150 per gross ton of the ship.

14 (2) The financial assurance established under subsection (1) of this section shall meet the li-
15 ability to the State of Oregon for:

16 (a) Actual costs for removal of spills of oil;

17 (b) Civil penalties and fines imposed in connection with the spill of oil; and

18 (c) Natural resource damages.

19 **SECTION 4.** (1) Financial assurance may be established by any of the following methods or a
20 combination of these methods acceptable to the Environmental Quality Commission:

21 (a) Evidence of insurance;

22 (b) Surety bond;

23 (c) Qualifications as a self-insurer; or

24 (d) Any other evidence of financial assurance approved by the commission.

NOTE: Matter in bold face in an amended section is new; matter *(italic and bracketed)* is existing law to be omitted.

1 (2) Any bond filed shall be issued by a bonding company authorized to do business in the United
2 States.

3 (3) Documentation of the financial assurance shall be kept on the ship or filed with the depart-
4 ment. The owner or operator of any other ship shall maintain on the ship a certificate issued by the
5 United States Coast Guard evidencing compliance with the requirements of section 311 of the Fed-
6 eral Water Pollution Control Act, P.L. 92-500, as amended.

7 **SECTION 5.** The maritime pilot piloting a ship subject to the provisions of section 3 of this 1989
8 Act shall report to the Department of Environmental Quality any ship owner or operator having
9 control over oil who does not provide financial assurance as required under sections 3 and 4 of this
10 1989 Act.

11 **SECTION 6.** Not later than January 1, 1990, the Environmental Quality Commission shall adopt
12 rules to carry out the provisions of sections 2 to 5 of this Act.

13 **SECTION 7.** ORS 468.140 is amended to read:

14 468.140. (1) In addition to any other penalty provided by law, any person who violates any of the
15 following shall incur a civil penalty for each day of violation in the amount prescribed by the
16 schedule adopted under ORS 468.130:

17 (a) The terms or conditions of any permit required or authorized by law and issued by the de-
18 partment or a regional air quality control authority.

19 (b) Any provision of ORS 164.785, 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425,
20 454.505 to 454.535, 454.605 to 454.745, ORS chapter 467 and this chapter.

21 (c) Any rule or standard or order of the commission adopted or issued pursuant to ORS 448.305,
22 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745, ORS
23 chapter 467 and this chapter.

24 (d) Any term or condition of a variance granted by the commission or department pursuant to
25 ORS 467.060.

26 (e) Any rule or standard or order of a regional authority adopted or issued under authority of
27 ORS 468.535 (1).

28 (f) The financial assurance requirement under sections 3 and 4 of this 1989 Act or any
29 rule related to the financial assurance requirement under section 3 of this 1989 Act.

30 (2) Each day of violation under subsection (1) of this section constitutes a separate offense.

31 (3)(a) In addition to any other penalty provided by law, any person who intentionally or
32 negligently causes or permits the discharge of oil into the waters of the state shall incur a civil
33 penalty not to exceed the amount of \$20,000 for each violation.

34 (b) In addition to any other penalty provided by law, any person who violates the terms or
35 conditions of a permit authorizing waste discharge into the air or waters of the state or violates any
36 law, rule, order or standard in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425,
37 454.505 to 454.535, 454.605 to 454.745 and this chapter relating to air or water pollution shall incur
38 a civil penalty not to exceed the amount of \$10,000 for each day of violation.

39 (4) Paragraphs (c) and (e) of subsection (1) of this section do not apply to violations of motor
40 vehicle emission standards which are not violations of standards for control of noise emissions.

41 (5) Notwithstanding the limits of ORS 468.130 (1) and in addition to any other penalty provided
42 by law, any person who intentionally or negligently causes or permits open field burning contrary
43 to the provisions of ORS 468.450, 468.455 to 468.480, 476.380 and 478.960 shall be assessed by the
44 department a civil penalty of at least \$20 but not more than \$40 for each acre so burned. Any fines

44

1 collected by the department pursuant to this subsection shall be deposited with the State Treasurer
2 to the credit of the General Fund and shall be available for general governmental expense.

3

period, or unless the person incurring the penalty shall otherwise have received actual notice of the violation not less than five days prior to the violation for which a penalty is imposed.

(2) No advance notice shall be required under subsection (1) of this section if:

(a) The violation is intentional or consists of disposing of solid waste or sewage at an unauthorized disposal site or constructing a sewage disposal system without the department's permit.

(b) The water pollution, air pollution or air contamination source would normally not be in existence for five days, including but not limited to open burning.

(c) The water pollution, air pollution or air contamination source might leave or be removed from the jurisdiction of the department or regional air quality control authority, including but not limited to ships.

(d) The penalty to be imposed is for a violation of ORS 466.005 to 466.385.

(e) The penalty to be imposed is for a violation of ORS 468.893 (8) relating to the control of asbestos fiber releases into the environment. [Formerly 449.967; 1977 c.317 §2; 1983 c.703 §17; 1985 c.735 §3; 1987 c.741 §19]

468.130 Schedule of civil penalties; factors to be considered in imposing civil penalties. (1) The commission shall adopt by rule a schedule or schedules establishing the amount of civil penalty that may be imposed for a particular violation. Except as provided in ORS 468.140 (3), no civil penalty shall exceed \$500 per day. Where the classification involves air pollution, the commission shall consult with the regional air quality control authorities before adopting any classification or schedule.

(2) In imposing a penalty pursuant to the schedule or schedules authorized by this section, the commission and regional air quality control authorities shall consider the following factors:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(b) Any prior violations of statutes, rules, orders and permits pertaining to water or air pollution or air contamination or solid waste disposal.

(c) The economic and financial conditions of the person incurring a penalty.

(d) The gravity and magnitude of the violation.

(e) Whether the violation was repeated or continuous.

(f) Whether the cause of the violation was an unavoidable accident, negligence or an intentional act.

(g) The violator's cooperativeness and efforts to correct the violation.

(h) Any relevant rule of the commission.

(3) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the commission or regional authority considers proper and consistent with the public health and safety.

(4) The commission may by rule delegate to the department, upon such conditions as deemed necessary, all or part of the authority of the commission provided in subsection (3) of this section to remit or mitigate civil penalties. [Formerly 449.970; 1977 c.317 §3; 1987 c.266 §2]

468.135 Procedures to collect civil penalties. (1) Subject to the advance notice provisions of ORS 468.125, any civil penalty imposed under ORS 468.140 shall become due and payable when the person incurring the penalty receives a notice in writing from the director of the department, or from the director of a regional air quality control authority, if the violation occurs within its territory. The notice referred to in this section shall be sent by registered or certified mail and shall include:

(a) A reference to the particular sections of the statute, rule, standard, order or permit involved;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed; and

(d) A statement of the party's right to request a hearing.

(2) The person to whom the notice is addressed shall have 20 days from the date of mailing of the notice in which to make written application for a hearing before the commission or before the board of directors of a regional air quality control authority.

(3) All hearings shall be conducted pursuant to the applicable provisions of ORS 183.310 to 183.550.

(4) Unless the amount of the penalty is paid within 10 days after the order becomes final, the order shall constitute a judgment and may be filed in accordance with the provisions of ORS 18.320 to 18.370. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

F-1

413

(5) All penalties recovered under ORS 468.140 shall be paid into the State Treasury and credited to the General Fund, or in the event the penalty is recovered by a regional air quality control authority, it shall be paid into the county treasury of the county in which the violation occurred. [Formerly 449.973]

468.140 Civil penalties for specified violations. (1) In addition to any other penalty provided by law, any person who violates any of the following shall incur a civil penalty for each day of violation in the amount prescribed by the schedule adopted under ORS 468.130:

(a) The terms or conditions of any permit required or authorized by law and issued by the department or a regional air quality control authority.

(b) Any provision of ORS 164.785, 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745, ORS chapter 467 and this chapter.

(c) Any rule or standard or order of the commission adopted or issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745, ORS chapter 467 and this chapter.

(d) Any term or condition of a variance granted by the commission or department pursuant to ORS 467.060.

(e) Any rule or standard or order of a regional authority adopted or issued under authority of ORS 468.535 (1).

(2) Each day of violation under subsection (1) of this section constitutes a separate offense.

(3)(a) In addition to any other penalty provided by law, any person who intentionally or negligently causes or permits the discharge of oil into the waters of the state shall incur a civil penalty not to exceed the amount of \$20,000 for each violation.

(b) In addition to any other penalty provided by law, any person who violates the terms or conditions of a permit authorizing waste discharge into the air or waters of the state or violates any law, rule, order or standard in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter relating to air or water pollution shall incur a civil penalty not to exceed the amount of \$10,000 for each day of violation.

(4) Paragraphs (c) and (e) of subsection (1) of this section do not apply to violations of motor vehicle emission standards which are not violations of standards for control of noise emissions.

(5) Notwithstanding the limits of ORS 468.130 (1) and in addition to any other penalty provided by law, any person who intentionally or negligently causes or permits open field burning contrary to the provisions of ORS 468.450, 468.455 to 468.480, 476.380 and 478.960 shall be assessed by the department a civil penalty of at least \$20 but not more than \$40 for each acre so burned. Any fines collected by the department pursuant to this subsection shall be deposited with the State Treasurer to the credit of the General Fund and shall be available for general governmental expense. [Formerly 449.993; 1975 c.559 §14; 1977 c.511 §5; 1979 c.353 §1; 1987 c.513 §1]

POLLUTION CONTROL FACILITIES TAX CREDIT

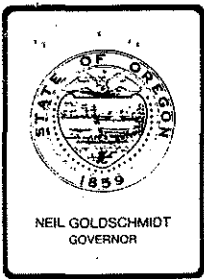
468.150 Field sanitation and straw utilization and disposal methods as "pollution control facilities." After alternative methods for field sanitation and straw utilization and disposal are approved by the committee and the department, "pollution control facility," as defined in ORS 468.155, shall include such approved alternative methods and persons purchasing and utilizing such methods shall be eligible for the benefits allowed by ORS 468.155 to 468.190. [1975 c.559 §15]

Note: 468.150 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 468 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

468.155 Definitions for ORS 468.155 to 468.190. (1)(a) As used in ORS 468.155 to 468.190, unless the context requires otherwise, "pollution control facility" or "facility" means any land, structure, building, installation, excavation, machinery, equipment or device, or any addition to, reconstruction of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device reasonably used, erected, constructed or installed by any person if:

(A) The principal purpose of such use, erection, construction or installation is to comply with a requirement imposed by the department, the federal Environmental Protection Agency or regional air pollution authority to prevent, control or reduce air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil; or

(B) The sole purpose of such use, erection, construction or installation is to prevent, control or reduce a substantial quantity of air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil.



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.

EQC Workshop Item

Enforcement Rules/Discussion of Implementation Experience

Page 2

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

CONFIDENTIAL
U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

CONFIDENTIAL

Enclosed for your information are two copies of a letterhead memorandum dated and captioned as above, which was prepared by the New York Office of the FBI on 11/15/50. This memorandum was prepared in accordance with the instructions of the Bureau dated 10/25/50, and a copy of this memorandum is being furnished to the New York Office for your information. The Bureau is also interested in the results of your investigation of this matter.



Very truly yours,
Special Agent in Charge

WILLIAM A. RAY
100-211
11/15/50
New York Office

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 _____

Date Assigned _____

cc: _____
(Program or Region)

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.

And finally, we have the...

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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 |

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63

PROCEEDINGS OF THE CONFERENCE ON THE
STATUS OF THE UNITED STATES

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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.

45

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

Southwest Region Office

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

Counties served:

Jackson
Josephine

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

Coos Bay Branch Office

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

Counties served:

Coos
Curry

Central Region Office

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

Counties served:

| | |
|------------|---------|
| Crook | Klamath |
| Deschutes | Lake |
| Harney | Sherman |
| Hood River | Wasco |
| Jefferson | |

Roseburg Branch Office

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

County served:

Douglas

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 | |

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 | |

Northwest Region Office

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

Counties served:

| | |
|-----------|------------|
| Clackamas | Multnomah |
| Clatsop | Tillamook |
| Columbia | Washington |

ENFORCEMENT ACTIONS COMPLETED

09-15-1989

PAGE: 1

| SOURCE | LOCATION | PRO-GRAM | DATE OF VIOLATION | DESCRIPTION OF VIOLATION | ENFORCEMENT NUMBER | TYPE OF ACTION | COMPLIANCE SCHEDULE |
|---------------------------|-----------------------|----------|-------------------|-----------------------------------|--------------------|----------------|---|
| Port Of Astoria | Astoria | AQ | 11-07-1988 | Open Burning Prohibited Materials | NWR-89-07 | CP | |
| Lammi 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 | NOM | |
| 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

4-23

67

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 | | |
| OECD CORP. CLACKAMAS CO. | NWR-89-136 | NON | HW | HW VIOLATIONS | 08-28-1989 | 27 | | |

4-2 0-25

69

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

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 Per | | | | | | | | (3) 4,000 | (1) 8,000 | |
| Animal Waste | | | | | | (2) 7,500 | (2) 6,000 | (2) 5,000 | | |
| Run Sources | (1) 500 | (2) 4,850 | (1) 2,500 | (2) 550 | (1) 750 | (1) 7,500 | (1) 100 | (3) 7,050 | | |
| Run Strip Per | | | | | | | | (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) 24,090 | |
| Hazardous/Solid Waste | | | | | | | | | | |
| Hazardous Waste | | | | (1) 2,500 | (7) 23,500 | (4) 25,500 | (5) 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 | |

57
6-27

71

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: 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 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 Classification of Violations</u> | <u>19</u> |
| <u>340-12-069 - Oil and Hazardous Material Spill and Release 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.

OAR12 (9/89)

6-1

(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)

26

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

| | | Magnitude of Violation | | |
|-----------|---------------|------------------------|----------|---------|
| | | Major | Moderate | Minor |
| Class I | Assessment of | \$5,000 | \$2,500 | \$1,000 |
| | Violations | | | |
| | of | | | |
| Class II | Assessment of | \$2,000 | \$1,000 | \$500 |
| | Violations | | | |
| | of | | | |
| Class III | Assessment of | \$500 | \$250 | \$100 |
| | Violations | | | |
| | of | | | |

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

8/

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) [(l)] 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 [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.

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Winter Burning Season Regulations

340-26-020 [DEQ 29, f. 6-12-71, ef. 7-12-71;
DEQ 93(Temp), f. & ef. 7-11-75 thru 11-28-75;
DEQ 104, f. & ef. 12-26-75;
DEQ 114, f. 6-4-76;
DEQ 138, f. 6-30-77;
DEQ 6-1978, f. 4-18-78;
DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78;
DEQ 2-1980, f. & ef. 1-21-80;
DEQ 12-1980, f. & ef. 4-21-80;
DEQ 9-1981, f. & ef. 3-19-81;
Repealed by DEQ 5-1984, f. & ef. 3-7-84]

Civil Penalties

340-26-025 In addition to any other penalty provided by law:

(1) Any person who intentionally or negligently causes or allows open field burning contrary to the provisions of ORS 468.450, 468.455 to 468.480, 476.380, and 478.960 or these rules shall be assessed by the Department a civil penalty of at least \$20, but not more than \$40 for each acre so burned.

(2) In lieu of any per-acre civil penalty assessed pursuant to section (1) of this rule, the Director may assess a specific civil penalty for any open field burning violation by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be established consistent with the following schedule:

(a) Not less than \$500 nor more than \$10,000 upon any person who:

(A) Causes or allows open field burning on any acreage which has not been registered with the Department for such purposes.

(B) Causes or allows open field burning on any acreage without first obtaining and readily demonstrating a valid open field burning permit for all acreage so burned.

(b) Not less than \$300 nor more than \$10,000 upon any person who fails to actively extinguish all flames and major smoke sources when prohibition conditions are imposed by the Department or when instructed to do so by any agent or employe of the Department.

(c) Not less than \$200 nor more than \$10,000 upon any person who:

(A) Conducts burning using an approved alternative method contrary to any specific conditions or provisions governing such method.

height required for burning based upon cumulative hours of smoke intrusion in the Eugene-Springfield area as follows:

(A) Except as provided in paragraph (B) of this subsection, burning shall not be permitted whenever the effective mixing height is less than the minimum allowable height specified in Table 1, and by reference made a part of these rules.

(B) Notwithstanding the effective mixing height restrictions of paragraph (A) of this subsection, the Department may authorize burning of up to 1000 acres total per day for the Willamette Valley, consistent with smoke management considerations and these rules.

(8) Limitations on burning based on rainfall:

(a) Burning shall not be permitted in an area for one drying day (up to a maximum of four consecutive drying days) for each 0.10 inch increment of rainfall received per day at the nearest reliable measuring station.

(b) The Department may waive the restrictions of subsection (a) of this section when dry fields are available as a result of special field preparation or condition, irregular rainfall patterns, or unusually high evaporative weather condition.

(9) Other discretionary provisions and restrictions:

(a) The Department may require special field preparations before burning, such as, but not limited to, mechanical fluffing of residues, when conditions in its judgement warrant such action.

(b) The Department may designate specified periods following permit issuance within which time active field ignition must be initiated and/or all flames must be actively extinguished before said permit is automatically rendered invalid.

(c) The Department may designate additional areas as priority areas when conditions in its judgement warrant such action.

(B) Fails to readily demonstrate at the site of the burn operation the capability to monitor the Department's field burning schedule broadcasts.

(d) Not less than \$50 nor more than \$10,000 upon any person who commits any other violation pertaining to the rules of this Division.

(3) In establishing a civil penalty greater than the minimum amount specified in sections (1) and (2) of this rule, the Director may consider any mitigating and aggravating factors as provided for in OAR 340-12-045.

(4) Any person planting contrary to the restrictions of subsection (1) of ORS 468.465 pertaining to the open burning of cereal grain acreage shall be assessed by the Department a civil penalty of \$25 for each acre planted contrary to the restrictions.

Tax Credits for Approved Alternative Methods, and Approved Alternative Facilities

340-26-030 [DEQ 114, f. & ef. 6-4-76;
DEQ 138, f. 6-30-77;
DEQ 6-1978, f. & ef. 4-18-78;
DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78;
DEQ 2-1980, f. & ef. 1-21-80;
DEQ 12-1980, f. & ef. 4-21-80;
DEQ 9-1981, f. & ef. 3-19-81;
DEQ 5-1984, f. & ef. 3-7-84;
Repealed by DEQ 12-1984, f. & ef. 7-13-84]

Burning by Public Agencies (Training Fires)

340-26-031 Open field burning on grass seed or cereal grain acreage by or for any public agency for official purposes, including the training of fire-fighting personnel, may be permitted by the Department on a prescheduled basis consistent with smoke management considerations and subject to the following conditions:

(1) Such burning must be deemed necessary by the official local authority having jurisdiction and must be conducted in a manner consistent with its purpose.

(2) Such burning must be limited to the minimum number of acres and occasions reasonably needed.

(3) Such burning must comply with the provisions of rules 340-26-010 through 340-26-013.

Preparatory Burning

340-26-033 The Department may allow preparatory burning of portions of selected problem fields, consistent with smoke management considerations and subject to the following conditions:

- (1) Such burning must, in the opinion of the Department, be necessary to reduce or eliminate a potential fire hazard or safety problem in order to expedite the subsequent burning of the field.
- (2) Such burning shall be limited to the minimum number of acres necessary, in no case exceeding 5 acres for each burn or a maximum of 100 acres each day.
- (3) Such burning must employ backfiring burning techniques.
- (4) Such burning is exempt from the provisions of rule 340-26-015 but must comply with the provisions of rules 340-26-010 through 340-26-013.

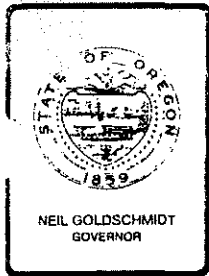
Experimental Burning

340-26-035 The Department may allow open field burning for demonstration or experimental purposes pursuant to the provisions of ORS 468.490, consistent with smoke management considerations and subject to the following conditions:

- (1) Acreage experimentally open burned shall not exceed 5,000 acres annually.
- (2) Acreage experimentally open burned shall not apply to the district allocation or to the maximum annual acreage limit specified in rule 340-26-013-
(1)(a).
- (3) Such burning is exempt from the provisions of rule 340-26-015 but must comply with the provisions of rules 340-26-010 and 340-26-012, except that the Department may elect to waive all or part of the \$2.50 per acre burn fee.

Emergency Burning, Cessation

340-26-040 (1) Pursuant to ORS 468.475 and upon a finding of extreme hardship, disease outbreak, insect infestation or irreparable damage to the land, the Commission may by order, and consistent with smoke management considerations and these field burning rules, permit the emergency open burning of more acreage than the maximum annual acreage limitation specified in rule 340-26-013(1)(a). The Commission shall act upon emergency burning requests within 10 days of receipt of a properly completed application form and supporting documentation:



Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: December 1, 1989

Agenda Item: R

Division: Regional Operations

Section: Enforcement

SUBJECT:

Department Enforcement Policy and Civil Penalty Procedure:
Request for authorization to conduct rulemaking hearing.

PURPOSE:

Make revisions to the Department's current enforcement and civil penalty rules based on the experience of working with the new system in order to improve it. Also to make the field burning program subject to the same enforcement policy and procedures as the rest of the Department's programs.

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 C
 - Public Notice Attachment D
- Issue a Contested Case Order
- Approve a Stipulated Order
- Enter an Order
 - Proposed Order Attachment ___

Meeting Date: 12/1/89
Agenda Item: R
Page 2

| | |
|--|------------|
| <input type="checkbox"/> Approve Department Recommendation | Attachment |
| <input type="checkbox"/> Variance Request | Attachment |
| <input type="checkbox"/> Exception to Rule | Attachment |
| <input type="checkbox"/> Informational Report | Attachment |
| <input type="checkbox"/> Other: (specify) | Attachment |

DESCRIPTION OF REQUESTED ACTION:

On March 3, 1989, the Commission adopted rules which codified the Department's enforcement policy and drastically changed the Department's civil penalty determination procedures. At that time, the Commission requested that the Department report within in six months on how the new rules were working and on the need for any changes.

On October 19, 1989, the Department reported to the Commission on the implementation of the rules and recommended changes based on the Department's experience in working with the rules.

At this time, the Department is requesting the Commission to authorize the Department to conduct a rulemaking hearing so that the Department may receive public comments and testimony concerning the proposed changes. The changes are necessary to clarify some areas of confusion, to make Division 12 applicable to the field burning program, to classify new violations in the areas of oil transport and oil spills, and to make housekeeping changes. The changes are described more fully in the an October 19, 1989, report to the Commission (Attachment G).

AUTHORITY/NEED FOR ACTION:

| | | |
|---|------------|----------|
| <input checked="" type="checkbox"/> Required by Statute: <u>House Bill 3493 & Senate Bill 1038 Amending ORS 468.130 & 468.140 & ORS 468.780-468.815</u> | Attachment | <u>E</u> |
| Enactment Date: <u>1989</u> | | |
| <input checked="" type="checkbox"/> Statutory Authority: <u>ORS 468.130 & 468.140</u> | Attachment | <u>F</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) | | |

Meeting Date: 12/1/89
Agenda Item: R
Page 2

| | |
|--|-------------------------------------|
| <input type="checkbox"/> Approve Department Recommendation | |
| <input type="checkbox"/> Variance Request | Attachment <input type="checkbox"/> |
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| <input type="checkbox"/> Other: (specify) | Attachment <input type="checkbox"/> |

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| <input type="checkbox"/> Other: _____ | Attachment _____ |
| <input type="checkbox"/> Time Constraints: (explain) | |

Meeting Date: 12/1/89
Agenda Item: R
Page 3

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"/> |
| <input checked="" type="checkbox"/> Other Related Reports/Rules/Statutes: | Attachment | <u>G</u> |
| <input checked="" type="checkbox"/> Supplemental Background Information | Attachment | <u>H</u> |

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The rule revisions do not affect the major thrust of the enforcement program and should have little or no affect on the majority of the regulated community. The regulated community is generally aware of the rules and how they work.

However, the field burning program was originally exempted from the rules. The Department is now proposing to make that program subject to the rules. Subjecting the field burning program to these rules would assure that all the members of the regulated community are treated similarly. Violation of field burning rules will result in higher penalties.

PROGRAM CONSIDERATIONS:

The Department believes that the enforcement rules have achieved much of the consistency the Department was striving for. It has helped the Department prioritize violations and its enforcement actions. However, the implementation of the rules has demonstrated the need for clarification and changes in several areas. Review of the rules demonstrates that several housekeeping changes are necessary also.

The Department believes that all programs under its jurisdiction should be enforced in a fair and consistent manner. This requires that field burning enforcement and penalties be incorporated into the rules.

With the adoption of criteria for settlement of penalties, the Department is proposing that the Commission delegate settlement authority to the Director. This change has been proposed subsequent to the Commission's October 19, 1989 workshop.

Meeting Date: 12/1/89
Agenda Item: R
Page 4

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Revise Division 12 as proposed and repeal OAR 340-26-026 (Attachment H, Division 26, Field Burning Civil Penalty Schedule). Revising the rules as proposed would result in the current enforcement procedures being applicable to all the Department's programs. This helps the Department achieve its goal of overall consistency in enforcement. Revising the rules would also add the new areas created by the 1989 legislature and allow the Department to make necessary housekeeping changes.
2. Do not revise Division 12. If the rules are not revised, enforcement procedure governing the field burning program would be inconsistent with those governing the rest of the Department's programs. Failure to revise the rules would also limit the Department's ability to assess civil penalties under new laws passed by the 1989 legislature.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission authorize a rulemaking hearing so that the Department may receive public comments and testimony concerning the proposed revisions to Division 12.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

At the time the current enforcement rules were adopted, the Commission requested the Department to report to the Commission within six months on how the rules were working. The proposed revisions are the result of the review and are consistent with the Commission's directive.

ISSUES FOR COMMISSION TO RESOLVE:

None at this time.

INTENDED FOLLOWUP ACTIONS:

Publish notice of rulemaking hearing in the Secretary of State's Administrative Bulletin and mail notice of rulemaking hearing to Department mailing list.

Meeting Date: 12/1/89
Agenda Item: R
Page 4

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ISSUES FOR COMMISSION TO RESOLVE:

None at this time.

INTENDED FOLLOWUP ACTIONS:

Publish notice of rulemaking hearing in the Secretary of State's Administrative Bulletin and mail notice of rulemaking hearing to Department mailing list.

Meeting Date: 12/1/89
Agenda Item: R
Page 5

Conduct rulemaking hearing and collect public testimony and comments.

Respond to testimony and comments.

Request adoption of revised rules at Commission's February 23, 1990,, meeting.

Approved:

Section:

Van A. Kollian

Division:

Legal Services

Director:

Fuller

Report Prepared By: Yone C. McNally

Phone: 229-5152

Date Prepared: October 29, 1989

YCM:b
GB9075
October 29, 1989

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>3</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>5</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>10</u> |
| <u>340-12-048 - Stipulated Penalties</u> | <u>10</u> |
| <u>340-12-049 - Civil Penalty for Damage Caused by Oil Spill</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>13</u> |
| <u>340-12-055 - Water Quality Classification of Violations</u> | <u>14</u> |
| <u>340-12-060 - On-Site Sewage Disposal Classification of Violations</u> | <u>15</u> |
| <u>340-12-065 - Solid Waste Management Classification of Violations</u> | <u>16</u> |
| <u>340-12-066 - Solid Waste Tire Management of Classification of</u> <u>Violations</u> | <u>17</u> |
| <u>340-12-067 - Underground Storage Tank Classification of Violations</u> | <u>18</u> |
| <u>340-12-068 - Hazardous Waste Management and Disposal</u> <u>Classification of Violations</u> | <u>20</u> |
| <u>340-12-069 - Oil and Hazardous Material Spill and Release</u> <u>Classification of Violations</u> | <u>22</u> |
| <u>340-12-071 - PCB Classification of Violations</u> | <u>22</u> |
| <u>340-12-073 - Environmental Cleanup Classification of Violations</u> | <u>23</u> |
| <u>340-12-074 - Environmental Cleanup Classification of Violations</u> | <u>23</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", [when used with respect to a result or to conduct described by a statute, rule, permit, standard or order defining a violation], means Respondent consciously and voluntarily took an action or omitted to take action and knew the probable consequences of so acting or omitting to act. [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)

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(Statutory Authority: ORS CH 468)

100

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.

(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).

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(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.

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(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**

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

No civil penalty issued by the Director pursuant to this matrix shall be less than fifty dollars (\$50) or more than ten thousand dollars (\$10,000) for each day of each violation. This matrix shall apply to the following types of violations:

- (a) Any violation related to air quality statutes, rules, permits or orders, except for residential open burning [and field burning];
- (b) Any violation related to of ORS 468.875 to 468.899 relating to asbestos abatement projects;

(c) water quality statutes, rules, permits or orders, except for violations of ORS 164.785(1) relating to the placement of offensive substances into waters of the state;

(d) Any violation related to underground storage tanks statutes, rules, permits or orders, except for failure to pay a fee due and owing under ORS 466.785 and 466.795;

(e) Any violation related to hazardous waste management statutes, rules, permits or orders, except for violations of ORS 466.890 related to damage to wildlife;

(f) Any violation related to oil and hazardous material spill and release statutes, rules and orders, except for negligent or intentional oil spills;

(g) Any violation related to polychlorinated biphenyls management and disposal statutes; and

(h) Any violation ORS 466.540 to 466.590 related to 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**

| | | | | |
|--|-----------------|-----------------|--------------|--------------|
| C l a s s o f V i o l a t i o n | 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) 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
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|--|--------------|-------|----------|-------|
| C l a s s o f V i o l a t i o n | | Major | Moderate | Minor |
| | Class I | \$400 | \$300 | \$200 |
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| | 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 there is 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)]s [is] are [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.

(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)

CIVIL PENALTY FOR DAMAGE CAUSED BY OIL SPILL

340-12-049

In addition to any other penalty provided by law, any person who wilfully or negligently causes an oil spill shall incur a civil penalty commensurate with the amount of damage incurred. Notwithstanding OAR 340-12-042 and OAR 340-12-045, the amount of the penalty shall be determined by the Director with the advice of the Director of Fish and Wildlife. In determining the amount of the penalty, the Director may consider the gravity of the violation, the previous record of the violator and such other considerations the Director deems appropriate.

AIR QUALITY CLASSIFICATION OF VIOLATIONS

340-12-050

Violations pertaining to air quality shall be classified as follows:

(1) Class One:

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)

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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)

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340-12-049

In addition to any other penalty provided by law, any person who wilfully or negligently causes an oil spill shall incur a civil penalty commensurate with the amount of damage incurred. Notwithstanding OAR 340-12-042 and OAR 340-12-045, the amount of the penalty shall be determined by the Director with the advice of the Director of Fish and Wildlife. In determining the amount of the penalty, the Director may consider the gravity of the violation, the previous record of the violator and such other considerations the Director deems appropriate.

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, of 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) [(l)] 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;]

[(i) Any other violation related to air quality which poses a minor risk of harm to public health or the environment.

(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;]

(i) [(o)] Any other violation related to air quality which poses a minor risk of harm to public health or the environment.

(4) In addition to any other penalty provided by law, any person planting contrary to the restrictions of subsection (1) of ORS 468.465 pertaining to the open burning of cereal grain acreage shall be assessed by the Department a civil penalty of \$25 for each acre planted contrary to the restrictions.

(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 [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) Failure of any ship carrying oil to have financial assurance as required in ORS 468.780 to 468.815 or rules adopted thereunder.
 - (j) [(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) Failure by any ship carrying oil to keep documentation of financial assurance on board or on file with the Department as required by ORS 468.780 to 468.815 or rules adopted thereunder.
 - (f) [(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)

(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 [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) Failure of any ship carrying oil to have financial assurance as required in ORS 468.780 to 468.815 or rules adopted thereunder.
- (j) [(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) Failure by any ship carrying oil to keep documentation of financial assurance on board or on file with the Department as required by ORS 468.780 to 468.815 or rules adopted thereunder.
- (f) [(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;]

(e) Failure to provide access to premises or records:

(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.

(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.

123

(h) 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;

(i)[(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 or Letter of Authorization;

(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;

(h) 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;

(i)[(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 or Letter of Authorization;

(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;

124

- (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 a compliance schedule contained in a solid waste disposal closure permit;] Violation of a condition or term of a Letter of Authorization;
- (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:
 - [(a) Establishing, expanding or operating a waste tire storage site without first obtaining a permit;]
 - (b) Disposing of waste tires at an unauthorized site;
 - (c) [Any v] Violation of the compliance schedule or fire safety requirements of a waste tire storage site permit;
 - (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];
 - (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;]
 - (f) Failure to provide access to premises or records;
 - (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) Establishing, expanding, or operating a waste tire storage site without first obtaining a permit:

(c) [(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.

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

(c)[(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;

(4) Whenever an underground storage tank fee is due and owing under ORS 466.785 or 466.795, the Director may issue a civil penalty not less twenty-five dollars (\$25) nor more than one hundred dollars (\$100) for each day the fee is due and owing.

(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;

(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) Violation of a Commission or Department order;

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

[(b) Violation of an order requiring remedial action;]

[(c) Violation of an order requiring removal action;]

(c)[(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;]

(b)[(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 is a Class Three violation.

(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.

STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS 183.335(1), this statement provides information on Environmental Quality Commission's intended action to adopt a rule.

(1) Legal Authority:

ORS 468.130 requires the Commission to adopt civil penalty schedules in order to effectuate its civil penalty authority.

Senate Bill 1038 authorizes the Department to seek civil penalties for violations related to the failure of a ship carrying oil to have financial assurance.

House Bill 3493 authorizes the Department to seek civil penalties in the amount commensurate to damage caused by a willful or negligent oil spill.

(2) Need for Rule:

On March 3, 1989, the Commission adopted rules which codified the Department's enforcement policy and drastically changed the Department's civil penalty determination procedures. At that time, the Commission requested that the Department report within six months on how the new rules were working and on the need for any changes. The Department reported to the Commission on October 19, 1989. The proposed revisions are based on the Department's experience in working with the rules.

(3) Principal Documents Relied Upon:

Senate Bill 1038; House Bill 3493; ORS Chapters 454, 459, 466, and 468; Report to the Environmental Quality Commission, October 19, 1989. These documents are available for review at the Department of Environmental Quality, Regional Operations, 10th floor, 811 S.W. Sixth Avenue, Portland, OR 97204.

LAND USE CONSISTENCY STATEMENT

The proposed rule does not affect land use as defined in the Department's coordination program approved by the Land Conservation and Development Commission.

Yone C. McNally
229-5152
October 29, 1989
GB9075B

FISCAL AND ECONOMIC IMPACT STATEMENT

The newly proposed rules, as the current rules, would have no direct fiscal or economic impact on individuals, public entities, and small and large businesses as the adoption of these rules set forth the procedure that Department is to follow. The adoption of these rules, by itself, will not require the expenditure of funds by any group within the regulated community as these rules do not require an affirmative act in order to come into compliance. The rules do not place any additional duties on the regulated communities in order to maintain compliance. There is no fiscal or economic on small business as a result of these rules.

The fiscal and economic impact of the proposed rules will come into play when a violation occurs. The actual fiscal impact would then depend on the type of violation, its seriousness and other factors including the violator's compliance history. In many instances, a violation would result in no fiscal impact as a civil penalty would not be assessed due to advance notice requirements. Thus, the fiscal and economic impact of the proposed rules would be highly individualized depending on the type of violation and the circumstances surrounding it. Depending on the activity engaged in, the total fiscal impact would be no greater than \$500 or \$10,000 per day of violation.

The fiscal and economic impact on small business would also be individualized. A small business is treated the same as all other regulated entities, including individuals, under these rules. Thus, a small business would only be affected if a violation warranted a civil penalty. The economic condition of each entity receiving a civil penalty is taken consideration when determining the penalty amount.

Yone C. McNally
229-5152
October 29, 1989
GB9075C

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

PROPOSED REVISION OF OREGON ADMINISTRATIVE RULES
CHAPTER 340, DIVISION 12, CIVIL PENALTY RULES

NOTICE OF PUBLIC HEARING

Date Prepared: October 29, 1989
Hearing Date: January 8, 1990
Comments Due: January 16, 1990

**WHO IS
AFFECTED:**

People to whom Oregon's air quality, noise pollution, water quality, solid waste, on-site sewage disposal and hazardous waste and materials regulations may apply.

**WHAT IS
PROPOSED:**

The DEQ is proposing to revise the civil penalty rules, OAR 340-12-026 through 12-080.

**WHAT ARE THE
HIGHLIGHTS:**

1. Proposed State Rule Revisions:

- >The application of the Department's enforcement policy and civil penalty procedures to field burning violations.
- >The classification of violations related to the transporting of oil by ships which fail to obtain financial assurance as required by Senate Bill 1038.
- >The authority to assess civil penalties in the amount commensurate with damage caused by willful or negligent oil spills as authorized by House Bill 3493.

**HOW TO
COMMENT:**

Copies of the complete proposed rule package may be obtained from the Regional Operations Division, Enforcement, in Portland (811 S.W. Sixth Avenue, Tenth Floor) or the regional office nearest you. For further information, contact Van A. Kollias at 229-6232.

A public hearing will be held before a hearings officer at:

2:00 p.m.
Friday, January 8, 1990
DEQ Offices, Tenth Floor, Room 10A
811 S.W. Sixth Avenue, Portland, Oregon

Oral and written comments will be accepted at the public hearing. Written comments may be sent to the DEQ Enforcement Section, 811 S.W. Sixth Avenue, Tenth Floor, Portland, OR 97204. Written comments must be received no later than 5:00 p.m., January 16, 1990.

(over)

D-1



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.

124

**WHAT IS THE
NEXT STEP:**

After public hearing, the Environmental Quality Commission may adopt rule amendments identical to the proposed amendments, adopt modified rule amendments on the same subject matter, or decline to act. The Commission's deliberation may come on February 23, 1990, as part of the agenda of the regularly scheduled Commission meeting. A Statement of Need, Fiscal and Economic Impact Statement, and Land Use Consistency Statement are attached to this notice.

GB9075D

Attachment D
Agenda Item 
12/1/89 EQC Meeting

WHAT IS THE
NEXT STEP:

After public hearing, the Environmental Quality Commission may adopt rule amendments identical to the proposed amendments, adopt modified rule amendments on the same subject matter, or decline to act. The Commission's deliberation may come on February 23, 1990, as part of the agenda of the regularly scheduled Commission meeting. A Statement of Need, Fiscal and Economic Impact Statement, and Land Use Consistency Statement are attached to this notice.

GB9075D

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1 - Van Kollas
Reg Opus

A-Engrossed House Bill 3493

Ordered by the House June 15
Including House Amendments dated June 15

Sponsored by Representatives DWYER, CEASE, AGRONS, CALHOON, CARTER, COURTNEY, DIX, DOMINY, EDMUNSON, GERSHON, HANLON, HANNEMAN, HOSTICKA, HUGO, KOTULSKI, MANNIX, MARKHAM, McTEAGUE, PICKARD, RIJKEN, ROBERTS, SCHOON, SHIPRACK, SOWA, WHITTY, Senators BRADBURY, BUNN, COHEN, McCOY

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.

Punishes persons intentionally or negligently discharging oil unlawfully into Oregon waters by making violation Class [B felony] A misdemeanor punishable by maximum fine of [\$100,000] \$2,500, maximum imprisonment for [10 years] one year, or both. Imposes civil penalty in addition to any other penalty provided by law, commensurate with amount of damage.

Establishes Oil Spillage Control Fund in General to receive penalties. Appropriates moneys from spillage fund to Department of Environmental Quality for cleanup and rehabilitation of affected fish and wildlife.

Declares emergency, effective July 1, 1989.

A BILL FOR AN ACT

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Relating to water pollution; creating new provisions; amending ORS 468.990; appropriating money; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to 5 of this Act are added to and made a part of ORS 468.780 to 468.815.

SECTION 2. The commission shall adopt rules necessary to carry out the provisions of sections 3 to 5 of this 1989 Act.

SECTION 3. Any person who wilfully or negligently causes or permits the discharge of oil into the waters of the state shall incur, in addition to any other penalty provided by law, a civil penalty commensurate with the amount of damage incurred. The amount of the penalty shall be determined by the Director of the Department of Environmental Quality with the advice of the State Fish and Wildlife Director after taking into consideration the gravity of the violation, the previous record of the violator in complying, or failing to comply, with the provisions of sections 2 to 5 of this 1989 Act, and such other considerations as the director considers appropriate. The penalty provided for in this section shall be imposed and enforced in accordance with ORS 468.135.

SECTION 4. (1) There is established an Oil Spillage Control Fund within the General Fund. This account shall be a revolving fund, the interest of which accrues to the Oil Spillage Control Fund.

(2) All penalties recovered under section 3 of this 1989 Act shall be paid into the Oil Spillage Control Fund. Such moneys are continuously appropriated to the Department of Environmental Quality for the advancement of costs incurred in carrying out cleanup activities and for the rehabilitation of affected fish and wildlife as provided under ORS 468.745.

(3) With the approval of the commission, the moneys in the Oil Spillage Control Fund may be invested as provided by ORS 293.701 to 293.716, and earnings from such investment shall be credited

NOTE: After the end of the session, the bill shall be printed in the Oregon Statutes.

A-Engrossed Senate Bill 1038

Ordered by the Senate May 23
Including Senate Amendments dated May 23

Sponsored by COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

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.

Establishes financial assurance ~~(requirements)~~ provisions for ~~(person having control over)~~ ships over 300 gross tons that transport bulk oil ~~(or hazardous material transported)~~ in waters of state. Specifies methods by which assurance may be established. ~~(Requires port authority to suspend operation of ship until demonstration of proof that requirements have been met.)~~ Requires Environmental Quality Commission, by January 1, 1990, to adopt rules to carry out Act. Allows required documentation of compliance to be kept on ship or filed with Department of Environmental Quality. Requires owner or operator to maintain on ship certificate of compliance with Federal Water Pollution Control Act. Requires maritime pilot to report to department owner or operator of ship carrying oil without required financial assurances. *(Declares emergency, effective on passage.)*

A BILL FOR AN ACT

1
2 Relating to oil spills; creating new provisions; and amending ORS 468.140.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** Sections 2 to 5 of this Act are added to and made a part of ORS 468.780 to 468.815.

5 **SECTION 2.** The Legislative Assembly finds that oil spills, hazardous material spills and other
6 forms of incremental pollution present serious danger to the fragile marine environment of the state.
7 Therefore, it is the intent of sections 2 to 5 of this 1989 Act to establish financial assurance for ships
8 that transport oil and other hazardous material in the waters of the state.

9 **SECTION 3.** (1) Any ship over 300 gross tons, that transports oil in bulk as cargo, using any
10 port or place in this state or the waters of the state shall establish, under rules adopted by the
11 Environmental Quality Commission, evidence of financial assurance in the amount of the greater of:

- 12 (a) \$1 million; or
- 13 (b) \$150 per gross ton of the ship.

14 (2) The financial assurance established under subsection (1) of this section shall meet the li-
15 ability to the State of Oregon for:

- 16 (a) Actual costs for removal of spills of oil;
- 17 (b) Civil penalties and fines imposed in connection with the spill of oil; and
- 18 (c) Natural resource damages.

19 **SECTION 4.** (1) Financial assurance may be established by any of the following methods or a
20 combination of these methods acceptable to the Environmental Quality Commission:

- 21 (a) Evidence of insurance;
- 22 (b) Surety bond;
- 23 (c) Qualifications as a self-insurer; or
- 24 (d) Any other evidence of financial assurance approved by the commission.

NOTE: This bill amends ORS 468.140, ORS 468.780, ORS 468.781, ORS 468.782, ORS 468.783, ORS 468.784, ORS 468.785, ORS 468.786, ORS 468.787, ORS 468.788, ORS 468.789, ORS 468.810, ORS 468.811, ORS 468.812, ORS 468.813, ORS 468.814, ORS 468.815, ORS 468.816, ORS 468.817, ORS 468.818, ORS 468.819, ORS 468.820, ORS 468.821, ORS 468.822, ORS 468.823, ORS 468.824, ORS 468.825, ORS 468.826, ORS 468.827, ORS 468.828, ORS 468.829, ORS 468.830, ORS 468.831, ORS 468.832, ORS 468.833, ORS 468.834, ORS 468.835, ORS 468.836, ORS 468.837, ORS 468.838, ORS 468.839, ORS 468.840, ORS 468.841, ORS 468.842, ORS 468.843, ORS 468.844, ORS 468.845, ORS 468.846, ORS 468.847, ORS 468.848, ORS 468.849, ORS 468.850, ORS 468.851, ORS 468.852, ORS 468.853, ORS 468.854, ORS 468.855, ORS 468.856, ORS 468.857, ORS 468.858, ORS 468.859, ORS 468.860, ORS 468.861, ORS 468.862, ORS 468.863, ORS 468.864, ORS 468.865, ORS 468.866, ORS 468.867, ORS 468.868, ORS 468.869, ORS 468.870, ORS 468.871, ORS 468.872, ORS 468.873, ORS 468.874, ORS 468.875, ORS 468.876, ORS 468.877, ORS 468.878, ORS 468.879, ORS 468.880, ORS 468.881, ORS 468.882, ORS 468.883, ORS 468.884, ORS 468.885, ORS 468.886, ORS 468.887, ORS 468.888, ORS 468.889, ORS 468.890, ORS 468.891, ORS 468.892, ORS 468.893, ORS 468.894, ORS 468.895, ORS 468.896, ORS 468.897, ORS 468.898, ORS 468.899, ORS 468.900, ORS 468.901, ORS 468.902, ORS 468.903, ORS 468.904, ORS 468.905, ORS 468.906, ORS 468.907, ORS 468.908, ORS 468.909, ORS 468.910, ORS 468.911, ORS 468.912, ORS 468.913, ORS 468.914, ORS 468.915, ORS 468.916, ORS 468.917, ORS 468.918, ORS 468.919, ORS 468.920, ORS 468.921, ORS 468.922, ORS 468.923, ORS 468.924, ORS 468.925, ORS 468.926, ORS 468.927, ORS 468.928, ORS 468.929, ORS 468.930, ORS 468.931, ORS 468.932, ORS 468.933, ORS 468.934, ORS 468.935, ORS 468.936, ORS 468.937, ORS 468.938, ORS 468.939, ORS 468.940, ORS 468.941, ORS 468.942, ORS 468.943, ORS 468.944, ORS 468.945, ORS 468.946, ORS 468.947, ORS 468.948, ORS 468.949, ORS 468.950, ORS 468.951, ORS 468.952, ORS 468.953, ORS 468.954, ORS 468.955, ORS 468.956, ORS 468.957, ORS 468.958, ORS 468.959, ORS 468.960, ORS 468.961, ORS 468.962, ORS 468.963, ORS 468.964, ORS 468.965, ORS 468.966, ORS 468.967, ORS 468.968, ORS 468.969, ORS 468.970, ORS 468.971, ORS 468.972, ORS 468.973, ORS 468.974, ORS 468.975, ORS 468.976, ORS 468.977, ORS 468.978, ORS 468.979, ORS 468.980, ORS 468.981, ORS 468.982, ORS 468.983, ORS 468.984, ORS 468.985, ORS 468.986, ORS 468.987, ORS 468.988, ORS 468.989, ORS 468.990, ORS 468.991, ORS 468.992, ORS 468.993, ORS 468.994, ORS 468.995, ORS 468.996, ORS 468.997, ORS 468.998, ORS 468.999, ORS 469.000.

A-Engrossed
Senate Bill 1038

Ordered by the Senate May 23
Including Senate Amendments dated May 23

Sponsored by COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

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.

Establishes financial assurance ~~(requirements)~~ provisions for ~~(person having control over)~~ ships over 300 gross tons that transport bulk oil ~~(or hazardous material transported)~~ in waters of state. Specifies methods by which assurance may be established. ~~(Requires port authority to suspend operation of ship until demonstration of proof that requirements have been met.)~~ Requires Environmental Quality Commission, by January 1, 1990, to adopt rules to carry out Act. Allows required documentation of compliance to be kept on ship or filed with Department of Environmental Quality. Requires owner or operator to maintain on ship certificate of compliance with Federal Water Pollution Control Act. Requires maritime pilot to report to department owner or operator of ship carrying oil without required financial assurances.
(Declares emergency, effective on passage.)

A BILL FOR AN ACT

1
2 Relating to oil spills; creating new provisions; and amending ORS 468.140.

3 Be It Enacted by the People of the State of Oregon:

4 SECTION 1. Sections 2 to 5 of this Act are added to and made a part of ORS 468.780 to 468.815.

5 SECTION 2. The Legislative Assembly finds that oil spills, hazardous material spills and other
6 forms of incremental pollution present serious danger to the fragile marine environment of the state.
7 Therefore, it is the intent of sections 2 to 5 of this 1989 Act to establish financial assurance for ships
8 that transport oil and other hazardous material in the waters of the state.

9 SECTION 3. (1) Any ship over 300 gross tons, that transports oil in bulk as cargo, using any
10 port or place in this state or the waters of the state shall establish, under rules adopted by the
11 Environmental Quality Commission, evidence of financial assurance in the amount of the greater of:

- 12 (a) \$1 million; or
13 (b) \$150 per gross ton of the ship.

14 (2) The financial assurance established under subsection (1) of this section shall meet the li-
15 ability to the State of Oregon for:

- 16 (a) Actual costs for removal of spills of oil;
17 (b) Civil penalties and fines imposed in connection with the spill of oil; and
18 (c) Natural resource damages.

19 SECTION 4. (1) Financial assurance may be established by any of the following methods or a
20 combination of these methods acceptable to the Environmental Quality Commission:

- 21 (a) Evidence of insurance;
22 (b) Surety bond;
23 (c) Qualifications as a self-insurer; or
24 (d) Any other evidence of financial assurance approved by the commission.

137

1 (2) Any bond filed shall be issued by a bonding company authorized to do business in the United
2 States.

3 (3) Documentation of the financial assurance shall be kept on the ship or filed with the depart-
4 ment. The owner or operator of any other ship shall maintain on the ship a certificate issued by the
5 United States Coast Guard evidencing compliance with the requirements of section 311 of the Fed-
6 eral Water Pollution Control Act, P.L. 92-500, as amended.

7 **SECTION 5.** The maritime pilot piloting a ship subject to the provisions of section 3 of this 1989
8 Act shall report to the Department of Environmental Quality any ship owner or operator having
9 control over oil who does not provide financial assurance as required under sections 3 and 4 of this
10 1989 Act.

11 **SECTION 6.** Not later than January 1, 1990, the Environmental Quality Commission shall adopt
12 rules to carry out the provisions of sections 2 to 5 of this Act.

13 **SECTION 7.** ORS 468.140 is amended to read:

14 468.140. (1) In addition to any other penalty provided by law, any person who violates any of the
15 following shall incur a civil penalty for each day of violation in the amount prescribed by the
16 schedule adopted under ORS 468.130:

17 (a) The terms or conditions of any permit required or authorized by law and issued by the de-
18 partment or a regional air quality control authority.

19 (b) Any provision of ORS 164.785, 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425,
20 454.505 to 454.535, 454.605 to 454.745, ORS chapter 467 and this chapter.

21 (c) Any rule or standard or order of the commission adopted or issued pursuant to ORS 448.305,
22 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745, ORS
23 chapter 467 and this chapter.

24 (d) Any term or condition of a variance granted by the commission or department pursuant to
25 ORS 467.060.

26 (e) Any rule or standard or order of a regional authority adopted or issued under authority of
27 ORS 468.535 (1).

28 (f) The financial assurance requirement under sections 3 and 4 of this 1989 Act or any
29 rule related to the financial assurance requirement under section 3 of this 1989 Act.

30 (2) Each day of violation under subsection (1) of this section constitutes a separate offense.

31 (3)(a) In addition to any other penalty provided by law, any person who intentionally or
32 negligently causes or permits the discharge of oil into the waters of the state shall incur a civil
33 penalty not to exceed the amount of \$20,000 for each violation.

34 (b) In addition to any other penalty provided by law, any person who violates the terms or
35 conditions of a permit authorizing waste discharge into the air or waters of the state or violates any
36 law, rule, order or standard in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425,
37 454.505 to 454.535, 454.605 to 454.745 and this chapter relating to air or water pollution shall incur
38 a civil penalty not to exceed the amount of \$10,000 for each day of violation.

39 (4) Paragraphs (c) and (e) of subsection (1) of this section do not apply to violations of motor
40 vehicle emission standards which are not violations of standards for control of noise emissions.

41 (5) Notwithstanding the limits of ORS 468.130 (1) and in addition to any other penalty provided
42 by law, any person who intentionally or negligently causes or permits open field burning contrary
43 to the provisions of ORS 468.450, 468.455 to 468.480, 476.380 and 478.960 shall be assessed by the
44 department a civil penalty of at least \$20 but not more than \$40 for each acre so burned. Any fines

1 collected by the department pursuant to this subsection shall be deposited with the State Treasurer
2 to the credit of the General Fund and shall be available for general governmental expense.
3

1 collected by the department pursuant to this subsection shall be deposited with the State Treasurer
2 to the credit of the General Fund and shall be available for general governmental expense.
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period, or unless the person incurring the penalty shall otherwise have received actual notice of the violation not less than five days prior to the violation for which a penalty is imposed.

(2) No advance notice shall be required under subsection (1) of this section if:

(a) The violation is intentional or consists of disposing of solid waste or sewage at an unauthorized disposal site or constructing a sewage disposal system without the department's permit.

(b) The water pollution, air pollution or air contamination source would normally not be in existence for five days, including but not limited to open burning.

(c) The water pollution, air pollution or air contamination source might leave or be removed from the jurisdiction of the department or regional air quality control authority, including but not limited to ships.

(d) The penalty to be imposed is for a violation of ORS 466.005 to 466.385.

(e) The penalty to be imposed is for a violation of ORS 468.893 (8) relating to the control of asbestos fiber releases into the environment. [Formerly 449.967: 1977 c.317 §2; 1983 c.703 §17; 1985 c.735 §3; 1987 c.741 §19]

468.130 Schedule of civil penalties; factors to be considered in imposing civil penalties. (1) The commission shall adopt by rule a schedule or schedules establishing the amount of civil penalty that may be imposed for a particular violation. Except as provided in ORS 468.140 (3), no civil penalty shall exceed \$500 per day. Where the classification involves air pollution, the commission shall consult with the regional air quality control authorities before adopting any classification or schedule.

(2) In imposing a penalty pursuant to the schedule or schedules authorized by this section, the commission and regional air quality control authorities shall consider the following factors:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(b) Any prior violations of statutes, rules, orders and permits pertaining to water or air pollution or air contamination or solid waste disposal.

(c) The economic and financial conditions of the person incurring a penalty.

(d) The gravity and magnitude of the violation.

(e) Whether the violation was repeated or continuous.

(f) Whether the cause of the violation was an unavoidable accident, negligence or an intentional act.

(g) The violator's cooperativeness and efforts to correct the violation.

(h) Any relevant rule of the commission.

(3) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the commission or regional authority considers proper and consistent with the public health and safety.

(4) The commission may by rule delegate to the department, upon such conditions as deemed necessary, all or part of the authority of the commission provided in subsection (3) of this section to remit or mitigate civil penalties. [Formerly 449.970: 1977 c.317 §3; 1987 c.266 §2]

468.135 Procedures to collect civil penalties. (1) Subject to the advance notice provisions of ORS 468.125, any civil penalty imposed under ORS 468.140 shall become due and payable when the person incurring the penalty receives a notice in writing from the director of the department, or from the director of a regional air quality control authority, if the violation occurs within its territory. The notice referred to in this section shall be sent by registered or certified mail and shall include:

(a) A reference to the particular sections of the statute, rule, standard, order or permit involved;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed; and

(d) A statement of the party's right to request a hearing.

(2) The person to whom the notice is addressed shall have 20 days from the date of mailing of the notice in which to make written application for a hearing before the commission or before the board of directors of a regional air quality control authority.

(3) All hearings shall be conducted pursuant to the applicable provisions of ORS 183.310 to 183.550.

(4) Unless the amount of the penalty is paid within 10 days after the order becomes final, the order shall constitute a judgment and may be filed in accordance with the provisions of ORS 18.320 to 18.370. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(5) All penalties recovered under ORS 468.140 shall be paid into the State Treasury and credited to the General Fund, or in the event the penalty is recovered by a regional air quality control authority, it shall be paid into the county treasury of the county in which the violation occurred. [Formerly 449.973]

468.140 Civil penalties for specified violations. (1) In addition to any other penalty provided by law, any person who violates any of the following shall incur a civil penalty for each day of violation in the amount prescribed by the schedule adopted under ORS 468.130:

(a) The terms or conditions of any permit required or authorized by law and issued by the department or a regional air quality control authority.

(b) Any provision of ORS 164.785, 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745, ORS chapter 467 and this chapter.

(c) Any rule or standard or order of the commission adopted or issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745, ORS chapter 467 and this chapter.

(d) Any term or condition of a variance granted by the commission or department pursuant to ORS 467.060.

(e) Any rule or standard or order of a regional authority adopted or issued under authority of ORS 468.535 (1).

(2) Each day of violation under subsection (1) of this section constitutes a separate offense.

(3)(a) In addition to any other penalty provided by law, any person who intentionally or negligently causes or permits the discharge of oil into the waters of the state shall incur a civil penalty not to exceed the amount of \$20,000 for each violation.

(b) In addition to any other penalty provided by law, any person who violates the terms or conditions of a permit authorizing waste discharge into the air or waters of the state or violates any law, rule, order or standard in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter relating to air or water pollution shall incur a civil penalty not to exceed the amount of \$10,000 for each day of violation.

(4) Paragraphs (c) and (e) of subsection (1) of this section do not apply to violations of motor vehicle emission standards which are not violations of standards for control of noise emissions.

(5) Notwithstanding the limits of ORS 468.130 (1) and in addition to any other penalty provided by law, any person who intentionally or negligently causes or permits open field burning contrary to the provisions of ORS 468.450, 468.455 to 468.480, 476.380 and 478.960 shall be assessed by the department a civil penalty of at least \$20 but not more than \$40 for each acre so burned. Any fines collected by the department pursuant to this subsection shall be deposited with the State Treasurer to the credit of the General Fund and shall be available for general governmental expense. [Formerly 449.993; 1975 c.559 §14; 1977 c.511 §5; 1979 c.353 §1; 1987 c.513 §1]

POLLUTION CONTROL FACILITIES TAX CREDIT

468.150 Field sanitation and straw utilization and disposal methods as "pollution control facilities." After alternative methods for field sanitation and straw utilization and disposal are approved by the committee and the department, "pollution control facility," as defined in ORS 468.155, shall include such approved alternative methods and persons purchasing and utilizing such methods shall be eligible for the benefits allowed by ORS 468.155 to 468.190. [1975 c.559 §15]

Notes: 468.150 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 468 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

468.155 Definitions for ORS 468.155 to 468.190. (1)(a) As used in ORS 468.155 to 468.190, unless the context requires otherwise "pollution control facility" or "facility" means any land, structure, building, installation, excavation, machinery, equipment or device, or any addition to, reconstruction of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device reasonably used, erected, constructed or installed by any person if:

(A) The principal purpose of such use, erection, construction or installation is to comply with a requirement imposed by the department, the federal Environmental Protection Agency or regional air pollution authority to prevent, control or reduce air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil; or

(B) The sole purpose of such use, erection, construction or installation is to prevent, control or reduce a substantial quantity of air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil.

(5) All penalties recovered under ORS 468.140 shall be paid into the State Treasury and credited to the General Fund, or in the event the penalty is recovered by a regional air quality control authority, it shall be paid into the county treasury of the county in which the violation occurred. [Formerly 449.973]

468.140 Civil penalties for specified violations. (1) In addition to any other penalty provided by law, any person who violates any of the following shall incur a civil penalty for each day of violation in the amount prescribed by the schedule adopted under ORS 468.130:

(a) The terms or conditions of any permit required or authorized by law and issued by the department or a regional air quality control authority.

(b) Any provision of ORS 164.785, 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745, ORS chapter 467 and this chapter.

(c) Any rule or standard or order of the commission adopted or issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745, ORS chapter 467 and this chapter.

(d) Any term or condition of a variance granted by the commission or department pursuant to ORS 467.060.

(e) Any rule or standard or order of a regional authority adopted or issued under authority of ORS 468.535 (1).

(2) Each day of violation under subsection (1) of this section constitutes a separate offense.

(3)(a) In addition to any other penalty provided by law, any person who intentionally or negligently causes or permits the discharge of oil into the waters of the state shall incur a civil penalty not to exceed the amount of \$20,000 for each violation.

(b) In addition to any other penalty provided by law, any person who violates the terms or conditions of a permit authorizing waste discharge into the air or waters of the state or violates any law, rule, order or standard in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter relating to air or water pollution shall incur a civil penalty not to exceed the amount of \$10,000 for each day of violation.

(4) Paragraphs (c) and (e) of subsection (1) of this section do not apply to violations of motor vehicle emission standards which are not violations of standards for control of noise emissions.

(5) Notwithstanding the limits of ORS 468.130 (1) and in addition to any other penalty provided by law, any person who intentionally or negligently causes or permits open field burning contrary to the provisions of ORS 468.450, 468.455 to 468.480, 476.380 and 478.960 shall be assessed by the department a civil penalty of at least \$20 but not more than \$40 for each acre so burned. Any fines collected by the department pursuant to this subsection shall be deposited with the State Treasurer to the credit of the General Fund and shall be available for general governmental expense. [Formerly 449.993; 1975 c.559 §14; 1977 c.511 §5; 1979 c.353 §1; 1987 c.513 §1]

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(A) The principal purpose of such use, erection, construction or installation is to comply with a requirement imposed by the department, the federal Environmental Protection Agency or regional air pollution authority to prevent, control or reduce air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil; or

(B) The sole purpose of such use, erection, construction or installation is to prevent, control or reduce a substantial quantity of air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil.



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.

EQC Workshop Item

Enforcement Rules/Discussion of Implementation Experience

Page 2

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.

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103

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.

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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.

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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:

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:

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___ 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 normal 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.)

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?

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?

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.

6-17

17

SECRET

CONFIDENTIAL

TOP SECRET

SECRET

CONFIDENTIAL

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TOP SECRET

SECRET

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

25
11-19

11-19

STATE OF TEXAS
COUNTY OF DALLAS

Know all men by these presents, that

JOHN A. SMITH, of the County of Dallas, State of Texas, do hereby certify that

JOHN A. SMITH, of the County of Dallas, State of Texas, is the owner of the following described land, to-wit:

Acres

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY

Attachment 3-1

NOTICE OF INVESTIGATION

To: _____
(Person or Company)

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

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.
_____ p.m.
(Date)

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

DEPARTMENT OF ENVIRONMENTAL QUALITY
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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 |

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Suite 120
Salem, OR 97310
378-8240

Counties served:

| | |
|---------|---------|
| Benton | Marion |
| Lane | Polk |
| Lincoln | Yamhill |
| Linn | |

ENFORCEMENT ACTIONS COMPLETED

09-15-1989

PAGE: 1

| SOURCE | LOCATION | PRO-GRAM | DATE OF VIOLATION | DESCRIPTION OF VIOLATION | ENFORCEMENT NUMBER | TYPE OF ACTION | COMPLIANCE SCHEDULE |
|---|----------------------------|----------|--------------------------|--|-------------------------|----------------|---|
| Port Of Astoria | Astoria | AQ | 11-07-1988 | Open Burning Prohibited Materials | NWR-89-07 | CP | |
| Lammi Sand And Rock Ponds | 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 Smurfit Neenaprint Corp | MULTNOMAH CO. West Linn | HW AQ | 08-01-1989 03-08-1989 | IMPROPER DISPOSAL OF HW Odors From Pond | NWR-89-143 NWR-89-60 | NON CP | 12/31/89 (12/89) remove 7000 dry tons of sludge from pond |
| Louis Masc, | 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

5-23

10/1

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 | VIOL. 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 BURNING | 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 | VIOL. 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 SEWER 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

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 SEVERE 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 | WG | PERMIT VIO. & SLOW LEAK IN 2 HOMES | 08-11-1989 | 10 | | |
| FLYING J SERVICE STATION CLACKAMAS CO | NWR-89-119 | NON | WG | FAILURE TO SUBMIT REPORT | 08-11-1989 | 10 | | |
| PGE-BEAVER COLUMBIA CO. | NWR-89-123 | NON | WG | TSS EXCEEDS PERMIT LIMIT | 08-16-1989 | 15 | | |
| THOUSAND TRAILS TILLAMOOK CO. | NWR-89-128 | NON | WG | FAILURE TO MONITOR | 08-18-1989 | 17 | | |
| CAPE LOOKOUT STATE PARK TILLAMOOK CO. | NWR-89-132 | NON | WG | FAILURE TO MONITOR | 08-21-1989 | 20 | | |
| TILLAMOOK CO. CREAMERY TILLAMOOK CO. | NWR-89-140 | NON | WG | EXCEEDED PERMIT | 08-30-1989 | 29 | | |

COUNT: 30

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 |
|--------------------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|---------------------|
| Water 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 |
| Air 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 |
| Industrial Pen | | | | | | | | (3) 4,000 | (1) 8,000 |
| Airport Waste | | | | | | (2) 7,500 | (2) 6,000 | (2) 5,000 | |
| Mar Sources | (1) 500 | (2) 4,850 | (1) 2,500 | (2) 550 | (1) 750 | (1) 7,500 | (1) 100 | (3) 7,050 | |
| Mar Slip Per | | | | | | | | (3) 5,410 | (2) 3,610 |
| Industrial/ Power | (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) 24,090 |
| Other Air/Soil/Sludge: | | | | | | | | | |
| Industrial Waste | | | | (1) 2,500 | (7) 23,500 | (4) 25,500 | 15 22,000 | (1) 7,500 | (9) 80,300 |
| Soil Waste | | (2) 1,350 | | | (3) 1,150 | | | | (1) 3,750 |
| Other | | | | | | | | | (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 |

5-1
27

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.

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.
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340-12-030

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- (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.

OAR12 (9/89)

6-1

(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;

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

| Class | Major | Moderate | Minor |
|-----------|---------|----------|---------|
| Class I | \$5,000 | \$2,500 | \$1,000 |
| Class II | \$2,000 | \$1,000 | \$500 |
| Class III | \$500 | \$250 | \$100 |

No civil penalty issued by the Director pursuant to this matrix shall be less than fifty dollars (\$50) or more than ten thousand dollars (\$10,000) for each day of each violation. This matrix shall apply to the following types of violations:

- (a) Any violation related to air quality statutes, rules, permits or orders, except for residential open burning and field burning;
- (b) Any violation related to of ORS 468.875 to 468.899 relating to asbestos abatement projects;
- (c) water quality statutes, rules, permits or orders, except for violations of ORS 164.785(1) relating to the placement of offensive substances into waters of the state;
- (d) Any violation related to underground storage tanks statutes, rules, permits or orders, except for failure to pay a fee due and owing under ORS 466.785 and 466.795;
- (e) Any violation related to hazardous waste management statutes, rules, permits or orders, except for violations of ORS 466.890 related to damage to wildlife;
- (f) Any violation related to oil and hazardous material spill and release statutes, rules and orders, except for negligent or intentional oil spills;

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 |
|--------------------------------|---------|----------|---------|
| Civil Sanitation Class I | \$5,000 | \$2,500 | \$1,000 |
| Violations Class II | \$2,000 | \$1,000 | \$500 |
| Attorney Class III | \$500 | \$250 | \$100 |

No civil penalty issued by the Director pursuant to this matrix shall be less than fifty dollars (\$50) or more than ten thousand dollars (\$10,000) for each day of each violation. This matrix shall apply to the following types of violations:

- (a) Any violation related to air quality statutes, rules, permits or orders, except for residential open burning and field burning;
- (b) Any violation related to of ORS 468.875 to 468.899 relating to asbestos abatement projects;
- (c) water quality statutes, rules, permits or orders, except for violations of ORS 164.785(1) relating to the placement of offensive substances into waters of the state;
- (d) Any violation related to underground storage tanks statutes, rules, permits or orders, except for failure to pay a fee due and owing under ORS 466.785 and 466.795;
- (e) Any violation related to hazardous waste management statutes, rules, permits or orders, except for violations of ORS 466.890 related to damage to wildlife;
- (f) Any violation related to oil and hazardous material spill and release statutes, rules and orders, except for negligent or intentional oil spills;

170

(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 $BP + [(0.1 \times BP)(P + H + E + O + R + C)]$ 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;

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 $BP + [(0.1 \times BP)(P + H + E + O + R + C)]$ 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;

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); *which poses a major risk of harm to public health or the environment*

(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;

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)^f; *which poses a major risk of harm to public health or the environment*

(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 airfews set forth in OAR 340-15-040(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 [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;

(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 [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;]

(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];

OAR12 (9/89)

6-16

(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

(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;

(j) [(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.

(1) 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;~~

- (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)

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(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.

1. The first section of the document discusses the general principles of the organization and its objectives. It outlines the mission and vision statements, which are central to the organization's identity and purpose.

- (a) The first section of the document discusses the general principles of the organization and its objectives. It outlines the mission and vision statements, which are central to the organization's identity and purpose.
- (b) The second section of the document discusses the organizational structure and the roles of the various departments. It details the reporting lines and the responsibilities of each department.
- (c) The third section of the document discusses the organizational culture and the values that guide the organization's actions. It describes the behaviors and attitudes that are expected of all employees.

ADMINISTRATIVE PROCEDURES AND POLICIES

- (1) The first section of this part discusses the administrative procedures and policies that govern the organization's operations. It covers areas such as recruitment, training, and performance management.
- (2) The second section of this part discusses the financial management policies and procedures. It details the budgeting process, the approval of expenditures, and the reporting requirements.
- (3) The third section of this part discusses the human resources policies and procedures. It covers areas such as employee benefits, disciplinary actions, and the grievance procedure.
- (4) The fourth section of this part discusses the information management policies and procedures. It covers areas such as data security, record keeping, and the use of information technology.
- (5) The fifth section of this part discusses the legal and compliance policies and procedures. It covers areas such as the organization's obligations under applicable laws and regulations, and the procedures for ensuring compliance.

The document concludes with a summary of the key points discussed in the preceding sections. It emphasizes the importance of adherence to the organizational policies and procedures, and the role of each employee in the success of the organization. The document is intended to serve as a guide for all employees and to ensure that the organization operates in a consistent and efficient manner.

Winter Burning Season Regulations

340-26-020 [DEQ 29, f. 6-12-71, ef. 7-12-71;
DEQ 93(Temp), f. & ef. 7-11-75 thru 11-28-75;
DEQ 104, f. & ef. 12-26-75;
DEQ 114, f. 6-4-76;
DEQ 138, f. 6-30-77;
DEQ 6-1978, f. 4-18-78;
DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78;
DEQ 2-1980, f. & ef. 1-21-80;
DEQ 12-1980, f. & ef. 4-21-80;
DEQ 9-1981, f. & ef. 3-19-81;
Repealed by DEQ 5-1984, f. & ef. 3-7-84]

Civil Penalties

340-26-025 In addition to any other penalty provided by law:

(1) Any person who intentionally or negligently causes or allows open field burning contrary to the provisions of ORS 468.450, 468.455 to 468.480, 476.380, and 478.960 or these rules shall be assessed by the Department a civil penalty of at least \$20, but not more than \$40 for each acre so burned.

(2) In lieu of any per-acre civil penalty assessed pursuant to section (1) of this rule, the Director may assess a specific civil penalty for any open field burning violation by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be established consistent with the following schedule:

(a) Not less than \$500 nor more than \$10,000 upon any person who:

(A) Causes or allows open field burning on any acreage which has not been registered with the Department for such purposes.

(B) Causes or allows open field burning on any acreage without first obtaining and readily demonstrating a valid open field burning permit for all acreage so burned.

(b) Not less than \$300 nor more than \$10,000 upon any person who fails to actively extinguish all flames and major smoke sources when prohibition conditions are imposed by the Department or when instructed to do so by any agent or employe of the Department.

(c) Not less than \$200 nor more than \$10,000 upon any person who:

(A) Conducts burning using an approved alternative method contrary to any specific conditions or provisions governing such method.

height required for burning based upon cumulative hours of smoke intrusion in the Eugene-Springfield area as follows:

(A) Except as provided in paragraph (B) of this subsection, burning shall not be permitted whenever the effective mixing height is less than the minimum allowable height specified in Table 1, and by reference made a part of these rules.

(B) Notwithstanding the effective mixing height restrictions of paragraph (A) of this subsection, the Department may authorize burning of up to 1000 acres total per day for the Willamette Valley, consistent with smoke management considerations and these rules.

(8) Limitations on burning based on rainfall:

(a) Burning shall not be permitted in an area for one drying day (up to a maximum of four consecutive drying days) for each 0.10 inch increment of rainfall received per day at the nearest reliable measuring station.

(b) The Department may waive the restrictions of subsection (a) of this section when dry fields are available as a result of special field preparation or condition, irregular rainfall patterns, or unusually high evaporative weather condition.

(9) Other discretionary provisions and restrictions:

(a) The Department may require special field preparations before burning, such as, but not limited to, mechanical fluffing of residues, when conditions in its judgement warrant such action.

(b) The Department may designate specified periods following permit issuance within which time active field ignition must be initiated and/or all flames must be actively extinguished before said permit is automatically rendered invalid.

(c) The Department may designate additional areas as priority areas when conditions in its judgement warrant such action.

(B) Fails to readily demonstrate at the site of the burn operation the capability to monitor the Department's field burning schedule broadcasts.

(d) Not less than \$50 nor more than \$10,000 upon any person who commits any other violation pertaining to the rules of this Division.

(3) In establishing a civil penalty greater than the minimum amount specified in sections (1) and (2) of this rule, the Director may consider any mitigating and aggravating factors as provided for in OAR 340-12-045.

(4) Any person planting contrary to the restrictions of subsection (1) of ORS 468.465 pertaining to the open burning of cereal grain acreage shall be assessed by the Department a civil penalty of \$25 for each acre planted contrary to the restrictions.]

Tax Credits for Approved Alternative Methods, and Approved Alternative Facilities

340-26-030 [DEQ 114, f. & ef. 6-4-76;
DEQ 138, f. 6-30-77;
DEQ 6-1978, f. & ef. 4-18-78;
DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78;
DEQ 2-1980, f. & ef. 1-21-80;
DEQ 12-1980, f. & ef. 4-21-80;
DEQ 9-1981, f. & ef. 3-19-81;
DEQ 5-1984, f. & ef. 3-7-84;
Repealed by DEQ 12-1984, f. & ef. 7-13-84]

Burning by Public Agencies (Training Fires)

340-26-031 Open field burning on grass seed or cereal grain acreage by or for any public agency for official purposes, including the training of fire-fighting personnel, may be permitted by the Department on a prescheduled basis consistent with smoke management considerations and subject to the following conditions:

(1) Such burning must be deemed necessary by the official local authority having jurisdiction and must be conducted in a manner consistent with its purpose.

(2) Such burning must be limited to the minimum number of acres and occasions reasonably needed.

(3) Such burning must comply with the provisions of rules 340-26-010 through 340-26-013.

Preparatory Burning

340-26-033 The Department may allow preparatory burning of portions of selected problem fields, consistent with smoke management considerations and subject to the following conditions:

- (1) Such burning must, in the opinion of the Department, be necessary to reduce or eliminate a potential fire hazard or safety problem in order to expedite the subsequent burning of the field.
- (2) Such burning shall be limited to the minimum number of acres necessary, in no case exceeding 5 acres for each burn or a maximum of 100 acres each day.
- (3) Such burning must employ backfiring burning techniques.
- (4) Such burning is exempt from the provisions of rule 340-26-015 but must comply with the provisions of rules 340-26-010 through 340-26-013.

Experimental Burning

340-26-035 The Department may allow open field burning for demonstration or experimental purposes pursuant to the provisions of ORS 468.490, consistent with smoke management considerations and subject to the following conditions:

- (1) Acreage experimentally open burned shall not exceed 5,000 acres annually.
- (2) Acreage experimentally open burned shall not apply to the district allocation or to the maximum annual acreage limit specified in rule 340-26-013-
(1)(a).
- (3) Such burning is exempt from the provisions of rule 340-26-015 but must comply with the provisions of rules 340-26-010 and 340-26-012, except that the Department may elect to waive all or part of the \$2.50 per acre burn fee.

Emergency Burning, Cessation

340-26-040 (1) Pursuant to ORS 468.475 and upon a finding of extreme hardship, disease outbreak, insect infestation or irreparable damage to the land, the Commission may by order, and consistent with smoke management considerations and these field burning rules, permit the emergency open burning of more acreage than the maximum annual acreage limitation specified in rule 340-26-013(1)(a). The Commission shall act upon emergency burning requests within 10 days of receipt of a properly completed application form and supporting documentation:

Preparatory Burning

340-26-033 The Department may allow preparatory burning of portions of selected problem fields, consistent with smoke management considerations and subject to the following conditions:

- (1) Such burning must, in the opinion of the Department, be necessary to reduce or eliminate a potential fire hazard or safety problem in order to expedite the subsequent burning of the field.
- (2) Such burning shall be limited to the minimum number of acres necessary, in no case exceeding 5 acres for each burn or a maximum of 100 acres each day.
- (3) Such burning must employ backfiring burning techniques.
- (4) Such burning is exempt from the provisions of rule 340-26-013 but must comply with the provisions of rules 340-26-010 through 340-26-012.

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- (1) Acreage experimentally open burned shall not exceed 5,000 acres annually.
- (2) Acreage experimentally open burned shall not apply to the district allocation or to the maximum annual acreage limit specified in rule 340-26-012-(1)(a).
- (3) Such burning is exempt from the provisions of rule 340-26-015 but must comply with the provisions of rules 340-26-010 and 340-26-012, except that the Department may elect to waive all or part of the \$2.50 per acre burn fee.

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(This summary and response to comments was originally prepared for the March 3, 1989 EQC meeting and attached to agenda item P.)

SUMMARY AND RESPONSE TO WRITTEN COMMENTS
AND COMMENTS RECEIVED AT THE PUBLIC HEARING

OAR 340-12-026 POLICY

Comment: Delete unnecessary words and add to goals of enforcement policy

Harry Demaray commented that the word "to" be removed from sections (1)(b), (c) and (d). He also suggested that the enforcement goals (section 1) be expanded to include denying a violator any monetary gain through penalty and recovering the full cost of investigating and prosecuting a violation from a violator through the use of penalties.

Response:

The Department proposes to delete the word "to" as suggested. The Department believes that the suggested statements are contrary to the Department's legislative authority. In most cases, the Department is not authorized to pursue penalties for first time violations. Also, penalties are not paid to the Department but are required by statute to be paid into the state general fund. As the Department is not authorized to recover costs directly under most of its civil penalty statutes, it believes it would be inappropriate to have a policy to that effect.

Comment: Endeavor to achieve compliance

R.J. Hess of Portland General Electric (PGE) commented that the language "will endeavor" contained in section (2), be replaced with the phrase, "shall use best efforts". PGE believes that this places a higher duty on the Department.

Marialice Galt of the Northwest Environmental Defense Center (NEDC) commented that the policy of section (2) was contrary to legislative intent.

Response:

The Department believes that the policy to endeavor to achieve compliance through conference, conciliation and persuasion is mandated by ORS 468.090(1) and proposes to continue to use the word "endeavor" as it is used in the statute. However, the

Department proposes to change "will" to "shall" so the language will be identical to that contained in the statute.

Comment: Pursue enforcement to achieve all goals.

Ann Wheeler of Oregon Environmental Council (OEC) commented that the Department should pursue the level of enforcement necessary to achieve all its goals, not just the goal of compliance.

Response:

The Department agrees with this comment and purposes that the word "compliance" in section (3) be replaced with "the goals set forth in section (1) of this rule."

OAR 340-12-030 DEFINITIONS

Comment: Define "Formal Enforcement"

The Environmental Protection Agency (EPA) commented that it believed that "formal enforcement" needed to be defined.

Response:

The Department agrees with this comment and has added a definition for "formal enforcement".

Comment: Magnitude of the Violation

The EPA, Jean Meddaugh and Ann Wheeler of OEC and PGE commented that the Department's definition of "magnitude of the violation" was too vague. EPA suggested defining "magnitude" specifically within each program similar to the way violations are classified (e.g. "magnitude" would be measured by a specific percentage exceedance of a permit standard).

Response:

The Department recognizes this problem and has wrestled with it throughout the rule making process. However, it has been unable to come up with a workable alternative. The Department does believe, however, that by listing the factors to be taken into account in determining magnitude, the Department has provided some standard by which a determination may be made.

The Department believes that EPA's suggestion has some merit. However, the Department finds that the suggestion works much better with sources on permits, where a certain level of discharge or emission is authorized, than an activity which is outright

banned. The suggestion also only takes into account one of the several factors relevant to the Department's decision concerning magnitude. Also, the approach may be difficult and cumbersome as the Department regulates a much broader range of activities than does EPA. Therefore, the Department proposes to leave the definition as is and attempt to clarify it through application.

Comment: Broaden definition of "Prior Violation"

OEC and Harry Demaray commented that the Department's definition of "Prior Violations" is too restrictive in that it includes only those violations for which one is afforded an opportunity for a hearing. OEC stated that the Notice of Violation and Intent to Assess a Civil Penalty (NOI) should be included as it is a key element in determining when a civil penalty can be assessed in many cases. Mr. Demaray believed that all documented violations should be included regardless of the enforcement response.

Response:

The Department agrees with these comments. However, since prior violations affect a person's interest in that they cause an increase in the penalty amount, the Department believes that it is constrained as to what violations may be considered. The Department believes that counting violations for which the opportunity of a hearing has not been afforded potentially violates due process.

The Department will continue to consider an NOI a prior violation as it is incorporated into civil penalty actions. Thus, it does fall under the definition of a "prior violation" as it allows a violator the opportunity to contest it at the time a civil penalty is assessed.

Comment: Terms incorrectly or vaguely defined

PGE commented that the use of the term "significant" should not be used in the definition of "moderate" contained in the rules as they are not synonymous terms in a thesaurus. OEC also commented that the terms "major", "moderate" and "minor" were too vaguely defined.

Response:

The Department agrees with PGE's comment and has dropped the terms "substantial," "significant," and "slight" from the definitions of "magnitude of the violation" and "risk of harm".

The Department recognizes that there is a vagueness problem and will continue to work on refining these terms.

OAR 340-12-040 NOTICE OF VIOLATION

Comment: Why are certain categories excluded from the Notice of Violation requirement while others are not?
PGE objected to the exclusions of hazardous waste, polychlorinated biphenyls (PCBs) and asbestos laws from the Notice of Violation procedure. Harry Demaray commented that oil spills should also be excluded from the procedure.

Response:

The Oregon Legislature has specifically excluded these areas from the Notice of Violation procedure giving the Department the authority to assess penalties in these cases without prior warning. The statute, ORS 468.125(2) (page D-3), also excludes violations occurring under specific circumstances.

The Department does not specifically have the authority to add oil spills to this list of exclusions, as it has not been granted that authority by the legislature. However, oil spills generally fall under the exclusion "a source of water pollution not normally in existence for five days". Therefore, the Department believes it has adequate authority and a specific exclusion is unnecessary.

OAR 340-12-041 ENFORCEMENT ACTIONS

Comment: Replace phrase "may be issued" with stronger language

EPA commented that the phrase "may be issued" for formal enforcement actions was inconsistent with the Department's stated goals of increased predictability and consistency. It suggested that "may" be replaced by "will".

Response:

The Department disagrees that the use of the word "may" is inconsistent with the Department's stated goals. By classifying violations, the rules create a priority system which allows violations to be addressed appropriately. The Notice of Violation and Compliance Order (NOVCO), civil penalties and orders will generally be issued under the appropriate circumstances. However, the Department believes it needs to retain the flexibility to assure that violations subject to these levels of enforcement are addressed appropriately.

Comment: Eliminate the Notice of Noncompliance

OEC and EPA commented on the Department's use of the Notice of Noncompliance. Both thought it an unnecessary step and did not gain the Department added compliance. EPA further believed it was an inefficient use of Department resources and that the Department should be allowed to issue penalties as an initial action. OEC suggested that if the Department chose to continue using this notice, its issuance be made mandatory.

Response:

The Department believes that it is required by ORS 468.090(1) (page D-1) to attempt to achieve compliance through "conference, conciliation and persuasion" prior to initiating formal enforcement. The Department believes that the Notice of Noncompliance fulfills this duty. The Department does not believe that the Notice is ineffective or inefficient. The Notice of Noncompliance allows the Department to respond to a violation quickly and is often the most efficient resource available in enforcement.

The Department agrees that the issuance of the Notice of Noncompliance should be mandatory and proposes to change the "may" to "shall". The Department also proposes that the notice be made the minimum level to be taken for all classes of violation and that in appropriate circumstances the notice inform a violator that the Department is considering higher levels of enforcement.

The Department is authorized to issue penalties for certain first time violations. However, legislative action is required to expand this authority to include other areas.

Comment: Notice of Violation and Intent to Assess a Civil Penalty is an inappropriate action for hazardous waste

EPA commented that issuing an NOI is inappropriate in the enforcement of hazardous waste regulation. EPA also commented that there appeared to be no difference between a Department Order and a NOVCO. It also commented that the enforcement actions appeared to be exclusive and could not be mixed.

Response:

The Department agrees that an NOI is an inappropriate response to a hazardous waste violation and does not intend to issue such an action for these violations. However, it proposes no changes to the rules as the rules are written generally to encompass all the Department's programs. The NOVCO is the action to be issued for hazardous waste actions. It is a type of Department Order in

that it is designed specifically for hazardous waste violations, while Department and Commission orders are available to all programs and are issued pursuant to specific statutory authority.

The Department is precluded from mixing civil penalties with other enforcement actions where prior notice is required for pursuing penalties. It is not precluded from mixing actions for violations excluded from the notice requirement or where the Department has satisfied the requirement.

In terms of when penalties may be assessed, the violations which are excluded from the prior notice requirement are subject to penalties regardless of the class of violation.

OAR 340-12-042 CIVIL PENALTY SCHEDULE MATRICES

Comment: Penalties are too low

Lane Regional Air Pollution Authority (LRAPA) and George and Rhonda Ostertag commented that the base penalties amounts were too low. LRAPA suggested higher alternative amounts.

Response:

The Department designed the base penalties to take into account the range of activities it regulates. The levels not only take into consideration the seriousness of the violation, but also recognize the fact that private individuals as well as business entities are subject to the Department's regulation. The Department believes that the base fines are set at a reasonable level for the vast majority of the violations. The Department shares the concern that the base penalties may not result in penalties that comport with "reasonable judgment" in every case. However, the Department believes that the vast majority of penalties will be appropriate to the violation and that those instances where they are not will be the exception.

Comment: Underground Injection Control program penalties are too low

EPA commented that the \$500 penalty matrix was inappropriate for the Underground Injection Control (UIC) program and that it should be under the \$10,000 matrix.

Response:

EPA is referring to Oregon's on-site sewage disposal system. Historically, the Commission has limited on-site sewage disposal penalties to \$500 by rule. The Department does not consider residential on-site sewage disposal to be a part of the UIC

program. Also, although the penalties in the \$500 matrix appear relatively small, they may be assessed on a per day basis.

On-site systems which are larger than 5,000 gallons are required to have a Water Pollution Control Facility permit. Violations involving systems of this size fall under the Department's water quality regulations and are subject to the \$10,000 matrix.

Comment: Mandate civil penalties for oil spills

Harry Demaray commented that the "shall incur" language of 340-12-042(2) be replaced with "shall be assessed" to make the language consistent with section 311(b)(6)(A) of the Federal Water Pollution Control Act.

Response:

The section to which Mr. Demaray refers is a program administered by the U.S. Coast Guard. The Coast Guard has not delegated this authority to the state of Oregon. Thus, Oregon is not required to correct any perceived conflict with federal law. The Department also feels that it is unnecessary to mandate penalties for oil spills. Generally, oil spills would fall under the statutory exclusion "[t]he water pollution . . . would not normally be in existence for five days . . ." (ORS 468.125(2)(b) page D-3). However, if a spill were in existence for more than five days, the violation would be subject to the prior notice requirements of ORS 468.125(1) (page D-2). Mandatory language would have no affect in this case as oil spills are not a class specifically excluded from the prior notice requirements.

OAR 340-12-045 CIVIL PENALTY DETERMINATION PROCEDURE

Comment: Change order of letters to spell "PHORCE"

Harry Demaray suggested that the order of the formula factors be changed so that the letters spell "PHORCE" (for force). He suggested that it is both easier to remember and fitting.

Response:

Although the suggestion is attractive, the Department has decided to continue to use the order used in the statute, ORS 468.130(2) (page D-3).

Comment: Too many variables in determining the amount of the penalty

NEDC commented that the Department included too many factors in its civil penalty determination process. It suggested instead that the Department develop specific penalty amounts for all violations taking into account only the most extreme circumstances.

Response:

The Department only included those factors which it is required to consider by statute. NEDC's suggestion would fail to take into account these factors as is required. It also fails to take into account the range of activities the Department regulates.

Comment: Approach to "Prior Violations"

The Department received several comments concerning the use and weighting of "prior violations". LRAPA commented that the weighting of this factor should be increased and prior violations of the same nature should carry more weight than unrelated ones. Larry Patterson of Pennwalt suggested that only similar prior violations be counted and only those that occurred within five years of the violations for which the penalty is being assessed. Miriam Feder, commenting for Tektronics, suggested that prior violations more than two years old, cross media violations and violations occurring prior to the promulgation of these rules not be counted. Thomas Donaca of Associated Oregon Industries (AOI) and Llewellyn Matthews of Northwest Pulp and Paper Association suggested that cross facility violations not be counted. AOI further suggested that a time limit be placed on how many years the Department can go back in considering violations and suggested two years as a starting point, which could be lengthened later. Craig Johnston of Perkins Coie also suggested that counting violations which occurred prior to the promulgation of the rules may be unfair.

Response:

The Department believes that the weighting of prior violations generally is sufficient. However, the Department agrees with LRAPA that identical prior violations should be given more weight than unrelated violations because a violator is aware that allowing the same violation to occur again carries the risk of additional enforcement. Historically, the Department has always given more weight to identical prior violations than to other unrelated violations. The Department proposes to increase the

weighting of the prior violation factor for the recurrence of the same violation.

The Department does not believe it should wipe the slate clean on a violation simply because of its age. The Department believes this potentially gives a break to those who have past violations in that it makes them equal to those who had no prior violations.

The Department will consider cross media and cross facility violations. The Department is not only concerned with an individual facility's compliance, but with compliance company wide. It is a company's responsibility to see that all its facilities in all areas are in compliance at all times.

The Department does not believe that including prior violation which occurred prior to the promulgation of these rules is unfair. The Department has considered prior violations in penalty assessments for many years. This consideration has been in the Department's earlier rules and the regulated community has been on notice of it. The proposed rule does no more than quantify this consideration.

Comment: Consider eliminating the economic factor from the penalty determination or formula

Several comments were received concerning the use and weighting of the economic factor. OEC suggested it not be considered in determining the amount of the penalty, only in determining a payment schedule. George and Rhonda Ostertag commented that it should not be considered at all. Perkins Coie and EPA suggested that it be removed from the formula, calculated separately and added to the penalty amount.

Response:

ORS 468.130(2)(c) requires the consideration of a violator's economic condition in determining the amount of the penalty. The Department believes that it was the Legislature's intent that this consideration include the examination of facts which would mitigate a penalty as well as aggravate it. The Department believes that although the factor is unable to take into account the specifics of economic benefit or ability to pay, the factor does generally reflect the weight the Department affords this factor in its consideration and recognizes the wide range of individuals and businesses the Department deals with. The Department agrees with Perkins Coie that it is inappropriate to increase a penalty simply because an entity is economically sound and has removed this reference from the rule. However, the Department believes that the mitigating side should be more

heavily weighted and the Department proposes to increase it to a negative four (-4).

Comment: What constitutes a single occurrence?

Pennwalt commented that what constitutes a single occurrence or repeated violation under the "O" factor needed to be clarified.

Response:

The Department agrees that this factor lacks clarity. The Department proposes to add wording to the rule to make it clear that the factor of whether a violation is a single occurrence, or repeated or continuous refers to the period of time during which the violation, for which the penalty is being assessed, occurred. That is, if a violation occurred only on the first day of the month, it would be considered a single occurrence under this factor. If the same violation occurred on the first and third day of the month, the violation would be considered a repeated violation. If the same violation occurred continuously for several days, it would be considered a continuous violation.

Comment: Weighting of the cause of the violation

OEC commented that the cause of the violation, or "R" factor, should not be weighted at a "-2" for violations which are caused by unavoidable accidents. OEC suggested that unavoidable accidents carry a "0" weighting. LRAPA commented that the other causes of violation (negligence, gross negligence, intent and flagrant) are not weighted heavily enough.

Response:

The Department disagrees with OEC and intends to leave "unavoidable accident" at negative two (-2) as proposed. As stated under the response to the comment concerning economics, the Department believes that the legislature intended to give a break to a person when the cause of a violation was beyond one's control.

The Department agrees with LRAPA that the factors should be more heavily weighted. The Department proposes to change the weighting so that it better reflects the seriousness with which the Department views a violation that is negligent, intentional or flagrant.

Comment: No credit for violator cooperativeness

OEC and George and Rhonda Ostertag commented that the violators cooperativeness, or "C" factor, should not allow a "-2" for a cooperative violator.

Response:

The Department disagrees that a violator's cooperativeness should be assumed. The Department believes that it was the Legislature's intent to give credit to a violator if one cooperated once aware of a violation. The Department believes it is justified in leaving this factor at negative two (-2) as proposed.

OAR 340-12-047 COMPROMISE AND SETTLEMENT OF PENALTIES BY THE DIRECTOR

Comment: Settlement negotiations should not be the sole avenue

NEDC commented that settlement negotiations should not be the sole avenue for the Department to pursue once a penalty has been assessed.

Response:

The Department has never been limited to settlement when pursuing payment of a penalty. The Director is authorized, not required, to seek settlement or compromise of any penalty. All penalty assessments are entitled to a contested case proceeding as described in Chapter 340, Division 11.

OAR 340-12-055 WATER QUALITY CLASSIFICATION OF VIOLATIONS

Comment: Intentional oil spills and miscellaneous reports

EPA noted that the Department included "intentional oil spill" as a class I violations. EPA asked if Oregon had criminal authority for oil spills. EPA also asked if sections (2)(c) and (3)(a) included all required water quality reports.

Response:

ORS 468.990 and 468.992 authorize criminal penalties for willful of negligent violations of Oregon's water pollution laws. ORS 466.995(3) authorizes criminal penalties for violations of ORS 466.605 to 466.680, Oregon's spill response laws. Oregon may pursue criminal penalties for oil spills under these laws. All violations are classified as misdemeanors. Violations of water pollution laws carry a maximum fine of \$25,000 per day of violation, while violations of the spill response laws carry a maximum fine of \$10,000 per day of violation.

Section (2)(c) includes reports to the extent that they are required by a permit or license. Section (3)(a) applies to discharge monitoring reports. Failure to submit other required reports falls under the catch all "any other violation".

Comment: Change language on discharge without a permit violation

Harry Demaray commented that the language of section (1)(e) should be changed to read "any unpermitted discharge that causes pollution of any waters of the state", as this wording is consistent with ORS 468.720(1)(a).

Response:

The Department believes that the current wording is adequate. The Department does propose to eliminate the word "unpermitted" as it is redundant within the section's context.

OAR 340-12-068 HAZARDOUS WASTE CLASSIFICATION OF VIOLATIONS

Comment: Eliminate some of the Class I violations

AOI urged the Department to reconsider all the Class I Violations for hazardous waste as some appear not to deserve a Class I rating.

Response:

The Department recognizes that the hazardous waste program is a complex one. However, it believes that classing of hazardous waste violations is reasonable due to the potential harm that such violations pose. The Department also would like to clarify that the first occurrence of many of these violations are not eligible for class I status. They are considered Class IIs. To clarify this, the Department proposes to add the term "systematic" to the definition section of the rule.

Comment: Wording changes

EPA suggested several wording changes for sections (1)(q) (now (1)(r)) and (1)(n) (now (1)(o)). EPA also asked why the classification did not include placarding violations.

Response:

The Department proposes to change the wording of section (1)(r) to "failure to conduct unit specific and general inspections," removing the reference to 40 CFR 265.15 and adding an "or" to section (1)(o).

Placarding violations apply to transporters. The Department does not regulate transporters in Oregon. That is the responsibility of the Public Utility Commission.

OAR 340-12-071 POLYCHLORINATED BIPHENYL CLASSIFICATION OF VIOLATIONS

Comment: Misspelled word and meaning of "facility"

PGE pointed out the polychlorinated biphenyl was misspelled (biphenol) and asked whether a mobil PCB treatment facility would be considered a permitted PCB disposal facility.

Response:

The Department has corrected the spelling error. The definition of PCB disposal facility is found in 40 CFR part 761.3, adopted by reference in OAR 340-110-003.

GENERAL COMMENTS

Comment: Determination of number of days of violation

EPA asked how the Department would treat several similar violations for purposes of determining the number of days of violation.

Response:

The Department retains the discretion to treat similar violations as repeated or continuous for purposes of the formula or single separate violations. Generally in situations such as EPA's example (a water quality source has three consecutive monthly average violations), the Department would view these as separate violations subject to independent penalties.

The Department does not intend to use this general framework for several hazardous waste violations. Several violations (proposed OAR 340-12-068(1)(e), (r), (u), (aa) and (bb), pages A-38 to 40) are termed "systematic", meaning they occur on a regular basis. When such violations are discovered, they will be considered as a single violation as it is the number of times these violations occurred that make them systematic.

Comment: Air quality significant violators

EPA commented that it believed that the proposed rules should provide for mandatory penalties for all air quality "significant violators".

Response:

The Department may not mandate penalties for air quality violations. Such violations are generally subject to the prior notice requirement of ORS 468.125. The Department must evaluate each violation to determine whether it may fit into the statutory exclusion of a source of air pollution not normally in existence for five days (468.125(3)(d)).

Comment: Purpose of penalties

EPA asked what the purpose of issuing penalties will be. Would penalties be issued more routinely, with more predictability or would more violations be subject to penalties.

Response:

Generally the purpose of penalties is to punish violations and deter future ones. The Department believes that the proposed rules may result in the issuance of more and larger penalties. However, no more violations are subject to penalties than in the past.

Comment: Uniform enforcement program

NEDC commented that the Department should create one enforcement program with subparts that address individual areas of regulation.

Response:

The proposed rules are exactly such a program. OAR 340-12-026 through 048 applies to all programs while OAR 340-12-050 through 073 addresses each program individually.

Comment: Penalty determination system too subjective

NEDC and George and Rhonda Ostertag commented that the proposed penalty system was too subjective.

Response:

The Department agrees that the penalty determination procedures is somewhat subjective. However, the creation of a completely objective system may be impossible. The Department believes that the factors enumerated by ORS 468.130(2) requires the Department to consider the particular circumstances of each violation individually within a set of standards. Thus, the process will always require a certain level of subjectivity in order to assure that each penalty is assessed with regard to the circumstances surrounding each violation. By establishing base penalties, classes of violations, and a formula which requires the Director to make specific findings, the Department believes it has balanced the Department's need to limit the system's subjectivity while considering each violation individually to the extent possible.

Comment: Eliminate prosecutorial discretion

NEDC commented that prosecutorial discretion be eliminated for pursuing the assessment and determining the amount of civil penalty.

Response:

The Department believes prosecutorial discretion is necessary to assure that penalties are assessed fairly with regard to the particular circumstances of the violation. The Department requires the flexibility to determine what cases are most appropriate and best support a penalty assessment.

Comment: Rules limit Commission authority

Perkins Coie commented that the proposed rules appear to limit the Commission's authority to defer penalties completely.

Response:

The Department disagrees with this reading. The proposed rules are intended to limit the Department's authority but not the Commission's authority to defer penalties to any amount as authorized by ORS 468.130(3).

Comment: Take into account "environmental credits"

Perkins Coie commented that the proposed rules do not take into account the issue of whether "environmental credits" or "alternative payments" might be an appropriate way of paying penalties. The concept of "environmental credits" proposes that those who are fined be allowed to apply the amount of the penalty to activities that will confer a direct environmental benefit.

Response:

The Department has examined the concept of "environmental credits" and has used it in at least one instance. The Department believes these credits can be a useful tool. However, the Department would only consider using such credits for activities beyond those required to achieve compliance. The Department did not include such a concept in its rules as it must first examine the legal issue of whether it is permissible to defer money from the general fund.

Comment: Consider litigation practicalities

Perkins Coie commented that the rules do not appear to allow the Department to make penalty adjustments based on litigation practicalities.

Response:

The Department generally takes considerations such as strength of case and likelihood of success into account in its decision whether to pursue a penalty. Thus, it believes it is inappropriate to take such practicalities into account in a post assessment penalty adjustment. Generally, factors which may influence the Department's chances for success may be adjusted under the available factors. The Department therefore believes it unnecessary to promulgate a rule which would take such a factor into account.

Comment: Affect of rules on Oregon Court of Appeals

Perkins Coie commented that the Department does not make clear whether it intends the proposed rules to be binding on the Court of Appeals. The Department should make it clear if it intends to do so.

Response:

The Department does not believe these rules are or should be binding on the Court of Appeals.

Comment: Use of "promptly" and "immediately"

PGE commented that the words "promptly" and "immediately" are used in the classification of violations and should be defined.

Response:

The terms "promptly" and "immediately" have different meanings depending upon the program. The specific meaning of these terms are found under the substantive requirements for the program. Thus, the Department believes it is unnecessary and repetitive to define these words within the proposed rules.

Comment: Meaning of "any"

PGE commented that "any violation of a Commission or Department Order" is listed as a Class I violation. PGE asked if the term "any" in this context meant any violation or any violation which poses a major risk of harm to human health or the environment.

Response:

The Department has proposed that any violation of a Commission or Department order is a Class I violation. This violation does not carry with it an implied requirement that the Department must first prove the violation poses a major risk. The Department believes that all such violations are serious and pose a major risk as such orders are generally issued only after actual environmental harm has occurred. The Department also considers violations of orders to be serious as a violator has the right to participate in the process of finalizing an order either through contested case proceedings or negotiations. The Department considers the violation of stipulated order especially serious as these orders are the product of negotiations and therefore are viewed by the Department as binding contracts.

Comment: Proposed rules as a Clean Air Act State Implementation Plan (SIP) Revision

EPA commented that it believed that the proposed rules should be incorporated in the federally enforceable SIP, while Richard Bach of Stoel, Rives, Boley, Jones and Grey commented that it should not be incorporated as incorporation is not required.

Response:

The Department has traditionally incorporated revisions of its civil penalty rules related to air quality into the SIP. However, incorporation is not required nor would lack of incorporation have any adverse affect on EPA's authority to enforce air quality laws in Oregon. The Department believes the State, EPA agreement (SEA) gives EPA adequate authority to oversee compliance and enforcement proceedings in Oregon. If the Department fails to

ATTACHMENT J
Agenda Item J
3/2/90 EQC Meeting

live up to its commitment under the SEA, EPA has the authority to independently pursue enforcement. The Department agrees with Mr. Bach and proposes that the proposed rules not be incorporated into the state SIP.

Attachments:

1. Written comments provided by Lane Regional Air Pollution Control Authority
2. Written comments provided by Ann Wheeler of Oregon Environmental Council
3. Written comments provided by the U.S. Environmental Protection Agency
4. Written comments provided by Larry Patterson of Pennwalt
5. Written comments provided by George and Rhonda Ostertag
6. Written comments provided by Miriam Feder of Tektronics
7. Written comments provided by Llewellyn Matthews of Northwest Pulp and Paper Association
8. Written comments provided by Thomas Donaca of Associated Oregon Industries
9. Written comments provided by R.J. Hess of Portland General Electric
10. Written comments provided by Marialice Galt of the Northwest Environmental Defense Center
11. Craig Johnston of Perkins Coie
12. Harry Demaray

Yone C. McNally:ycm
229-5152
comments
February 16, 1989

Winter Burning Season Regulations

340-26-020 [DEQ 29, f. 6-12-71, ef. 7-12-71;
DEQ 93(Temp), f. & ef. 7-11-75 thru 11-28-75;
DEQ 104, f. & ef. 12-26-75;
DEQ 114, f. 6-4-76;
DEQ 138, f. 6-30-77;
DEQ 6-1978, f. 4-18-78;
DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78;
DEQ 2-1980, f. & ef. 1-21-80;
DEQ 12-1980, f. & ef. 4-21-80;
DEQ 9-1981, f. & ef. 3-19-81;
Repealed by DEQ 5-1984, f. & ef. 3-7-84]

[Civil Penalties

340-26-025 In addition to any other penalty provided by law:

(1) Any person who intentionally or negligently causes or allows open field burning contrary to the provisions of ORS 468.450, 468.455 to 468.480, 476.380, and 478.960 or these rules shall be assessed by the Department a civil penalty of at least \$20, but not more than \$40 for each acre so burned.

(2) In lieu of any per-acre civil penalty assessed pursuant to section (1) of this rule, the Director may assess a specific civil penalty for any open field burning violation by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be established consistent with the following schedule:

(a) Not less than \$500 nor more than \$10,000 upon any person who:

(A) Causes or allows open field burning on any acreage which has not been registered with the Department for such purposes.

(B) Causes or allows open field burning on any acreage without first obtaining and readily demonstrating a valid open field burning permit for all acreage so burned.

(b) Not less than \$300 nor more than \$10,000 upon any person who fails to actively extinguish all flames and major smoke sources when prohibition conditions are imposed by the Department or when instructed to do so by any agent or employe of the Department.

(c) Not less than \$200 nor more than \$10,000 upon any person who:

(A) Conducts burning using an approved alternative method contrary to any specific conditions or provisions governing such method.

(B) -Fails -to -readily -demonstrate -at -the -site -of -the -burn -operation -the capability -to -monitor -the -Department's -field -burning -schedule -broadcasts:

(d) -Not -less -than -\$50 -nor -more -than -\$10,000 -upon -any -person -who -commits -any other -violation -pertaining -to -the -rules -of -this -Division:

(3) -In -establishing -a -civil -penalty -greater -than -the -minimum -amount -specified -in -sections -(1) -and -(2) -of -this -rule, -the -Director -may -consider -any -mitigating -and -aggravating -factors -as -provided -for -in -OAR -340-12-045:

(4) -Any -person -planting -contrary -to -the -restrictions -of -subsection -(1) -of ORS -468.465 -pertaining -to -the -open -burning -of -cereal -grain -acreage -shall -be assessedd -by -the -Department -a -civil -penalty -of -\$25 -for -each -acre -planted -contrary to -the -restrictions:}]

Tax Credits for Approved Alternative Methods, and Approved Alternative Facilities

340-26-030 [DEQ 114, f. & ef. 6-4-76;
DEQ 138, f. 6-30-77;
DEQ 6-1978, f. & ef. 4-18-78;
DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78;
DEQ 2-1980, f. & ef. 1-21-80;
DEQ 12-1980, f. & ef. 4-21-80;
DEQ 9-1981, f. & ef. 3-19-81;
DEQ 5-1984, f. & ef. 3-7-84;
Repealed by DEQ 12-1984, f. & ef. 7-13-84]

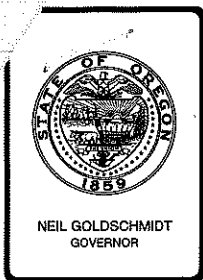
Burning by Public Agencies (Training Fires)

340-26-031 Open field burning on grass seed or cereal grain acreage by or for any public agency for official purposes, including the training of fire-fighting personnel, may be permitted by the Department on a prescheduled basis consistent with smoke management considerations and subject to the following conditions:

(1) Such burning must be deemed necessary by the official local authority having jurisdiction and must be conducted in a manner consistent with its purpose.

(2) Such burning must be limited to the minimum number of acres and occasions reasonably needed.

(3) Such burning must comply with the provisions of rules 340-26-010 through 340-26-013.



Environmental Quality Commission

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

INFORMATIONAL ITEM

Meeting Date: December 1, 1989
Agenda Item: S
Division: Air Quality
Section: Program Planning

SUBJECT:

Periodic Report on Compliance with Air Pollution Control Requirements.

PURPOSE:

Discuss feasibility and present alternatives for periodic reporting on the compliance status of air pollution sources in the Medford-Ashland Air Quality Maintenance Area of Jackson County, as requested by the Environmental Quality Commission (EQC, Commission) at the September 1989 EQC meeting.

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: December 1, 1989
Agenda Item: S
Page 2

| | | |
|--|-----------------------------------|------------------|
| <input checked="" type="checkbox"/> <u>X</u> | Approve Department Recommendation | |
| <input type="checkbox"/> | Variance Request | Attachment _____ |
| <input type="checkbox"/> | Exception to Rule | Attachment _____ |
| <input checked="" type="checkbox"/> | <u>X</u> Informational Report | Attachment _____ |
| <input type="checkbox"/> | Other: (specify) | Attachment _____ |

DESCRIPTION OF REQUESTED ACTION:

The Department of Environmental Quality (DEQ, Department) proposes to prepare, on a pilot basis, a quarterly report on the compliance status of air pollution sources in Jackson County. Portions of Jackson County do not meet the air quality health standards for carbon monoxide (CO) or particulate matter (PM₁₀).

The proposed report, tentatively titled the Air Quality Compliance Update, would summarize progress to reduce air pollutant emissions from industries, woodstoves and other residential sources, and motor vehicles. The purpose of the report would be to educate and inform the public on current air quality issues and recent progress to improve air quality to healthful levels.

The quarterly Air Quality Compliance Update would be primarily a condensation of compliance and trend information that is already being used internally by DEQ staff for air quality management purposes.

- o Industry information could include the number of permitted industrial sources in Jackson County, the number in violation with permit limits, the number on schedule to meet rules or other requirements, and a listing of penalties assessed.
- o Residential information could include the results of local government surveys on compliance with woodburning curtailment advisories on stagnant air days or other surveys of public opinions, wood use, etc. It could also include the number of warnings or citations issued for residential woodburning or backyard debris burning on no-burn days.
- o Transportation information could include a discussion of any recent traffic improvements that smooth traffic flow and reduce carbon monoxide emissions and summaries of the test results of the Rogue Valley inspection and

Meeting Date: December 1, 1989
Agenda Item: S
Page 3

maintenance program (I/M) for motor vehicles (pass/fail rate compared to Portland testing program, pollution control disconnect rate compared to national average, etc.).

- o Other air quality information of interest could include weather notes, the days per month of unhealthful air quality (days with an air pollution index above 100), a comparison with previous years, etc.

The quarterly Air Quality Compliance Update would supplement the Department's regular statewide annual air quality reports (Annual Air Quality Report, Report on Reasonable Further Progress, etc.) and annual emission inventories.

AUTHORITY/NEED FOR ACTION:

- Required by Statute: _____ 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)

- New Industrial PM₁₀ Rules for the
Medford-Ashland and Grants Pass Areas
(September 7, 1989, EQC Meeting) Attachment _____
- Other Related Reports/Rules/Statutes: Attachment _____
- Supplemental Background Information Attachment _____

At the September 7, 1989, EQC Meeting, Jackson County Commissioner Jeff Golden recommended that the Department prepare a periodic "industry report card" to identify those

Meeting Date: December 1, 1989
Agenda Item: S
Page 4

industries that were doing well in meeting air pollution control requirements and those that weren't. The Environmental Quality Commission directed the Department to report back to the Commission at a future EQC meeting on the feasibility of this type of reporting.

In responding to this reporting concept, Department staff felt it would be more appropriate to address not only industrial sources but also the other major pollution sources in the Medford area.

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

Regulated industries, especially those affected by enforcement actions, may be opposed to the proposed periodic reports on industrial air pollution sources and control activities. However, this is public information and already used routinely within the Department for air quality management purposes and routinely reported to the Environmental Protection Agency (EPA). Any significant assessment of civil penalties is normally accompanied by a Department news release.

Local governments are considering ordinances for curtailment of residential woodburning during air stagnation periods (about 20 days per year). Any reporting of compliance surveys or the number of warnings/citations would be coordinated with local governments.

In general, the Department does not propose to list specific names of industrial, residential or motor vehicle noncomplying sources. The one exception is that the Department would continue to identify sources assessed significant civil penalties.

PROGRAM CONSIDERATIONS:

The preparation of the proposed quarterly report will require resources of the Public Affairs Section and the Air Quality Division. The proposed report will require some information that is not available in the Department's computerized format, so the report will have to be generated manually. However, the Department believes that such a report would provide a valuable public information service. Extending such a report to other areas of the state would place a substantial burden on staff. The Department supports the proposed reporting on a pilot basis for Jackson County.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Continue only the existing air quality reporting (daily air pollution index in news media, annual air quality report, annual report on reasonable further progress, etc.) and news releases on significant air quality issues as needed.
2. Add, as a pilot, an annual or quarterly "industry report card", the pilot period being for one year beginning in 1990.
3. Add a quarterly air quality update on various air pollution sources including industrial, residential and transportation sources on a pilot basis for Jackson County; include information on ambient air quality trends and weather notes.
4. Add a quarterly air quality update for urban areas of air quality concern throughout Oregon.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends Alternative No. 3. This alternative provides the most useful and comprehensive air quality information in response to the request of Jackson County Commissioner Jeff Golden. It would allow the Department to evaluate the usefulness of the Air Quality Compliance Update and the amount of resources to prepare it on a quarterly basis and re-evaluate its usefulness at the end of the pilot period.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The proposal is consistent with the air quality and public education goals of the Department.

ISSUES FOR COMMISSION TO RESOLVE:

1. Does the Commission concur that the Air Quality Compliance Update should not include names of specific industries (or individuals) that receive enforcement action, except in cases of significant civil penalties?
2. Does the Commission see additions (or deletions) to the Air Quality Compliance Update that would be useful?

Meeting Date: December 1, 1989
Agenda Item: S
Page 6

INTENDED FOLLOWUP ACTIONS:

The Department proposes to begin the quarterly Air Quality Compliance Update for Jackson County beginning in January 1990, reviewing the fourth quarter of 1989.

Approved:

Section:

Division:

Director:

John F. Kowaluk
Don Householder
Lee Hansen

Report Prepared By: Merlyn L. Hough

Phone: 229-6446

Date Prepared: November 14, 1989

MLH:1
PLAN\AR1729
November 14, 1989

Agenda Item T: Pulp and Paper Mill Regulatory Issues

- Consideration of modification of water quality standards to include sediment standards and standards for chlorinated organic compounds related to chlorine based pulp and paper mills.

BACKGROUND

The general structure for Oregon's Water Quality regulations (including Water Quality Standards) is as follows:

- **Policies and Guidelines Generally Applicable to All Basins** (OAR 340-41-026)

Policy on approval of new or increased wasteloads is in this section.

- **Implementation Program Applicable to All Basins** (OAR 340-41-120)

This section contains policies and requirements that relate to phase in and implementation of water quality requirements and generally provide that the permit is the place where specific implementation requirements and schedules will be recorded. (Policies also provide for transition where state requirements are more stringent than federal requirements, where construction was underway when new standards were adopted, etc).

- **Beneficial Water Uses to be Protected** (for each of 19 designated basins)

This section identifies the beneficial uses for each basin that are recognized for protection. In some basins this is done on a basin-wide basis. In others, uses are identified more specifically for specific stream segments. Identified uses are intended to be consistent with Beneficial Uses designated by the Water Resources Commission. In some cases, use categories have been subdivided to reflect potentially different water quality needs (e.g. Fishery use has been subdivided to distinguish between resident fish (warm water species) and anadromous fish and in some cases to recognize different needs for passage, rearing, spawning.)

- **Water Quality Standards not to be Exceeded** (for each of 19 designated basins)

Standards are established in an effort to make sure that water quality does not become a barrier or detriment to the use. Since the quality demands of the various uses differs, and may be in conflict, the standard setting process is necessarily a balancing process. In general, standards are set to protect the most sensitive use unless a careful decision is made in the public interest to strike a different balance.

The State adopts water quality standards. Under the Federal Clean Water Act, state

standards are submitted to EPA for approval as consistent with national goals. Upon EPA approval, state standards become federally enforceable standards. Since the water quality protection goals of the Federal Law and of Oregon Law are compatible, and since EPA provides guidance to the state on criteria necessary to protect uses, DEQ relies heavily (but not exclusively) on EPA guidance in setting standards. EPA guidance is in the form of guidance "criteria" for use protection. The state is expected to factor in local conditions, unique features, etc. in the process of developing the standards applicable to each specific water body. In some cases where site specific information is lacking, DEQ has adopted the federal "criteria" as the state standard that is applicable unless and until information is presented to suggest that an alternative standard would be properly protective of beneficial uses. (This was done in the case of TCDD and other potentially toxic substances that DEQ did not have site specific data on.)

Since standards are established to protect beneficial uses, DEQ interprets standards compliance to also be protection of uses unless specific new information is presented to suggest that the existing standard is inadequate. When dealing with a parameter for which a standard has not been established, it is necessary to evaluate a proposal against available information regarding protection of the beneficial uses deemed most sensitive.

Oregon's standards for each basin begin with the following requirement:

"Notwithstanding the water quality standards contained below, the highest and best practicable treatment and/or control of wastes, activities, and flows shall in every case be provided so as to maintain dissolved oxygen and overall water quality at the highest possible levels and water temperatures, coliform bacteria concentrations, dissolved chemical substances, toxic materials, radioactivity, turbidities, color, odor, and other deleterious factors at the lowest possible levels."

Thus, standards are the ceiling, not the goal.

- **Minimum Design Criteria for Treatment and Control of Wastes** (for each of 19 designated basins)

Each basin section contains minimum facility design requirements. These are general for industry (e.g. maximum in-plant control, minimum of secondary treatment or equivalent control, off stream cooling for significant heat loads, spill containment facility requirements, etc.), and more specific for sewage sources (e.g. BOD not to exceed a monthly average of 20 mg/l during low stream flow periods, etc.). The minimum design criteria were intended to set a floor on the level of technology that should be used to minimize discharges. More stringent control would be required as needed to meet water quality standards.

Under Federal law, EPA has established effluent guidelines and new source performance standards for various categories of industrial sources. Any NPDES

permit issued must comply with these federal effluent guidelines. The federal effluent guidelines are substantially more detailed than these EQC rules and are used in addition to these minimum design criteria rules.

- **Special Policies and Guidelines** (as required for each basin)

This section is used to record special policies or requirements that are unique to a specific stream segment or sub-basin. For example, the special rules related to the TMDL for the Tualatin Basin are recorded in this section of the Willamette Basin Rules. Other examples include rules prohibiting new discharges to the McKenzie River above Hayden Bridge, the North Santiam River and the Clackamas River in order to protect these streams for use as regional drinking water supplies.

POTENTIAL CONSIDERATIONS IN MODIFICATION OF WATER QUALITY STANDARDS

The above background information may be helpful as discussion proceeds on options for modification of rules to include sediment standard or standards for chlorinated organic compounds related to chlorine based pulp and paper mills.

What follows is an outline of potential approaches or issues for consideration in the process of this discussion:

Sediment Standards:

- Wait for EPA to provide guidance? (timing is uncertain but probably several years away)
- Urge EPA to accelerate efforts?
- Establish state standards without waiting for EPA?
 - Is enough information available?
 - Would they be general statewide standards or stream-reach specific? (The quality of natural sediments differs in various parts of the state.)

Standards Related to Chlorinated Compounds:

- TCDD is one compound for which a state standard currently exists (0.013 ppq). The standard is based on EPA nationwide guidance alone; local site specific conditions were not factored in when it was adopted because information was not available.
 - Is the standard appropriate? Pope & Talbot has filed information proposing to modify the current TCDD standard for the Willamette based on consideration of new information and information on site specific conditions.

- If the current standard is to be changed, what should it be changed to, and on what basis?
- Should standards be set for other chlorinated organic compounds in addition to TCDD or in lieu of a standard for TCDD?
 - Which compounds? Adsorbable Organic Halides (AOX)? Others?
 - As stream standards? Effluent Standards? Minimum Design Criteria for specified industries recognized to be large users or producers?
- Should Oregon establish a goal of phasing out significant discharges of chlorinated compounds through product or process change?
 - How would this be done? Water Quality Standard? Effluent Standard? Design Criteria?
 - By When?

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE MEMORANDUM

DATE: December 1, 1989

TO: Lydia Taylor, EQC Members

FROM: Peter S. Wong

SUBJECT: Second Dioxin Update - A status report on the control of Chlorinated Organic Compounds and Dioxin releases from the Oregon Pulp & Paper Mills.

According to the Clean Water Act statutory requirements (123.46 (c)), DEQ must submit FINAL Individual Control Strategies (ICSSs) to EPA no later than February 4, 1990, and implement the ICSSs by June 4, 1992. EPA expects that many of the ICSSs that are subject to Section 304(1) will be final state-issued permits. Based on the above requirements, the Department has been developing draft permits or modifications to existing permits to comply with the deadlines. Highlights of the draft permits (ICSSs) and other dioxin-related activities undertaken by each Oregon bleached mill are summarized as follows:

Pope & Talbot, Inc.

- 1) A proposed draft permit was sent for applicant review on November 24, 1989. Written comment from Pope & Talbot is due no later than December 8, 1989. The draft permit contains dioxin (TCDD) load limitations and compliance dates.
- 2) On November 26, Pope & Talbot sent ten technical staff members to Finland and Sweden. Their prime objective is to gain operating experience in the latest European technologies in pulping and bleaching. After their return on December 8, they will advise the Department on the latest European regulations and on the approaches adopted by that regional pulp and paper industry towards controlling the discharge of chlorinated organics.
- 3) Mr. Steve Anderson of Pope & Talbot conducted a TCDD Site Specific Water Quality Standard Evaluation and submitted a report for DEQ review. The information will be reviewed by DEQ staff, and it will be used by DEQ in the triennial review of water quality standards.

James River, Wauna Mill.

- 1) DEQ is currently preparing a draft permit for the Wauna Mill. The Department is planning to send the draft permit for applicant review during the week of December 4 or 11.
- 2) In September, James River retained Ekonoteck in Vancouver, B.C., to conduct laboratory studies on various bleaching alternatives to reduce dioxin generation in the Wauna Mill. Laboratory studies were completed and preliminary results will be available in mid December.

Memo to: Lydia Taylor
August 1, 1989
Page 2

- 3) The company is participating in the Columbia River Fish Study sponsored by the Northwest Pulp and Paper Association (NWPPA). The study is intended to determinate dioxin concentration in edible tissue of selected species of Columbia River fish, and determinate the estimated consumption rate of Columbia River fish by humans. Fish sampling was completed in October. Preliminary study results and analytical data will be available for DEQ review in the latter part of December 1989 or in early January 1990.
- 4) On a short-term basis, the Wauna Mill initiated several in-mill process modifications and experiments to curtail dioxin generation. High precursor defoamers, which lead to the creation of TCDD in the bleaching steps, were replaced in June 1989. Trials to eliminate contaminated condensate in pulp washing were conducted. Subsequent to these changes, chlorinated organics in their process effluent were found to have been significantly reduced. Preliminary results indicate a 50% to 60% reduction of TCDD in the secondary treated effluent, and the mill believes that the reduction was mainly due to the change in defoamers.

Boise Cascade, St. Helens Mill.

- 1) DEQ is currently preparing a draft permit for the St. Helens Mill. It is intended to be sent out for applicant review during the week of December 4 or 11.
- 2) Boise Cascade is also participating in the Columbia River Fish Study sponsored by NWPPA.
- 3) Currently the company is entering relevant fish and river data to a computer model developed by the National Council of Paper Industry for Air and Stream Improvement (NCASI). The NCASI model is still under development. With site-specific information, the model can simulate river diffusion and perform health risk assessments for toxic compounds.
- 4) The mill has stopped using high precursor defoamers.
- 5) During the upcoming Christmas shutdown, the mill will conduct a mill-scale trial using a 50% substitution of chlorine dioxide in their existing bleaching equipment. Additional trials using higher chlorine dioxide substitution were recommended by the Department. Concurrently, the company is evaluating other alternatives to modify the pulping and bleaching operations.

LATEST DIOXIN RELATED EVENTS WORLDWIDE

British Columbia, Canada

In December 1988, Environment Canada closed two coastal locations (Howe Sound and Prince Rupert) for shellfish harvesting because of the presence of high levels of dioxin in shellfish. On November 23, 1989, Environment Canada and Canada Department of Fisheries and Oceans

Memo to: Lydia Taylor
August 1, 1989
Page 3

announced the closure of seven (7) additional coastal areas for commercial shellfish harvesting. These closures were again based on high levels of dioxin and furan found in several species of bottom fish and shellfish. Dioxin levels were higher than 20 ppt, which is the health standard established in Canada. All of these fishing areas are in the vicinity of bleached pulp and paper operations on Vancouver Island and in northern B.C.

Alberta, Canada

A new bleached pulp and paper mill is being proposed by ALPAC in the Athabasca/Peace River area (northern Alberta) and is running into a lot of opposition. Alberta Environment does not have any established AOX limits for new or existing mills in the Province, but is currently considering imposing AOX limitations (1.0 to 1.5 kg/tonne) on the proposed mill. Similar standards will also be applied to the Daishowa Mill which is currently under construction.

United States

Preliminary results from the National Bioaccumulation Study were released recently. Median TCDD concentration is around 5 ppt (picogram/gram). The 90, 75 and 25 percentiles of the fish samples taken near bleached pulp and paper mills are 42 ppt, 15 ppt, and 2 ppt respectively. Final report for the 104 mills will be available in August 1990, and the NCASI Intensive Study of 25 bleached mills is estimated to be released in February 1990.

For more details in AOX limitations, see attached August 1, 1989 memo.

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE MEMORANDUM

DATE: August 1, 1989

TO: Lydia Taylor

FROM: Peter S. Wong

SUBJECT: Dioxin update - The Current trends in controlling Chlorinated Organic Compounds and Dioxin releases from the Pulp & Paper Mills.

I participated in the recent "Environmental Aspects of Pulping Operations and their Wastewater Implications" conference in Edmonton, Alberta. Highlights of the presentations and discussions are as follows:

- 1) In addition to discharges from the bleached pulp and paper mills, dioxins are currently being released from many other sources in the industrialized western world. Burning of municipal garbage is one of the major contributors, which accounts for over 50% of the total release to the environment. Other major sources for dioxin release are: incineration, iron and steel manufacturing, coal and wood burning, and chemicals (pesticide and herbicide) manufacturing. Because of many site-specific factors, such as local vs regional activities, and types of industries in a certain area, the release percentage will vary greatly. In general, approximately 1% to 5% of the total release is from the bleached pulp and paper mills. According to a scientific hypothesis, most of the dioxin produced in the incineration of domestic wastes will either be collected in the air pollution control devices as fly ash or evenly dispersed with the flue gas in the atmosphere. Therefore only a small fraction of the dioxin will be directly released into the river, lake, or ocean systems. However, pulp and paper mills do release a significant quantity to public waters. The following is an extract from an Ontario document.

"The average mass loading in a study of 5 US mills for liquid effluent was 11 mg/d as TEQ (Toxic Equivalency), which is 11,000,000 ng. Let us populate the river downstream of this 'average loading' with hypothetical 2-kg bass, and assume that all the chlorinated PCDDs and PCDFs magically get into the fish and reach the Canadian limit of 20 ppt (on a TEQ basis). We would need 275,000 bass to use up the day's production of contaminant, which is a lot of good-sized fish!"

- 2) Several countries have recently established limitations on chlorinated organic compounds for the bleached mills. Prior to establishing new limitations, technical and economic evaluations have been conducted by the Scandinavian countries and Canada. They concluded that the new requirements on the control of chlorinated compounds do not put their industries at a significant disadvantage compared with other producers in the world. Some of the latest limitations and compliance dates are tabulated as follows:

Sweden

Compliance Date

| | |
|---------------------------------------|------|
| 1.8 to 2.5 kg of AOX/ADT | 1989 |
| 2 kg of AOX/ADT for bleached softwood | 1994 |
| 1 kg of AOX/ADT for bleached hardwood | 1994 |
| 1 kg of AOX/ADT for bleached sulfite | 1994 |
| 0.6 kg of AOX/ADT | 2004 |
| 0.12 kg of AOX/ADT | 2010 |

Finland

| | |
|--|------|
| 1 kg of AOX/ADT for bleached sulfite | 1994 |
| 200 kg of COD/ADT for (Ca-base) | |
| 10 kg of BOD ₇ /ADT for (Ca-base) | |
| 65 kg of COD/ADT for (Na-base) | |
| 8 kg of BOD ₇ /ADT for (Na-base) | |

Norway

| | |
|--------------------------------------|------|
| 2 kg of AOX/ADT for bleached Kraft | 1994 |
| 1 kg of AOX/ADT for bleached sulfite | 1994 |

Germany

| | |
|--------------------------------------|------|
| 220 kg of COD/ADT | 1987 |
| 70 kg of BOD ₅ /ADT | |
| 1 kg of AOX/ADT for bleached sulfite | 1990 |
| 65 kg of COD/ADT | |
| 8 kg of BOD ₅ /ADT | |

A fee of 20 DM/tonne of AOX is imposed to all discharges having AOX in the effluent

NOTE: AOX = Adsorbable Organic Halogen or Halide
ADT = Air Dried Ton
BOD₇ = 7 day Biochemical Oxygen Demand
COD = Chemical Oxygen Demand
PCDD = Poly Chlorinated Dibenzo-p-dioxins
PCDF = Poly Chlorinated Dibenzofurans

Memo to: Lydia Taylor
August 1, 1989
Page 3

| <u>Province of British Columbia, Canada</u> | <u>Compliance Date</u> |
|---|------------------------|
| 2.5 kg of AOX/ADT | 1991 |
| 1.5 kg of AOX/ADT | 1994 |
| <u>Province of Ontario, Canada</u> | |
| 2.5 kg of AOX/ADT | 1991 |
| 1.5 kg of AOX/ADT | 1994 |
| <u>Province of Alberta, Canada</u> | |
| No AOX limitation now but require a minimum of 70% chlorine dioxide substitution in the bleaching sequence and oxygen delignification | 1989 |

The latest technologies to be used to minimize dioxin production include: dry debarking, steam stripping of condensate, improve brown stock washing, oxygen delignification, modified cooking, high chlorine dioxide substitution, and biological treatment.

- 3) The Canadian Federal and Provincial Agencies require all mills to monitor the storm water for dioxin and other priority pollutants. In the Province of Alberta, a separate lined pond must be provided for spill control, general mill surface runoff, and runoff from chip piles and log storage areas. Canadian provincial governments require very extensive monitoring of the discharges from the bleached mills.
- 4) Anaerobic biological systems have been found to be very efficient in treating some specific waste streams from the pulp and paper mills. Several mills have the anaerobic system working in series with the aerobic system to remove some of the toxic chlorinated organics.
- 5) A recent study by the Swedish government indicates that the effluent from the production of bleached pulp has significant impacts to the receiving water body. Within a distance of 20 - 50 km, the Extractable Organic Halides (EOX) in the bottom sediment were about ten times the background level. Biological effects in local fish species (e.g. impaired reproduction and susceptibility to infection) were suspected at distances more than 10 km from the discharge. Fish reproduction was severely disturbed in areas close (< 2 km) to the point of discharge. More research is being done to confirm and better understand the results.

Memo to: Lydia Taylor
August 1, 1989
Page 4

6) AOX as a Surrogate Parameter

The detection limit for dioxin is much higher than the concentrations of concern. Therefore, a surrogate parameter which is measurable and can relate to dioxin production needs to be used. Although the relationship is not thought to be linear, whenever there is a reduction in AOX production there is also a reduction in dioxin. That is why those countries which have already set out to reduce dioxin production have established compliance schedules for reducing AOX.

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE MEMORANDUM

DATE: November 30, 1989

TO: Lydia Taylor, EQC Memembers

FROM: Eugene Foster

SUBJECT: 2,3,7,8-TCDD Sediment Standards

1. USEPA Region X indicated that development of sediment standard development by EPA for 2,3,7,8-TCDD was 2 - 5 years 'down the road'.
2. No information from the US Corps of Engineers.
3. Several studies underway &/or completed which supplies information on bioavailability of 2,3,7,8-TCDD in sediments. Some of these studies are:

USEPA/Duluth -- Carp and sediments

Narraganset/MD -- Macoma sp. and sediments (in-progress)

Grays Harbor/WA -- Macoma sp. and sediment (in-progress)

4. USEPA has developed interim-criteria for selected hydrophobic, organic compounds. This approach utilizes the equilibrium partitioning concept which may be adapted to 2,3,7,8-TCDD in the future.



**NORTHWEST COALITION for
ALTERNATIVES to PESTICIDES**

P.O. BOX 1393 EUGENE, OREGON 97440 (503) 344-5044

DEPARTMENT OF ENVIRONMENTAL QUALITY

RECEIVED
NOV 29 1989

November 24, 1989

Environmental Quality Commission

OFFICE OF THE DIRECTOR

Dear EQC Members:

The U.S. Environmental Protection Agency has just issued an important new document on the toxicity of 2,3,7,8-TCDD. A copy is enclosed.

This is important for your November 30 and December 1 meetings regarding Oregon's water quality standard for 2,3,7,8-TCDD and toxic organochlorine pollution from pulp mills in Oregon. (Of course, the memo does not address the environmental and health dangers posed by the 50 tons of hundreds of other chlorinated organic compounds that are emitted by each mill each day.)

The EPA document was prepared as a reevaluation of EPA's water quality criterion for 2,3,7,8-TCDD in response to criticisms by the pulp and paper industry.

The EPA document directly contradicts assertions being made to you by the pulp and paper industry. For example, Carol Whitaker of James River Corporation wrote in a letter to Commissioner Lorenzen on September 20 that "studies and data compiled since EPA developed the dioxin criterion in the early 1980s indicate that several critical assumptions used to derive the criterion are . . . wrong, because they have been superseded by more recent information" There is in fact no "more recent information."

The EPA memorandum makes these points on the dangers of 2,3,7,8-TCDD, one of the dioxins released by pulp mills:

- * 2,3,7,8-TCDD is "the most potent animal carcinogen [cancer-causing substance] ever tested."
- * For cancer-causing effects, 2,3,7,8-TCDD is "50 million times more potent than vinyl chloride." Vinyl chloride is also regulated as a carcinogen by EPA.
- * Of the other PCDDs [polychlorinated dibenzo-dioxins, emitted by pulp mills and other sources] "only one other" has been tested, "and this has also been shown to be carcinogenic" in animals. This would be expected, as all dioxins, furans, and PCBs (polychlorinated biphenyls) cause adverse health

effects by the same toxicological mechanism.¹

But the health threats are not only cancer:

- * "2,3,7,8-TCDD is also the most potent animal teratogen [causes birth defects] known"
- * 2,3,7,8-TCDD also "causes other reproductive, neurobehavioral, and immune system effects at extremely low doses."
- * Although our society does not formally test dangerous chemicals in humans, "in the monkey 2,3,7,8-TCDD causes adverse reproductive effects, including spontaneous abortions."

Unfortunately, both EPA and Oregon's water quality standards ignore the hundreds of other chlorinated organic compounds released by pulp mills.

The industry is preparing substitute risk assessment models to try to argue that dioxin is less dangerous than it is. Here is what EPA says about such models:

- * Substitute risk assessment models proposed by the pulp and paper industry to weaken the degree of regulation do not have more scientific support than EPA's own analysis. EPA's approach is intentionally "public health protective."

And what about industry's position that small amounts of 2,3,7 8-TCDD don't cause damage?

- * Industry arguments that 2,3,7,8-TCDD has a "threshold effect" (a dose below which cancer will not be caused) are inconsistent with scientific evidence which the EPA cites on pages 4-5 of their enclosed memo.

The reliability of material you may receive from the Northwest Pulp and Paper Association must be judged against their past reporting of the dioxin issue. For example, the NWPPA wrote a letter to DEQ in July 1989 asserting that Oregon's dioxin standard should be changed because EPA had decided that 2,3,7,8-TCDD was less potent than previously thought. That statement was incorrect when NWPPA made it, and they had to have known it was

¹ U.S. Environmental Protection Agency. September 1985. Health assessment document for polychlorinated dibenzo-p-dioxins. Final report. EPA/600/8-8d4/014F. Cincinnati, OH.

incorrect at the time.²

The facts are that although some employees in EPA had proposed weakening the potency estimate, first describing the change as based on facts and then, in the face of strong evidence to the contrary, correctly characterizing it as a "policy" matter in order to lead to less regulation, the EPA's Science Advisory Board met in November 1988 and found no basis for the arguments of those who proposed a lower potency estimate. This meeting is described by the EPA in the document that I am enclosing:

[A] transcript of the meeting suggests that there is no new scientific evidence that can be used to show that the [Risk Specific Dose] of 0.006 pg/kg-day is too stringent a criteria. (Page 8, emphasis added.)

Oregon's policy toward not only pulp mill contamination of the environment with 2,3,7,8-TCDD, but with all of the chlorinated compounds pouring out of pulp mills is in your hands.

Will the EQC assume that the other 250 known chlorinated organic pulp mill pollutants, and the hundreds of others not even yet identified by mass spectroscopy, are not adversely affecting beneficial uses of Oregon rivers? Or will the EQC consider moving, as Sweden is doing, against all chlorinated organics discharged by pulp mills? Sweden is doing so on the grounds that many of the most bioaccumulative, persistent, and toxic known substances are chlorinated organics (DDT, PCBs, aldrin, heptachlor) and that most chlorinated phenolic (ring) compounds are inimical to living organisms. (Sweden has announced that it will eliminate all chlorinated organic discharges even from all existing mills by the year 2000, and Austrian pulp and paper industry has made a similar pledge, we are told, for the year 1995.)

There is the alternative of unbleached pulp. Nearly 100 percent of the consumer market for tampons, disposable baby diapers, and toilet paper in Sweden is now unbleached, because the government spoke out strongly on the dangers and the need for change. Consumers immediately responded and are demanding a broad range of unbleached paper products.

Does Oregon have to continue adding massive loadings of toxic chlorinated organic pollution to its river ecosystems, air, and workplaces every day from existing and new pulp mills? The answer is clearly No. For just one among many pieces of

² An EPA memorandum dated March 15, 1989, said that EPA's scientists had rejected the arguments of lessened potency. The NWPPA cited that March 15 memorandum in their letter to you, but for a different point.

evidence, see the enclosed article by a DuPont consultant and pulp expert ("Alternative Processes Hold Greatest Promise for Bleaching"). In this piece Rudra Singh notes that "The use of chemicals such as ozone and peroxides as the sole bleaching agents offers the potential for [great] environmental advantages."

You will hear a lot of things from the pulp and paper industry in the next week. Please keep in mind that EPA in this new document has recently rejected the industry's argument that 2,3,7,8-TCDD has a "safe threshold dose"; has rejected industry's argument that 2,3,7,8-TCDD is a less diabolical threat than previously believed; and has rejected industry's substitute risk assessment models.

Sincerely,

Mary H. O'Brien

Mary H. O'Brien
Staff Scientist

cc: Fred Hansen
Neil Goldschmidt
Dick Springer
Bill Bradbury



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

349 COURTLAND STREET
ATLANTA, GEORGIA 30363

~~WPCB~~
~~OFFICE~~ ON
WPCB

MEMORANDUM

DATE : September 25, 1989
SUBJECT: Review of Dioxin Cancer Potency Factor
FROM : John T. Marlar, Chief *Marlar*
Facilities Performance Branch
TO : James R. Elder, Director
Office of Water Enforcement and Permits

Attached is a review by the Office of Health and Environmental Assessment of information submitted by Champion International Corporation challenging the basis of EPA's criterion for 2,3,7,8-TCDD. Since I believe that almost identical challenges can be expected from most, if not all, paper companies I have distributed copies of the review widely. It appears to be thorough and to the point.

I appreciate your efforts in obtaining this review.

Attachment

cc: Martha Prothro
Diane Regas, C
Water Managem
All Region IV

8:30

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NOV 02 1989

Water Quality Division
Office of Environmental Quality



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
RESEARCH AND DEVELOPMENT

September 21, 1989

SUBJECT: OHEA Critique to Champion Corporation's Alternative Risk Assessment for TCDD: Discharge Permit for the Canton (North Carolina) Mill.

FROM: Steven Bayard, Ph.D.
Human Health Assessment Group (RD-689)
Office of Research and Development

TO: John Marlar
Water Management Division
Region IV

THRU: Charles Ris
Deputy Director
Human Health Assessment Group (RD-689)

Before addressing the risk assessment issues raised by the Champion International Corporation, it is important to realize the scope of the health issues associated with 2,3,7,8-TCDD. 2,3,7,8-Tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD) is the most potent animal carcinogen ever tested. It causes cancer in all three species (rat, hamster and mouse) in which it has been tested and at multiple sites in the rat (liver, lung, hard palate and nasal turbinates). In a relative context it is 50 times more potent than aflatoxin B1 on a per mole basis and 50 million times more potent than vinyl chloride. In addition to its carcinogenic potency, 2,3,7,8-TCDD is also the most potent animal teratogen known and causes other reproductive, neurobehavioral and immune system effects at extremely low doses as well.

Only one other polychlorinated dibenzo dioxin (PCDD) compound, a 50-50 mixture of 1,2,3,6,7,8 and 1,2,3,7,8,9 hexachlorodibenzo-dioxin (HxCDD) has been tested for carcinogenicity in animals (rats and mice) and this has also been shown to be carcinogenic (liver cancers) in both species. Upper-limit estimates of the carcinogenic potency of HxCDD place it at about one-twenty fifth that of 2,3,7,8-TCDD, but still in the top five most potent animal carcinogens ever tested.

In humans, the effects of 2,3,7,8-TCDD and other PCDDs are

less well known. 2,3,7,8-TCDD does cause "chloracne, a severe skin lesion that usually occurs on the head and upper body. Unlike common acne, chloracne is more disfiguring and often lasts for years after the initial exposure" (ATSDR (1989) pg. 3). "There is (also) suggestive evidence that 2,3,7,8-TCDD causes liver damage in humans, as indicated by an increase in levels of certain enzymes in the blood (and that it) causes loss of appetite, weight loss and digestive disorders, although these effects might also have resulted from the concomitant exposure to the chemicals contaminated with 2,3,7,8-TCDD or to the solvents in which these chemicals are usually dissolved." (ibid pg. 3) Although not demonstrated in humans, in the monkey 2,3,7,8-TCDD causes adverse reproductive effects, including spontaneous abortions.

With respect to cancer in humans, the EPA has concluded that there is positive but "limited" evidence regarding the carcinogenicity of 2,3,7,8-TCDD contaminated phenoxyacetic acid herbicides and chlorophenols. The evidence for 2,3,7,8-TCDD alone, however, must be considered "inadequate" meaning that there is insufficient data to demonstrate or refute a human carcinogenic hazard. The main problem in analyzing the available human data for the effects of PCDDs is one of exposure. PCDD's occur only as byproducts or contaminants (in very small quantities) of other chemical processes. Therefore, exposure, when it can be documented at all, is practically never to PCDDs alone. Of the seven exposures episodes to mainly 2,3,7,8-TCDD from industrial accidents studied by EPA, analysis has shown that these studies just do not provide enough information either to confirm or refute carcinogenic potential for humans. In general the studies lack sufficient size and any kind of exposure documentation to allow scientific judgments of either a positive or negative fashion. (Bayard, 1988).

Based on the extreme carcinogenic potency in animals and the inadequate information in humans, EPA has decided, according to its Guidelines for Carcinogenic Risk Assessment (1986), that it is prudent to declare 2,3,7,8-TCDD and HxCDD probable human carcinogens (EPA Group B2) and to issue guidance for protection of the public in the form of upper bound cancer potency estimates. These estimates are derived using a published EPA methodology, developed over a number of years, reviewed and accepted by independent scientific panels, and used in publications in many different scientific journals. The EPA approach of using animal carcinogenicity data to predict potential human response is recognized as an essential tool for regulatory agencies to characterize hazard potential and to estimate possible population impacts if exposure occurs.

The petitioners in this matter on the proposed TCDD effluent limit, Champion International Corporation, do not argue that a cancer risk assessment methodology should not be used, rather

they argue that 1) the EPA methodology (use of the linearized multistage model (LMS) for risk extrapolation) should not be used and 2) "that the effluent limitation for dioxin proposed in the permit be deleted until adequate reliable scientific evidence supports the need to limit the amount of dioxin in the discharge" (letter to Suzanne Durham, April 27, 1989, pg. 14).

Addressing (2) first, Champion argues that because dioxin has not been shown to be carcinogenic in humans, that "until scientific evidence more strongly supports an increased risk of such adverse health effects any regulatory action which is based upon an assumed adverse human health effect is premature." (ibid pg. 14)

The EPA strongly rejects this argument in general (that effects must be seen in humans before regulatory action is justifiable) and especially for 2,3,7,8-TCDD. The wide range of severe effects in animals tested at extremely low doses of 2,3,7,8-TCDD, and the lack of suitable human studies for confirmation or refutation, compel the Agency to rely on results of animal testing. This position is not unique to EPA and has long been a hallmark in public health programs worldwide.

Argument (1) requires a more lengthy discussion. Champion suggests that if argument (1) is not accepted, then as an "alternative that the limit suggested by Dr. Anderson be imposed." Dr. Anderson's analysis is presented in a document prepared for Champion dated April, 1989, document number 1360-010-000. Dr. Anderson presents his own dioxin effluent limit recommendation of 88,266 parts per quadrillion (ppqd), roughly one million times (10^6) higher than the 0.1 ppqd effluent limit proposed by EPA. Over one-half of the difference (1.6×10^3) is based on Dr. Anderson's assumption of TCDD carcinogenicity in animals as having a threshold response and thus adaptable to an ADI with safety factor criteria formulation methodology. This is in contrast with EPA's assumption of a nonthreshold response and use of the LMS model for low dose criteria formulation. Dr. Anderson uses the same ADI approach that has been adopted for 2,3,7,8-TCDD by Health and Welfare Canada and, in fact, Dr. Anderson's results are identical to theirs.

Dr. Anderson's arguments for an ADI with safety factor approach for 2,3,7,8-TCDD are based on a sequential logic of certain observations and assumptions, which focus on hypothesizing about mechanisms of action which then lead to choices in the procedure for dose-response analysis:

- a. 2,3,7,8-TCDD is a potent promoter of liver cancer, but is not known to be an initiator of liver cancer.
- b. The action of (some) tumor promoters is reversible in that when the promoter is removed from the

stage will regress.

- c. Promoters also have dose thresholds, below which there is no carcinogenic influence. (i.e. adverse effect)
- d. Therefore, 2,3,7,8-TCDD has a dose threshold and an acceptable daily intake (ADI) can be derived by a safety factor approach. A safety factor of 100 yields an ADI of 10 pg/kg-day. This is about 1600 times higher than EPA's estimate of 0.006 pg/kg-day derived using EPA's methodology with the LMS model. The model as used by EPA rejects the premise of a threshold dose below which tumorigenesis can occur.

OHEA has examined Dr. Anderson's alternative risk assessment analysis and does not find the underlying assumptions and interpretations to have more scientific support than EPA's own analysis, which follows the science policy guideposts of the EPA Risk Assessment Guidelines. OHEA agrees that in the absence of a definitive understanding of carcinogenic mechanisms and related biochemical information, that its guideline based default assumptions and procedures result in risk characterizations which are public health protective. However, there is not compelling scientific support by Champion to demonstrate that the uncertainties of their approach are less than those of EPA or that the Champion assessment is or more appropriate for public health protection. With respect to Champion's specific risk assessment premise about a threshold only (as a promoter) mechanism of action, we do not agree that this is an adequate or complete characterization for 2,3,7,8-TCDD activity, for the following reasons:

- (1) The mechanism of action of 2,3,7,8-TCDD appears to be unlike that of other promoters, in that 2,3,7,8-TCDD promotes at a very small dose, whereas most promoters act only at high doses.
- (2) The half-life of 2,3,7,8-TCDD in the human is extremely long - about 7 years, vs. 23-29 days in the rat. Thus, the possibility of removing 2,3,7,8-TCDD from humans once exposed is remote. With the long residence time of 2,3,7,8-TCDD in the system it has increased bioavailability is and thus potential to promote or induce carcinogenicity; thus, the conventional concept of reversibility of promotion is questioned.
- (3) The reversibility of the promoting action of 2,3,7,8-TCDD in the rat liver has not been tested. Therefore, one is even less certain that it acts like other promoters.

- (4) Besides causing liver tumors in the rat, 2,3,7,8-TCDD also causes tumors of the tongue, lung, hard palate and nasal turbinates. The lung tumors are of a rare type (keratinizing squamous cell) as are those of the tongue, hard palate and nasal turbinates. Because these are all rare tumors, 2,3,7,8-TCDD must be both initiating and promoting the cells and, therefore, must be a complete carcinogen in some target organs.
- (5) A recent study by Rao et al. (1988), showed the carcinogenicity of 2,3,7,8-TCDD in the Syrian golden hamster exposed either by the subcutaneous or intraperitoneal route. The animals developed squamous cell carcinomas of the skin of the facial region, "in which spontaneous benign or malignant tumors are unknown." Furthermore, the authors had never encountered any skin tumors before in over ten years "in the many hundreds of hamsters used in various carcinogenesis experiments." This strongly suggests that 2,3,7,8-TCDD is a complete carcinogen, at least for some sites.
- (6) The proximate location of these tumors in the hamster and the rat reasons for accumulation of 2,3,7,8-TCDD at these sites. The identification of specific receptors in the olfactory epithelium of the rat capable of high affinity binding of 2,3,7,8-TCDD, argue for a direct (originating in target cells) rather than an indirect mechanism of action (an indirect mechanism is more likely to show a threshold).
- (7) The hamster is the most resistant mammalian species thus far identified to the toxicity of 2,3,7,8-TCDD. ($LD_{50} > 3000$ ug/kg b.w.). Thus, any claim of 2,3,7,8-TCDD promotion effects due to cell toxicity and subsequent replication is dismissed in this case.

Based on the above arguments, OHEA rejects Dr. Anderson's and Champion's (and those of CanTox Inc., April 10, 1989) recommendation that an ADI methodology is adequate to characterize the potential carcinogenic impact on humans from exposure to 2,3,7,8-TCDD. While many of their arguments have merit, and in fact these arguments are used in like form by other Agencies in their criteria setting for PCDDs, OHEA believes that the evidence for the liver promoting effects of 2,3,7,8-TCDD does not justify use of an ADI with safety factor in view of the evidence supporting its action as a complete carcinogen. Furthermore, OHEA is also concerned about the other potential adverse health effects of 2,3,7,8-TCDD and its extremely long half-life in the human.

The issues raised by Champion are not new. In the recent past EPA has convened several scientific panels in which the use of alternative approaches to deriving public health protective levels for the cancer potential of 2,3,7,8-TCDD have been discussed. On July 1-2, 1986, Dr. John A. Moore, Assistant Administrator of the Office of Pesticides and Toxic Substance convened a panel of dioxin experts to determine their views on five specific areas of dioxin toxicology and risk assessment. The panel was chaired by Dr. Henry Pitot of the University of Wisconsin. Specialty members were:

- A. Human Health Consequences - Dr. Aaron Blair, National Cancer Institute
- B. Immunotoxicity - Dr. Jack Dean, CIIT
- C. Bioavailability - Dr. Michael Gallo, Rutgers University Medical School
- D. Mechanism of Action - Dr. Allen Poland, University of Wisconsin
- E. Risk Assessment Methodology - Dr. David Hoel, NIEHS

Part of this panel's conclusions regarding human risks are:
(1) "There is an apparent linear response to TCDD administration with regard to tumor incidence in the female rat liver. Epidemiological studies, which associate TCDD exposure with cancer, do not have quantitative information concerning exposure and are thus not useful for quantitative risk estimation."
(2) "Mechanistic models should be used for quantitative risk estimation for TCDD and related compounds. Such methods should consider epidemiological data, sex-species susceptibility, the promoting action of TCDD, and its pharmacokinetics properties in predicting risks for exposed populations (OPTS, 1986)."

Subsequent to the report from the "Pitot Panel", scientists at EPA drafted updates and extensions of EPA's earlier works on 2,3,7,8-TCDD. This culminated in two 1988 draft documents "A Cancer Risk-Specific Dose Estimate for 2,3,7,8-TCDD" (including six lengthy detailed appendices) and "Estimating Exposure to 2,3,7,8-TCDD." The recommendations contained in "A Cancer Risk-Specific Dose Estimate for 2,3,7,8-TCDD" were that "none of the available models adequately describe the carcinogenic behavior of 2,3,7,8-TCDD at low doses" (pg. 46). Specifically:

- " While there is evidence that 2,3,7,8-TCDD acts as a promotor, there is little evidence on which to conclude that a threshold exists. Without a more scientific basis for such a radical departure from

EPA's traditional approach to the risk assessment for carcinogens, the Workgroup is unwilling to adopt a threshold approach for 2,3,7,8-TCDD.

The innovative approaches of Sielken and Moolgavkar, Venson, and Knudson are interesting, but untested. Therefore, the Workgroup concludes that it would be imprudent to use them at this time for 2,3,7,8-TCDD.

The available evidence suggests that reliance on the LMS model, as traditionally used by EPA, may be less appropriate for 2,3,7,8-TCDD than for many other chemicals, and that the Agency's 1985 assessment based on the LMS model may overestimate the upper bound on the risk by some unknown amount. However, a rationale for a possible linear behavior at low doses has been developed in this report, and the LMS model provides a useful and familiar context which is widely used in the Federal government when discussing risk estimates. Therefore, the Workgroup discusses its recommendation using the LMS model as a construct, that is, the plausible upper-bound estimate of risk and the risk-specific dose."

Finally, the draft 1988 EPA assessment proposed that the 1985 EPA low dose risk characterization for 2,3,7,8-TCDD be relaxed by a factor of sixteen, from a Risk Specific Dose (RSD) associated with an upper limit 10^{-6} incremental lifetime risk of 0.006 pg/kg-day to 0.1 pg/kg-day. The reasoning was (pg. 51):

"the scientific data indicate that the Agency's current upper bound for 2,3,7,8-TCDD may be an overestimate;

the scientific data do not permit an estimate of the extent of the overestimate;

all of the UCL LMS RSD estimates generated by the Federal agencies are arguably of equal scientific merit at this time;

for strictly policy purposes, there is great benefit in Federal agencies adopting consistent positions in the absence of compelling scientific information; and an order of magnitude estimate of the RSD (potency), as opposed to some more precise estimate of the risk-specific dose, helps to convey the notion that the numerical expression is only a rough estimate (the science permits no greater accuracy).

The 1988 draft documents were presented for review to the Ad Hoc Panel on Dioxin of the (EPA's) Science Advisory Board's (SAB) Executive Committee, which met in Washington, D.C. on November 29-30, 1988. That panel had two subpanels, each of which reviewed one of the draft documents. The subpanel reviewing "A Cancer Risk-Specific Dose Estimate for 2,3,7,8-TCDD" was chaired by Dr. Bernard Goldstein, Rutgers University Medical School, and comprised of nine other eminent scientists. While their conclusions have not been formally presented to the EPA Administrator, a transcript of the meeting suggests that there is no new scientific information that can be used to show that the 1985 RSD of 0.006 pg/kg-day is too stringent a criteria.

In conclusion, OHEA has examined the major points raised by Champion with respect to the health effects and cancer quantitative risk assessment of 2,3,7,8-TCDD. While they do have some scientific merit individually, taken together OHEA feels that they do not have sufficient scientific support to supersede the EPA 1985 characterization of 2,3,7,8 TCDD risks. We note that the EPA has periodically updated its analyses and has asked several panels of non-EPA scientific experts to review the evidence relating to the health effects. The 1988, continuing into 1989, review of the most current data relating to TCDD and cancer is ongoing, however, the preliminary outcome of this endeavor does not seem likely to result in a change for the Agency's risk specific dose for 2,3,7,8-TCDD. The Agency will continue to review its position as research findings are developed.

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Rudra P. Singh

Special Consultant
DuPont Co.

Editor
The Bleaching of Pulp
TAPPI PRESS

The growing concern for environmental and health hazards associated with the discharges from the pulp mills is challenging the pulp and paper industry to develop alternate processing methods to minimize these chemical discharges into the environment.

Alternate processes hold greatest promise for bleaching

Current thinking calls for a sharp reduction in the use of chlorine and its derivatives in pulp bleaching, which would require drastic changes in the process lay-out. While no one method proposed meets all the requirements, one possible alternative is the extended delignification technology developed by KTH and STFI in Sweden. This technology has been demonstrated on mill scale to achieve an increased viscosity of about 15%. Practical methods for this process are being developed for both batch and continuous digesters, which could produce pulp with kappa numbers of 20 to 25 for softwoods on a commercial scale. This ability to lower the kappa number in the digester reduces the demands placed on subsequent portions of the pulping process, reducing bleaching chemical demand.

While oxygen delignification offers immediate economic and environmental gains, I believe that where additional in-plant load reductions are desired, the use of chemicals such as ozone and peroxides as the sole bleaching agents offers the potential for even greater environmental advantages. The improvements from extended delignification in reducing the kappa number could possibly be enhanced by combining this technology with oxygen delignification, making it possible to attain kappa numbers in the 10 to 12 range for softwoods.

In a new mill, for example, the bleach sequence ZEP or OZEP, in combination with extended delignification, presents significant potential. The elimination of chlorides in the bleach plant would allow the mill to practice counter-current washing all the way back to the black liquor recovery stage. This, combined with other technologies, could permit the mill to approach if not actually operate on, the closed mill concept.

An additional benefit of such an operation would be the increased energy efficiency and resulting economical advantages. Where present furnaces use 90% of a mill's non-cellulosic portions of wood material for energy production, this new approach would allow use of virtually all the mill's non-cellulosic material. The mill could do this, increasing its energy output by approximately 10%, without additional expenditure for upgrading of the metallurgy needed in the other stages.

In retrofitting existing bleach plants operating on CEHD, CEHED, and CEDED sequences, ZE/(O+P)D and OZE/(O+P)D would be the most desirable for hardwoods and softwoods respectively. In these sequences, the effluent from ZE/(O+P) and OZE/(O+P) stages could be recycled to the chemical recovery facility and the dioxide filtrate could be sewerred to an already existing treatment facility.

In summary, I believe that the future of pulping and bleaching technology will be increasingly affected by environmental concerns. Various state and federal regulating agencies will tighten their effluent quality demands as major rebuilds and new mills are put in place. They will focus increasing attention on existing mills. As a consequence, increasing attention will be paid to new processes that diminish the use of chlorine and its compounds in pulp bleaching.

As I see it, extended delignification with some combination of peroxide, oxygen, and ozone is one of the strongest candidates for providing the industry with a cost-effective solution that will allow the industry to remain productive and competitive while providing protection for environmental concerns. □

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OREGON ENVIRONMENTAL COUNCIL

2637 S.W. Water Avenue, Portland, Oregon 97201

Phone: 503/222-1963

AIR QUALITY CONTROL

November 27, 1989

Environmental Quality Commission
811 SW Sixth
Portland, OR 97204

**Re: Work Session Agenda Item #1: Proposed Stage Two Vapor
Recovery Rules**

Dear Commissioners,

I will be out of the state this week and unable to participate in your work session on the proposed stage II vapor recovery rules. Therefore I am forwarding our views by letter and hope that they will be considered along with the presentations made by the advisory committee members.

Summary Statement

OEC opposes the advisory committee and Department recommendations. The recommendations are vague and open-ended, with no proposed date for implementation. In order for a stage II program to become meaningful, the EQC must go considerably further than what is recommended in the staff report.

General Comments: Process

The fact that the staff is forwarding a "consensus" recommendation from the advisory committee is likely to give you a false sense of comfort that the appropriate middle-ground position has been identified. That is incorrect. Committee members and department staff have apparently become so obsessed with reaching consensus that the whole point of the exercise has been lost. What you have before you is the lowest common denominator of policy that could be endorsed by a group entirely dominated by petroleum industry representatives; in other words, regulatory mush.

Although I was not a formal member of the committee, I did attend parts of two meetings. It seemed obvious to me that a strong recommendation would never emerge because the meetings were dominated by petroleum industry representatives engaged in long-winded, repetitive diatribes against implementation of stage II. Almost everyone supported the idea conceptually; but a program with real teeth had no chance to survive.

I was not present when the committee vote was taken. However, the views expressed below had been presented to the committee in a more condensed form at a prior meeting.

General Comments: Substance

Overall the staff report makes a persuasive case for stage II controls, but then, inexplicably, ends with a set of recommendations that are almost useless. Clearly the committee and the DEQ staff have become unduly focused on the issues of cost and inconvenience to gasoline dealers, while ignoring the over-riding concerns of environmental protection, public health, and worker safety. The committee report apparently assumes that the dumping of poisonous gasoline vapors into the public airshed is some kind of property right, and that this right should only be modified when it is convenient for gasoline dealers.

OEC's view is considerably different. We believe that the release of vapors is a privilege, not a right, and that the EQC should regulate the terms of that privilege without apology for cost or inconvenience. Since the release of vapors is an avoidable act, the State of Oregon is, in effect, subsidizing the operations of gasoline dealers by allowing them to externalize the social costs of pollution that should be internalized. The costs of stage II control should be borne by dealers and their customers. That is economic fairness. The fact that this does not now occur means that the state of Oregon is in partnership with all gasoline dealers. Unfortunately, the public assumes all the risks in that partnership, while the dealers get all the benefits.

There really is no difference between dumping gasoline vapors into the airshed and spilling oil from a cargo ship in Alaska. One occurs thousands of times per day in small amounts all over the state, while the other occurs less frequently but in large quantities. Probably the only reason the public does not get as outraged about vapor release is because the fumes are colorless and the damage inflicted by them is indirect and difficult to measure. If the fumes were as black as crude oil, and if they coated the ground like sticky glue, stage II would have been required nation-wide years ago.

When the Exxon Valdez was considering using Portland as a port for repairs, the Governor and DEQ were quick to impose a "zero discharge" standard for the tow up the Columbia. We look forward to the same response on stage II controls. This is the Commission's chance to impose a zero discharge standard for the thousands of little oil spills that occur daily in Oregon.

Specific Comments

The first recommendation includes several components that we support. The 10,000 gallons per/month throughput as the cutoff point is reasonable and the focus on the Portland tri-county area is also appropriate.

However, the implementation schedule for the underground

pipng of Stage II is convoluted and ultimately leads nowhere. First, the issue is deferred to the rulemaking process, which apparently means the EQC is to pick a number with no guidance from the staff. Then it establishes a protective cushion of 24 months in which the industry is not obligated to do anything, and an outer limit coinciding with UST compliance -- which is some 8 years from now.

The only conclusion that can be drawn from this proposed timetable is that all stage two underground piping will have to be in place by the time UST requirements are met in the year 1997. But, even this weak recommendation is meaningless because it has to be read in tandem with the 3rd committee recommendation for the above-ground components. That part simply recommends that the EQC defer entirely to Congress as it grapples with re-authorization of the Clean Air Act. Presumably if that does not occur, the underground elements required in the first phase of the program need not be installed.

We feel that basing an EQC regulatory decision on the speculative actions of Congress is tantamount to doing nothing. Congress has been trying to re-authorize the Clean Air Act since 1982. Every year it's the same story: political gridlock. There is no particular reason to assume that things will change any time soon. We believe the Commission must make regulatory decisions based on factors it can control. If the EQC is going to base it's implementation schedule on the possible actions of a regulatory body it doesn't control, we might as well base it on the next sighting of Halley's comet (actually the comet is much more dependable than Congress).

I understand that a large part of the Department's rationale for this recommendation stems from certain aspects of some reauthorization proposals that might penalize DEQ if stage II were implemented too soon (the so-called "base year" considerations). Although the intent of those proposals is to provide an incentive for state agencies to adopt strategies, in reality it is having the opposite effect on DEQ.

While I sympathize with the Department's concerns, the appropriate response would be to work with Rep. Ron Wyden to ensure that as the legislation goes through his committee, this aspect of the bill is changed. This would make more sense than simply waiting around for Congress to act first. The committee recommendation reflects a concern for bureaucratic preservation more than it does a concern for ambient clean air.

We feel that, based on the St. Louis experience, 36 months should be the outer limit for full compliance with all aspects of stage II control in the Tri-county area. The EQC should pick this or some other deadline regardless of what Congress does. The Commission must be in a position to control its own destiny.

The 2nd recommendation refers to Stage I implementation. It

is our understanding that stage I is already required and has been for some time. Why is this even being recommended? If stage I has not been fully implemented, why not? And why should we give those in noncompliance another 2 or 3 or 8 years to comply?

The final recommendation is meaningless because it is advisory only. It simply evades the issue of where stage II should be implemented in addition to Portland. The EQC should decide now where those areas should be and when the program should be implemented. This will give affected parties the certainty they need.

We agree that stage II need not be implemented on the same schedule in all parts of the state (urban areas are an obvious priority). Eventually, however, all stations above the 10,000 gallons per/month throughput level should be equipped with stage II controls simply because it is appropriate to internalize pollution costs that should not be borne by the public.


Conclusion

The 1990's will be the decade of non-point source (NPS) control. If the EQC loses the battle to control the millions of non-point sources -- whether they be woodstoves, cars, agricultural chemicals or household wastes -- the gains made in the industrial sector will be completely lost. Compared with some NPS strategies, stage II is simple. It's been proven elsewhere, it's generally cost-effective, it can be implemented quickly, and it works. We should be so lucky in the woodstove arena.

The Commission should disregard the advisory committee and departmental recommendations and undertake rule-making to implement stage II controls in a way that gives certainty to the public and regulated community.

Thank you.

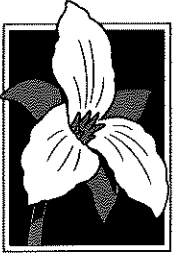
Sincerely,



John A. Charles
Executive Director

cc: Joe Weller
Quincy Sugarman

NORTHWEST ENVIRONMENTAL ADVOCATES



November 30, 1989

Bill Hutchison, Chair
Environmental Quality Commission
811 S.W. 6th
Portland, Oregon 97204

Dear Commissioner Hutchison:

This letter is intended to help the Commission to focus its discussion at the upcoming work session on Oregon's water quality rules. At this time neither we nor the Commission have seen the options that will be made available by the Department at the meeting. For this reason the following is a discussion about the broader policy objectives involved in clarifying the Commission's rules.

Recent events regarding the proposed WTD discharge permit have focused the EQC's attention on the inadequacy of its current rules. The Commission should not approach this problem narrowly, trying only to resolve its difficulty in granting a permit for WTD. Instead, the challenge to the Commission is in resolving the broader question of how the Department is going to actually improve water quality. If the Commission focuses on how to define "water quality limited" in order to allow the WTD permit, it will create a policy which is defined by its exceptions, loopholes and interim solutions. In the end, it will be no policy at all. The result of this scheme will not be a meaningful application of "Oregon's New Approach" which will result in improved water quality. Instead of reducing excess discharges to a level called for by the standards it will allow temporary overload after temporary overload. Permit by permit decisions, by themselves, are not likely to result in a coherent policy that is fair to industry or the environment.

In the recent WTD permit process, the Commission was asked to grant a permit for a future discharge to a waterway on which current discharges exceed water quality standards -- a water quality limited stream. The likely result would be a new discharge which would perpetuate the continuing failure to meet water quality standards. Once the Commission allows standards to be exceeded "temporarily" for an unknown level over an unknown time, the question becomes why bother to have standards?

One way of bringing the policy question into perspective is to ask what the Commission would do if it were faced with applications from five proposed new dischargers of dioxin to the Columbia River? Here, the Commission would have to choose to abide by the standard or to ignore it (violate the law), would have to choose between old and new dischargers, would

have to choose between new proposals.

The reasonable answer to this problem would be to complete a Total Maximum Daily Load (TMDL) calculation with Waste Load Allocations (WLA), agree to an enforcement policy with teeth, and develop a basin-wide Commission policy for achieving standards. Such a policy should focus first on bringing waters of the state into compliance with standards and then address the economic issues that are involved in making choices. The fact is, whether faced with one or five WTD's -- or none at all -- the EQC must make wise policy that is appropriate to achieve the state's environmental goals.

DEQ has also suggested that the granting of the WTD permit can be done concurrently with the TMDL/WLA process -- the very process which is intended to show whether or not there is "room" for an additional discharge. The lack of logic in this position is self-evident. More important, it treats the TMDL as a legal artifact rather than the critically important tool for achieving water quality standards that it is.

The Commission needs to have rules that call for integrated planning to manage water quality, a scheme composed of TMDL's, WLA's, compliance schedules, and a strong enforcement commitment. All of the former without the last will not result in achieving standards. Similarly, adopting a rule which allows the EQC to find that waterways which are not meeting standards are not technically "water quality limited streams" is a loophole which will guarantee that standards will not be met. Instead, the Commission should focus on developing a scheme of rules guaranteeing that the standards will be met.

In conclusion, we urge the Commission not to rush into piecemeal rulemaking that will have negative ramifications for water quality throughout the state. We look forward to having the opportunity to provide meaningful input into the Department's options to the Commission, preferably before any proposed rules go out for rulemaking.

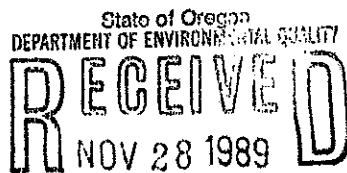
Sincerely,



Nina Bell
Executive Director

for Northwest Environmental Advocates
and Northwest Environmental Defense Center

cc: EQC Commissioners



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811 SW 6th AVE.
Portland, OR 97204

I would like to commend you on deciding to keep the Columbia River clean of anymore dioxins. Your recent decision to deny WTD Industries to build a pulp mill in Clatskanie shows you are concerned enough to take a stand against big business and opt for clean water. I do hope you stand by your decision despite any pressure you may be receiving to accept any changes to your rules that would allow the WTD mill to pollute the Columbia River.

My family has lived on Puget Island for many years. Living right on the river we have experienced the changes in the quality of the river first hand. The river is an important part of our lives, and keeping it clean means alot to us.

Sincerely yours,

Michael A. Nollan

To Whom It May Concern
EQC

Congratulations on voting for
a clean Columbia River by denying
the WTO permit. It's important
that you stand by your vote
and not accept any changes to
your rules that would allow
the WTO mill to pollute the
Columbia River.

Sincerely

Mrs & Mr Dave Bittman
79935 Blackford Rd.
Clatskanie, Oregon 97016

State of Oregon
DEPARTMENT OF ENVIRONMENT & FORESTRY
RECEIVED
NOV 28 1989

OFFICE OF THE DIRECTOR

Dept of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204-1390

Sept. 5, 1989

Dear Sirs:

I'm sending this letter in response to your request for comment on the proposed WTD pulp mill in the Clatskanie area. I attended both public hearings in Clatskanie and have read most of the written material provided at the hearings.

I strongly urge you to grant a permit only within the context of an overall reduction in pollutants discharged into the air and water of the Columbia River pulp production basin. We have only recently become aware of the extent of dioxin pollution from pulp mills. It is my understanding that new rules and restrictions are being developed that will require the older mills to provide additional pollution control equipment. I believe no more pollution should be allowed until reductions have been made from existing plants. The pulp mill industry should work as a group with regulators and develop a plan to reduce pulp and paper mill pollution to the lowest possible level over a five to ten year period.

I am aware that some of the existing mills are fighting the new rules which would require additional pollution control equipment. I believe this issue needs to be resolved before any new permits to pollute are granted. The current pollution levels from pulp and paper mills (all types of pollution, not just dioxin) should be considered ceiling levels, never to be exceeded. The construction of new pulp and paper mills should be predicated on pollution reductions from current ones.

State and federal regulators must work together with industry and establish goals for reductions since this issue crosses state lines and involves several regulating agencies and private corporations. A model structure for addressing these kinds of large scale interstate pollution problems should be developed and applied to this current situation. An organization similar to the Columbia Gorge Commission should be created and made part of the permit process before any new discharge permits are granted.

We have allowed degradation of our natural heritage to continue essentially unabated for too long. The time has come to reverse the trend. We can have a clean environment and economic development if we demand that each be dependent on the other.

Sincerely,



Jeff Benham
175 Shore Drive
St. Helens, OR 97051

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
NOV 28 1989

Environmental Quality Commission **OFFICE OF THE DIRECTOR** Nov. 25, 1989
811 SW 6th Ave.
Portland, Oregon 97204

Dear Commissioners:

I am writing this letter to thank the commission for having the courage to make the decision it did on the proposed WTD pulp mill. I fully support delaying further development on the river involving pollutant discharges until existing mills reduce their current levels of discharge. The EQC and industry need to work together for significant net annual reductions of existing pollution levels in the coming years. Its good policy not to add to the problem before we can develop an acceptable long term solution.

I have been informed that the commission is considering changing its own rules to allow this plant to be built. I believe this would be a mistake. It would be unfortunate if the commission were to disregard proper protection of the river for what would have to be seen as a blatantly political move. PLEASE, for the reasons I have cited here and in my earlier letter, do not reverse your decision.

Sincerely,



Jeff Benham
175 Shore Drive
St. Helens, OR 97051

PS: I have enclosed a copy of my earlier letter sent in response to the DEQ request for public comment.

11-13-89

Due to the Federal Government (EPA) and the State of Oregon (DEQ) rulings on underground storage tanks, we are forced to discontinue pumping gas. The high cost of update, replacement, monitoring systems and extra liability insurance has forced our closing of the gas pumps.

There has been a Shell gasoline station in Molalla as long as I can remember and now there will be none. I am not sure what our government is trying to do for sure. Could it be that all independent stations will have to close?

Sincerely

Richard Reasoner
Reasoner Shell Service
Molalla, Ore

TO: Dept. of Environmental Quality

Public Affairs

Fax Number: 252-4124

Phone Number: 252-4124

From: [Name]

Fax Number: 252-4124

Phone Number: 252-4124

Please visit

copies to

Public Affairs

Thank you

John Brown

RECEIVED

NOV 30 1989

**DEPARTMENT OF ENVIRONMENTAL QUALITY
PUBLIC AFFAIRS**

Nov. 30, 1989

T. S. A.
P. O. Box 137
Glenwood, N.J. 07433

NOV 30 1989

To Whom It May Concern
EQC

Congratulations on voting for
a clean Columbia River by denying
the WTO permit. It's important
that you stand by your vote
and not accept any changes to
your rules that would allow
the WTO mill to pollute the
Columbia River.

Sincerely

Mrs & Mr Dave Bitterman
79935 Blackford Rd.
Clatskanie, Oregon 97016

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
NOV 28 1989

OFFICE OF THE DIRECTOR

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
NOV 29 1989

11 - 28 - 89

EQC !

OFFICE OF THE DIRECTOR

Congratulations on voting for a clean Columbia River by denying the WTD permit. It's important that you stand by your vote AND NOT accept any changes to your rules that would allow the WTD mill to pollute the Columbia RIVER.

ROCHNE E. WEGDAHL

Rochne E. Wegdahl

RECEIVED
NOV 29 1989

NOV. 27, 1989

OFFICE OF THE DIRECTOR
E.Q.C. COMMISSION

CONGRATULATIONS ON VOTING FOR
A CLEAN COLUMBIA RIVER BY DENYING
W.T.D. A PERMIT. ITS IMPORTANT
THAT YOU STAND BY YOUR VOTE AND
NOT ACCEPT ANY CHANGES TO YOUR
RULES THAT WOULD ALLOW THE W.T.D.
MILL TO POLLUTE THE COLUMBIA RIVER

JOE MUSTOLA
22647 MAYGER HTS. LN
CLATSkanie, OR. 97014

FRIDAY DEC 1, 1989

LEONARD GRUBB STANK

5050 S.W. CHILD'S ROAD

LIKE OSWEGO, OREGON

97035 - 639-2807

DICK NICHOLS

DEPARTMENT OF ENVIRONMENTAL QUALITY 229-5696

811 S.W. SIXTH AVE - PORTLAND OREGON 97204

DEAR BOARD ATT: DICK NICHOLS & JULIE,

'PLANNING WATER QUALITY & TRMS IS'

ADAPTING PERMANENT STORM WATER QUALITY

I ATTENDED BOTH PUBLIC HEARINGS

LISTED ON PAGE D-2. OCT 16 & 27. HEARINGS

AND OCT 18TH (DAY ARTS SAN FRANCISCO EARTHQUAKE)

150 NORTH 1ST AVENUE ROOM 402. W.C. COURT HOUSE.

TESTIMONY I TURNED IN AT BOTH IS ON RECORD.

I ATTENDED MOST CITIZEN ADVISORY COMMITTEE

ON SURFACE WATER MANAGEMENT WHICH ALSO

HAS WRITTEN INPUT ON RECORD. MOST RECENT

ONE WAS 28TH NOV. AT ST. VINCENTS AUDITORIUM

WHICH PUBLIC INVOLVEMENT WAS DISCUSSED

I AM SORRY TO SAY BUT IT DOES NEED MORE

IMPROVEMENT. I SUGGESTED HAVE CITIZENS PUT A

NOTICE IN THEIR NEWS LETTERS. THEN THERE

IS LOTS OF NEIGHBORHOOD ASSOCIATIONS. THAT

THAT I HAVE SEEN GET PROZZY GOOD ATTENDANCE

TO RECAP WHAT I HAVE SAID BEFORE

IT TAKES MONEY TO GET THE 'BALL ROLLING'

FOR A STARTER. THEN SPUR FEEL AND DEVELOPMENT

BUT I SAY EVERYONE IN QUALITY WATER SHOULD

SHOULD PAY. AND GET THE 'BALL ROLLING' FAST

BECAUSE PEOPLE JUST WANT TO HAVE FEEL

MONEY SAID NOW WOULD BE A REPORT ON RECORD

GOD BLESS. HAVE A GOOD HOLIDAY SEASON *Leah's Stok*

TUALATIN RIVER WATCH BULLETIN



150 N. First Avenue, Room 302
Hillsboro, Oregon 97124

UPDATE ON THE UNIFIED SEWERAGE AGENCY FACILITIES PLAN

NOVEMBER 1989

THE TUALATIN RIVER, which flows from one end of Washington County to the other, is not like many other rivers in the northwest. It's mostly flat and, especially in the summer when the river is low, very slow moving. While this difference gives it an appeal of its own, it also limits the capacity of the river to handle the load that people and nature put on it. Our urban and agricultural wastes feed algae and use up the river's oxygen. These and other problems have to be addressed now.

The Unified Sewerage Agency (USA), which discharges effluent (treated wastewater) from several treatment plants into the river, is looking for ways to remedy the problems. We are developing a "facilities plan" to identify the best ways to improve our service to the urban area and return higher quality water to the environment.



Do you wonder . . .

- What's wrong with the river?
- What USA is doing about it?
- Which solutions might work?
- What might they cost?

. . . then visit USA's

WASTEWATER WONDER?LAND

An Open House on USA's Tualatin River cleanup efforts.

Saturday, December 9, 1989
anytime from 10 a.m. to 4 p.m.
at Security Pacific Atrium

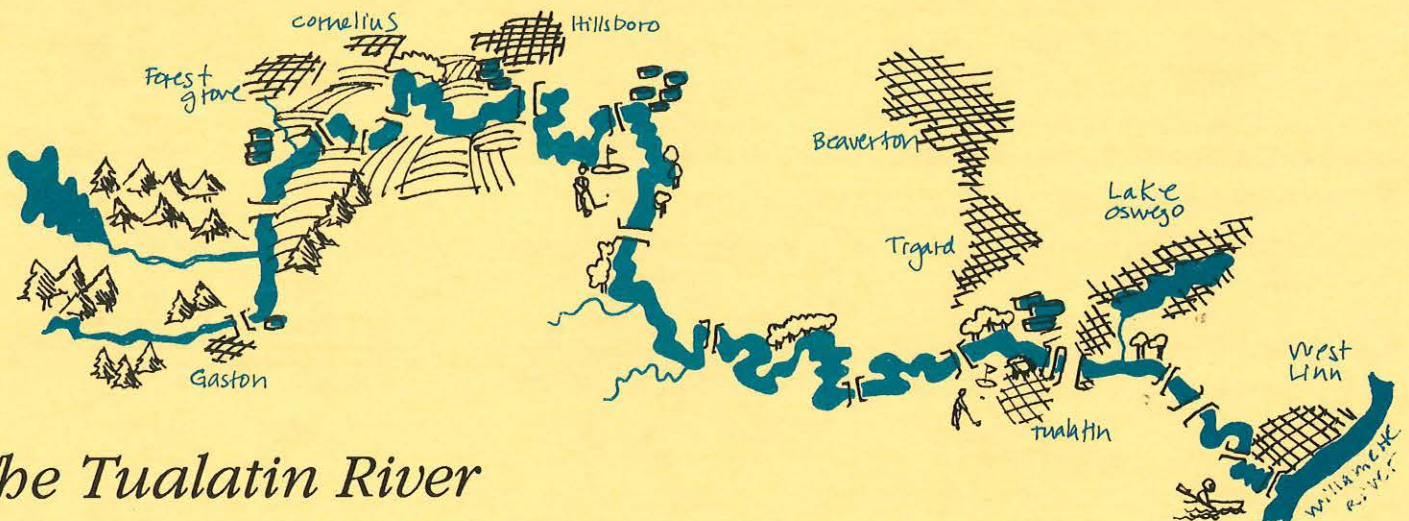
Lincoln Center

across from Washington Square Too
10250 S.W. Greenburg Road, Tigard



Displays will illustrate techniques that the study team is exploring to deal with the area's wastewater and stormwater. Staff will be available to discuss your questions and concerns. Also:

- Door Prizes
- "Stocking Stuffers" for children (River Ranger coloring books, badges & stickers)
- Refreshments



The Tualatin River

THE PURPOSE

There are two primary reasons for the facilities plan.

First, we have an immediate deadline that we are committed to meeting. Oregon's Environmental Quality Commission recently set strict new water quality standards for the Tualatin River. The river has to meet these standards by June 1993, and USA must submit a facilities plan by June 1990 detailing how this will be done.

Second, we are concerned about the future. USA has already done a lot to clean up the river over the past twenty years, but the more we learn, the more we know our efforts have not been enough. This facilities plan will provide USA with a long-term strategy for handling an increasing amount of wastewater as the area grows, while also increasing our protection of the environment.

THE PROBLEMS

A variety of sources contribute to the problems - - - but wastewater from our homes and businesses is a major source

USA operates six treatment plants in the Tualatin River Basin (one plant will close near the end of 1989). These plants either discharge effluent (treated wastewater) to the Tualatin River or one of its tributaries, or recycle it onto land. The "nutrients" and other elements left in the effluent after treatment are what cause problems in the Tualatin.

Algae is the most visible problem; it sometimes clogs portions of the river and creates offensive odors when it decays. While algae is primarily an aesthetic problem, in large amounts it causes daily swings in the pH and oxygen levels in the river that can make it difficult for fish and other organisms to adapt.

Low levels of **dissolved oxygen** in the water is another, less visible, but related problem. Oxygen, of course, is essential to the survival of life in the river.

Phosphorus, one of the "nutrients" left in the effluent, has been identified as a key element in the growth of algae. Algae feeds on the phosphorus and grows easily in the slow-moving, warm water of the Tualatin. Our treatment plants that discharge in the summer now remove 70-80% of the phosphorus. To meet new standards, we will have to remove over 99%.

Ammonia nitrogen is another nutrient in effluent. As it breaks down, it actually depletes oxygen in the river. Currently, more than 60% of the ammonia and other nitrate sources are eliminated from effluent leaving our plants in the summer. To meet new standards we need to remove 90-95%.

Beyond these existing problems, USA also is concerned about other *potential* problems that may occur in the future. For example, above certain levels, the chlorine used to disinfect the effluent can be toxic to fish and other wildlife. We plan to add "dechlorination" facilities or use other forms of disinfection in the future. And, with the potential for individuals to dump harmful substances into the sewer system and with the increasing number of industries, USA also is looking for additional safeguards against toxic chemicals and metals in the system.

THE SOLUTIONS

Planners are taking a "no holds barred" approach to solving water quality problems in the Tualatin River Basin. **All the possible ways** - - -

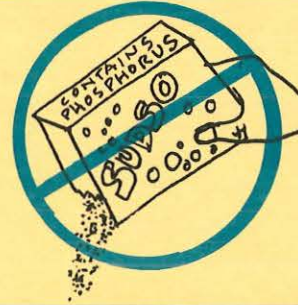
from "high-tech" to common sense - - - to meet the immediate deadlines and to accommodate future needs are being explored. For example:

WHAT CAN WE DO?

SOME WAYS WE MIGHT BE ABLE TO DO IT

• **KEEP
POLLUTANTS
OUT OF THE
BASIN**

Ban on phosphorus detergents, water conservation, bans on certain industrial processes, growth management, etc.



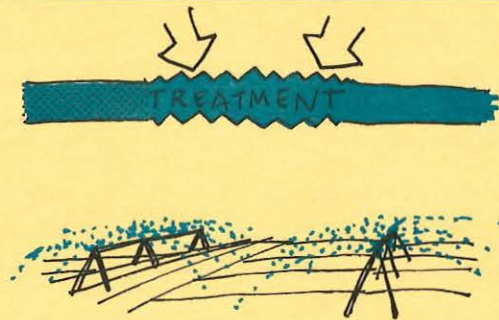
• **KEEP
POLLUTANTS
OUT OF THE
WASTEWATER**

Household composting, bans on garbage disposals, industrial pretreatment or onsite disposal, public education, etc.



• **TREAT
AND
REUSE
WASTEWATER**

Additional treatment to remove phosphorus and nitrates, reusing effluent for irrigation, using wetlands to process the nutrients, exporting effluent directly to the Columbia or Willamette River, etc.



• **MANAGE THE
RIVER TO
IMPROVE WATER
QUALITY**

Adding more summer flows to the river by better management of available stored water, new reservoirs, or groundwater, or by treating the river water, etc



Not all of the methods may seem feasible or reasonable now. But, each one will be examined until we know its benefits and impacts, how reliable it is, and how compatible it is with the needs and values of our community. We may

find that some are too costly, others may create new problems while fixing an existing one. Whatever the final solution is, it will be a *combination* of the most viable methods.

THE DECISION PROCESS

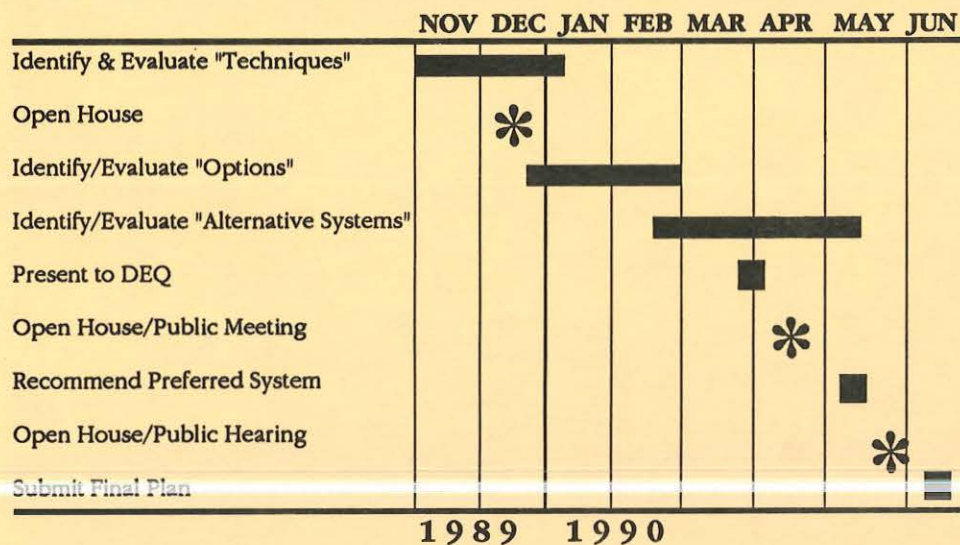
Meeting the deadlines means sticking to a tight decision-making schedule.

So far in the project, the planning team has identified potential "techniques" or ways of addressing the problems (see inside). Citizens can examine and comment on these techniques at an **Open House** December 9 (see front page). By the end of the year, the most feasible ones will be selected for further evaluation.

In the next phase of the project, more site-specific ways

of using the techniques, called "options", will be identified and evaluated. The best of these will be combined into "alternative systems" and presented to the USA Board for discussion. Based on public review and technical evaluation, a preferred system will be recommended to the State in the final facilities plan to be submitted in June 1990.

SCHEDULE



Citizen and agency coordinating groups advise planners

A Public Advisory Committee, made up of representatives of citizens within the community, will help identify public issues and advise the planning team on the public acceptability of possible solutions. An Inter-governmental Coordinating Committee will be the focus for ongoing agency coordination on the project. They will ensure that solutions are technically feasible and consistent with the regulations and policies of the various

jurisdictions involved in the project.

These committees will meet at key decision points during the project to screen and select alternatives before the preferred plan is recommended. To add your suggestions or to put your name on the mailing list - - -

Call or write John Jackson or Debie Garner:

Unified Sewerage Agency
150 N. First Avenue
Hillsboro, Oregon 97124
(503) 648-8621

CONSULTING TEAM FORMED FOR PROJECT

The Facilities Plan is a complex project and USA has selected an exceptional team of planning, engineering, scientific and public involvement experts to carry it out. Called **Tualatin Basin Consultants**, the planning team is made up of nine firms, headed by Brown and Caldwell, each selected for the particular expertise it brings to the team:

Brown and Caldwell

Overall project management, development of source control techniques, nonpoint source impact analysis, and infiltration/inflow analyses.

Barney & Worth

Strategic planning and policy analysis

CH2M Hill

Coordination of sludge and waste management and flow augmentation studies

HDR Engineering, Inc.

Coordination of effluent reuse and treatment process planning

Jeanne Lawson Associates

Public Involvement

Scientific Resources, Inc.

Wetlands development

Cascade Earth Sciences

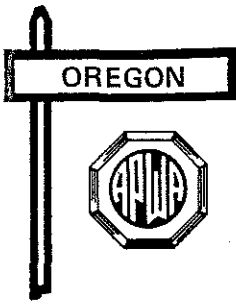
Assistance in establishing effluent and sludge reuse alternatives

Walker & Macy

Development of the recreational elements of the plan

Public Financial Management, Inc.

Development of financing options.



AMERICAN PUBLIC WORKS ASSOCIATION



1964 - 1989

PROPOSAL TO THE ENVIRONMENTAL QUALITY COMMISSION

Oregon Chapter
1989 Executive Board

PRESIDENT
Eugene Appel, Princ. Eng.
Bureau of Envir. Services - City of Portland
1120 S.W. 5th Avenue, Rm. 400
Portland, OR 97204-1972
796-7185

PRESIDENT-ELECT
Mary Sallnas, Public Works Director
City of Stayton
362 North 3rd Avenue
Stayton, OR 97383
769-3425

SECRETARY
Jeffery A. Ballard
Zumar Industries
17060 S. Buckner Creek Road
Beavercreek, OR 97004
482-3211

TREASURER
Steven M. Hall, Director of Public Works
City of Ashland
20 E. Main St., City Hall
Ashland, OR 97520

PAST-PRESIDENT
David J. Vargas, P.E.
O.I.T. OWENS-105
3201 Campus Drive
Klamath Falls, OR 97601-8801
882-6994

NATIONAL DELEGATE
Merle E. Langley
580 Argon Avenue
Eugene, OR 97404
688-7279

DIRECTORS
Carl Goebel
P.O. Box 9190, Portland, OR 97207

Ronald D. Polvi
220 N.W. 2nd Avenue, Portland, OR 97209

Larry A. Rice
61150 S.E. 27th, Bend, OR 97702

Daniel J. Boss
P.O. Box 369, Tualatin, OR 97062

Donald E. Schut
230 E. 2nd Street, McMinnville, OR 97128

Gordon L. Merseth
2020 S.W. 4th Avenue, 2nd Floor
Portland, OR 97201

COMMITTEES

| | |
|-----------------|----------------|
| Adm. Mgt. | F. Collins |
| AGC Liaison | L. Klingler |
| Audit | G. Odman |
| Awards | C. Van Elsberg |
| Bldgs. & Grds. | J. Nyquist |
| By-Laws | R. Dopp |
| Computer Tech. | D. Boss |
| Conferences: | |
| Steering | G. Wyatt |
| Spring '89 | R. Gitt |
| Fall '89 | G. Wyatt |
| Spring '90 | L. Rice |
| Education | E. Arasmith |
| Emergency Mgmt. | W. Harris |
| Equip. Ser. | R. Gitt |
| Historical | M. Soderquist |
| Intergov't Rel. | D. Harwell |
| Membership | D. Gellings |
| Munc. Eng. | L. Faha |
| Newsletter | D. Vargas |
| Nominating | H. Kalani |
| Past Presidents | B. Blum |
| Public Rel. | J. Nyquist |
| Research | G. Ott |
| Scholarship | H. Hanson |
| Solid Waste | D. Kies |
| Stand. Specs | F. Bouma |
| Student Members | T. Morris |
| Transportation | |
| Supt. & Foreman | H. Kalani |
| Design | L. Rice |
| U.L.C.C. | F. Nelson |
| Water Resources | S. Simonson |

from: Lori Faha, Oregon Chapter - American Public Works Association

date: December 1, 1989

subject: Storm Drain Stencils

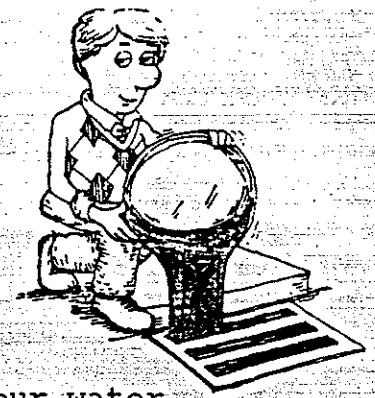
Pollution of stormwater runoff is increasingly a subject of concern. One source of such pollution is the dumping of used motor oil, paint, anti-freeze, pesticides and other products into stormwater catch basins. We know that many people do such dumping. They do so because they are indifferent to the consequences or because they are uninformed about where these catch basins lead (to waterways and groundwater systems).

It is proposed that a statewide public involvement & education project be set up to counter act such dumping problems. The heart of this program would be the painting of stencils next to catch basins that read: "DUMP NO WASTE, DRAINS TO STREAM" or "DUMP NO WASTE, PROTECT YOUR GROUND WATER". Cities, counties and other local jurisdictions would administer these programs, and volunteer citizens groups such as scout troops and neighborhood organizations could provide the labor. Such a program is ongoing in Washington state, where their Department of Ecology gives out free stencils to local jurisdictions and other groups. Washington jurisdictions have found this to be a very inexpensive way to get community involvement and get the word out about pollution problems and solutions.

In Oregon, a small amount of stenciling has been done to date, but rarely in a large, organized fashion. The Oregon Chapter of the American Public Works Association (APWA) is offering to be a statewide clearinghouse for storm drain stencils, providing a central organization to order and distribute stencils and related program information. The APWA board of directors and officers have committed to providing a base level of funding for this program by budgeting money toward the purchase of the 'dies' used to manufacture the stencils.

APWA would like to purchase at least a large first time order of stencils that can be distributed free to interested jurisdictions (there is a lot of interest in this program statewide from many jurisdictions). Our proposal is to have 500 stencils initially manufactured, 400 of the "...Drains to Stream" stencil, and 100 of the groundwater stencil. This may seem like a lot of stencils, but consider the fact that the City of Portland alone has approximately 34,000 catch basins that could be stenciled. The stencils are re-usable if maintained properly, but there will still be a great need for stencils to loan out to all interested volunteer groups and cover the large number of catch basins existing.

Source: City of Bellevue, Washington



WHY STORM DRAIN STENCILS?

Why storm drain stencils? Because poisons are damaging our water quality! Every year people pour hazardous chemicals, pesticides, paints, antifreeze and used motor oil down storm drains.

How much is dumped? The Seattle Aquarium estimates that more than two million gallons of used motor oil ends up in Puget Sound each year. That's enough to fill a medium-sized tanker!

Some people believe that the storm drain will carry the waste to a sewage treatment for cleanup. Not true! (Even if it did, chemical wastes would not belong there.) In fact, storm drains simply carry rainwater into the nearest stream, lake or Puget Sound--directly into fish habitats or sometimes drinking water.

Some Washington communities draw drinking water from surface waters, such as large lakes. Toxic chemicals don't belong there!

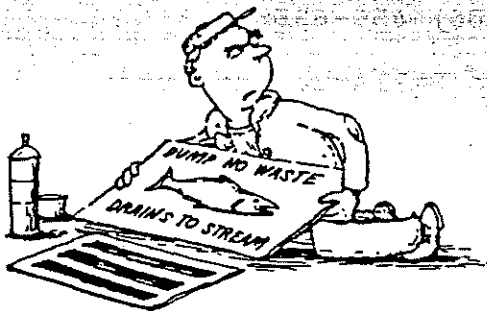
As to marine life, even small amounts of toxic chemicals--like antifreeze, pesticides and household cleaners--can weaken fish and make them susceptible to fatal diseases.

One pint of oil can cause a slick about the size of two football fields on calm water! The surface of the water is a vital biological habitat, and serves as a nursery for developing eggs and larvae of fish and shellfish. It doesn't take much oil to smother or poison these surface organisms.

What can you do? Apply the stencil next to the storm drain grates in your community. The next time someone gets ready to pour waste down the drain, they'll get the message!

FOR INFORMATION:

- On where to recycle used oil, call the City of Bellevue Storm & Surface Water Utility, 451-4476, or the Department of Ecology's toll-free Recycling Hotline, 1-800-RECYCLE.
- On safe disposal of hazardous substances, call the City of Bellevue Storm & Surface Water Utility at 453-4895, King County's Hazards Line at 296-4692 or Ecology's Hazardous Substance Information Office Hotline at 1-800-633-7585.



HERE'S HOW TO USE STORM DRAIN STENCILS

FIRST, CALL FOR PERMISSION

In Bellevue, call the City of Bellevue Storm & Surface Water Utility, 453-4858. They will provide stenciling materials.

In other cities or counties, contact the Public Works Dept., Storm Drain Utility or Road Maintenance Division. They may issue a permit or offer assistance.

Storm drains on private property (e.g., business and apartment parking lots) require permission of the property owner. If children will be helping to apply the stencil, special care needs to be given to site selection for traffic safety reasons.

WHERE TO PUT THE STENCIL

One option is to lay the stencil on the street side of the drain grate, out of the way of flowing dirt and leaves. Another option is to carefully cut the stencil into three equal sections and stencil the curb above the storm drain. (Additional backing may be required to prevent overspray with this method.) Stenciling the sidewalk itself is discouraged due to the slick nature of a painted surface and possible falls by pedestrians.

WHEN TO APPLY THE STENCIL

Not during a rainstorm! Wait for dry weather and dry pavement with air temperatures in accordance with instructions on the paint can (probably at least 50 degrees). It defeats the purpose to have wet paint rinsed down the storm drain to the stream.

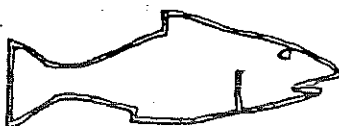
HOW TO APPLY THE STENCIL

Use white or yellow, flat latex paint or traffic zone latex. It is probably the least toxic and most visible. It's been used successfully by road crews who report up to a two-year life span on pavement. The paint may be applied with a stencil brush or by spray can. The rough surface of the roadway or curb may dictate the best method. (Very new asphalt may taint the color of the paint.)

Scrub the area briskly with a wire brush so the surface is free of dirt. Lay stencil flat and apply paint carefully so it doesn't run under the stencil. Return all supplies including unused paint to the Storm & Surface Water Utility.

* IF YOU NEED MORE STENCILS or information on local stencil projects, call Sheila Tilander, 453-4858, in Bellevue. Outside Bellevue, call Rhonda Hunter at the Department of Ecology (206) 459-6356.

Thank you for helping to improve water quality in Bellevue and Puget Sound!



STATEMENT

by

TOM ZELENKA

CASCADE STEEL ROLLING MILLS, INC.

McMinnville, Oregon

to

OREGON ENVIRONMENTAL QUALITY COMMISSION

December 1, 1989

My name is Tom Zelenka, and I'm here today to present a few comments on behalf of Cascade Steel Rolling Mills, Inc. Cascade provided detailed testimony to you in July, when the Commission adopted the temporary rule governing this subject -- and we also provided detailed comments during the October public hearing before DEQ staff on this subject.

The purpose today is not to reiterate all the details we presented earlier -- or to just even highlight those presentations. Rather, I'd like to focus your attention to just several points.

Keep Rule Temporary

First, we have heard for several years now that DEQ would be developing a long term approach to financing the hazardous waste program -- and that the generator fee approach was recognized as flawed and temporary -- and that the issues would be addressed "sometime". If you believe that, why now adopt this rule as permanent? You may not develop a more reasoned approach between now and next year, but at least the Commission should have in place a mechanism that forces and acts as an incentive for this issue to be dealt with and a more permanent funding approach hopefully suggested. Having this rule as temporary for one year means the staff must come back to you next year -- you'll have the means to discuss funding approaches. Without this, statements that a task force will be set up to address such concerns is a hollow solution indeed.

No Commitment to Recycling Demonstrated in Rule

In a September 21, 1989 Memorandum to members of the Pacific Northwest Hazardous Waste Advisory Council, Co-Chair Bill Hutchinson said "...The beginnings of regulatory policy, are instilling a real commitment to reduce and recycle hazardous waste." Subsequently, on September 29, 1989 the Council unanimously adopted a resolution which recommended waste reduction programs which specifically included" ...Utilization of waste exchanges to keep materials, which otherwise would be in need of treatment and disposal, in the production process."

Yet, we do not find any evidence of these statements reflective in the proposed permanent rule. The rule as proposed does not recognize recycling or

use of hazardous waste as a raw material in subsequent production or reclamation processes. Moreover, even if a manufacturer either reduced their hazardous waste to zero or recycled it for other beneficial uses, it would be still be subject to the generator fee for the year in which no wastes were being created or when the waste was being recycled. That is hardly an incentive to reduce or recycle.

Suggestions

Let me close by suggesting that the EQC consider taking several specific steps:

--Adopt the proposed for one year only; do not make it permanent.

--Modify the proposed fee structure to provide incentives for generators to be encouraged to recycle hazardous wastes or who otherwise take actions making their hazardous waste non-toxic. Clearly there should be incentives and preferences encouraging recycling, re-use and/or other ways to avoid merely disposal.

We are aware of other states who have made efforts to turn word commitments about recycling and waste reduction into action deeds -- by adopting policies and fee approaches which do not assess fees against generators who recycle waste or render wastes non-toxic or reusable.

Oregon should, too.



OREGON STATE PUBLIC INTEREST RESEARCH GROUP

027 SW Arthur St.
Portland, OR 97201
(503) 222-9641

Comments of Quincy Sugarman
Environmental Advocate for the
Oregon State Public Interest Research Group
regarding Work Session Item #1:
Gasoline Vapor Recovery (Stage II)

Good morning Chair Hutchison and Commissioners. Thank you for this opportunity to make comments. My name is Quincy Sugarman. I am the Environmental Advocate for the Oregon State Public Interest Research Group. I was a member of the Stage II Technical Advisory Committee.

I am speaking in support of the recommendations presented to the Commission yesterday for implementation of Stage II gasoline vapor recovery. Stage II should be implemented in the Portland area with an exemption for low volume stations. These recommendations should be viewed as the minimum that the state Department of Environmental Quality will undertake to reduce ground level ozone pollution and toxic emissions caused by gasoline vapors.

The report given to the Commission details the benefits of implementing Stage II. These include helping maintain compliance with federal ozone standards in the Portland area, reduction in emissions of and exposure to toxic chemicals, and a potential recovery of gasoline vapor to use as fuel. These benefits to public health and environmental protection would extend to the entire state if Stage II was required for the entire state.

An important point regarding this program is that Stage II is a strategy of pollution prevention. By recapturing vapors that would have evaporated into the atmosphere and recovering the vapors into gasoline, we can reduce the use of the toxic chemicals that fuel motor vehicles. The 1989 Legislature passed important legislation focused on

pollution prevention in the Toxics Use Reduction and Hazardous Waste Reduction Act. OSPIRG strongly supports preventing pollution as the ultimate solution to many of the problems associated with the use of toxic chemicals.

Stage II reduces worker, consumer and environmental exposure to toxic components of gasoline through use of currently available technology. It is a cost-effective way to reduce toxic emissions from a very common source, motor vehicle refueling, as documented in California. Other states and localities have chosen to implement Stage II as part of their own pollution prevention strategies.

The Commission should adopt the recommendations of the Technical Advisory Committee. In addition we urge the Commission to consider requiring Stage II for the entire state. Finally the notion of the "economic cushion for development" that could be achieved by Stage II should be viewed cautiously. The effort must remain focused on the air becoming cleaner and healthier overall, not simply shifting the pollution from one source to another.

Thank you and I would be happy to answer any questions.



TUALATIN VALLEY
ECONOMIC DEVELOPMENT CORPORATION

December 1, 1989

Environmental Quality Commission
Public Hearing
Portland, Oregon

Mr. Hutchison and Members of the Commission:

The Tualatin Valley Economic Development Corporation (TVEDC) represents diverse business interests from throughout the western portion of the Portland Metropolitan area. TVEDC recognizes the importance of addressing the many environmental issues that impact Oregon's ability to compete for quality business expansion and development while protecting the quality of life appreciated by our citizens. For this reason, we have been active participants in the working group that helped draft the interim development standards.

The commission's adoption of the interim development standards for erosion control was timely. The standards before you today pertain to permanent retention facilities for surface water run-off.

I will take this opportunity to reiterate the role the interim rules play in the mitigation of the amount of phosphorus in the Tualatin River. First, non-point sources

have been estimated to contribute only 15% of the phosphorus level, the remaining 85% is from point sources. Surface water runoff in the urban area, which is the problem these proposed interim rules address, is just one of several identified non-point sources. Agriculture and forestry runoff in the rural area are also non-point sources.

The development of interim standards was intended as a short term response between the time of EQC's order and the adoption of USA's Watershed Management Plan which will be ready for review in March of 1990. During consideration of the interim standards all parties agreed that soil erosion standards during construction would provide both a short term and a long term solution to water quality controls. The erosion control guidelines adopted earlier are an appropriate mechanism to mitigate additional loadings of phosphorus to the Tualatin River during new construction.

In its Watershed Management Plan USA intends to develop a set of regulations for permanent storm water run-off facilities that can be assessed and fine-tuned over several months during the adoption process in anticipation of compliance in 1993. Even now USA and the cities are working on public education programs to raise community awareness; and USA is improving maintenance of the existing storm drain system.

The goal of the interim rules is to mitigate phosphorus loadings in the Tualatin River until the management plan is in place; through community efforts we have begun to work

toward meeting that goal without the addition of these proposed rules. As we continue to move toward July 1990 the parties involved in this process need the flexibility of time and of scientific discovery to weigh the pros and cons of a region-wide system versus individual on-site retention facilities. Adding an additional layer of regulation at this time muddies the water.

The interim regulations before you now represent at best a temporary "fix" for a very small part of the problem. However, the repercussion of these regulations could saddle the parties with a set of 'interim' rules that act like a management plan but precede the required, careful crafting of the plan to be placed before you in March 1990. Without the ability to continue to fine-tune the rules through the application of scientific data gathered during the next several months there could potentially be a delay in compliance.

TVEDC urges the commission to hold adoption of the interim standards in abeyance while USA completes its Watershed Management Plan. We also encourage you to continue this process of cooperation as we all work to resolve the issues that lie ahead.

If the commission believes that interim rules are necessary, we urge you to proceed with caution and care so as not to constrain the process by which the systems performance can be integrated into a workable long term solution.

PLANNING PROCESS SUMMARY

| | |
|-----------|--|
| Sept 1988 | EQC order USA & DEQ begin planning process |
| Jan 1989 | Ad Hoc committee on interim standards begins working with DEQ |
| June 1989 | Ad Hoc committee reports out to EQC support for soil erosion standards EQC adopts soil erosion control standards Work on interim standards continues |
| Oct 1989 | Ad Hoc committee reports concern about timeline for interim standards |
| Dec 1989 | EQC considers adopting interim standards |
| Mar 1990 | USA Watershed Management Plan to EQC for review |
| June 1990 | If adopted interim standards take effect |
| July 1990 | EQC adoption of USA's basinwide Watershed Management Plan |

FOREST GROVE  **ECONOMIC
DEVELOPMENT
COUNCIL**
CORNELIUS

December 1, 1989

To: Environmental Quality Commission

From: Bob Alexander, Executive Director
Forest Grove/Cornelius Economic Development Council

I would like to address the impact of these interim rules would have on outlying areas and the consequences of their adoption. This information may seem irrelevant to the charge of your commission and department but I would submit that the vary reason you exist is to look at the broader implications for your decisions and the impacts upon the citizens.

The Forest Grove/Cornelius area has an average income that is well below the county average, in fact, we qualified for application to the Enterprise Zone program. The assessed valuation of our area on a per capita basis is 1/2 that of cities in the eastern portion of Washington County, Lake Oswego or Portland. Our school district is in the second year of the safety net - with increasing student population. However that is not to say we are not supporting our schools because we are paying the highest school tax rate in Oregon for schools with over 3,000 children.

Other relevant facts are that industrial and commercial growth in the Forest Grove/Cornelius area has been at a minimum since 1980. The reason this Economic Development Council was founded was to try to encourage some activity in order to reduce our high tax rate. However we have the problem that development costs are identical to the rest of the Metro area with the prices that property can command on the market being much less than those other areas. For the few developments that we have had, the margins were very small. To add increased costs of \$3,300 to \$3,900 per acre to this scenario would have a disastrous impact upon our small businesses. These small developments and expansions are the ones upon which we will depend for any future relief of our tax burden. They simply will not settle here and existing industries will be discouraged from expanding. While that may suit the needs of some who want no more growth, it does little for the low income population in our area who must pay a tremendous tax burden.

The vast majority of our existing industry is on lots of less than two acres and I would encourage you to look at the possibility of some relief for those businesses in our area that would develop on that size parcel.

Thank you for your consideration.

MAYOR
Randy J. Traeger

The City of Mt. Angel

Incorporated April 3, 1893

TELEPHONE (503) 845-9291

P. O. Box 960
MT. ANGEL, OR 97362

Fred - F
CITY ADMINISTRATOR
Richard L. Van Orman

CITY RECORDER
Sharon Todd

CITY COUNCIL MEMBERS

C. J. Annen
Robert Frey
Victor Hoffer
Lee Layman
James Schaecher
Deanna Verboort

November 22, 1989

Lydia Taylor, Administrator
Department of Environmental Quality
Water Quality Division
811 SW 6th Avenue
Portland, OR 97204

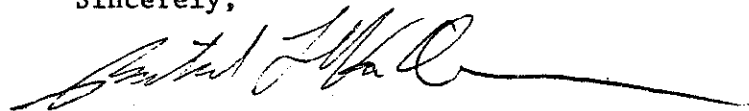
Dear Ms. Taylor:

This letter is to formally request on the part of the City of Mt. Angel, that Agenda Item "F", request by the City of Mt. Angel for waiver of the receiving stream dilution requirement, be withdrawn from the December 1st E.Q.C. meeting.

I have met (November 22, 1989) with Ken Vigil of your staff and we have found that an alternative not using the "unnamed tributary" is most cost effective. The later assumes direct discharge to the Pudding River at a point below Cline Bridge at approximately river mile 40.1.

If this has caused significant inconvenience, I extend our apology.

Sincerely,



Richard L. Van Orman
City Administrator

RLV/sa
CC: Ken Vigil

NOV 24 1989
Water Quality Division

AGENDA ITEM Public Forum

OREGON ENVIRONMENTAL QUALITY COMMISSION

WITNESS REGISTRATION

John Bonine

NAME (PLEASE PRINT)

Western Natural Resources Law Clinic

University of Oregon School of Law, Eugene

ADDRESS

Representing Northwest Coalition for Alternatives to Pesticides

AFFILIATION

I REQUEST APPROXIMATELY 10 MINUTES TO SPEAK.

AGENDA ITEM _____

OREGON ENVIRONMENTAL QUALITY COMMISSION

WITNESS REGISTRATION

*Public
Comment*

NAME (PLEASE PRINT)

Suda William

ADDRESS

1744 NE Clackamas

AFFILIATION

Atty

I REQUEST APPROXIMATELY 3 MINUTES TO SPEAK.

AGENDA ITEM

Public
for you

OREGON ENVIRONMENTAL QUALITY COMMISSION

WITNESS REGISTRATION

John Williams

NAME (PLEASE PRINT)

ADDRESS

STEAM Fitters #290

AFFILIATION

I REQUEST APPROXIMATELY 5 MINUTES TO SPEAK.

yesterday's Water Quality Rule
Proposed Amendment

AGENDA ITEM

Public Forum

OREGON ENVIRONMENTAL QUALITY COMMISSION

WITNESS REGISTRATION

Lora FANA ~~FANTA~~ FAY A
NAME (PLEASE PRINT)

1120 SW 5th Ave, Rm. 400, Portland, 97204
ADDRESS

American Public Works Assoc
AFFILIATION

I REQUEST APPROXIMATELY 10 MINUTES TO SPEAK.

AGENDA ITEM _____
PUBLIC FORUM

OREGON ENVIRONMENTAL QUALITY COMMISSION
WITNESS REGISTRATION

Quincy SUGARMAN
NAME (PLEASE PRINT)

127 SW ARTHUR, PORTLAND, OR 97201
ADDRESS

OSPIRG
AFFILIATION

I REQUEST APPROXIMATELY 2-4 MINUTES TO SPEAK.

2 ITEMS - GASOLINE VAPOR RECOVERY

- AIR TOXICS FROM BLEACHED PULP MILLS

AGENDA ITEM PUBLIC Forum

OREGON ENVIRONMENTAL QUALITY COMMISSION

WITNESS REGISTRATION

County

JEFF GOLDEN

NAME (PLEASE PRINT)

JACKSON COUNTY COURTHOUSE, MEDFORD

ADDRESS

JACKSON CO.

AFFILIATION

I REQUEST APPROXIMATELY 7 MINUTES TO SPEAK.

AGENDA ITEM Forum

OREGON ENVIRONMENTAL QUALITY COMMISSION

WITNESS REGISTRATION

Jerry VAN Scoy
NAME (PLEASE PRINT)
13807 SE McLoughlin Blvd. #608 Portland 97222
ADDRESS
Associated Floor Covering Contractors
AFFILIATION

I REQUEST APPROXIMATELY 5+- MINUTES TO SPEAK.

AGENDA ITEM

J.

OREGON ENVIRONMENTAL QUALITY COMMISSION

WITNESS REGISTRATION

John Williams

NAME (PLEASE PRINT)

ADDRESS

Steam Fitters #290

AFFILIATION

I REQUEST APPROXIMATELY 5 MINUTES TO SPEAK.

AGENDA ITEM X

OREGON ENVIRONMENTAL QUALITY COMMISSION
WITNESS REGISTRATION

LEONARD G STARK
NAME (PLEASE PRINT)

5050 S.W. CHILDS ROAD, LAKE OSWEGO 97035
ADDRESS

(EMPLOYMENT) LAKE OSWEGO, ^{RENEWAL} ~~RENEWAL~~ RISKWATER ACTION
AFFILIATION

I REQUEST APPROXIMATELY 10 MINUTES TO SPEAK.

AGENDA ITEM K

OREGON ENVIRONMENTAL QUALITY COMMISSION

WITNESS REGISTRATION

Darren Kipper, PE

NAME (PLEASE PRINT)

2121 SW BROADWAY SUITE 100

ADDRESS

SUNSET CORRIDOR ASSOCIATION

AFFILIATION

I REQUEST APPROXIMATELY 2-4 MINUTES TO SPEAK.

Att 2
Def to local

AGENDA ITEM K

OREGON ENVIRONMENTAL QUALITY COMMISSION

WITNESS REGISTRATION

LORI FANA

NAME (PLEASE PRINT)

1120 SW 5th AVE, Rm 400, Portland 97209

ADDRESS

CITY OF PORTLAND

AFFILIATION

I REQUEST APPROXIMATELY 5 MINUTES TO SPEAK.

AGENDA ITEM _____

K - Stormwater

OREGON ENVIRONMENTAL QUALITY COMMISSION

WITNESS REGISTRATION

RICK PARRISH

NAME (PLEASE PRINT)

215 SW Washington ST #200 PHD 97204

ADDRESS

NEDC

AFFILIATION

I REQUEST APPROXIMATELY 3 MINUTES TO SPEAK.

AGENDA ITEM K

OREGON ENVIRONMENTAL QUALITY COMMISSION

WITNESS REGISTRATION

Bob Alexander
NAME (PLEASE PRINT)

2819 Indigo Way, Forest Grove 97116
ADDRESS

Forest Grove / Cornelius Economic Development Council
AFFILIATION

I REQUEST APPROXIMATELY 2 MINUTES TO SPEAK.

AGENDA ITEM K

OREGON ENVIRONMENTAL QUALITY COMMISSION

WITNESS REGISTRATION

 GARY KRAHMER
NAME (PLEASE PRINT)

 150 W. 1ST
ADDRESS

 USA
AFFILIATION

I REQUEST APPROXIMATELY 5+- MINUTES TO SPEAK.

AGENDA ITEM K

OREGON ENVIRONMENTAL QUALITY COMMISSION
WITNESS REGISTRATION

MARY L. TOBIAS
NAME (PLEASE PRINT)

10170 SW NIMBUS STE H-2 TIGARD, OR 97222
ADDRESS

TUALATIN VALLEY ECONOMIC DEVELOPMENT CORPORATION (TVEDC)
AFFILIATION

I REQUEST APPROXIMATELY 5 MINUTES TO SPEAK.

AGENDA ITEM 5

OREGON ENVIRONMENTAL QUALITY COMMISSION

Betty Adams

WITNESS REGISTRATION

DIET FORN

NAME (PLEASE PRINT) _____

4930 N.W. 187th - PORTLAND

ADDRESS _____

Summit Corridor Association

AFFILIATION _____

I REQUEST APPROXIMATELY 5 MINUTES TO SPEAK.

AGENDA ITEM L

OREGON ENVIRONMENTAL QUALITY COMMISSION

WITNESS REGISTRATION

Tom Zelenka

NAME (PLEASE PRINT)

PO Box 10047 PORTLAND OREGON 97210

ADDRESS

CASCADE STEEL ROLLING MILLS, INC.

AFFILIATION

I REQUEST APPROXIMATELY 25 MINUTES TO SPEAK.

AGENDA ITEM 9

OREGON ENVIRONMENTAL QUALITY COMMISSION

WITNESS REGISTRATION

Thane Tienson

NAME (PLEASE PRINT)

ADDRESS

101 SW Main, Ste 2000

AFFILIATION

Attorney for Salmon For All

I REQUEST APPROXIMATELY 5 MINUTES TO SPEAK.

AGENDA ITEM

7

OREGON ENVIRONMENTAL QUALITY COMMISSION

WITNESS REGISTRATION

John Williams

NAME (PLEASE PRINT)

NE 82nd

PTLD

ADDRESS

Steamfitters # 290

AFFILIATION

I REQUEST APPROXIMATELY 5 MINUTES TO SPEAK.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Certificate No. 2078

Date of Issue Dec. 1, 1989

Application No. T-2002

POLLUTION CONTROL FACILITY CERTIFICATE

| | |
|---|---|
| Issued To: Willamette Industries, Inc. Duraflake Division 3800 First Interstate Tower Portland, OR 97201 | Location of Pollution Control Facility: 2550 Old Salem Road N.E. Albany, Oregon |
| As: <input type="checkbox"/> Lessee <input checked="" type="checkbox"/> Owner | |
| Description of Pollution Control Facility: Claimed facility consists of the installation of three new baghouses, one modified baghouse, four modified scrubbers, two silos, associated blowers, conveyors and other equipment. | |
| Type of Pollution Control Facility: <input checked="" type="checkbox"/> Air <input type="checkbox"/> Noise <input type="checkbox"/> Water <input type="checkbox"/> Solid Waste <input type="checkbox"/> Hazardous Waste <input type="checkbox"/> Used Oil | |
| Date Pollution Control Facility was completed: <u>9-30-86</u> Placed into operation: <u>9-30-86</u> | |
| Actual Cost of Pollution Control Facility: \$ <u>1,047,642.20</u> | |
| Percent of actual cost properly allocable to pollution control: <u>100 percent</u> | |

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

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

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

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

Signed 

Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on
the 1st day of December, 19 89.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Certificate No. 2079
Date of Issue Dec. 1, 1989
Application No. T-2097

POLLUTION CONTROL FACILITY CERTIFICATE

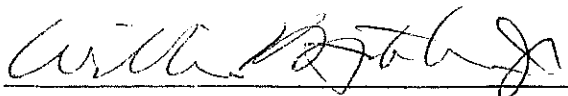
| | |
|---|---|
| Issued To: Whittier Wood Products Co. 3787 West First Ave. P.O. Box 2827 Eugene, OR 97402 | Location of Pollution Control Facility: 3787 West 1st Avenue Eugene, Oregon |
| As: <input type="checkbox"/> Lessee <input checked="" type="checkbox"/> Owner | |
| Description of Pollution Control Facility: Claimed facility is for the installation of two baghouses, fans and associated ductwork. | |
| Type of Pollution Control Facility: <input checked="" type="checkbox"/> Air <input type="checkbox"/> Noise <input type="checkbox"/> Water <input type="checkbox"/> Solid Waste <input type="checkbox"/> Hazardous Waste <input type="checkbox"/> Used Oil | |
| Date Pollution Control Facility was completed: <u>4-30-87</u> Placed into operation: <u>4-30-87</u> | |
| Actual Cost of Pollution Control Facility: \$ <u>97,881.71</u> | |
| Percent of actual cost properly allocable to pollution control: 100 percent | |

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

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3. Any reports or monitoring data requested by the Department of Environmental Quality shall be promptly provided.

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Signed 
Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on
the 1st day of December, 19 89.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Certificate No. 2083

Date of Issue Dec. 1, 1989

Application No. T-2275

POLLUTION CONTROL FACILITY CERTIFICATE

| | |
|---|--|
| Issued To: Teledyne Industries, Inc. Teledyne Wah Chang Albany P.O. Box 460 Albany, OR 97321 | Location of Pollution Control Facility: 1600 Old Salem Road Albany, Oregon |
| As: <input type="checkbox"/> Lessee <input checked="" type="checkbox"/> Owner | |
| Description of Pollution Control Facility: Venturi scrubber system consisting of a Venair scrubber, ductwork, fan, pump, flow and PH monitoring equipment and associated controls. | |
| Type of Pollution Control Facility: <input checked="" type="checkbox"/> Air <input type="checkbox"/> Noise <input type="checkbox"/> Water <input type="checkbox"/> Solid Waste <input type="checkbox"/> Hazardous Waste <input type="checkbox"/> Used Oil | |
| Date Pollution Control Facility was completed: <u>8-18-87</u> | Placed into operation: <u>1-01-88</u> |
| Actual Cost of Pollution Control Facility: <u>\$ 60,307.00</u> | |
| Percent of actual cost properly allocable to pollution control: 100 percent | |

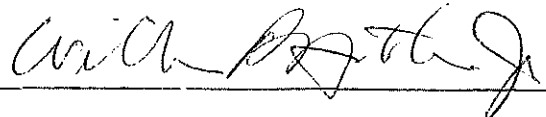
Based upon the information contained in the application referenced above, the Environmental Quality Commission certifies that the facility described herein was erected, constructed or installed in accordance with the requirements of ORS 468.175 and subsection (1) of ORS 468.165, and is designed for,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

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3. Any reports or monitoring data requested by the Department of Environmental Quality shall be promptly provided.

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

Signed



Title

William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on

the 1st day of December, 1989

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Certificate No. 2084

Date of Issue Dec. 1, 1989

Application No. T-2286

POLLUTION CONTROL FACILITY CERTIFICATE

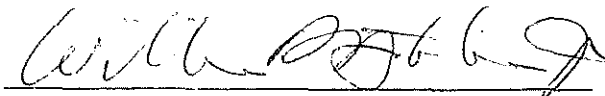
| | |
|---|--|
| Issued To: Newood Products of Oregon, Inc. P.O. Box 21808 Eugene, OR 97402 | Location of Pollution Control Facility: 10 N. Seneca Road Eugene, Oregon |
| As: <input type="checkbox"/> Lessee <input checked="" type="checkbox"/> Owner | |
| Description of Pollution Control Facility: Installation of a cyclone/baghouse dust control system. | |
| Type of Pollution Control Facility: <input checked="" type="checkbox"/> Air <input type="checkbox"/> Noise <input type="checkbox"/> Water <input type="checkbox"/> Solid Waste <input type="checkbox"/> Hazardous Waste <input type="checkbox"/> Used Oil | |
| Date Pollution Control Facility was completed: <u>3-11-88</u> Placed into operation: <u>3-11-88</u> | |
| Actual Cost of Pollution Control Facility: \$ <u>43,918.23</u> | |
| Percent of actual cost properly allocable to pollution control: <p style="text-align: center;">100 percent</p> | |

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

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2. The Department of Environmental Quality shall be immediately notified of any proposed change in use or method of operation of the facility and if, for any reason, the facility ceases to operate for its intended pollution control purpose.
3. Any reports or monitoring data requested by the Department of Environmental Quality shall be promptly provided.

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

Signed 
 Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on
 the 1st day of December, 19 89

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Certificate No. 2088

Date of Issue Dec. 1, 1989

Application No. T-2515

POLLUTION CONTROL FACILITY CERTIFICATE


| | |
|---|---|
| Issued To: Willamette Industries, Inc. Korpine Division 3800-3825 First Interstate Tower 1300 SW Fifth Ave Portland, Or 97201 | Location of Pollution Control Facility: Bend, Oregon |
| As: <input type="checkbox"/> Lessee <input checked="" type="checkbox"/> Owner | |
| Description of Pollution Control Facility: Pneumafil baghouse Model 8.5-162-12 and ancillary equipment. | |
| Type of Pollution Control Facility: <input checked="" type="checkbox"/> Air <input type="checkbox"/> Noise <input type="checkbox"/> Water <input type="checkbox"/> Solid Waste <input type="checkbox"/> Hazardous Waste <input type="checkbox"/> Used Oil | |
| Date Pollution Control Facility was completed: <u>8-26-88</u> Placed into operation: <u>8-26-88</u> | |
| Actual Cost of Pollution Control Facility: \$ <u>95,368.40</u> | |
| Percent of actual cost properly allocable to pollution control: 100 percent | |

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

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

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

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

Signed 

Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on
the 1st day of December, 19 89.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Certificate No. 2089
Date of Issue Dec. 1, 1989
Application No. T-2537

POLLUTION CONTROL FACILITY CERTIFICATE

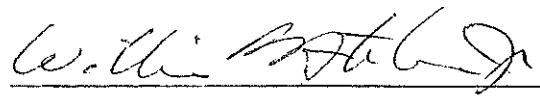
| | |
|---|--|
| Issued To: Teledyne Industries, Inc. Teledyne Wah Chang Albany P.O. Box 460 Albany, OR 97321 | Location of Pollution Control Facility: 1600 Old Salem Road Albany, Oregon |
| As: <input type="checkbox"/> Lessee <input checked="" type="checkbox"/> Owner | |
| Description of Pollution Control Facility: Two additional Brinks Demisters for the niobium calciner venturi scrubber system. | |
| Type of Pollution Control Facility: <input checked="" type="checkbox"/> Air <input type="checkbox"/> Noise <input type="checkbox"/> Water <input type="checkbox"/> Solid Waste <input type="checkbox"/> Hazardous Waste <input type="checkbox"/> Used Oil | |
| Date Pollution Control Facility was completed: <u>9-9-1988</u> Placed into operation: <u>9-9-1988</u> | |
| Actual Cost of Pollution Control Facility: \$ <u>10,980.00</u> | |
| Percent of actual cost properly allocable to pollution control: <p style="text-align: center;">100 percent</p> | |

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

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

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

Signed 
 Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on
 the 1st day of December, 1989

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Certificate No. 2090

Date of Issue Dec. 1, 1989

Application No. T-2625

POLLUTION CONTROL FACILITY CERTIFICATE

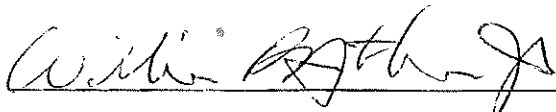
| | |
|---|---|
| Issued To: South Coast Lumber Co. Plywood Division P.O. Box 670 Brookings, OR 97415 | Location of Pollution Control Facility: Railroad Avenue Brookings, Oregon |
| As: <input type="checkbox"/> Lessee <input checked="" type="checkbox"/> Owner | |
| Description of Pollution Control Facility: Installation of an American Kiln scrubber and clarifier on a new wood fired boiler. | |
| Type of Pollution Control Facility: <input checked="" type="checkbox"/> Air <input type="checkbox"/> Noise <input type="checkbox"/> Water <input type="checkbox"/> Solid Waste <input type="checkbox"/> Hazardous Waste <input type="checkbox"/> Used Oil | |
| Date Pollution Control Facility was completed: <u>5-31-88</u> Placed into operation: <u>5-31-88</u> | |
| Actual Cost of Pollution Control Facility: \$ <u>114,174.00</u> | |
| Percent of actual cost properly allocable to pollution control: <p style="text-align: center;">100 percent</p> | |

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

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

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

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Signed 
 Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on
 the 1st day of December, 1989

**State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY**

Certificate No. 2092
Date of Issue Dec. 1, 1989
Application No. T-2815

POLLUTION CONTROL FACILITY CERTIFICATE

| | |
|---|---|
| Issued To: Kenneth Roth 33803 Seven Mile Lane SE Albany, Oregon 97321 | Location of Pollution Control Facility: (same) |
| As: <input type="checkbox"/> Lessee <input checked="" type="checkbox"/> Owner | |
| Description of Pollution Control Facility: 20' x 70' x 100' pole construction straw storage shed. | |
| Type of Pollution Control Facility: <input checked="" type="checkbox"/> Air <input type="checkbox"/> Noise <input type="checkbox"/> Water <input type="checkbox"/> Solid Waste <input type="checkbox"/> Hazardous Waste <input type="checkbox"/> Used Oil | |
| Date Pollution Control Facility was completed: <u>7-15-1989</u> Placed into operation: <u>7-16-1989</u> | |
| Actual Cost of Pollution Control Facility: \$ <u>27,036.00</u> | |
| Percent of actual cost properly allocable to pollution control: 74 percent | |

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

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

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3. Any reports or monitoring data requested by the Department of Environmental Quality shall be promptly provided.

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

Signed William P. Hutchison, Jr.

Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on
the 1st day of December, 1989.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Certificate No. 2091

Date of Issue Dec. 1, 1989

Application No. T-2668

POLLUTION CONTROL FACILITY CERTIFICATE

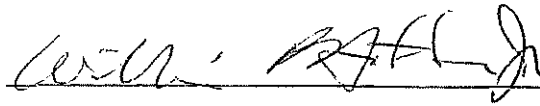
| | |
|---|--|
| Issued To: Timber Products Co. P.O. Box 269 Springfield, Or 97477 | Location of Pollution Control Facility: 25 E. McAndrews Road Medford, Oregon |
| As: <input type="checkbox"/> Lessee <input checked="" type="checkbox"/> Owner | |
| Description of Pollution Control Facility: Two Clarke Model 60-20 Pneu-Aire Baghouses | |
| Type of Pollution Control Facility: <input checked="" type="checkbox"/> Air <input type="checkbox"/> Noise <input type="checkbox"/> Water <input type="checkbox"/> Solid Waste <input type="checkbox"/> Hazardous Waste <input type="checkbox"/> Used Oil | |
| Date Pollution Control Facility was completed: <u>6-01-89</u> | Placed into operation: <u>6-01-89</u> |
| Actual Cost of Pollution Control Facility: \$ <u>246,706.00</u> | |
| Percent of actual cost properly allocable to pollution control: 100 percent | |

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

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

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3. Any reports or monitoring data requested by the Department of Environmental Quality shall be promptly provided.

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

Signed 

Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on
the 1st day of December, 1989

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Certificate No. 2093

Date of Issue Dec. 1, 1989

Application No. T-2859

POLLUTION CONTROL FACILITY CERTIFICATE

| | |
|---|---|
| Issued To: Looney Farms, Inc. 627 Ferry Street SW Albany, Oregon 97321 | Location of Pollution Control Facility: 31499 Kendall Loop Road Shedd, Oregon |
| As: <input type="checkbox"/> Lessee <input checked="" type="checkbox"/> Owner | |
| Description of Pollution Control Facility: Galvanized, four-sided metal pole straw storage building, 22' x 124' x 144' (1500 ton capacity) | |
| Type of Pollution Control Facility: <input checked="" type="checkbox"/> Air <input type="checkbox"/> Noise <input type="checkbox"/> Water <input type="checkbox"/> Solid Waste <input type="checkbox"/> Hazardous Waste <input type="checkbox"/> Used Oil | |
| Date Pollution Control Facility was completed: <u>5-10-1989</u> | Placed into operation: <u>7-01-1989</u> |
| Actual Cost of Pollution Control Facility: <u>\$ 58,738.32</u> | |
| Percent of actual cost properly allocable to pollution control: 100 percent | |

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

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

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

Signed 

Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on
the 1st day of December, 1989.

**State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY**

Certificate No. 2094
Date of Issue Dec. 1, 1989
Application No. T-3034

POLLUTION CONTROL FACILITY CERTIFICATE


| | |
|---|---|
| Issued To: Knaupp Seed Farm, Inc. Mark and Deborah Knaupp 815 Greenwood Road Independence, OR 97351 | Location of Pollution Control Facility: (same) |
| As: <input type="checkbox"/> Lessee <input checked="" type="checkbox"/> Owner | |
| Description of Pollution Control Facility: Rears 30-foot propane flamer. | |
| Type of Pollution Control Facility: <input checked="" type="checkbox"/> Air <input type="checkbox"/> Noise <input type="checkbox"/> Water <input type="checkbox"/> Solid Waste <input type="checkbox"/> Hazardous Waste <input type="checkbox"/> Used Oil | |
| Date Pollution Control Facility was completed: 6-26-1989 Placed into operation: 8-11-1989 | |
| Actual Cost of Pollution Control Facility: \$ 7,749.65 | |
| Percent of actual cost properly allocable to pollution control: 100 percent | |

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

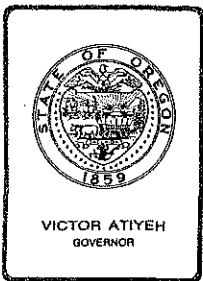
Therefore, this Pollution Control Facility Certificate is issued this date subject to compliance with the statutes of the State of Oregon, the regulations of the Department of Environmental Quality and the following special conditions:

1. The facility shall be continuously operated at maximum efficiency for the designed purpose of preventing, controlling, and reducing the type of pollution as indicated above.
2. The Department of Environmental Quality shall be immediately notified of any proposed change in use or method of operation of the facility and if, for any reason, the facility ceases to operate for its intended pollution control purpose.
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NOTE — The facility described herein is not eligible to receive tax credit certification as an Energy Conservation Facility under the provisions of Chapter 512, Oregon Law 1979, if the person issued the Certificate elects to take the tax credit relief under ORS 316.097 or 317.072.

Signed 
Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on
the 1st day of December, 19 89.



Ready For P.N. #13
P.N. 6/17-7/18/83

Department of Environmental Quality

(Mod)

522 S.W. 5th AVENUE, BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5325

MAY 24 1983

Dan Weybright, Engineering Manager
WEYERHAEUSER COMPANY
Southwest Oregon Region
P.O. Box 389
North Bend, OR 97459

Final Date for Submission
of Written Comments: JUN 7 1983

Re: NPDES Permit No. 3437-J
File No. 96225
(Plywood & Sawmill)

Dear Mr. Weybright:

Your request for modification of your National Pollutant Discharge Elimination System (NPDES) Permit has been reviewed and a proposed permit modification has been drafted. You are invited to review the attached copy and submit any comments you may have in writing prior to the date indicated above.

A public notice of the proposed action is also being circulated for 30 days. Public comments must be considered before taking final action on the modification. A copy of the public notice is enclosed for your information.

After the public participation period is over and all comments received have been evaluated, final action will be taken on the modification request.

If you have any questions, please contact this office.

Very truly yours,

Charles K. Ashbaker
Supervisor
Source Control Section
Water Quality Division

CKA:mjb

Enclosures

cc: Southwest Region, DEQ

Fiscal Office
Dept. of Environmental Quality
RECEIVED
MAY 16 1983



File 96225
modification made
Weyerhaeuser Company *SB.*

Southwest Oregon Region
North Bend, Oregon 97459
(503) 756-5121

SAWMILL

May 6, 1983

Mr. Larry Patterson
Water Quality Division
Department of Environmental Quality
522 Southwest 5th Avenue
Box 1760
Portland, Oregon 97207

Copy
Larry Patterson
has original
letter

Reference: NPDES Permit #3437-J

Mr. Patterson:

During a recent meeting Jerry Bollen indicated that verbal approval has been given to Weyerhaeuser Company, North Bend, Oregon allowing BOD increases in hydraulic barker effluent from January through May. This letter is to formally request that NPDES Waste Discharge Permit #3437-J be revised per your discussion with Jerry Bollen.

Schedule A

Outfall Number 001 (hydraulic barker effluent)

| | Loadings | | | |
|-------------------------|--------------|----------|------------|----------|
| | Monthly Avg. | | Daily Max. | |
| | kg/day | (lb/day) | kg/day | (lb/day) |
| Current Permit BOD-5 | 363 | (800) | 726 | (1600) |
| Proposed Revision | | | | |
| BOD-5 Jan. 1 - May 31 | 681 | (1500) | 908 | (2000) |
| June 1 - Dec. 31 | 363 | (800) | 726 | (1600) |

The \$275 permit modification fee is enclosed.

Thank you for your assistance.

Sincerely,

Dan Weybright.

Dan Weybright
Engineering Manager

DW:fc
Encl.

CC: Jerry Bollen
G. Van Vleet
Bruce Hammon - DEQ

RECEIVED
MAY 18 1983
Dept. of Environ.
Water Quality Division
Quality

96255 ~~108~~



Weyerhaeuser Company
Containerboard Division *WEST COAST*

P.O. Box 329
North Bend, Oregon 97459
(503) 756-5171

May 3, 1983

RECEIVED
MAY 05 1983

Water Quality Division
Dept. of Environmental Quality

Mr. Larry Patterson
Oregon Department of Environmental Quality
Post Office Box 1760
Portland, Oregon 97207

Dear Mr. Patterson

This will serve to confirm our recent conversations regarding the deadline for our lagoon groundwater study.

We originally planned to complete our study by June 1, 1983 as proposed in your letter which originally proposed this study. This winter it was decided to add an EM survey to the scope of the study. (The EM survey is a non-intrusive method which will allow us to produce a three dimensional map of the concentration of lagoon waste/old spent liquor in the groundwater around the lagoon). We had planned to do this study in May, however, the area to the southeast of the lagoon has been closed to protect snowy plover habitat. In addition, water levels around the lagoon have only recently dropped to a level which allows access to the area north of the lagoon. This has been quite a problem this year; for example, the newly elevated road to Horsfall Beach is still under several inches of water.

We plan to complete the EM survey as soon as possible after June 15 as our consultant's schedule will allow. We anticipate a final groundwater report will be available before September 1. This delay will allow us to include the results of the survey in the first phase of the study.

We will inform you of the survey schedule as soon as it is set, as you indicated an interest in observing the procedure.

If you have any questions or require additional information, please contact Larry Schoolcraft or me.

Sincerely,

Jon Gjertsen
Jon E. Gjertsen, Process Engineer

JEG:bj

- cc: T. F. Williscroft
- Jim West
- Jerry Bollen, Weyerhaeuser, Springfield
- Doug Mahurin, Weyerhaeuser, North Bend
- Bruce Hammon, DEQ, Coos Bay
- Harold Sawyer, DEQ, Portland
- John Edwards, Sweet, Edwards & Associates

Interoffice Communication



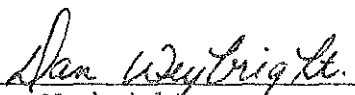
Weyerhaeuser

Date October 5, 1981
From Dan Weybright
Location Southwest Oregon Region
Subject NPDES Hydraulic Barker BOD
To Jerry Bollen Springfield

As you requested attached is a summary of BOD results for the North Bend Hydraulic Barker effluent. Data represents the numbers that have been reported to the DEQ each month.

Months that exceeded the allowable limits are marked with an asterisk. In addition, circled months indicate when extra samples had to be taken to meet maximum limits.

If you have any questions please call.


Dan Weybright
Engineering Manager

DW/pw

cc: Larry Patterson Portland Office DEQ
Bruce Hammon Coos Bay Office DEQ
Bob Abel
Bill Cole

WEYERHAEUSER COMPANY
North Bend, Oregon

HYDRAULIC BARKER EFFLUENT - BOD

ALLOWABLE LIMITS

AVERAGE - 800 lbs/day
MAXIMUM - 1600 lbs/day

| | 1978 | | 1979 | | 1980 | | 1981 | |
|-----------|-------|--------|-------|--------|-------|-------|-------|--------|
| | Avg. | Max. | Avg. | Max. | Avg. | Max. | Avg. | Max. |
| January | *865 | 1211 | 679 | 951 | 502 | 703 | 571 | 800 |
| February | *865 | 1211 | (741) | (1038) | 432 | 605 | 757 | 1059 |
| March | (780) | (1092) | *965 | 1351 | *965 | 1351 | (757) | (1059) |
| April | 795 | 1113 | *1189 | *1665 | *1328 | *1859 | (571) | (800) |
| May | 602 | 843 | (772) | (1081) | *988 | 1384 | (787) | (1157) |
| June | 471 | 659 | 679 | 951 | 757 | 1059 | 656 | 919 |
| July | 456 | 638 | 641 | 897 | 587 | 821 | 772 | 1081 |
| August | 743 | 811 | 718 | 1005 | 448 | 627 | 649 | 908 |
| September | 337 | 367 | 540 | 757 | 463 | 649 | | |
| October | 664 | 724 | 540 | 757 | 263 | 367 | 714 | 1135 |
| November | 575 | 627 | 741 | 1038 | 494 | 692 | 772 | 1405 |
| December | 656 | 919 | 718 | 1005 | 525 | 735 | 772 | 1081 |

Exceeds Allowable Unit
Numbers circle indicate months where extra samples were taken.

24 hrs composite, BARKER STATION
1000 DISCHARGE PER HOUR

WEYERHAEUSER COMPANY
North Bend, Oregon

HYDRAULIC BARKER EFFLUENT - BOD

ERAGE - 800 lbs/day
XIMUM - 1600 lbs/day

| ax. | 1979 | | 1980 | | 1981 | | 1982 | | 1983 | |
|------|-------|--------|-------|-------|-------|--------|------|------|------|------|
| | Avg. | Max. | Avg. | Max. | Avg. | Max. | Avg. | Max. | Avg. | Max. |
| 211 | 679 | 951 | 502 | 703 | 571 | 800 | 795 | 1405 | 1056 | 1713 |
| 211 | (741) | (1038) | 432 | 605 | 757 | 1059 | 850 | 1459 | 1081 | 1513 |
| (92) | *965 | 1351 | *965 | 1351 | (757) | (1059) | 815 | 1513 | | |
| 113 | *1189 | *1665 | *1328 | *1859 | (571) | (800) | 1009 | 1405 | | |
| 13 | (772) | (1081) | *988 | 1384 | (787) | (1157) | 685 | 975 | | |
| 19 | 679 | 951 | 757 | 1059 | 656 | 919 | 772 | 1405 | | |
| 18 | 641 | 897 | 587 | 821 | 772 | 1081 | 371 | 519 | | |
| 1 | 718 | 1005 | 448 | 627 | 649 | 908 | | | | |
| 7 | 540 | 757 | 463 | 649 | | | | | | |
| 4 | 540 | 757 | 263 | 367 | 714 | 1135 | 456 | 638 | | |
| 7 | 741 | 1038 | 494 | 692 | 772 | 1405 | 448 | 627 | | |
| 9 | 718 | 1005 | 525 | 735 | 772 | 1081 | 710 | 994 | | |

ra samples were taken.

107, BARKER SEWER
USING...
... & ...

mailed

Application No. T-1576

State of Oregon
Department of Environmental Quality
TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Meyerhaeuser Company
Wood Products Manufacturing
P. O. Box 389
North Bend, OR 97459

The applicant owns and operates a lumber and plywood manufacturing facility at North Bend.

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

2. Description of Claimed Facility

The facility described in this application is a pentachlorophenol spill control system consisting of:

- a. A 36' long steel dip tank;
- b. Concrete foundation, curbing, and drip pad;
- c. Pump house; and
- d. Stainless steel pump.

Request for Preliminary Certification for Tax Credit was made July 9, 1981, and approved July 31, 1981. Construction was initiated on the claimed facility August 11, 1981, completed November 9, 1981, and the facility was placed into operation November 9, 1981.

Facility Cost: \$141,886 (Accountant's Certification was provided).

3. Evaluation of Application

Wood intended for export is often dipped in a pentachlorophenol solution to reduce stain and fungus growth. Prior to installation of the claimed facility, the pentachlorophenol dip system did not provide for collection of drippings and spills. Early in 1967, several spills occurred from this system which allowed the anti-stain solution to enter Coos Bay. In addition, the solution was applied by hose on large timbers with excess solution dripping onto the ground. The new dip tank is large enough such that all lumber and timbers can be handled in it. The spill control facility has a sealed concrete floor and walls to contain drips and spills. Lumber removed from the dip tank is placed on sloped racks within the walled area for further drip time. Liquids collect in a sump and are pumped back to the dip tank. A shed located within the facility houses the pumps and concentrated solution. This is a well designed system which has greatly reduced the loss of pentachlorophenol to the surrounding environment. There is no return on investment from this facility.

4. Summation

- a. Facility was constructed in accordance with the requirements of ORS 468.175, regarding preliminary certification.
- b. Facility was constructed on or after January 1, 1967, as required by ORS 468.165(1)(a).
- c. Facility is designed for and is being operated to a substantial extent for the purpose of preventing, controlling, or reducing water pollution.
- d. The facility is necessary to satisfy the intents and purposes of ORS Chapter 468 and the rules adopted under that chapter.
- e. The portion of the facility cost that is properly allocable to pollution control is 80 percent or more.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$141,886 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1576.

C. K. Ashbaker:g
(503) 229-5325
November 24, 1982

WC1770

mailed 11/24

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE MEMO

TO: Bruce Hammon, Coos Bay

DATE: November 23, 1981

FROM: L. D. Patterson, Water Quality

SUBJECT: WQ - Weyerhaeuser, N. Bend

Dan Weybright called at 9:55 a.m. on 11-23-81, to report a breakdown with the hydraulic barker clarifier.

Weyerhaeuser took the clarifier over the weekend of the 21st and found significant metal deterioration in the rake mechanism. Repairs are under way and should be completed by the afternoon of 11/23/81. The barker was down over the weekend, but restarted at 7:30 a.m. on the 23rd. The barker process water is going directly to the Bay.

I told Mr. Weybright to keep an eye on the appearance of the discharge area and inform us if they receive any complaints. Weybright will submit a report of the breakdown occurrence.

LDP:l
WL1248 (1)



Department of Environmental Quality
SOUTHWEST REGION
201 W. MAIN, SUITE 2-D, MEDFORD, OREGON 97501

COOS BAY BRANCH OFFICE
SOUTHWEST REGION
490 N. SECOND STREET
COOS BAY, OR 97420 - 269-2721
PHONE (503) 776-6010

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

May 11, 1982

RECEIVED
MAY 14 1982

WATER QUALITY CONTROL

Mr. Dan Weybright
Engineering Manager
Weyerhaeuser Company
P. O. Box 389
North Bend, OR 97459

RE: IW - Coos County
Weyerhaeuser Company
North Bend
3437-J/96225

Dear Mr. Weybright:

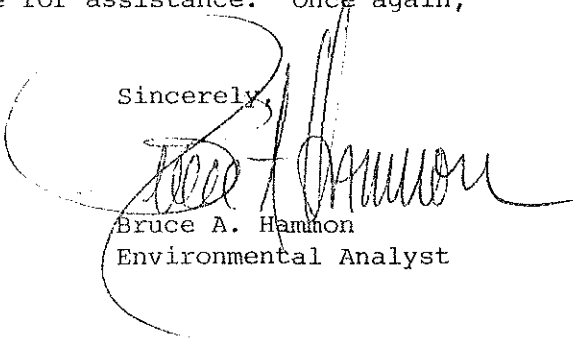
On May 7, 1982, the Department inspected the glue waste recycle and pentachlorophenol dip systems for compliance with the NPDES permit issued for the North Bend mill.

At the time of this visit, it was noted that the aforementioned systems appeared to be operated and maintained in a satisfactory manner.

We would like to take this opportunity to commend you and Bill Cole for the effort put forth to comply with our recommendations as well as the conditions of the NPDES permit.

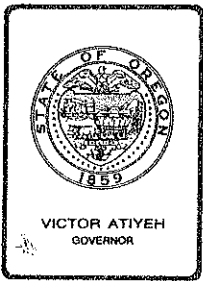
In event questions arise on the terms and conditions of the permit, please feel free to contact this office for assistance. Once again, thank you for a job well done.

Sincerely,


Bruce A. Hammon
Environmental Analyst

BAH:dp

cc: Jerry Bollen
Gary Grimes
Larry Patterson



Department of Environmental Quality

522 S.W. 5th AVENUE, BOX 1760, PORTLAND, OREGON 97207

JAN 5 1982

File
THIS DOES NOT

BELONG ON

PERMIT SIDE
OF FOLDER

WEYERHAEUSER COMPANY

Southwest Oregon Region - Wood Products

Attention: Dan Weybright, Engineering Manager

P.O. Box 389

North Bend, OR 97459

Re: Waste Discharge Permit
File No. 96225

Gentlemen:

We have completed our review of your permit application and the comments received regarding the preliminary draft permit which was mailed to you for review on September 21, 1981 and have issued the enclosed NPDES Waste Discharge Permit.

This permit will be considered as the final action on permit application number OR-200083-3.

Copies of monitoring report forms will be sent to you by our regional office under separate cover.

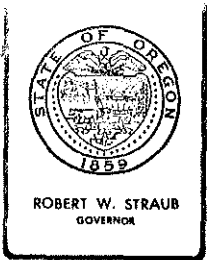
You are urged to carefully read the permit and take all possible steps to comply with the conditions contained therein so our Oregon environment can be preserved. If you have questions regarding the permit, please contact this office.

Sincerely,

William H. Young
Director

CKA: mjb
Enclosure

cc: EPA
Southwest Region, DEQ



Department of Environmental Quality
SOUTHWEST REGION

1937 W. HARVARD BLVD., ROSEBURG, OREGON 97470 PHONE (503) 672-8204
Coos Bay Branch Office - 1360 Virginia #4, North Bend, OR 97459

Richard P. Reiter
Regional Manager

April 29, 1977

RECEIVED
MAY 02 1977

Ms. Fay Cook
Engineering Office
Weyerhaeuser Company
P. O. Box 389
North Bend, Oregon 97459

Water Quality Division
Dept. of Environmental Quality

Re: IW-Coos County
Weyerhaeuser Company (North Bend)
File No. 96180

Dear Ms. Cook:

In response to your telephone request, we are sending you a six (6) month supply of the Water Quality self-monitoring forms (EPA Form 3320-1 [10-72]). This supply of these forms does not have the information pre-typed as did your previous supply. Please include the permit identification and the discharge limitations on each sheet each month. We hope to provide you with a new supply of the pre-typed forms in the near future.

If you have any questions or if we can assist you, please call me at the Coos Bay Branch Office at 756-4244.

Sincerely,

William H. Young
Director

E. T. Davison
Field Engineer

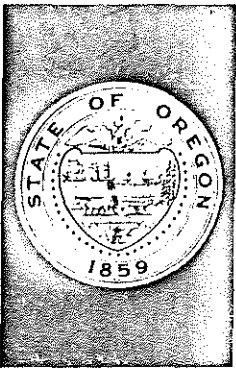
ETD:am

cc: Water Quality Control Division, DEQ
ATTN: Mr. Kent Ashbaker



Contains
Recycled
Materials

DEQ-37



DEPARTMENT OF ENVIRONMENTAL QUALITY

SOUTHWEST REGION

1937 W. HARVARD BLVD. • ROSEBURG, OREGON • 97470 • (503) 672-8204

ROBERT W. STRAUB
GOVERNOR

February 23, 1977

Richard P. Reiter
Regional Manager

Mr. Jerry Bollen
Weyerhaeuser Company
P. O. Box 275
Springfield, Oregon 97477

Re: IW - Coos County
Weyerhaeuser Company
File Number: 96225

Dear Mr. Bollen:

The Department of Environmental Quality has, for several years, collected and analyzed water samples from rivers and estuaries near water-based log handling activities. This data showed that significant water quality problems can occur around log dumps, storage areas and mills receiving logs by water. Under the authority granted to the Department by the Oregon State Legislature in Oregon Revised Statutes (ORS) 468.740 and after several public hearings to discuss log handling practices in State waters, the Department is initiating a permit program for most log handling activities. Enclosed is a copy of ORS 468.740, an application form and maps for your use in indicating expected storage areas for 1977. Please complete them and return as soon as possible, but by no later than March 11, 1977. Required with the application is a fee of \$125 to cover the processing of the permit and the first year's inspection fee.

Members of the Southwest Region staff will be meeting with you in the near future to discuss the permit with you. If you have any questions prior to that meeting, please feel free to call me at 672-8204. Your prompt attention will be appreciated.

Sincerely,

WILLIAM H. YOUNG
Director

Barbara A. Burton
Assistant Regional Manager

BAB/pk

Enclosures

cc: Water Quality Division, DEQ, Portland



State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Kearns Water Quality Division
Spencer & Co. Inc.
INTEROFFICE MEMO

To: Rich, Barb, Tim

Date: December 13, 1976
RECEIVED
DEC 20 1976
WATER QUALITY CONTROL

From: Dan *DP*

Subject: Log Handling- Weyerhaeuser Company, Coos Bay

Barb and I met with Lee Esterbrook, of Weyerhaeuser Company, to inspect the Dellwood log dump. The site includes a large cold deck storage area served by a conveyer for placing the logs in the water. A second conveyer underneath, catches loose bark and carries it into a dump truck. (The debris is apparently hauled to their disposal site about a mile up the road.) An "A" frame is also available on a standby basis.

The receiving channel for the logs is cleared of floating debris by the logster about twice a week. Two days had elapsed since the area had been cleared at the time of our inspection. A large amount of floating bark was evident. The receiving channel is boomed off, but is opened when the log rafts are towed out. Weyerhaeuser dredges the area about once a year.

According to Lee, the Company tries to maintain about a two week inventory ahead of the mill's needs. However, the maximum turnover for a given raft of logs in the water is 4-6 months.

Barb and I also inspected the log yard bordering the slough. Log debris has been piled to form a large berm extending about 50 feet above the water. Lee indicated that this was done to form a "filter" for runoff from the surrounding log yard. (Convenience seems a more likely explanation).

Apparently not more than 10-12 rafts are now stored above the Chandler Bridge due to danger to the bridge during winter flood conditions. The Company has, therefore, gone to storage in the Koostore Channel. Most grounding apparently occurs near the old river channel rather than the upriver location. I asked whether the limitation of log storage in the upper Coos River meant that some of the upriver pilings were now not used and could be removed. Lee said this was not the case.

We will have to schedule an inspection of the Allegany site at a later date.

State of Oregon
Department of Environmental Quality
Box 1760
Portland, OR 97207

FILE
State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
DEC 08 1981

NOTICE OF APPROVED CONSTRUCTION COMPLETION WATER QUALITY CONTROL

To: Owner or Applicant

This form must be filled in and returned within 30 days upon completion of the approved construction.

Mail to: Department of Environmental Quality
Box 1760
Portland, OR 97207

Attention: Air Quality Division
 Water Quality Division
 Solid Waste Division

The facility described below was completed on November 9, 1981 (date)

and was or will be in operation November 9, 1981 (date)

Scott S. Sorensen by Jan Wright
(signature) Project Engineer 11/9/81
(title) (date)

Please send tax credit application for this project yes no.

(For DEQ use only - below this line)

Applicant Name Weyerhaeuser Company Request No. WQ-420

Address P. O. Box 389 File No. 96225

City & Zip Code North Bend, Oregon 97459

Description of Facility New wood dip tank, concrete slab and curb, roof and drip pad

Date Notice Received _____

Assigned for Inspection to _____ by _____ on _____

Date of Inspection Report _____ by _____

Summary of Inspection:

Date cc to E.I. _____ Attachments



Weyerhaeuser Company

Southwest Oregon Region
North Bend, Oregon 97459
(503) 756-5121

September 24, 1981

Mr. Larry D. Patterson
Industrial Waste Engineer
Source Control Section
Water Quality Division
Department Of Environmental Quality
Portland, Oregon 97207

Re: Noxtane Dipping System -- File reference 96225

Dear Mr. Patterson:

As outlined in your Construction Approval Form #WQ-420 dated July 31, 1981 Weyerhaeuser Company, Southwest Oregon Region shall complete and have operational the proposed anti-stain dipping facility by no later than October 1, 1981.

Per our phone conversation this letter is to formally request that the completion deadline be changed from October 1 to November 1, 1981. A one month extension is required to complete construction because of project time lost from a strike at our facility in June and July.

At this time excavation, piling and concrete work are complete. Dip tank and control room fabrication are in process. Piping work is waiting on delivery of three pumps which are integral to the system. Expected delivery of the pumps is early October.

Your timely consideration of our proposal would be greatly appreciated. If you have any questions don't hesitate to call.

Sincerely,

WEYERHAEUSER COMPANY
Southwest Oregon Region

Dan Weybright

Dan Weybright
Engineering Manager

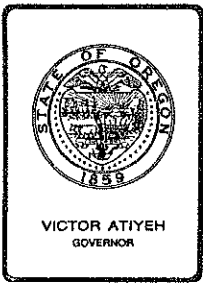
State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
SEP 28 1981

DW/pw

cc: Bruce Hammon
Jerry Bollen
Bob Abel
Scott Sorensen

WATER QUALITY CONTROL

File



Department of Environmental Quality

522 S.W. 5th AVENUE, BOX 1760, PORTLAND, OREGON 97207

SEP 21 1981

WEYERHAEUSER COMPANY

Southwest Oregon Region - Wood Products

Attention: Dan Weybright, Engineering Manager

P.O. Box 389

North Bend, OR 97459

Final Date for Submission
of Written Comments: OCT 5 1981

Re: Waste Disposal Permit
File No. 96225

Gentlemen:

Your application for a National Pollutant Discharge Elimination System (NPDES) permit has been reviewed by the Department and a proposed NPDES permit has been drafted. You are invited to review the attached copy and submit any comments you may have in writing prior to the date indicated above.

After that date, all comments received will be evaluated by the Department of Environmental Quality and final action on your application will be taken in accordance with the procedures set forth in Oregon Administrative Rules, Chapter 340, Section 14-025. You will be advised of the action taken as soon as possible after the final date for submission of written comments.

If you have any questions, please contact this office.

Sincerely,

Charles K. Ashbaker, Supervisor
Source Control Section
Water Quality Division

CKA: mjb
Enclosure

cc: Southwest Region, DEQ

PN 8-31-81



Weyerhaeuser Company

Southwest Oregon Region
North Bend, Oregon 97459
(503) 756-5121
July 20, 1981

Mr. Larry D. Patterson
Industrial Waste Engineer
Source Control Section
Water Quality Division
Dept. of Environmental Quality
Portland, Oregon 97207

State of Oregon.
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
JUL 22 1981

WATER QUALITY CONTROL

Re: Weyerhaeuser Company
File No. 96225

Mr. Patterson:

My name is Scott Sorensen. I have acquired the project of the Noxtane Dip Tank Relocation Revision. Following are answers to your six questions in the letter dated July 13, 1981.

1. A sketch of the pad is attached. If the area that the dip tank will be sitting on is not included, the exposed area is 1342.5 ft². If the dip tank area is included the exposed area is 1646.5 ft². This does not include the wall area and the raised slab which will be housed. Calculations are provided.
2. The sketch also shows a slope of 6 inches in 40 feet, section "A-A", with the uphill wall being 42 inches high (outside dimension, 36 inches inside dimension) and the downhill wall 48 inches high (outside dimension, 42 inches inside dimension). Using the area of 1342.5 ft², the usable volume figures out to be 4426 ft³ or 33,106.5 gallons. The 41,220 gallon capacity referred to from Walt Lawson's letter dated July 6, 1981 includes the area of the dip tank and was figured over a 40 inch average depth. There was a typographical error in that 30 inch depth. Another notable change is that the tank dimensions are different, as the sketch shows. Its volume, with a maximum depth of 56 inches, will be 1064 cu.ft. or 7960 gallons.
3. Yes, a seven-sack concrete mix will be used, giving an impermeable barrier. To ensure an impermeable barrier, polyethylene sheeting will be placed underneath the slab and the finished exposed concrete surface will be painted with an epoxy paint. The slab and walls will be re-inforced with 3/8 and 3/4 inch rebar. A sump and sump pump is incorporated into the scope of the project to pump drippings and rain water back to the dip tank as primary make up water.
4. A minimum of seven loads will be able to drain simultaneously. A maximum of 12 loads per hour will need to be processed. This works out to be a minimum of 35 minutes drain time per load. The sequencing will be operationally tied versus mechanically tied in the previous proposal.

WITH
PROPER
OPERATION

- Another difference is that we will be draining the loads on a 15° incline versus flat on the other proposal. This 35 minute cycle time on an incline will be more effective than 45 minutes sitting flat in the other proposal.
5. Yes. It has been incorporated into the slab that a trough will encompass the tote bin storage, pumping and screening equipment that drains into the sump.
 6. Provided is a documentation of Coos Bay's annual and monthly rainfall from January 1902 to December 1977. We use a dilution of one gallon of concentrate to 60 gallons of water. We use an average of 350 gallons of concentrate per month which converts to 17,500 gallons of water if 1:50 is used to give a fudge factor. It would take 16 inches of rain in one month accumulating over the entire slab area, including the wall area, to equal 17,500 gallons.

↙ If we (Weyerhaeuser Company, North Bend) were to have a prolonged winter shutdown, provisions will be made to either cover the area, or check the area every day and if the basin is filling up to an alarming level, arrangements will be made to dispose of the water.

I hope I have answered your questions satisfactorily, but if I haven't, don't hesitate to call me at 756-5121, ext. 368.

Sincerely,

WEYERHAEUSER COMPANY
Southwest Oregon Region

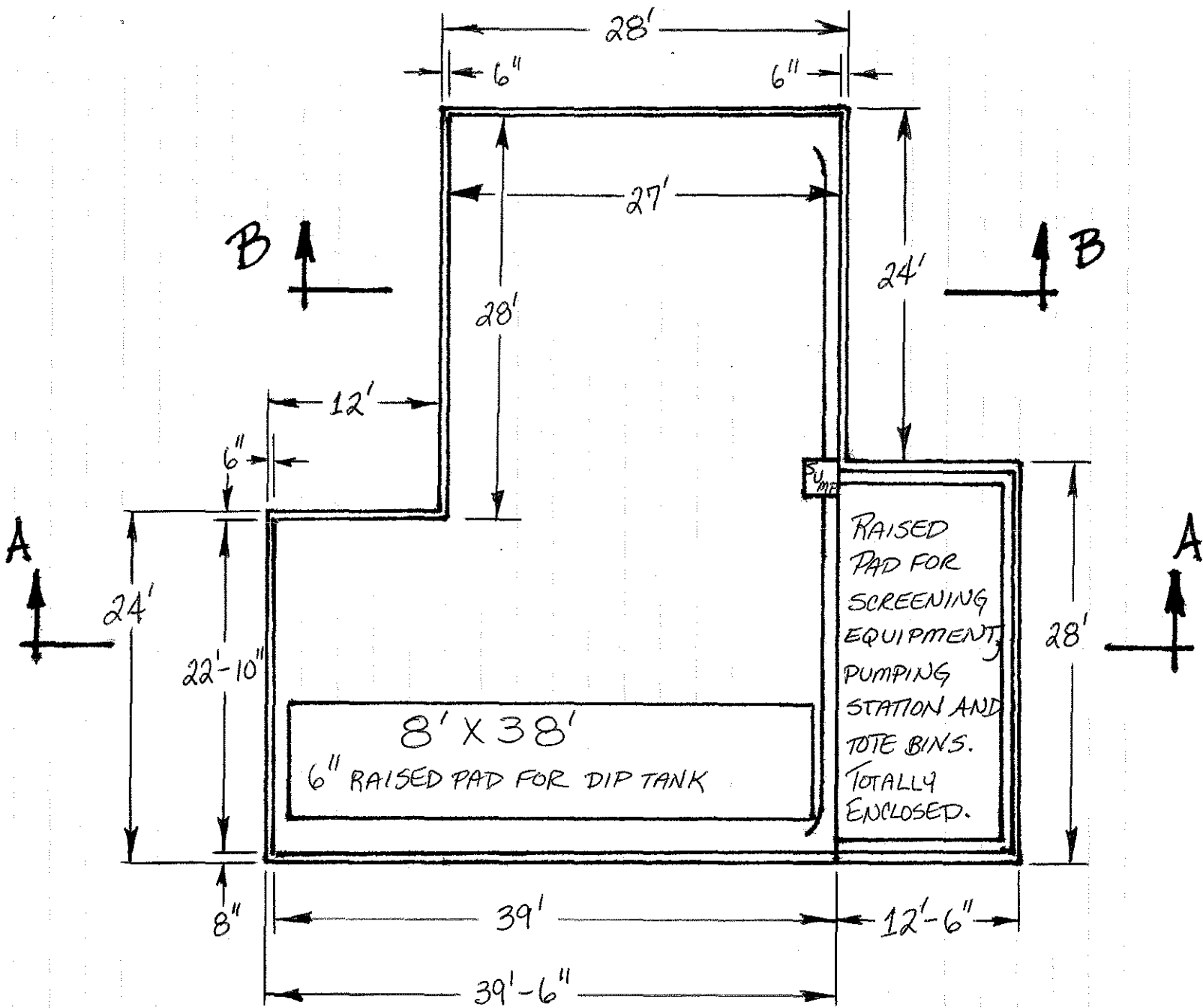


Scott R. Sorensen
Project Engineer

SRS:fc

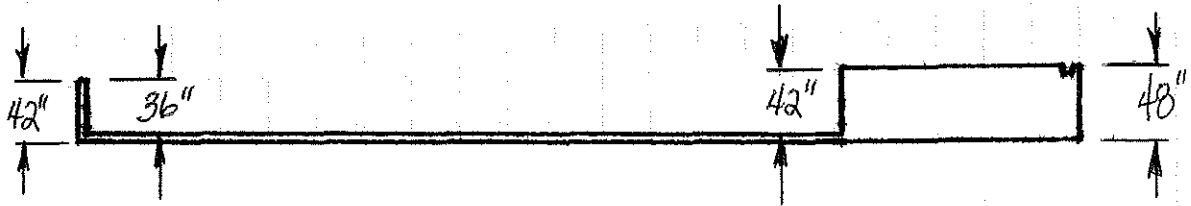
Encls.

CC: R. B. Abel
D. Weybright
J. Bollen - Salem
Bruce Hammon - DEQ, Coos Bay

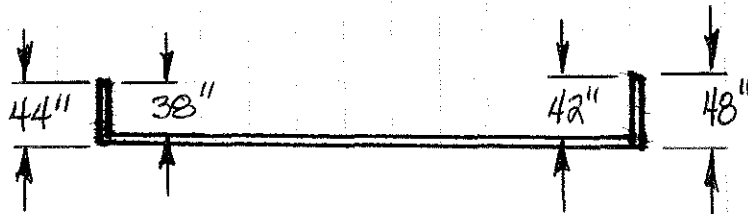


AREA INSIDE BERM

| | | | |
|---------------|---|--------|-----------------|
| 39' x 22'-10" | = | 890.5 | FT ² |
| + 28' x 27' | = | + 756 | FT ² |
| - 8' x 38' | = | - 304 | FT ² |
| | | 1342.5 | FT ² |



A-A

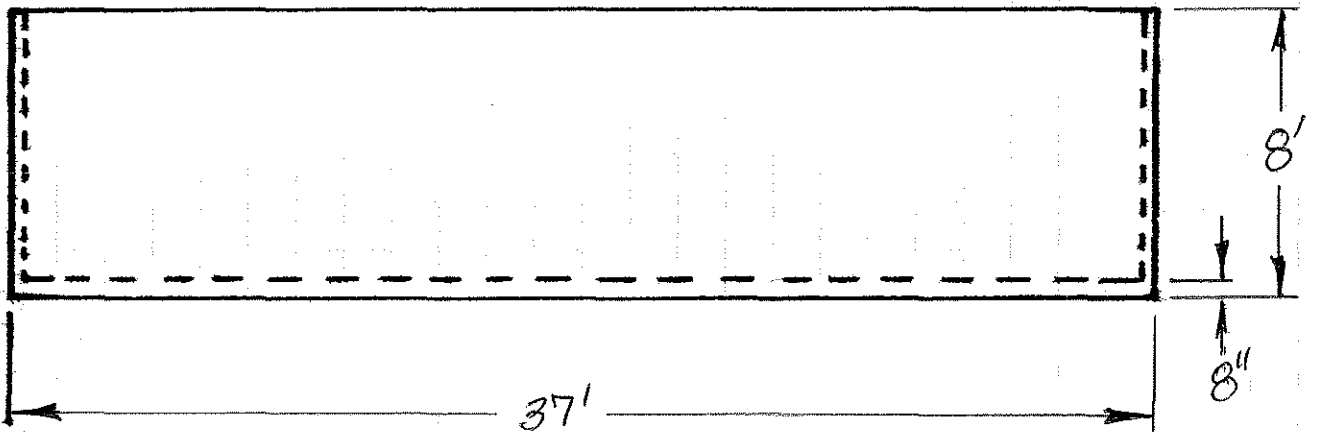
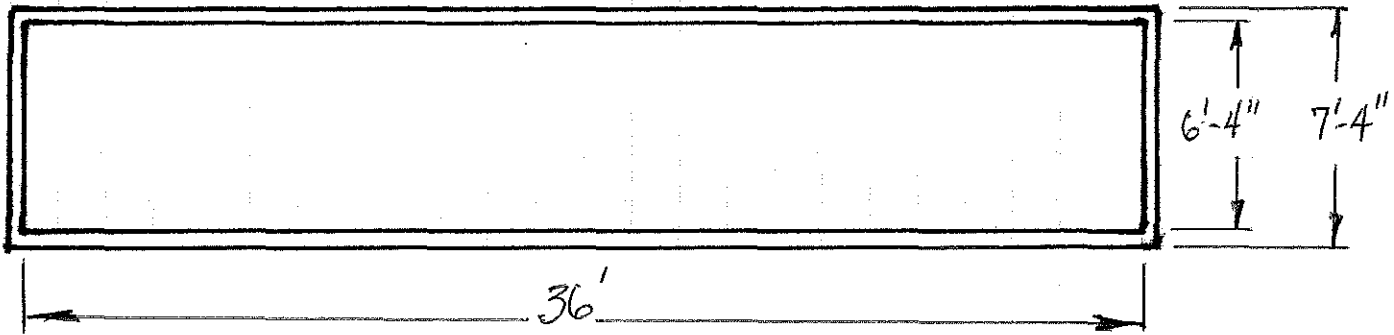


B-B

VOLUME INSIDE BASIN

$$\begin{aligned}
 & \frac{42'' + 38''}{2} \left(12 \frac{\text{IN}}{\text{FT}}\right) \quad 756 \text{ FT}^2 = \quad 2520 \text{ FT}^3 \\
 + & \frac{36'' + 42''}{2} \left(12 \frac{\text{IN}}{\text{FT}}\right) \quad 890.5 \text{ FT}^2 = \quad + 2894 \text{ FT}^3 \\
 - & \frac{36'' + 42''}{2} \left(12 \frac{\text{IN}}{\text{FT}}\right) \quad 304 \text{ FT}^2 = \quad - \frac{988 \text{ FT}^3}{4426 \text{ FT}^3} \\
 & \text{OR} \\
 & 33106.5 \text{ GALLONS}
 \end{aligned}$$

DIP TANK



RAINFALL CHART FOR COOS BAY

COMPLIMENTS OF

THE NEWS PRESS

Printers and Lithographers

ON THE MALL — 140 N. SECOND ST. — 269-5853
POST OFFICE BOX 420 — COOS BAY, OREGON 97420



| YEAR | JAN. | FEB. | MAR. | APR. | MAY | JUNE | JULY | AUG. | SEPT. | OCT. | NOV. | DEC. | Yearly Total | Season* Total |
|------|-------|-------|-------|------|------|------|------|------|-------|-------|-------|-------|--------------|---------------|
| 1902 | 5.12 | 15.50 | 11.95 | 6.41 | 4.17 | 1.14 | 1.56 | 0.00 | 0.85 | 2.67 | 14.87 | 16.53 | 89.67 | |
| 1903 | 15.56 | 2.27 | 7.68 | 3.73 | 2.13 | 1.10 | 0.55 | 0.49 | 0.74 | 1.94 | 17.07 | 5.03 | 58.30 | 63.44 |
| 1904 | 10.43 | 18.34 | 19.76 | 3.73 | 1.10 | 0.86 | 1.29 | 0.06 | 0.38 | 5.72 | 7.03 | 14.14 | 82.84 | 80.35 |
| 1905 | 7.47 | 4.12 | 10.17 | 1.88 | 2.96 | 1.26 | 0.69 | 0.00 | 1.48 | 5.91 | 6.00 | 7.94 | 49.28 | 55.22 |
| 1906 | 7.91 | 10.04 | 5.87 | 2.90 | 7.86 | 5.55 | 0.65 | 0.11 | 3.00 | 2.68 | 9.90 | 10.19 | 66.10 | 61.66 |
| 1907 | 13.45 | 11.76 | 8.54 | 7.66 | 3.91 | 3.22 | 0.10 | 0.59 | 2.42 | 2.42 | 7.15 | 17.41 | 78.73 | 75.10 |
| 1908 | 6.97 | 6.81 | 5.43 | 3.38 | 4.90 | 1.95 | 0.65 | 0.76 | 0.22 | 6.97 | 6.42 | 7.85 | 51.78 | 59.72 |
| 1909 | 17.99 | 15.69 | 5.69 | 1.38 | 5.69 | 0.60 | 1.39 | 0.17 | 1.27 | 8.07 | 17.46 | 8.96 | 84.36 | 70.06 |
| 1910 | 11.01 | 9.49 | 3.82 | 3.34 | 0.65 | 1.67 | 0.66 | 0.03 | 0.22 | 4.40 | 15.91 | 6.52 | 57.12 | 65.83 |
| 1911 | 15.56 | 5.55 | 2.90 | 4.01 | 5.36 | 1.21 | 0.00 | 0.23 | 3.01 | 2.76 | 7.11 | 9.51 | 57.21 | 61.87 |
| 1912 | 12.29 | 8.55 | 4.38 | 6.38 | 3.28 | 3.23 | 0.10 | 1.64 | 4.12 | 5.47 | 12.07 | 8.44 | 70.58 | 62.37 |
| 1913 | 12.60 | 2.37 | 7.64 | 5.97 | 2.35 | 2.57 | 1.22 | 0.15 | 3.80 | 4.29 | 7.95 | 8.07 | 58.98 | 64.97 |
| 1914 | 18.04 | 7.36 | 7.54 | 5.35 | 1.81 | 2.22 | 0.11 | 0.03 | 9.73 | 6.53 | 6.08 | 11.11 | 75.91 | 66.57 |
| 1915 | 10.84 | 8.35 | 4.18 | 3.09 | 6.57 | 0.77 | 1.32 | 0.04 | 1.01 | 2.42 | 17.67 | 12.51 | 62.97 | 68.51 |
| 1916 | 14.98 | 11.93 | 14.11 | 4.12 | 4.98 | 2.52 | 2.33 | 0.17 | 1.26 | 0.84 | 9.16 | 9.37 | 75.82 | 82.80 |
| 1917 | 6.86 | 6.84 | 10.51 | 7.60 | 3.49 | 0.88 | 0.07 | 0.01 | 1.72 | 0.02 | 10.35 | 11.62 | 59.97 | 56.89 |
| 1918 | 8.32 | 11.94 | 6.57 | 2.15 | 2.22 | 0.02 | 0.58 | 0.75 | 0.33 | 2.09 | 8.70 | 7.49 | 51.22 | 56.32 |
| 1919 | 12.99 | 14.19 | 9.82 | 6.63 | 2.38 | 0.44 | 0.20 | 0.16 | 2.76 | 2.78 | 9.20 | 10.21 | 71.76 | 65.42 |
| 1920 | 5.79 | 0.57 | 8.77 | 7.54 | 0.62 | 3.00 | 0.50 | 0.59 | 5.79 | 10.14 | 9.40 | 15.65 | 62.36 | 52.33 |
| 1921 | 11.61 | 10.75 | 5.78 | 6.06 | 2.89 | 2.64 | 0.00 | 0.15 | 3.04 | 5.08 | 15.48 | 3.85 | 67.33 | 80.86 |
| 1922 | 8.79 | 10.15 | 14.64 | 5.34 | 2.95 | 0.14 | 0.00 | 0.17 | 1.87 | 7.13 | 5.21 | 12.49 | 68.88 | 69.63 |
| 1923 | 13.12 | 3.09 | 5.32 | 4.78 | 4.34 | 2.26 | 0.52 | 0.08 | 1.24 | 4.06 | 5.40 | 9.06 | 54.17 | 61.11 |
| 1924 | 6.08 | 4.55 | 3.74 | 2.01 | 0.89 | 0.76 | 0.62 | 1.55 | 3.80 | 12.32 | 17.62 | 8.14 | 61.49 | 39.46 |
| 1925 | 14.71 | 11.12 | 3.81 | 6.91 | 1.63 | 2.21 | 0.02 | 1.15 | 2.60 | 0.20 | 6.18 | 8.22 | 58.76 | 83.44 |
| 1926 | 7.49 | 17.69 | 1.91 | 4.53 | 5.86 | 0.49 | 0.62 | 1.88 | 2.71 | 7.21 | 15.82 | 7.33 | 72.94 | 57.07 |
| 1927 | 15.53 | 14.05 | 7.84 | 4.17 | 3.73 | 0.94 | 0.19 | 0.39 | 0.00 | 3.56 | 14.48 | 7.05 | 71.93 | 79.91 |
| 1928 | 8.30 | 5.61 | 11.84 | 9.21 | 1.08 | 0.87 | 0.28 | 0.05 | 1.36 | 2.98 | 8.39 | 10.41 | 60.38 | 62.33 |
| 1929 | 10.21 | 1.99 | 5.73 | 6.43 | 1.28 | 3.35 | 0.00 | 0.10 | 0.22 | 1.46 | 0.82 | 15.54 | 47.13 | 52.23 |
| 1930 | 8.44 | 8.93 | 2.18 | 4.17 | 3.79 | 1.21 | 0.00 | 0.04 | 2.30 | 2.09 | 5.97 | 5.64 | 44.76 | 46.80 |
| 1931 | 6.81 | 4.26 | 9.22 | 4.13 | 0.96 | 3.26 | 0.02 | 0.05 | 1.95 | 4.23 | 9.05 | 15.02 | 59.96 | 44.71 |
| 1932 | 9.51 | 4.27 | 8.81 | 6.63 | 2.50 | 0.39 | 0.91 | 0.18 | 0.27 | 2.47 | 9.20 | 11.90 | 57.09 | 64.50 |
| 1933 | 17.33 | 8.35 | 9.59 | 2.36 | 7.21 | 2.85 | 0.00 | 0.53 | 3.32 | 3.59 | 2.26 | 14.15 | 71.54 | 72.06 |
| 1934 | 8.48 | 2.57 | 4.55 | 2.30 | 1.68 | 0.25 | 0.23 | 0.32 | 1.00 | 9.21 | 13.26 | 13.34 | 57.19 | 43.70 |
| 1935 | 7.47 | 4.95 | 10.33 | 3.93 | 0.50 | 0.70 | 0.35 | 0.02 | 1.65 | 5.73 | 4.08 | 8.01 | 47.72 | 55.06 |
| 1936 | 13.51 | 7.25 | 4.85 | 2.47 | 4.88 | 1.43 | 0.39 | 0.00 | 0.30 | 0.30 | 0.66 | 7.00 | 43.04 | 53.81 |
| 1937 | 12.69 | 16.89 | 6.39 | 9.12 | 2.62 | 5.57 | 0.11 | 0.62 | 2.83 | 5.06 | 18.86 | 10.41 | 91.17 | 62.27 |
| 1938 | 7.82 | 14.75 | 17.50 | 3.36 | 1.19 | 0.43 | 0.11 | 0.41 | 0.85 | 4.47 | 8.00 | 5.32 | 63.81 | 62.21 |
| 1939 | 8.25 | 7.83 | 4.83 | 1.00 | 1.49 | 2.79 | 0.86 | 0.62 | 0.93 | 3.95 | 1.01 | 13.51 | 47.07 | 45.01 |
| 1940 | 7.76 | 17.86 | 7.91 | 2.59 | 2.58 | 0.14 | 0.13 | 0.15 | 2.24 | 6.89 | 6.76 | 13.90 | 68.93 | 58.57 |
| 1941 | 10.65 | 4.19 | 2.80 | 4.04 | 3.23 | 3.18 | 0.29 | 0.59 | 4.64 | 3.84 | 11.02 | 18.56 | 67.03 | 58.76 |

AVERAGE FOR 40 YEAR PERIOD — 1902-41 Inc.

| | 10.71 | 8.82 | 7.63 | 4.57 | 3.09 | 1.77 | 0.41 | 0.37 | 2.08 | 4.35 | 9.47 | 10.46 | 63.73 | 63.20 |
|------|-------|-------|-------|------|------|------|------|------|------|-------|-------|-------|-------|-------|
| 1942 | 7.45 | 8.99 | 3.75 | 4.55 | 5.32 | 2.13 | 0.87 | 0.10 | 0.76 | 2.85 | 15.09 | 17.25 | 69.11 | 71.22 |
| 1943 | 9.70 | 4.00 | 8.39 | 4.00 | 3.16 | 1.63 | 0.43 | 1.24 | 0.08 | 9.82 | 6.12 | 3.51 | 52.18 | 63.60 |
| 1944 | 5.55 | 7.09 | 4.71 | 6.03 | 2.44 | 0.93 | 0.15 | 0.09 | 1.09 | 3.76 | 8.01 | 4.41 | 44.26 | 46.52 |
| 1945 | 6.68 | 10.05 | 12.98 | 6.27 | 3.53 | 0.44 | 0.33 | 0.33 | 1.74 | 2.98 | 18.00 | 12.67 | 76.00 | 57.88 |
| 1946 | 8.89 | 7.88 | 6.95 | 3.02 | 0.92 | 2.43 | 0.30 | 0.18 | 3.98 | 6.63 | 15.41 | 7.95 | 64.58 | 65.96 |
| 1947 | 5.37 | 4.21 | 6.54 | 2.77 | 0.87 | 5.72 | 2.22 | 0.32 | 1.58 | 13.83 | 5.04 | 7.20 | 55.67 | 62.00 |
| 1948 | 9.69 | 6.62 | 7.01 | 9.83 | 4.03 | 0.79 | 1.41 | 1.83 | 2.60 | 1.41 | 12.20 | 8.70 | 66.12 | 68.86 |
| 1949 | 2.89 | 12.08 | 5.61 | 1.18 | 3.48 | 0.22 | 0.16 | 0.24 | 1.36 | 3.33 | 7.81 | 7.29 | 45.65 | 53.51 |
| 1950 | 21.95 | 7.48 | 7.26 | 3.26 | 1.85 | 1.49 | 0.35 | 0.54 | 1.67 | 13.65 | 12.09 | 7.38 | 79.07 | 64.07 |
| 1951 | 11.68 | 8.83 | 7.58 | 1.76 | 3.61 | 0.08 | 0.16 | 0.15 | 1.21 | 8.17 | 9.54 | 11.17 | 63.94 | 68.64 |
| 1952 | 12.79 | 5.99 | 9.05 | 1.19 | 0.78 | 2.37 | 0.03 | 0.02 | 0.63 | 0.98 | 3.42 | 11.46 | 48.71 | 62.31 |
| 1953 | 13.93 | 7.88 | 9.21 | 5.41 | 6.06 | 1.71 | 0.15 | 3.38 | 1.59 | 3.37 | 15.17 | 11.05 | 78.91 | 64.22 |
| 1954 | 15.11 | 5.56 | 6.80 | 4.31 | 0.70 | 2.38 | 0.20 | 3.00 | 2.33 | 4.07 | 6.46 | 12.07 | 62.99 | 69.24 |
| 1955 | 5.41 | 6.25 | 7.30 | 7.48 | 1.34 | 0.87 | 0.86 | 0.04 | 1.71 | 8.07 | 8.78 | 22.35 | 70.47 | 51.45 |
| 1956 | 17.50 | 9.47 | 4.65 | 0.42 | 2.03 | 2.06 | 0.00 | 0.04 | 2.14 | 11.84 | 1.48 | 8.61 | 58.31 | 77.09 |
| 1957 | 8.22 | 6.66 | 11.31 | 2.83 | 3.01 | 1.18 | 0.61 | 0.44 | 1.81 | 6.89 | 2.86 | 13.11 | 57.03 | 54.30 |
| 1958 | 11.75 | 14.98 | 7.07 | 8.24 | 1.23 | 2.47 | 0.74 | 0.15 | 1.59 | 3.39 | 10.90 | 7.64 | 70.13 | 71.29 |
| 1959 | 17.41 | 10.86 | 5.63 | 0.72 | 3.85 | 0.67 | 0.42 | 0.34 | 3.79 | 3.04 | 1.65 | 5.07 | 63.45 | 63.42 |
| 1960 | 8.69 | 8.69 | 11.25 | 3.45 | 6.53 | 0.10 | 0.03 | 0.46 | 0.21 | 4.05 | 15.47 | 4.21 | 63.11 | 52.72 |
| 1961 | 8.06 | 15.70 | 13.45 | 4.59 | 5.74 | 0.52 | 0.17 | 0.63 | 0.76 | 5.72 | 10.63 | 6.34 | 72.31 | 72.80 |
| 1962 | 2.20 | 8.60 | 9.06 | 2.53 | 1.90 | 0.65 | 0.09 | 0.57 | 1.41 | 6.49 | 7.41 | 3.56 | 41.47 | 49.05 |
| 1963 | 3.47 | 6.84 | 8.12 | 9.26 | 5.26 | 1.64 | 0.71 | 0.05 | 1.53 | 3.92 | 11.66 | 4.92 | 57.38 | 54.22 |
| 1964 | 12.75 | 2.63 | 6.97 | 3.10 | 0.91 | 1.91 | 0.88 | 0.70 | 0.81 | 1.54 | 12.88 | 17.77 | 62.85 | 51.87 |
| 1965 | 14.06 | 3.25 | 1.65 | 5.05 | 1.76 | 0.84 | 0.10 | 0.50 | 0.09 | 2.80 | 13.87 | 15.37 | 59.34 | 61.07 |
| 1966 | 13.23 | 5.74 | 10.48 | 1.56 | 0.74 | 0.54 | 1.23 | 0.15 | 2.08 | 2.35 | 10.64 | 10.24 | 58.98 | 65.80 |
| 1967 | 13.43 | 5.50 | 9.79 | 6.25 | 1.80 | 0.48 | 0.00 | 0.00 | 1.34 | 5.10 | 5.67 | 10.79 | 60.15 | 62.56 |
| 1968 | 11.82 | 6.33 | 5.74 | 2.02 | 2.58 | 1.81 | 0.13 | 5.49 | 2.45 | 7.39 | 10.36 | 18.68 | 74.80 | 58.82 |
| 1969 | 16.92 | 6.10 | 2.49 | 3.43 | 1.56 | 3.48 | 0.19 | 0.01 | 3.09 | 4.81 | 5.59 | 14.28 | 62.95 | 73.05 |
| 1970 | 21.38 | 6.84 | 2.60 | 5.73 | 3.01 | 0.62 | 0.02 | 0.04 | 1.80 | 4.21 | 7.86 | 11.95 | 66.06 | 63.01 |
| 1971 | 13.59 | 5.98 | 9.72 | 8.03 | 1.84 | 2.82 | 0.08 | 2.74 | 5.36 | 4.62 | 9.50 | 15.01 | 79.29 | 70.62 |

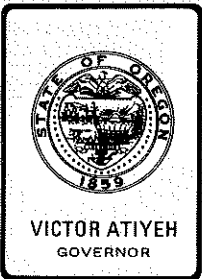
AVERAGE FOR 70 YEAR PERIOD — 1902-71 Inc.

| | 10.84 | 8.28 | 7.55 | 4.44 | 2.93 | 1.66 | 0.42 | 0.55 | 1.94 | 4.99 | 9.43 | 10.41 | 63.44 | 63.04 |
|------|-------|-------|-------|------|------|------|------|------|------|-------|-------|-------|-------|-------|
| 1972 | 9.64 | 7.49 | 11.28 | 7.66 | 1.22 | 0.87 | 0.14 | 1.10 | 1.78 | 1.25 | 5.84 | 10.54 | 58.81 | 73.89 |
| 1973 | 8.06 | 3.84 | 7.85 | 1.91 | 1.60 | 1.41 | 0.00 | 0.38 | 3.22 | 3.11 | 22.69 | 16.10 | 70.19 | 44.48 |
| 1974 | 11.67 | 10.33 | 12.58 | 3.02 | 2.00 | 0.57 | 0.88 | 0.00 | 1.17 | 1.26 | 8.63 | 10.84 | 61.95 | 86.17 |
| 1975 | 8.24 | 9.60 | 8.26 | 5.69 | 2.99 | 0.87 | 0.00 | 0.19 | 0.00 | 10.84 | 11.74 | 7.54 | 64.86 | 56.44 |
| 1976 | 7.73 | 7.31 | 7.35 | 2.75 | 0.68 | 0.72 | 0.00 | 2.20 | 0.75 | 1.52 | 2.12 | 1.80 | 45.72 | 58.85 |
| 1977 | 1.86 | 4.62 | 7.45 | 1.12 | 4.15 | 0.68 | 0.03 | 2.69 | 3.37 | 3.55 | 11.26 | 12.59 | 53.37 | 28.79 |

* Season Sept. 1 to Aug. 31.

1948 Figures incomplete and unofficial from the files of The World.

Mailed 5/7



Department of Environmental Quality

522 SOUTHWEST 5TH AVE. PORTLAND, OREGON

MAILING ADDRESS: P.O. BOX 1760, PORTLAND, OREGON 97207

October 5, 1981

• **Weyerhaeuser Company**
Attention: Mr. Dan Weybright
Southwest Oregon Region
North Bend, OR 97459

Re: Weyerhaeuser, North Bend
File No. 96225

Gentlemen:

This is in response to your letter of September 24, 1981 in which you requested additional time to complete the new anti-stain dipping system at the North Bend Mill.

As approved by the Department, the new facility was to be completed by no later than October 1, 1981. Due to delays caused by the strike in the mill, you have requested an additional 30 days to complete the project.

Since you have been progressing as rapidly as possible with the construction of the new system, the Department approves your request for a 30 day extension of the project schedule.

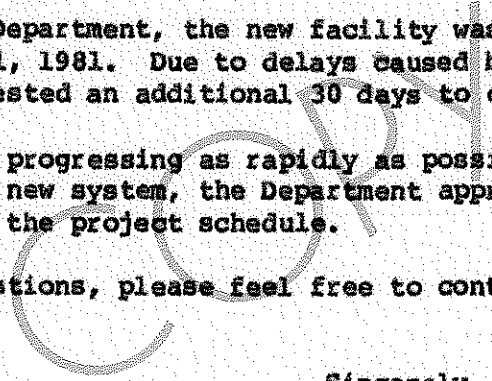
If you have any questions, please feel free to contact this office at 229-5374.

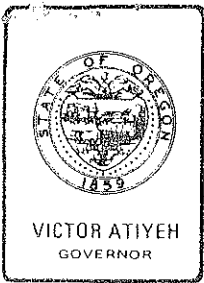
Sincerely,

Larry D. Patterson
Industrial Waste Engineer
Source Control Section
Water Quality Division

LDP:g
WG519 (1)

cc: Coos Bay Branch Office, DEQ





Department of Environmental Quality

522 SOUTHWEST 5TH AVE. PORTLAND, OREGON

MAILING ADDRESS: P.O. BOX 1760, PORTLAND, OREGON 97207

SEP 24 1981

CERTIFIED MAIL # P13 3192095

Weyerhaeuser Company
c/o Prentice Hall Corporation System, Inc.,
Registered Agent
1105 Common Wealth Building
Portland, OR 97204

Re: Notice of Violation and
Intent to Assess Civil Penalty
WQ-CR-81-93, Klamath County

On August 19, 1981, a fifty-five gallon drum of "fleet" oil was dropped from one of your supply trucks into a roadside ditch in Klamath county as the result of a traffic accident. The oil spilled and contaminated a small amount of surface water, but was quickly contained by your responding crews. Environmental damage was minor. However, notification that oil had been spilled was not forwarded by your company to this agency until August 25. Your failure to immediately notify us of the spill, as required by law, could severely hamper our prompt response.

To encourage your compliance with those state laws affecting oil storage, transport, and disposal, I have enclosed a formal notice warning you of our intent to assess civil penalties should the violation cited within continue or similar violations occur. The civil penalty schedules provide for penalties of from \$50 to \$30,000 per violation per day of violation, dependent upon the circumstances of any single oil spill.

This letter and the enclosed notice is intended to be warning. It initiates formal legal action against you. However, such action need proceed no further. Should your staff use reasonable methods in handling oil and follow the required reporting practices if an unavoidable spill occurs, I see no reason for the assessment of civil penalties. Also note that there are similar reporting requirements when you are handling hazardous materials.

The state's toll free access number for reporting spills is 1-800-452-0311. The federal number for reporting spills is 1-800-424-8802. The spill reporting and response procedures are detailed in the enclosed Oil Spill Contingency Plan.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
R E C E I V E D
SEP 24 1981

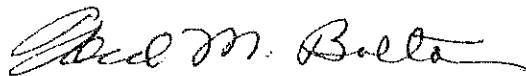
WATER QUALITY CONTROL

SEP 24 1981

Weyerhaeuser Company
Page 2

Questions regarding this letter or the enclosed notice should be directed to Mr. Van Kollias of my staff in Portland. His number is 229-6232.

Sincerely,



Fred M. Bolton
Administrator
Regional Operations

CR:j

GW1093.L1

Enclosure(s)

cc: Central Region, Bend Office, DEQ
Central Region, Klamath Falls Branch Office, DEQ
Water Quality, DEQ
Oregon Operations, EPA
Raymond P. Underwood, Chief Council, Department of Justice
John Monfore, Land Use Supervisor, Weyerhaeuser Company
Dave Pranghofer, Environmental Supervisor, Weyerhaeuser Company

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY,)
OF THE STATE OF OREGON,)
)
Department,)
)
v.)
)
)
WEYERHAEUSER COMPANY,)
a Washington corporation,)
)
Respondent.)

I

This notice is being sent to Respondent, Weyerhaeuser Company, a Washington corporation, pursuant to Oregon Revised Statutes (ORS) 468.125(1) and Oregon Administrative Rules (OAR) Section 340-12-040(1) and (2).

II

A. On or about August 19, 1981, Respondent caused or allowed the discharge of oil from a tanker truck under Respondent's control onto the ground surface of real property and into a roadside drainage ditch, both located within the Northeast 1/4 of the Southeast 1/4 of Section 10, Township 36 South, Range 12 East, Willamette Meridian, Klamath County, Oregon. The oil was spilled in a location where it was likely to pollute adjacent ground and surface waters of the state, in violation of ORS 468.720(1)(a).

///

///

///

1 B. On or about August 19, 1981, Respondent violated OAR 340-47-
2 015(1) (d) in that Respondent failed to immediately notify the Department of
3 the type, quantity, and location of the spill described in Paragraph II(A)
4 above and the corrective and cleanup action that Respondent proposed to
5 take.

6 III

7 If five (5) or more days after Respondent receives this notice, the
8 one or more violations cited in Paragraph II of this notice continue, or
9 any similar violation occurs, the Department will impose upon Respondent a
10 civil penalty pursuant to Oregon statutes and OAR, Chapter 340, Divisions
11 11 and 12. In the event that a civil penalty is imposed upon Respondent,
12 it will be assessed by a subsequent written notice, pursuant to ORS
13 468.135(1) and (2), ORS 183.415(1) and (2), and OAR, 340-11-100 and
14 340-12-070. Respondent will be given an opportunity for a contested case
15 hearing to contest the allegations and penalty assessed in that notice,
16 pursuant to ORS 468.135(2) and (3), ORS Chapter 183, and OAR Chapter 340,
17 Division 11. Respondent is not entitled to a contested case hearing at
18 this time.

19
20
21 Sept 24, 1981
Date

Fred M. Bolton
Fred M. Bolton, Administrator
Regional Operations, DEQ

23
24
25 Certified Mail P13 3192095
26



Weyerhaeuser Company

Southwest Oregon Region
North Bend, Oregon 97459
(503) 756-5121

June 18, 1981

*\$175.00
#79322806*

Department of Environmental Quality
Water Quality Division - Permit Program
P.O. Box 1760
Portland, Oregon 97207

RE: NPDES Permit #3068-J

Please find enclosed application for renewal of National Pollutant Discharge Elimination System permit #3068-J and \$175 check for filing and processing.

If you have any questions or need additional information please call.

Very truly yours,

WEYERHAEUSER COMPANY
Southwest Oregon Region

Dan Weybright

Dan Weybright
Engineering Manager

DW:fc

Encls.

CC: R. B. Abel
J. Bollen
Bruce Hammon, Coos Bay Branch, DEQ



Weyerhaeuser Company

| | | | | | | | |
|-------|----|--|--|--|--|--|--|
| By | To | | | | | | |
| | | | | | | | |
| File: | | | | | | | |

Southwest Oregon Region
North Bend, Oregon 97459
(503) 756-5121

May 28, 1981

To:
 →

Mr. Bruce A. Hammon
Coos Bay Branch Office
Southwest Region
490 N. Second Street
Coos Bay, Or. 97420

*EXTENSION SHOULD BE BY
PERMIT ACTION LETTER. COULD
POSSIBLY GIVE THEM AN ADDITION
60 DAYS.*

Dear Mr. Hammon:

Thank you for your letter and inspection results. I am glad to see that our operations were satisfactory.

Concerning the expansion of our log rafting facilities; I regret to say that we will not be able to accomplish the expansion in the stated time frame. Our difficulties are with the Corps of Engineers. We initially applied for the permit in November, 1980. We received our permit application and drawing back the first week of April, requiring more information and more detailed drawings. It appears that they raised (or at least changed) their standards. We will resubmit the application next week.

Let me assure you, Bruce, that we are not trying to delay this process. The majority of the tie-ups we are in agreement with and would like to be using. With any amount of luck, we should have approval by the end of June.

In consideration of the above, I am requesting an extension of the June 1 date.

If you have further questions, please call.

Sincerely,

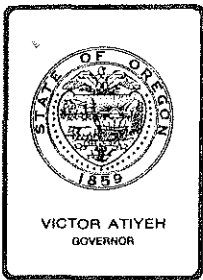
[Signature]
Jack P. Taylor
Raw Materials Manager

JT/k
cc: Timm Slater
Jerry Bollen

DEPARTMENT of Oregon
ENVIRONMENTAL QUALITY
RECEIVED
MAY 29 1981
COOS BAY BRANCH OFFICE

RECEIVED
JUN 3 1981

Water Quality Division
Dept. of Environmental Quality



Department of Environmental Quality
SOUTHWEST REGION

201 W. MAIN, SUITE 2-D, MEDFORD, OREGON 97501 PHONE (503) 776-6010

COOS BAY BRANCH OFFICE
SOUTHWEST REGION
490 N. SECOND STREET
COOS BAY, OR 97420 - 269-2721

May 27, 1981

Mr. Jack Taylor
Raw Materials Manager
Weyerhaeuser Company
P. O. Box 389
North Bend, OR 97459

RE: IW - Coos County
LOG HANDLING FACILITIES PERMIT
3254 / 96194

Dear Mr. Taylor:

On April 23, 1981, the Department conducted an inspection of the log handling/storage facilities located in Coos County, Oregon. The purpose of this visit was to determine the extent of compliance with the Log Handling Permit issued to the North Bend Facility. The report prepared as a result of this inspection is enclosed for your information.

At the time of this inspection, it was noted that log storage and related activities appeared to be operated in a satisfactory manner and in compliance with permit requirements. We note that Schedule B of the permit requires the expansion and development of additional storage sites by June 1, 1981. It is our understanding that progress is being delayed in the process of acquiring the necessary permits from the U. S. CORP. OF ENGINEERS. In event the aforementioned date cannot be met, please contact and advise this Agency.

In event questions arise on the above or the Log Handling Facilities Permit, please feel free to contact this office for assistance.

Sincerely,

Bruce A. Hammon
Environmental Analyst

BAH:dp

Encl.

cc: Gary Grimes, Southwest Region
Larry Patterson, Water Quality Division
Paul Halvor, Weyerhaeuser

RECEIVED

MAY 29 1981

Water Quality Division
Dept. of Environmental Quality

WP

Suggested Inventory Format

XC: GARY GRIMES
LARRY PATTERSON
FILE

Source - Weyerhaeuser Company

Address - North Bend Oregon

File 96225

Type facility - Sawmill
Planing mill

Preservative used -

Type - common and generic name

Noxane SSI Pentachlorophenol
Tetra & other Chlorophenols

Concentration/quantity

28% Raw material @ 1:66 or 1:50

.03% dilute dipping conc → 300 ppm

How applied (dip/spray) - Dipping

Spraying (interal misting)

Open spray

Spill or overflow control (area paved? covered? drains? berms?) -

As of JAN 26, limited control, due to D2C requirements major modifications
are anticipated between March 81 - Oct 81. Notable progress toward final compliance
(Oct 81) AS of 4/27/81

How handle waste? -

Arlington - concentrated materials (ie spill cleanup)

Bottom sediment - Further testing required to determine final status
of disposal

RECEIVED

APR 30 1981

Water Quality Division
Dept. of Environ: Quality

May 5, 1981

Weyerhaeuser Company
P.O. Box 389
North Bend, Oregon 97459

File Reference: WQ-420
Notice of Construction No. 96225

Department action as indicated below has been taken on your Notice of Intent to Construct and Request(s) for Construction Approval and/or Preliminary Certification for tax credit for the proposed facility.

| <u>Project</u> | <u>Project Description</u> | <u>Plans & Specifications Identification</u> |
|-----------------------------|--|--|
| Weyerhaeuser, North Bend | New Dip Tank, Concrete Slab and Curb, Roof, and Drip Pad | May 1, 1981 |

PLANS AND SPECIFICATIONS AND CONSTRUCTION APPROVAL

/X/ - APPROVED - Subject to the conditions listed on page 2.
Plans and Specifications reviewed by: Larry D. Patterson

PRELIMINARY CERTIFICATION FOR TAX CREDIT OF A POLLUTION CONTROL FACILITY

/X/ - APPROVED - This preliminary certification makes the proposed facility eligible for consideration for tax credit but does not insure that any specific part or all of the pollution control facility will be issued a tax credit certificate.

Tax Credit review by: Larry D. Patterson

If the Department can be of assistance, or if there are any questions, please contact:

Name: Larry D. Patterson Title: Industrial Waste Engineer Phone: 229-5374

Sincerely,



Larry D. Patterson
Industrial Waste Engineer
Water Quality Division

LDP:l
WL781 (1)

cc: Coos Bay Branch Office, DEQ

PLANS AND SPECIFICATIONS AND CONSTRUCTION APPROVAL CONDITIONS

1. The construction of the project shall be in strict conformance to approved plans and specifications identified above. No changes or deviations shall be made without prior written approval of the Department of Environmental Quality. (Air contaminant facilities are subject to confirmation by the Environmental Quality Commission.)
2. Granting approval does not relieve the owner of the obligation to obtain required local, state and other permits and to comply with the appropriate statutes, Administrative Rules, Standards, and if applicable, to demonstrate compliance.
3. Please fill out and return the enclosed Notice of Construction Completion form within 30 days upon completion of this approved project.
4. As required by the Department's letter dated February 9, 1981, construction must be completed as soon as possible to allow for operation of the treatment and containment facility by no later than October 1, 1981.
5. Accurate cost records should be kept for each portion of the project since process related equipment (dip tank, overhead crane, roller conveyor to strapper area) may not be eligible for full pollution control tax credit.

WL781 (1)



STATE OF OREGON

INTEROFFICE MEMO

SWR - COOS BAY BRANCH

269-2721

DEPT.

TELEPHONE

TO:

Van Kottas

cc Larry Patterson

Warren Westgate

DATE: April 8, 1981

THROUGH:

Gary Grimes

Then to spill notebook.

FROM:

B. A. Hammon

SUBJECT:

Chlorophenol Spill
Weyerhaeuser Company, North Bend, OR

FILE

On March 26, 1981, at approximately 1140 hrs., Weyerhaeuser had a spill of 28% Noxtane SSI in their sawmill operation of approximately 20-25 gallons of undiluted product. Fortunately, because of changes made at the dipping operation after the two (2) spills in January, the chemical did not reach waters of the state. The enclosed report from the company provides a detailed and accurate account of the incident including notification and cleanup, as well as disposal of contaminated materials. I have no further comments to add to the report; only that cleanup appeared to be satisfactory. Notification and reporting requirements have also been satisfied. No further action required.

BAH:dp

Encl.

DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
APR 11 1981

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
APR 14 1981

SOUTHWEST REGION OFFICE

RECEIVED
APR 20 1981

Water Quality Division
Dept. of Environmental Quality



Weyerhaeuser Company

Southwest Oregon Region
North Bend, Oregon 97459
(503) 756-6121

April 2, 1981

Department of Environmental Quality
Southwest Region - Coos Bay Branch
490 North 2nd Street
Coos Bay, Oregon 97420

Mr. Bruce Hammon:

Please see attached report for the environmental incident which occurred in the Noxtane room at the Coos Bay sawmill facility on March 26, 1981.

If you have any questions, please call.

Very truly yours,

WEYERHAEUSER COMPANY
Southwest Oregon Region

Dan Weybright

Dan Weybright
Engineering Manager

DW:fc

Encls.

CC: R. B. Abel
Jerry Bollen
Paul Halvor
John Robb
Dale Williams

DEPARTMENT OF ENVIRONMENTAL QUALITY

RECEIVED
APR 6 1981

COOS BAY BRANCH OFFICE

RECEIVED
APR 20 1981

Water Quality Division
Dept. of Environmental Quality



Date March 31, 1981
From Walt Lawson
Location Southwest Oregon Region
Subject NOXTANE INCIDENT 3/25/81

To Rob Abel Dan Haybright
Jerry Dollen John Robb
Paul Halvor Dale Williams

SUMMARY:

An hourly employee discovered a broken line in the sawmill Noxtane room make-up system just before noon on 3/25/81. As a result the system was shut off to await repairs and cleanup began right away.

Sand was used to prevent any possible runoff of the lightly contaminated area outside the sawmill and sawdust was used to soak up any liquid. The concentrated liquid and water mostly pooled inside the sawmill about 10' from the Noxtane room in a low area in the dirt. Sawdust was used to soak up this self-contained pool. The affected areas were excavated with about 127 cubic feet inside and 110 cubic feet outside the sawmill being placed in separate anti-pollution boxes. There are no awaiting transportation to Arlington, Oregon for disposal.

The Noxtane make-up system automatically meters and mixes Noxtane and water and keeps the dip tank full. A 1/2" plastic hose runs from the Noxtane tote bin to a small pump and then to the water make-up line. At this point the hose is fitted with a male plastic fitting that is screwed into a plastic tee. It was this male plastic fitting that broke off at the face of the plastic tee.

Cause of the break is not certain. Logically either the fitting was defective or it was hit. There is no direct evidence that it was done intentionally. Most probable cause was that this part of the system was bumped one or more times while moving the tote bins. The room is small and cramped since two (2) tote bins are now kept there instead of one. Unless the nearest tote bin is moved straight in or out it can easily hit this part of the system. The full tote bin that had just been put in service was nearest the broken fitting.

Each Noxtane tote bin contains 345 gallons of concentrated liquid. Following the spill the tote bin was measured as having 323.63 gallons remaining. Thus a maximum of 21.32 gallons was lost.

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APR 20 1981

of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
APR 6 1981

COOS BAY BRANCH OFFICE

Water Quality Division
Dept. of Environmental Quality

An estimate of costs incurred for clean-up:

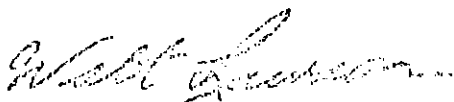
| | |
|---|-------------------|
| 2 Utility drivers with front end loaders and lift trucks - 7 hrs. | \$280.00 |
| 1 Utility laborer - 4 hrs. | 60.00 |
| 2 Welders - 2 hrs. | 100.00 |
| 10 yards of fill clay | 75.00 |
| Transportation and disposal of reclaim | <u>\$3,500.00</u> |
| TOTAL | \$4,015.00 |

See attached detail.

CONCLUSION:

To prevent recurrence the plastic tee and plastic male fitting are being replaced with stainless steel; a stainless steel check valve is being installed to prevent water from flowing back through the Noxtane line; and the plastic hose between the make-up pump and water line is being replaced with stainless steel flexible hose.

In case this was not an accident a heavier inside door and a double paned window has been installed in the Noxtane room. The plant site security police will be checking this area more thoroughly. The locks have also been changed.



Walt Lawson

WL:fc

Encl.

RECEIVED

APR 20 1981

DETAILS:

3/26/81

- 11:40 am Employee saw liquid coming from the Noxtane room. On investigating he found a 1/2" line broken squirting liquid from both ends. He reported this immediately to the pipe shop maintenance foreman.
- 11:45 am Pipe shop foreman and pipe fitter unplugged Noxtane make-up pump and turned make-up water valve off. A plastic type fitting between the Noxtane make-up pump and water make-up line had broken off. Noxtane was pulsating from the hose side (pump side). Since it was facing the sawmill interior, the Noxtane was mostly flowing in that direction and pooling in a low spot about 10' away. Water was shooting from the pipe side of the break and was mostly going out the outside door that it was facing.
- 11:50 am Pipe shop foreman reported incident to the utility foreman and requested sand to help contain any liquid outside the building.
- 11:55 am Pipe shop foreman reported incident to Engineering Manager who proceeded to the scene.
- 12: - 12:30 pm Two loads of sand and three loads of sawdust were delivered by front end loader. The sand was used to dam up at the low end of the outside of the building. The sawdust was used to soak up the pool inside the building. Some sawdust was spread around outside.
- 12:10 pm Engineering Manager called the local office of the DEQ. No answer.
- 12:15 pm DEQ representative was called at home. No answer.
- 12:20 pm DEQ state number was called. Gave information to woman who said she would notify the local DEQ office here. Engineering Manager returned to spill site.
- 12:30 - 3:00 pm Removed contaminated sawdust and soil from inside the sawmill and put in anti-pollution control tank. Used front end loader and laborer who had rain coat, mask, rubber gloves and rubber boots on.
- 1:05 pm Engineering Manager called local DEQ office again and reported the incident.

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APR 20 1981

Details (continued)

1:30 - 3:00 pm DEQ representative on the plantsite. Tests were conducted. Dug catch basin about 2' wide x 2' deep. Water from this hole was dumped into the anti-pollution control tank until it was inspected again the next day.

3:00 - 4:30 pm Using end loader, removed sand, sawdust and dirt from possible contaminated area outside the sawmill. This was placed in a second anti-pollution tank (an enclosed metal box for waste wood).

3/27/81

10:15 - 10:45 am DEQ representative on plantsite. Test was conducted on catch basin water. No Hexachlor detected. Location was filled with clay later this day and left as a basin like area.

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APR 20 1981

ENVIRONMENTAL INCIDENT REPORT



Weyerhaeuser

TO: Bob Abel

DATE 3/31/81

NO. _____

REPORTED BY Walt Lawson DATE OF INCIDENT 3/25/81

LOCATION North side of sawmill at Hoxtane room.
 DESCRIBE THE INCIDENT

A plastic male fitting in the Hoxtane make-up line from the tote bin broke.

WHAT WAS THE ENVIRONMENTAL EFFECT?
All the Hoxtane which was spilled was contained. All the contaminate was placed in anti-pollution control boxes.

WHAT ARE THE POSSIBLE LIABILITIES?

| NOTIFICATION ACTION | | |
|--|------------------|-------------------|
| COMPANY OR REGULATORY AGENCY | PERSON CONTACTED | RESPONSIBILITY |
| Local Office DEQ 3/26/81 - 12:10 pm | No answer | by: Dan Weybright |
| DEQ Rep. Home 3/26/81 - 12:15 pm | No answer | by: Dan Weybright |
| State Office DEQ 3/26/81 - 12:20 pm | Secretary | by: Dan Weybright |
| Local Office DEQ 3/26/81 - 1:05 pm | Bruce Hanson | by: Dan Weybright |

WHAT ACTION WAS TAKEN TO CORRECT THE PROBLEM?
Prevented any runoff with sand and sawdust. Soaked up area with sawdust. Excavate contaminates into anti-pollution control boxes.

WHAT IS THE PLAN TO PREVENT REOCCURENCE?
Plastic parts replaced with stainless steel. Check valve installed in Hoxtane line.
 Locks changed. Heavier inside door and double paneled window installed in Hoxtane room.
 Security police to more thoroughly check the area.

RECEIVED
 APR 20 1981

cc: D. C. Nicholson CH 3 22



Weyerhaeuser Company

Southwest Oregon Region
North Bend, Oregon 97459
(503) 756-5121

March 26, 1981

Mr. William H. Young
Dept. of Environmental Quality
522 S.W. 5th Avenue - Box 1760
Portland, Oregon 97207

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
MAR 30 1981

Subject: Weyerhaeuser Co., Coos Bay Branch - Chlorophenol Sampling

WATER QUALITY CONTROL

Mr. Young:

Please see attached final results of MEI - Charlton, Inc. analysis of chlorophenol concentration in landfill and dip tank residue samples. Samples one (1) through five (5) were all taken from our Mettman Ridge disposal site. Top and bottom screening samples were taken from a 55 gallon drum in which residue from the dip tank Sweco screen is stored.

Higher concentration in the bottom screening sample is most likely due to the storage time of the 55 gallon drum. Mechanical failure of the Sweco system required storage of the drum in a protected, undercover area for approximately three (3) weeks prior to sampling.

Sincerely,

WEYERHAEUSER COMPANY
Southwest Oregon Region

Dan Weybright

Dan Weybright
Engineering Manager

DW:fc

Encls.

CC: Water Quality Division - DEQ
Gary Grimes, Southwest Oregon Region - DEQ
Coos Bay Branch - DEQ
Jerry Bollen - Salem

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
MAR 30 1981

SOUTHWEST REGION OFFICE

| | | | | | | |
|-------|----|--|--|--|--|--|
| To | | | | | | |
| By | JP | | | | | |
| File: | | | | | | |



Weyerhaeuser Company

Southwest Oregon Region
North Bend, Oregon 97459
(503) 756-5121

March 26, 1981

Mr. William H. Young
Dept. of Environmental Quality
522 S.W. 5th Avenue - Box 1760
Portland, Oregon 97207

Subject: Weyerhaeuser Co., Coos Bay Branch - Chlorophenol Sampling

Mr. Young:

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Sincerely,

WEYERHAEUSER COMPANY
Southwest Oregon Region

Dan Weybright

Dan Weybright
Engineering Manager

DW:fc

Encls.

CC: Water Quality Division - DEQ
Gary Grimes, Southwest Oregon Region - DEQ
Coos Bay Branch - DEQ
Jerry Bollen - Salem

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
MAR 27 1981

WATER QUALITY CONTROL

REFERENCE NO. 4608066

mei

MEI-

CHARLTON, INC.

Department of Oregon
Division of Environmental Quality

2233 S.W. CANYON ROAD
PORTLAND, OREGON 97201
503/228-9663

1981

ENGINEERING AND APPLIED SCIENCES working with MATERIALS ENVIRONMENT INDUSTRIAL PRODUCTS AND PROCESSES
WATER QUALITY CONTROL

TO: Weyerhaeuser Company
Attention: Dean Schreiber
P. O. Box 389
North Bend, OR 97459

CLIENT NO.: HJ28995S
REFERENCE NO.: 4608066

DATE: 1-29-81

Page 1 of 2

SUBJECT: ANALYSIS OF CHIPS AND SOIL SAMPLES AS
SUBMITTED FOR PENTACHLOROPHENOL CONTENT

| Analysis: (1) | Specification | | Sample Identification | | | | | |
|---|-------------------------|-----------|-----------------------|---------------|---------------|---------------|---------------|---------------|
| | Method | Material | Sample #1 | Sample #2 | Sample #3 | Sample #4 | Sample #5 | Screening Top |
| | Gas Chromatography (2) | Not Given | Leachate (5) | Fill Material | Fill Material | Fill Material | Fill Material | |
| Pentachlorophenol, $\frac{\text{grams}}{\text{Kilogram}}$ | Electron Capture | | 0.0011 | 0.0001 | 0.0001 | 0.0001 | 0.0014 | 0.0012 |
| Tetrachlorophenol, $\frac{\text{grams}}{\text{Kilogram}}$ | Electron Capture (3)(4) | | 0.0010 | 0.0009 | 0.0011 | 0.0013 | 0.0017 | 0.0018 |
| (1) Analysis was performed on air dried samples. | | | | | | | | |
| (2) EPA "Methods for Evaluating Solid"; Method For Pentachlorophenol in Water and Wastewater with Boron Trifluoride Methylation. (Publication # SW 846) | | | | | | | | |
| (3) The degradation by-products Tri, Di and Mono chlorophenol did not have proper retention times to be distinguished from the solvent peak in this analysis. | | | | | | | | |
| (4) Plus or minus 25 % | | | | | | | | |
| (5) In units of $\frac{\text{grams}}{\text{Liter}}$ | | | | | | | | |

Tested on: 3-18-81/BK

MEI-Charlton, Inc.

Harry Czyzewski

Harry Czyzewski, P.E.
Account Director

3-18-81

E.174510



Weyerhaeuser Company

| | | | | | | |
|-------|----|----|--|--|--|--|
| To | WA | WA | | | | |
| By | | | | | | |
| File: | | | | | | |

Southwest Oregon Region
 North Bend, Oregon 97459
 (503) 756-5121

March 12, 1981

Mr. William H. Young
 Department of Environmental Quality
 522 S.W. 5th Avenue - Box 1760
 Portland, Oregon 97207

Mr. Young:

As requested, please see the following status report regarding chlorophenol management at Weyerhaeuser Company, Southwest Oregon Region, Wood Products Division. The reporting format is structured to address the five items as they appear in your letter of February 9th to Jerry Bollen

1. Develop a Chlorophenol Spill Prevention Control and Countermeasure Plan.

Two documents have been added to the plant's SPCCP: 1) A general description of areas where chlorophenols are used along with actions to take if an incident occurs and, 2) drawings of the sawmill dip tank and planer spray systems identifying flows, capacities and locations of adjacent rainwater drains.

2. Secure or relocate existing storage site to minimize spill potential.

The dip tank mixing station has been secured by construction of a new wall. There are two entries into the station both of which are kept locked and monitored by roving security. Two tote bins are positioned in the mixing center. All other totes have been removed from the plant. A new agreement with our supplier will eliminate the storage of any tote bin outside the mixing center.

A culvert has been installed in the drainage ditch adjacent to the dip tank area. The culvert extends approximately 80 feet above and below the mixing station and will prevent direct spillage of chlorophenols into the ditch. Blacktopping over the culvert and installation of a rain gutter is planned for the near future.

An area inside one of our shipping warehouses has been secured with a cyclone fence and locked gate. At this time screening from the dip tank, empty 55 gallon drums and contaminated soils are being stored there awaiting transportation to Arlington for disposal. Chem-Nuclear has requested results of the samples taken from the tip tank screening before they remove materials from the plant.

RECEIVED

MAR 16 1981

3. Management/Employee Awareness Program.

A.P.D. Industrial Hygenist Bud Sandvigen has conducted a series of informational and training sessions with all interested employees. Eight classes were held during the week of February 23rd with a total attendance of approximately 225. Subjects covered during the sessions were:

1. Why wood fungicide is used to treat lumber.
2. Possible health affects.
3. Proper protective equipment.
4. Handling procedures and personal hygiene.
5. Question and answer.

4. Hand application.

Due to the current sawmill order file all hand application at the timber pull chain has been eliminated. The condition is expected to continue for some time. Notification will be given to the local D.E.Q. office if and when operation of this system is resumed.

5. Dip tank sediment and land fill sampling.

Dip tank screenings were sampled February 18th and sent to M.E.I. - Charlton Laboratory, Portland, Oregon for analysis. Preliminary results received over the phone were:

| <u>Sample #</u> | <u>Description</u> | <u>PCP Contamination</u> |
|-----------------|------------------------|--------------------------|
| 1 | top of 55 gal. drum | .1 part per million |
| 2 | bottom of 55 gal. drum | 5 parts per million |

Land fill sampling was conducted the same day. Preliminary results of those samples are as follows:

| <u>Sample #</u> | <u>Description</u> | <u>PCP Contamination</u> |
|-----------------|--------------------|--------------------------|
| 1 | leachate | .14 parts per million |
| 2 | fill material | .09 parts per million |
| 3 | fill material | .10 parts per million |
| 4 | fill material | .05 parts per million |
| 5 | fill material | .05 parts per million |

Final results should be completed by M.E.I. next week. All samples were taken in the presence of local D.E.Q. representatives.

William H. Young
March 12, 1981

Page 3

Next steps include:

1. Report final results of sampling data.
2. Shipment of contaminates to Arlington.
3. Continue to formulate a proposal for permanent revisions to our handling systems.

If you have any questions please call.

Very truly yours,

WEYERHAEUSER COMPANY
Southwest Oregon Region

Dan Weybright

Dan Weybright
Engineering Manager

DW:fc

CC: Water Quality Division - D.E.Q.
Gary Grimes, Southwest Region - D.E.Q.
Coos Bay Branch - D.E.Q.
Jerry Bollen

Larry Patterson



Weyerhaeuser Company

270 Cottage Street, N.E.
Salem, Oregon 97301
(503) 588-0311

February 19, 1981

William H. Young, Director
Dept. of Environmental Quality
522 S.W. 5th Avenue
Box 1760
Portland, OR 97207

RE; IW - Coos County Weyerhaeuser Co.

Dear Mr. Young:

This is written in response to your letter dated February 9, 1981 regarding the use and handling of chlorophenols at Weyerhaeuser Company's North Bend facility. Your letter accurately summarizes the steps we have agreed to take to prevent any chlorophenol incidences from occurring in the future. Further, we are committed to the compliance agreement and time schedules as set forth and as requested will submit a progress report to your agency by March 15, 1981.

In closing, I would like to express my sincere appreciation for the cooperation and assistance provided by your staff in this situation.

Sincerely,

R. Jerry Bollen
Oregon Public Affairs Manager

cc: Bob Abel
Dan Weybright
Gary Grimes
Coos Bay Branch Office
Larry Patterson

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
FEB 20 1981
WATER QUALITY CONTROL



— PUMPER

— DIP.?

MOUSE TANK — CURB *
START NEW MAKE-UP ~~NOX~~
PUMP ELEV OK

(2)

ROOFED CONL. CONTAINMENT

— LG DEM. LUMBER
o/w SEP. *

(3) LOOK INTO

(1)

OUTSIDE BERMED
DIP AREA WITH
DRP PAD, TEMP. COVER
FOR LOW PRODUCTION HIGH
RAINFALL, COLLECTION TANK
FOR STORAGE OF CONTAMIN
RUNOFF.

— DIP TANK

LOCATE TANK AT COLCAGO LOC. *
CURB *



Timing

\$100,000 OK

MAY/JUNE

SUBMIT PLANS MAY 1 3
COMPLETE OCT 1 3

5-6 MONTHS

SEND ~~LETTER~~ LETTER & CONFIRM MEETING
INTERIM — MINIMIZE PCP USAGE (ANNUAL APPLICATION)

— EVALUATE STORM DRAIN TO PREVENT DIRECT DISCHARGE
& HELP IN LONG TERM CONTAINMENT SYSTEM.

FINAL - SEE ABOVE



Department of Environmental Quality

522 S.W. 5th AVENUE, BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229- 5395

February 9, 1981

CERTIFIED MAIL

Return Receipt Requested

Jerry Bollen
Oregon Public Affairs Manager
Weyerhaeuser Company
270 Cottage Street N.E.
Salem, Oregon 97301

RE: IW - Coos County
Weyerhaeuser Company

Dear Mr. Bollen:

On February 4, 1981, a meeting was held in Coos Bay on the subjects of recent spills as well as use and handling of chlorophenols at the Weyerhaeuser North Bend mill. Representing Weyerhaeuser were Messrs. Paul Halvor, Doug Mahurin, Dan Weybright and yourself. Department staff was comprised of Messrs. Gary Grimes, Larry Patterson and Bruce Hammon. This discussion was held subsequent to the issuance of a Field Notice (No. 0390) to Weyerhaeuser on January 26, 1981 for allowing a toxic substance, Pentachlorophenol (PCP), to enter the waters of the State of Oregon. Chlorophenols including PCP are presently used as a fungicide to treat export and special orders of clear domestic lumber from both the sawmill and planer mill at the North Bend facility.

Following a tour of both facilities and a discussion of the issues concerning the discharge of this substance, you proposed a program to insure on-site PCP containment. This letter contains our understanding of Weyerhaeuser's proposal and commitment to prevent any further occurrences of chlorophenol discharge to the waters of Coos Bay.

Weyerhaeuser will immediately:

- 1) Develop a chlorophenol Spill Prevention Control and Countermeasure Plan (SPCCP) to include physical features for the containment of potential spills of dilute or concentrated solution that could occur in the future.
- 2) Secure the existing storage site or relocate the storage area in such a manner as to minimize or reduce the potential for spillage.

- 3) Develop a management/employee awareness program for those individuals who work with the substance to include proper procedures for handling, mixing, application and on-site transportation. Complimenting this awareness initiative will be a program that defines methods for management of spill incidents, overflows, leaks, etc., and reporting procedures under regulatory and statutory requirements.
- 4) Totally contain or eliminate the hand application system located between the planer mill and sawmill by October 1, 1981. In the interim, this system can be utilized providing the overall volume of lumber being treated at this location is reduced by dipping the shorter lumber lengths at the sawmill. Also, hand application will be limited to periods when weather conditions are favorable, avoiding use of this system during periods of precipitation.
- 5) Determine if fungicide contaminated bottom sediment from the dip tank located at the sawmill is considered a hazardous waste by definition of State and Federal regulations. This will be accomplished by sampling and analysis of materials generated from the screening system. That data, including information pertaining to the volumes of material generated each month and concentration of chlorophenols will be submitted to our Hazardous Waste Section for evaluation. Upon review of that information, the Department will determine the status of the material and proper method of disposal. Our initial sampling data taken from the Mettman Ridge disposal site that serves the North Bend mill indicates that PCP is present at the site. Weyerhaeuser will take additional samples from the landfill site to determine if existing PCP levels fall within the definitions of a hazardous waste according to State and Federal law.

A report of progress will be submitted to this Agency by March 15, 1981 on meeting the above objectives. Longterm objectives:

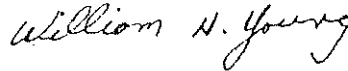
- 1) Weyerhaeuser will, on or before May 1, 1981, submit plans and specifications and notice of construction forms for facility modifications or relocation of the fungicide dipping system(s) to this Agency for approval.
- 2) On or before October 1, 1981, Weyerhaeuser will complete construction and commence operation of the approved wood fungicide treatment facility.

The Department concurs with your proposed program. Within ten (10) days of receipt of this letter, please confirm or comment on the entire above compliance agreement and schedules.

Jerry Bollen
Weyerhaeuser Company
February 9, 1981
Page Three

I would like to take this opportunity to thank you for your cooperation on this matter, and I will be looking forward to receiving your reply.

Sincerely,



William H. Young
Director

WHY:GG:fs

cc: ~~Water Quality Division~~
Gary Grimes, Southwest Region
Coos Bay Branch Office

RECEIVED

FEB 11 1981

Water Quality Division
Dept. of Environmental Quality



Department of Environmental Quality
SOUTHWEST REGION

1937 W. HARVARD BLVD., ROSEBURG, OREGON 97470 PHONE (503) 672-8204

April 9, 1979

Paul Halvor
Weyerhaeuser Company
PO Box 389
North Bend, Oregon 97459

RECEIVED
APR 10 1979

Coos County Division
Dept. of Environmental Quality
RE: IW-Coos County
Weyerhaeuser
File No. 96180

Dear Mr. Halvor:

March 27, 1979 we met and inspected the Weyerhaeuser North Bend mill. Present also were Bill Cole and Rich Reiter. The inspection was to determine whether or not your company is operating within the wastewater permit requirements.

No violations were seen, nor have any violations shown up in your monthly reports. Details of the inspection are included in the attached field report and memo. Mr. Reiter did notice one problem, however. A roof drain was discharging into the North Bend sanitary sewer near the glue-recirculation room. This is not a violation of your permit but is not desirable and may be against North Bend sewer ordinances. Excess rain water can and does flood out sewage treatment plants, causing extra expense and poor treatment.

Thank you for your time and courtesy in meeting with us. Feel free to call me at 269-2721 if you have any questions on the above.

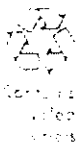
Sincerely,

Barbara A. Burton
Environmental Specialist

BAB/mg

Enclosures

cc: Water Quality Division



FIELD INSPECTION REPORT

Evaluation of Permit Compliance and Adequacy of Wastewater Control

Facility Name Weyerhaeuser
 Facility Location North Bend
 Official Contacted Paul Halvor and Bill Cole

File No. 96180 Permit No. 2062-J
 Type of Inspection: Reconnaissance Comprehensive
 Inspection Date 3-27-79 Duration 1 hr.

GENERAL OBSERVATIONS and REMARKS (Receiving Stream near Outfall, Facilities, Operation and Maintenance, etc.)

The effluent from the hydraulic barker clarifier was visible for about 75' with a red color and some foam. The oil-water separator no longer discharges.

COMPLIANCE SCHEDULE STATUS Permit Conditions 51, 52, 53, ___
 51. No schedule received on hydraulic barker, as agreed to by Department. Schedule will be included in 1980.
 52. Blue waste discharge to sewer system eliminated
 53. Generator not used, so no report required

EFFLUENT APPEARANCE AND CHARACTERISTICS

Appearance (Check if visible or present) Oil Grease Color Turbidity Settleable Solids Foam
 Floating Solids Odors Other

Field Observations and Data (See attached Sheet for Field and Lab Data)

Sample Information (Check as Applicable)

Type of Sample Grab 24 hr. Composite Composite, ___ hr. Other

Method of Collection Hand DEQ Sampler Permittee Sampler Flow Proportional Timer Activated
 Other

Planned Program Split for DEQ/Permittee Comparative Analysis Collected for DEQ Analysis Only

Comments

No sample collected

PERMITTEE MONITORING Permit Conditions ___, ___, ___, ___ (Check if Satisfactory and Note Applicable Details. Explain if Unsatisfactory.)

Flow Measurement and Recording Continuous Record Totaliser Other

Sample Collection and Handling Satisfactory Sample Location Sampling Frequency OK Grab Composite, ___ hr.
 Flow Proportional Timer Activated Hand Composite Refrigerated During Collection
 Other

Laboratory Procedures Proper Lab Storage of Sample Satisfactory Lab Procedures Correct Analytical Methods
 Other

Records Past Records Available Observation Records Available Other

Explanation

Samples analyzed in Springfield. Reports on time, complete.

OTHER PERMIT CONDITIONS (Note Permit Condition and Comment on Status of Compliance)

OVERALL EVALUATION OF COMPLIANCE STATUS (Check as Appropriate)

| | IN COMPLIANCE | PROBABLE OR SUBSTANTIAL COMPLIANCE | MORE INFORMATION NEEDED | POSSIBLE OR PROBABLE NONCOMPLIANCE | NONCOMPLIANCE |
|---------------------|-------------------------------------|------------------------------------|-------------------------|------------------------------------|---------------|
| COMPLIANCE SCHEDULE | <input checked="" type="checkbox"/> | | | | |
| EFFLUENT LIMITS | <input checked="" type="checkbox"/> | | | | |
| SELF MONITORING | <input checked="" type="checkbox"/> | | | | |
| OTHER CONDITIONS | <input checked="" type="checkbox"/> | | | | |
| OVERALL ASSESSMENT | <input checked="" type="checkbox"/> | | | | |

ACTIONS TAKEN AT SITE

None

RECOMMENDATIONS FOR FURTHER ACTION

Recommend roof drain be disconnected from sanitary sewer.

Signature of Inspector Barbara A. Burton

Date 4-8-79

Reviewed By Richard P. Rutz

Date 4-9-79



STATE OF OREGON

Southwest Region

DEPT.

672-8204

TELEPHONE

INTEROFFICE MEMO

TO: Files

DATE: April 9, 1979

FROM: Barb Burton

*Barb*SUBJECT: IW-Coos County
Weyerhaeuser Company
File No. 96180

March 27, 1979 Rich Reiter and I inspected the Weyerhaeuser mill. Present also were Paul Halvor and Bill Cole.

Hydraulic barker - discharge point 002.

The effluent from the barker goes to a clarifier, where fines are removed. Both the floating scum and fines (after vacuum filtration) are taken to a landfill. The effluent from the clarifier had a red color, with foam. The production through the barker is about the same as when the last permit was drafted - about 110,000 ft³ of wood/day.

Generator-turbine condenser cooling water - discharge point 003.

The generator is not running, and the effluent is the sawmill cooling water (formerly discharge point 003A) and a large volume of excess water from the hydraulic barker pump. This pump is much larger than needed for the barker, so that much of the water is bypassed back to discharge point 003.

Oil-water separator - discharge point 010.

This unit has been moved back from the water's edge. All oil-contaminated water is now being absorbed by sawdust (which then goes to the boiler). There is currently no discharge, but the company wishes to keep the possibility of a discharge open. The oil-water mixture comes from under the veneer lathe.

Softener regenerator backwash - discharge point 011.

A discharge from this is possible, but rare. Most of the backwash is used as make-up water (for what process I don't know).

Glue re-circulation system Discharge from this system to the North Bend sanitary sewer has been a problem in the past. The overflow pipe to the sewer has been permanently closed off. While there is apparently no longer a

possibility of discharge to the sewer, there still are glue wastes spilling out of the system and onto the ground outside the glue room. One roof drain dumps into the trough outside the building where glue has spilled, with the overflow going down slope towards the railroad tracks (not escaping to public waters). Another roof drain goes into the sanitary sewer (not a good idea - possibly against North Bend sewer ordinance).

Dryer deluge - Discharge point 007.

This is still used, but was not inspected.

BAB/mg

cc: ~~Water~~ Quality Division, DEQ

RECEIVED
APR 10 1979

Water Quality Division
Dept. of Environmental Quality

96 225



Weyerhaeuser Company

Southwest Oregon Region State of Oregon
North Bend, Oregon 97459 DEPARTMENT OF ENVIRONMENTAL QUALITY
(503) 756-5121
May 14, 1979

RECEIVED
MAY 17 1979

WATER QUALITY CONTROL

Department of Environmental Quality
Southwest Region
1937 W. Harvard Blvd.
Roseburg, Oregon 97470

Attention: Mr. Richard P. Reiter

Dear Mr. Reiter:

In the attached NPDES Discharge Monitoring Report for April 1979, the hydraulic barker effluent reflects non standard conditions.

We did not get the lab report back in time to take a second sample. We don't think this sample is normal for the hydraulic barker effluent.

Very truly yours,

WEYERHAEUSER COMPANY
Southwest Oregon Region

Dale C. Williams
Plant Engineer

DCW:fc
Encls.
CC: R. B. Abel
Paul Halvor
Jerry Bollen

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
MAY 15 1979

SOUTHWEST REGIONAL OFFICE

SW

RECEIVED
JAN 30 1979



Weyerhaeuser Company - log handling

SOUTHWEST REGIONAL OFFICE

Southwest Oregon Region
North Bend, Oregon 97459
(503) 756-5121

January 29, 1979

Kerox Water Quality Division

*WR - IW Log Handling
IW - Coos County*

Mr. Richard P. Reiter
Department of Environmental Quality
Southwest Region
1937 W. Harvard Blvd.
Roseburg, Oregon 97470

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
MAY 16 1979

Re: Log Handling Facilities
Permit Number: 2633
File Number: 98194

Dear Mr. Reiter:

WATER QUALITY CONTROL

The following information on 1978 location and thousand board feet of logs stored in public waters is submitted as required in Schedule C of the permit. The attached map shows the locations of the storage.

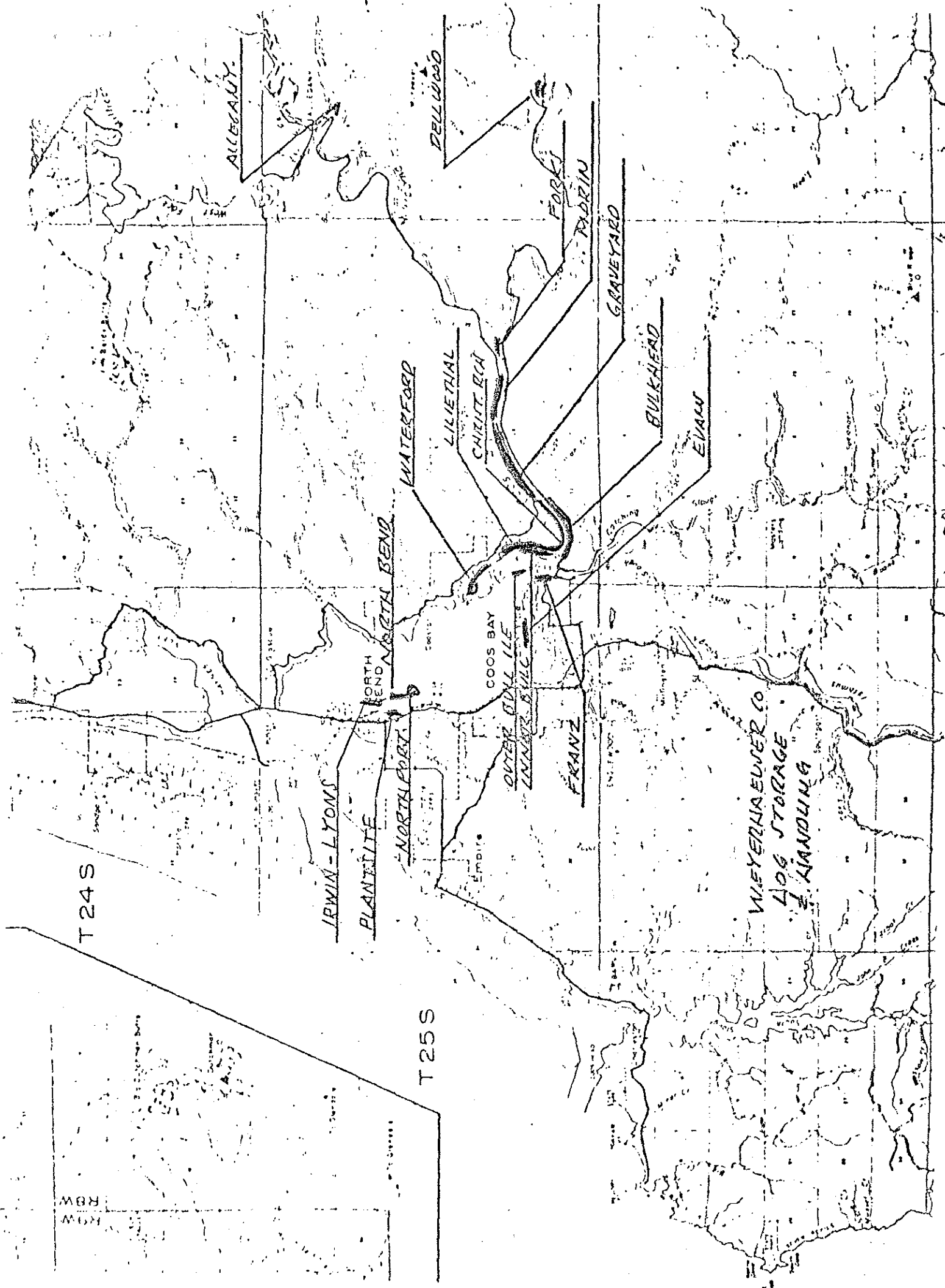
| Location | Jan. 1 | Apr. 1 | July 1 | Oct. 1 |
|-------------------|--------|--------|--------|--------|
| North Port | 1720 | 1020 | 1000 | 2420 |
| North Bend | 4170 | 3800 | 1980 | 3110 |
| I.L. | 790 | 1170 | 1350 | 2040 |
| Outer Bull Isle | 2100 | 1980 | 1430 | 0 |
| Inner Bull Isle | 1240 | 1240 | 440 | 200 |
| Evans Boom | 500 | 1310 | 2770 | 2130 |
| Franz | 490 | 1120 | 1670 | 960 |
| Christenson Ranch | 6200 | 7390 | 1800 | 3830 |
| Lilienthal | 1610 | 3230 | 2100 | 1780 |
| Waterford | 3350 | 3540 | 1860 | 790 |
| Bulkhead | 1170 | 3100 | 3100 | 1440 |
| Graveyard | 3000 | 4000 | 6090 | 3660 |
| Morin | 820 | 1390 | 1470 | 770 |
| Forks | 80 | 140 | 1260 | 470 |
| Allegany | 200 | 1170 | 1050 | 410 |
| Dellwood | 0 | 200 | 630 | 590 |
| Total | 27440 | 35800 | 30000 | 24600 |

Sincerely,

Paul Halvor
Paul Halvor
Region Environmental
Coordinator

PH/k

cc: Water Quality Division
Jerry Bollen
Bob Howry



T 24 S

T 25 S

RBW
RBM

ALBANY

BELLWOOD

FORK

MARIN

GRAVEYARD

BULKHEAD

EVANU

WATERFORD

LILIENTHAL

CHIRIT BOA

NORTH BEND

IRWIN-LYONS

PLANTITE

NORTH BEND

NORTH BEND

COOS BAY

OUTER GULL ISLE

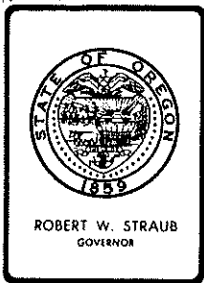
INNER BAY

FRANZ

WIEYERHAEUSER CO

LOG STORAGE

& HANDLING



Department of Environmental Quality

522 S.W. 5th AVENUE, P.O. BOX 1760, PORTLAND, OREGON 97207

January 16, 1979
State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
JAN 17 1979

Weyerhaeuser Company
Southwest Oregon Region
P. O. Box 389
North Bend OR 97459

WATER QUALITY CONTROL

Dear Sirs:

Thank you for your response to the Past Due Notice I sent you on October 10, 1978 regarding your Water Permit Filing Fee, Invoice W760747.

As your records show the invoice was, in fact, paid on April 25, 1977 (date of our deposit), Check Number 79020567, in the amount of \$25.00.

Please accept my apology for inconveniencing you in this matter.

Sincerely,

Debra L. Loucks
Clerical Assistant
Fiscal Office

dll

cc: Water Quality Division



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Recycled
Materials



Department of Environmental Quality
SOUTHWEST REGION

1937 W. HARVARD BLVD., ROSEBURG, OREGON 97470 PHONE (503) 672-8204
Coos Bay Branch Office - 490 North Second, Coos Bay, OR 97420 - 269-2721

Richard P. Reiter
Regional Manager

February 7, 1979
State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
FEB. 13 1979

Paul Halvor
Weyerhaeuser Company
Southwest Oregon Region
North Bend, OR 97459

RE: IW-Coos County WATER QUALITY CONTROL
Weyerhaeuser
File #96180

Dear Mr. Halvor:

This will confirm our meeting of February 1, 1979, to discuss the federal requirements for elimination of the hydraulic barker. The major points discussed were:

1. Under federal regulations, there is no variance possible for either economic or environmental reasons where "conventional pollutants" are involved. Conventional pollutants are defined as BOD, suspended solids, and fecal coliform.
2. The federal regulation for hydraulic barkers is under review, but our indications are that it is very unlikely there will be a change.
3. Since the Weyerhaeuser permit has expired, we are required to issue a renewal. The permit can either expire September 30, 1980, (and contain a condition requiring a compliance schedule be submitted before the permit expires), or can expire June 30, 1984, (and contain a schedule for eliminating the hydraulic barker). It is our preference to write the longer permit, but we would be prepared to write the shorter-term permit if you desire.

I look forward to hearing from you on this. I can be reached at 672-8204 if you have any questions on the above.

Sincerely,

Barbara A. Burton

Barbara A. Burton
Environmental Specialist

BAB:dp

cc: Water Quality Division - DEQ



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Water Quality

Department of Environmental Quality
SOUTHWEST REGION

1937 W. HARVARD BLVD., ROSEBURG, OREGON 97470 PHONE (503) 672-8204
Coos Bay Branch Office - 490 North Second, Coos Bay, OR 97420 - 269-2721

Richard P. Reiter
Regional Manager

March 9, 1979

Paul Halvor
Weyerhaeuser Company
Southwest Oregon Region
North Bend, OR 97459

RE: IW - Coos County
Weyerhaeuser
File #96180

Dear Mr. Halvor:

This will confirm our receipt of your letter dated March 5, 1979. In that letter, you requested a short term permit with no condition requiring a schedule for eliminating the barker.

The permit has been drafted to expire September 30, 1980. There will be no condition in it requiring a compliance schedule.

Feel free to call me at 269-2721 if you have any questions on the above or if we can be of further assistance.

Sincerely,

Barbara A. Burton

Barbara A. Burton
Environmental Specialist

BAB:dp

cc: Water Quality Division

RECEIVED
MAR 12 1979

Water Quality Division
Dept. of Environmental Quality



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Recycled
Materials

DEQ/RO-601



Weyerhaeuser Company

Rich
CBBB
perox *Water Quality Division*

Southwest Oregon Region
North Bend, Oregon 97459
(503) 756-5121

January 25, 1979
State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
MAR 8 1979

WATER QUALITY CONTROL

Department of Environmental Quality
Southwest Region
Coos Bay Branch Office
490 N. Second
Coos Bay, Oregon 97420

Gentlemen:

On Tuesday, January 23, 1979, at about 8:00 a.m. an oil spill occurred in the north log pond at the North Bend plantsite facility.

The diesel hose nozzle leaked diesel fuel on the dock that spilled through the dock plank into the log pond. About three gallons of diesel fuel is estimated to have spilled into the log pond.

At 8:00 a.m. five millwrights and one pond boat with operator placed five sorb oil booms around the spill to contain and collect the spill. Sawdust was used to soak up the oil on the dock planks.

At 8:30 a.m. Dale Williams, Plant Engineer, contacted the Coast Guard. Gary Morgan of the U. S. Coast Guard came to the plantsite to investigate the spill.

It took about one hour to mop up the spill. The diesel hose nozzle was repaired to prevent it from leaking.

Very truly yours,

Paul Halvor
Region Environmental Coordinator

PH/k

cc: Jerry Bollen
Dale Williams

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
JAN 26 1979

COOS BAY BRANCH OFFICE



Weyerhaeuser Company

Southwest Oregon Region
North Bend, Oregon 97459
(503) 758-5121

March 5, 1979

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

RECEIVED

MAR 8 1979

WATER QUALITY CONTROL

Barbara A. Burton
Department of Environmental Quality
490 N. 2nd
Coos Bay, Or. 97420

Re: IW - Coos County
Weyerhaeuser
File #96180

Dear Ms. Burton:

This will confirm the phone conversation we had about two weeks ago regarding renewal of the above referenced NPDES permit. Your letter of February 7, 1979 gave us the option of an 18 month or a five year permit.

After discussion with Jerry Bollen, we decided that the short period permit would best match our wishes. We request the permit be written to expire September 30, 1980, without a condition requiring a schedule for eliminating the hydraulic barker.

Sincerely,

Paul Halvor
Region Environmental
Coordinator

PH/k

cc: Kent Ashbaker
Jerry Bollen

DEPARTMENT OF ENVIRONMENTAL QUALITY
1234 S. W. Morrison Street
Portland, Oregon 97205

Attention: Permit Program

APPLICATION FOR RENEWAL OF A NATIONAL POLLUTANT
DISCHARGE ELIMINATION SYSTEM PERMIT
NPDES - R

APPL. No. OR-100083-3

File No. 96180

Received NOV 16 1978

APPLICATION COMPLETE

NOV 24 1978

for pd 11-24
file
A. REFERENCE INFORMATION:

| | | |
|---|---|---|
| Official Name and Address of Applicant (Owner) Weyerhaeuser Company P. O. Box 389 North Bend, Oregon 97459 | | File # 96255 Present Permit No. _____ Date Expires <u>1/31/79</u> |
| Responsible Official (Name, Title, Address, Phone) R. B. Abel Phone: 756-5121 - 230 Wood Products Manager Weyerhaeuser Company North Bend, Or. 97459 | Alternate Responsible Official or Chief Operator D. C. Williams Phone 756-5121 - 339 Plant Engineer Weyerhaeuser Company North Bend, Oregon 97459 | |
| Description of activities requiring a permit from the DEPARTMENT: (Check all that apply) <input type="checkbox"/> Construct, install, or modify waste collection, treatment, or disposal facilities. <input checked="" type="checkbox"/> Operate waste collection, treatment, or disposal facilities. <input checked="" type="checkbox"/> Discharge treated waste waters into the waters of <u>Coos Bay (Coos River)</u> <input type="checkbox"/> (Other) _____ | | |

B. GENERAL QUESTIONS:

1. Have the treatment or disposal methods employed, as indicated in previous applications, been altered in any way since the last application was submitted? YES NO If yes, explain.
 1. Particleboard plant has been shut down, eliminating process waste water.
 2. Plywood glue waste water is contained in a closed system--screened and reused--disposal to North Bend Municipal Sewer System has been discontinued.

2. Has the quantity or quality of wastes discharged, as indicated in previous applications, been significantly changed in any way since the last application was submitted? YES NO If yes, explain.
 The quantity of waste water discharged to North Bend Municipal Sewer System has been eliminated.

RECEIVED
NOV 16 1978

C. SPECIAL QUESTIONS AND REQUESTED INFORMATION:

WATER QUALITY CONTROL

1. If any changes in operations or waste quantity or quality are anticipated in the near future, please attach an explanation or proposal. No

2. Please attach a brief report which indicates your progress in meeting the requirements and limitations of your present permit.
 All compliance conditions of the permit have been completed. We continuously operate within the limits listed in the permit conditions.

I hereby certify that the information contained in this application is true and correct to the best of my knowledge and belief.

Robert B. Abel Jr.
Signature of owner (or legally authorized representative)

D. C. Williams
Title Plant Engineer
Date August 4, 1978



Weyerhaeuser Company

270 Cottage Street, N.E.
Salem, Oregon 97301
(503) 588-0311

November 13, 1978

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
NOV 16 1978

WATER QUALITY CONTROL

Kent Ashbaker
Department of Environmental Quality
1234 S.W. Morrison
Portland, Oregon 97205

Subject: Weyerhaeuser Company North Bend NPDES Permit
Application for Renewal

Dear Mr. Ashbaker:

The NPDES permit for Weyerhaeuser Company's North Bend facility expires on January 31, 1979. Enclosed is the completed application for permit renewal for your review and processing.

Condition S 1 of the current permit requires that a program and time schedule to eliminate the hydraulic barker discharge into Coos Bay be submitted by the permit expiration date. During the past few months we have thoroughly investigated both the receiving water quality impact of the barker discharge following primary treatment and available alternatives for eliminating the discharge. Based on the results of these investigations, we are respectfully requesting that condition S 1 be waived and the continued discharge of primary treated hydraulic barker water be permitted.

More specifically, the reasons for our request for a waiver of this requirement are delineated below:

1. A survey was conducted in May of 1978 to determine the impact of Weyerhaeuser Company's existing discharge on the water quality in Coos Bay. This study demonstrated that water quality standards were not being violated in Coos Bay, including the permitted mixing zone. It, as well, showed that even within the mixing zone, the water quality impact is minimal.

A copy of this study is enclosed for your review and consideration.

2. A dye study was conducted on September 27, 1978 to determine the volume of clarifier effluent that is being drawn back into the raw

water intake system. Because of the configuration of the log pond area and the relative locations of the raw water intake and clarifier effluent, the volume recirculated varies between 5% and 18% depending on the tide stage. Therefore, partial compliance with condition S 1 is currently being achieved as a result of the conditions mentioned above.

The report describing this survey and its results will be completed by December 1 and will be submitted to you immediately upon completion.

3. Two alternatives to eliminate the existing discharge have been considered; (1) replacement of the hydraulic barker with a mechanical barker and (2) complete recirculation of the existing discharge.

Installation of a mechanical barker is estimated to cost approximately \$3,400,000. Not only is this cost economically unfeasible for the North Bend mill, but a mechanical barker is less efficient in the removal of bark from old growth Douglas fir. Attached for your information is the detailed cost estimate for conversion to a mechanical barker.

The treatment and recirculation of barker effluent also has been extensively investigated by Weyerhaeuser Company research staff. Alternative methods that have been studied include direct recirculation with suspended solids removal only and recirculation after suspended solids removal, with pH, foam and biocide controls.

This investigation has shown that neither method is either mechanically or economically feasible. In addition, it has been found that when debarking Douglas fir logs, pitch buildup in the recirculated water is a significant problem for which a suitable foam control agent has not yet been developed.

For the reasons expressed above, we ask your favorable consideration of allowing continued use of our existing debarking and treatment system.

We would be pleased to meet with you to provide more detailed information if it would be helpful. In any event, we will look forward to hearing from you concerning this matter.



R. Jerry Bollen
Oregon Public Affairs Manager

Enclosures

cc: Richard P. Reiter, DEQ, Roseburg
Bob Abel, North Bend



Suggested Headings: *Title, Objective, Conclusions and Recommendations*

TITLE:

North Bend Mill Hydraulic Barker Clarifier Survey

OBJECTIVES:

A survey was conducted on May 16, 1978, to accomplish the following:

Determine the water quality conditions in the log sorting area which receives the clarifier effluent and in the bay near the millsite.

Assess the significance of the clarifier-related water quality alterations and the need for additional treatment strategies.

SUMMARY AND CONCLUSIONS:

1. At the time of the May survey, the effluent from the clarifier was not observed to cause violations of Oregon water quality standards for dissolved oxygen, temperature or turbidity either within the stipulated 60 m mixing zone encompassing the log pond or the bay proper off the mill.
2. In the log sorting area, the principle effect of clarifier effluent was a depression of the dissolved oxygen (DO) level. As far as a worst case situation, the DO in the center log lanes is representative. There the DO averaged 8.7 mg/L, about 85% of the DO saturation value. In summer a 15% depression of the oxygen saturation value would result in a DO of 6.3 mg/L, which exceeds the State of Oregon marine water standard of 6 mg/L. In the log sorting area, aside from DO, there were measurable increases in biochemical oxygen demand (BOD), suspended particulates, total Kjeldahl nitrogen (TKN), and total phosphorus (Total P). Suspended solids (TSS), and BOD in the log pond were increased about 1.5 X over bay values sampled near the mill, while nutrients were increased 2 X. An unknown portion of these increases are ascribable to the presence of barked and unbarked logs in the pond since these release both soluble compounds as carbohydrates and particulate matter, as bark. The calculated quantities of nitrogen and phosphorus discharged from the clarifier were insignificant: nitrogen 5 kg/day, phosphorus 1.5 kg/day. Parameters showing little difference between

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***DISTRIBUTION.**

Tech. Info. Center
Jerry Bollen
P. N. Halvor
R. N. Thut
J. R. Sedell
T. R. Frost

| | |
|---------------------------------------|-----------------|
| Author (signature) | Date 7/12/78 |
| Author's Name (typed) Bob Herrmann | |
| Approved By (signature) | Date 7/10/78 |

*Summary Page only. Complete Report available on request from R & D Technical Information Center.



Suggested Headings: *Background, Approach, Experimental Results, References, Index Terms and Attachments*

SUMMARY AND CONCLUSIONS (cont.)

the log pond and bay samples were color and turbidity. Since the log sorting area is wholly in the legally defined effluent mixing zone whether or not the effluent discharge results in a violation of the state water quality standards in that area is a moot point.

3. In the bay adjacent the mill, the clarifier effluent discharge appeared to exert little effect. In the DO, temperature and conductivity sampling there were top to bottom differences observed. The cooler, more saline water on the bottom had less DO, which was partly related to the lower DO saturation level of saline waters. In the fresher, surface layer, on the west, or left side of the channel the DO level was 90% of the saturation value. This condition was existant along the entire shoreline transect and not just off the log pond and seemed, due to man-related activities along the west side of the bay in the North Bend-Coos Bay area.
4. Since tidal flushing action probably accounts for most of the effluent dispersion from the log pond rather than tidal induced currents, wastes discharged into the log pond area may require up to four days to be completely flushed out. This retention would likely result not only in waste recycling through the raw water intake but also additional physical and biological improvement in the effluent character. Some continued settling of the particulates would be expected. Also, I would expect heterotropic bacteria to be active in degrading the soluble wastes in the log pond.
5. Additional primary treatment or installing secondary treatment with continued discharge to the bay, would produce a measureable increase in water quality only in the log pond. I would expect that the DO levels would rise with the reduced BOD loading; suspended solids levels in the form of bark might be less. However, since the log handling activities in the area would continue, the additional treatment of hydraulic barker wastes might not result in a significant improvement in these paramaters. Further, bioparticulates from secondary waste treatment system might increase the overall level of TSS. I estimate the additional TSS generated from the secondary treatment of the clarifier at 150 kg/day. This value compares to about 300 kg in the effluent at the time of our survey. Thus, if the solids carry over from primary treatment pass through the secondary system the effluent TSS level might be increased 50%. Other consequences of secondary treatment, would be increases in nitrogen and phosphorus; essentially there would be no change in effluent color.

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Suggested Headings: *Background, Approach, Experimental Results, References, Index Terms and Attachments*

BACKGROUND

The major process water discharged from the company mill at North Bend is from the hydraulic barker. This effluent is colored, contains bark, wood particles, and soluble carbohydrates and other readily leached organics. By comparison, the principal regulated waste stream, power house cooling water is unaltered except for added heat.

The barker effluent receives primary treatment at the mill in a 15 m clarifier to remove settleable solids (SS) and biochemical oxygen demand (BOD) associated with the SS. In addition to the barker effluent, the clarifier also receives the washdown from the powerhouse air pollution particle removal system. The clarifier discharge ranges from about 3700 m³/day when the barker is operated two shifts to 4900 m³/day with three shifts. The discharge point is about 60 m from the bay proper, in the mill log pond sorting area, adjacent to the clarifier. The raw water intake supplying the barker and powerhouse is in the log pond, "downstream" and about 30 m shoreward of the clarifier discharge. An undetermined but probably significant portion of the water drawn through the intake is effluent from the powerhouse and the clarifier.

Apart from the effluent recycling, the discharged waste appears to disperse from the log pond into the bay chiefly by tidal action. Except near the pierhead line, lateral water movements (currents) under the mill complex and through the log pond are minimized by piling, planking, debris accumulation, etc. The volume of the log pond is about 28,300 m³ of which 15,800 m³ is tidal. About eight tide cycles or four days, are required to completely remove effluents, etc., discharged to the pond on a particular day. While this flushing rate is high, the waste dispersion is not as rapid as would occur if the clarifier effluents were discharged directly to the bay.

The current NPDES Permit stipulates a maximum average monthly BOD₅ of 363 kg/day with a 726 kg daily maximum. A review of the Company Permit monitoring data for the last several years shows we comply with the monthly limit. However, the mill might not achieve compliance should the barker be operated continuously (three shifts), especially in the spring months.

For settleable solids (TSS) the respective Permit limits are 726 kg and 1451 kg. Our monthly monitoring data show we are in compliance with the TSS limit, even if the barker were operated on a round-the-clock basis. The mixing zone stipulated in the permit is for an area enclosed by a 60 m radius from the waste discharge. For the clarifier discharge,

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Suggested Headings: *Background, Approach, Experimental Results, References, Index Terms and Attachments*

BACKGROUND (cont.)

this essentially includes the whole log pond out to the pierhead line.

Another provision of the permit indicates that before January 1979 additional action must be taken to insure that there is no discharge of pollutants in the barker effluent after 1983. This survey was conducted to determine the characteristics of the effluent from hydraulic barker clarifier and the impact of the effluent on the water quality of the adjacent bay. State of Oregon water quality standards were one of the criteria used to evaluate the water quality effect.



Suggested Headings: *Background, Approach, Experimental Results, References, Index Terms and Attachments*

METHODS

We sampled the log pond and adjacent bay in front of the mill on the morning and afternoon of May 16, 1978, during a neap tide situation. The morning high tide was 1.7 m at 0900 hrs.; the afternoon low was 0.15 m at 1530 hrs. In the sampling, dissolved oxygen (DO), temperature, and conductivity were measured in situ using electronic monitoring equipment. The DO meter was calibrated in a water-saturated (100% humidity) atmosphere and the in situ DO reading were corrected for the effect of salinity on DO solubility with a computer-derived equation. Water samples also were taken for characterization of biochemical oxygen demand (BOD), color, solids and nutrients. Clarifier waste influent and effluents grab samples were also taken for comparison with the log pond and bay samples.

In the sampling in the log pond the DO, temperature and conductivity measurements were taken at 25 m intervals along three of the catwalks dividing the log sorting lanes, (Figure 1). The outermost catwalk where we sampled was on the pierhead line, essentially at the mixing zone boundary. Where the log pond depth was less than 2 m, measurements were made only at 1m depth. Water samples from the log pond were all from 1 m; one sample was taken on each of the catwalk transects. The sampling in the bay proper off the mill was along two transects. One traversed the channel immediately off the log pond area; west side, center channel, and east side locations were sampled on this transect. The second was a longitudinal transect about 15 - 20 m off the pierhead line from the chip pile at the north end of the millsite to the south end of the plywood plant; five locations on this transect were sampled. At most sampling points in the bay, both 1 m and 6 m temperature, DO and conductivity measurements were made, but the water sampling for detailed testing was less extensive; there were three samples taken on the channel traverse and two on the longitudinal transect.

On collection, the water samples were iced down and the aliquot for nutrient testing preserved with a 2% solution of HgCl (20 ml/L). Testing was done by the Scientific Services and Environmental Technology Departments at Longview, Washington.



Suggested Headings: *Background, Approach, Experimental Results, References, Index Terms and Attachments*

RESULTS

The discussion of the survey results is in three sections: temperature DO, BOD, and conductivity; particulate solids, turbidity and color; COD and nutrients. It should not be implicitly assumed that the water quality observed in the log handling area where the clarifier discharges, is wholly influenced by this effluent. To some lesser degree the barked and unbarked logs present in the area also influence water quality through the release of soluble carbohydrates and bark.

Temperature DO, BOD, and Conductivity

The average temperature in the log pond 13.5 C was about the same as at the surface in the bay near the mill, 13.6 C. Temperatures were elevated about a degree or more locally in the log pond immediately downstream of the powerhouse cooling water and the clarifier effluent discharges, however, the increase did not persist further bayward in the pond (Table 1).

Surface temperature in the bay were about a degree warmer than those near the bottom. The cooler temperature near the bottom was associated with higher salinity water.

Surface conductivities averaged about 11 millimhos, or 16 ppt. expressed as salinity. Since the log pond temperature/conductivity characteristics were about those of the surface water in the bay, we would expect water exiting the sorting area to flow out as a lens over the more dense water lying on the bottom.

The DO in the log pond during the survey averaged 9.0 mg/L, about 90% of saturation. The DO % saturation level was higher in the inner lane, near the cooling water and clarifier discharges, apparently from reaeration through effluent turbulence at the point of discharge and from the aerating effect of the water jets used to move the logs. As far as a "worst case" condition, the DO in the center log lanes is representative. There the DO averaged 8.7mg/L, or about 85% of the DO saturation value (Table 1). For comparison, the State of Oregon DO standard for marine waters is 6 mg/L.

The DO at the surface in the adjacent bay averaged 9.9 mg/L; the higher salinity water on the bottom averaged 8.7 mg/L.

In the bay sampling there was some evidence of depressed DO levels along the west side of the channel, nearest the various municipal and industrial waste sources. The surface DO % saturation levels at mid channel and on the east side of the channel averaged 101.5% compared to 91.6% for values on the west side of the channel.



Suggested Headings: *Background, Approach, Experimental Results, References, Index Terms and Attachments*

Temperature DO, BOD, and Conductivity (cont.)

The average BOD₅ in the log lanes was 1.7 mg/L, with the highest value 3.0 mg/L found nearest the clarifier discharge. (Table 2)

Based on a daily effluent volume of 3700 m³ from the clarifier and a log pond volume of 20,370 m³ at mean tide the theoretical waste dilution in the pond would be 18%. Thus from a BOD₅ discharge of 93 mg/L, the calculated BOD₅ level in the pond should have been about 17 mg/L, much higher than the levels we found. The difference may reflect both the settling of the particulate BOD fraction and heterotrophic biological action in the pond, reducing the soluble waste fraction. The cooling water discharge of 72,000 m³/day may also be a source of dilution, although the raw water intake location would seem to indicate water from the log pond as the major make up water. In any case the BOD₅ level in the sorting area is nearly the same as the average of 1.1 mg/L found in the surface water of the bay near the mill.



Suggested Headings: *Background, Approach, Experimental Results, References, Index Terms and Attachments*

Particulate solids, turbidity and color

The total suspended solids average of 34 mg/L for the log pond area samples is only slightly higher than the 31 mg/L average for the samples in the adjacent bay. (Table 2) Further, our testing showed most of the material was inorganic, since the volatile fraction (VSS) averaged 4 mg/L, and of small size, since the settleable solids (SS) accounted for ≈ 0.01 ml/L. The TSS in the clarifier effluent grab sample was 76 mg/L, much below the 150 mg/L average for the monthly testing values obtained in recent years. In reviewing previous TSS results for the Coos Bay Mill clarifier and for clarifiers at other company locations there is a seasonal decline in test values starting in late spring and progressing into early fall (Westenhouse, 1970). In this context the TSS value we obtained is not out of line.

The turbidity and color data also were little different between the log pond and the bay. Turbidity in the samples from the log lane averaged 5.6 FTU units compared to 6.6 FTU in the bay. The respective color levels were 23 APHA units in the log lanes and 20 APHA units in the bay. The color in the clarifier effluent was 560 units, the same as the average found in previous testing of this effluent.

Nutrients

This section includes material on soluble and particulate nitrogen and phosphorus and on C:N:P ratios, with the carbon data based on chemical oxygen demand (COD) testing.

Inorganic and organic nitrogen ($\text{NO}_3\text{-N} + \text{TKN}$) averaged 0.9 mg/L in the samples from the rafting lanes and 0.6 mg/L in the bay samples. The 1.5 x increase was attributable to the higher soluble and particulate Kjeldahl nitrogen levels in the log pond area.

The total nitrogen in the clarifier grab sample was 1.4 mg/L, with over half of the total from particulate material. Based on this test value about 5 kg of nitrogen are discharged daily from the clarifier. While Kjeldahl nitrogen was dominant in the log pond area, nitrate was the predominate nitrogen form in the bay; the average was 0.4 mg/L. The Kjeldahl nitrogen which was present was in the bay samples was nearly all in a soluble state.

Total phosphorus averaged 0.06 mg/L in the log pond samples compared to 0.4 mg/L in the clarifier effluent and 0.03 mg/L in the bay samples. The clarifier discharge amounts to about 1.5 kg of phosphorus per day. About half of the phosphorus in the clarifier effluent and log pond is particulate, while most of that found in the bay samples was soluble.



Suggested Headings: *Background, Approach, Experimental Results, References, Index Terms and Attachments*

Nutrients (cont.)

The C:N:P ratio for the clarifier effluent sample is 263:1:0.3; the ratio for the water samples from the log sorting area is 58:1:0.07. Unfortunately, COD analyses were not run on the bay samples, allowing further comparison.

The high proportion of carbon in the clarifier effluent is indicative of the bark and wood particles present. The much lower C:N ratio in the log pond samples is within the range of values commonly encountered in pulp mill effluents receiving secondary treatment. (Herrmann, 1976)

REFERENCES:

Herrmann, R.B. 1976 TSS Studies. Weyerhaeuser Company
Project No. 046-4509. Annual Report. 45 p.

Westenhouse, R.G. 1970. Hydraulic Barker Waste Characterization.
Weyerhaeuser Company. 7 p.

Weyerhaeuser North Bend Mill Complex

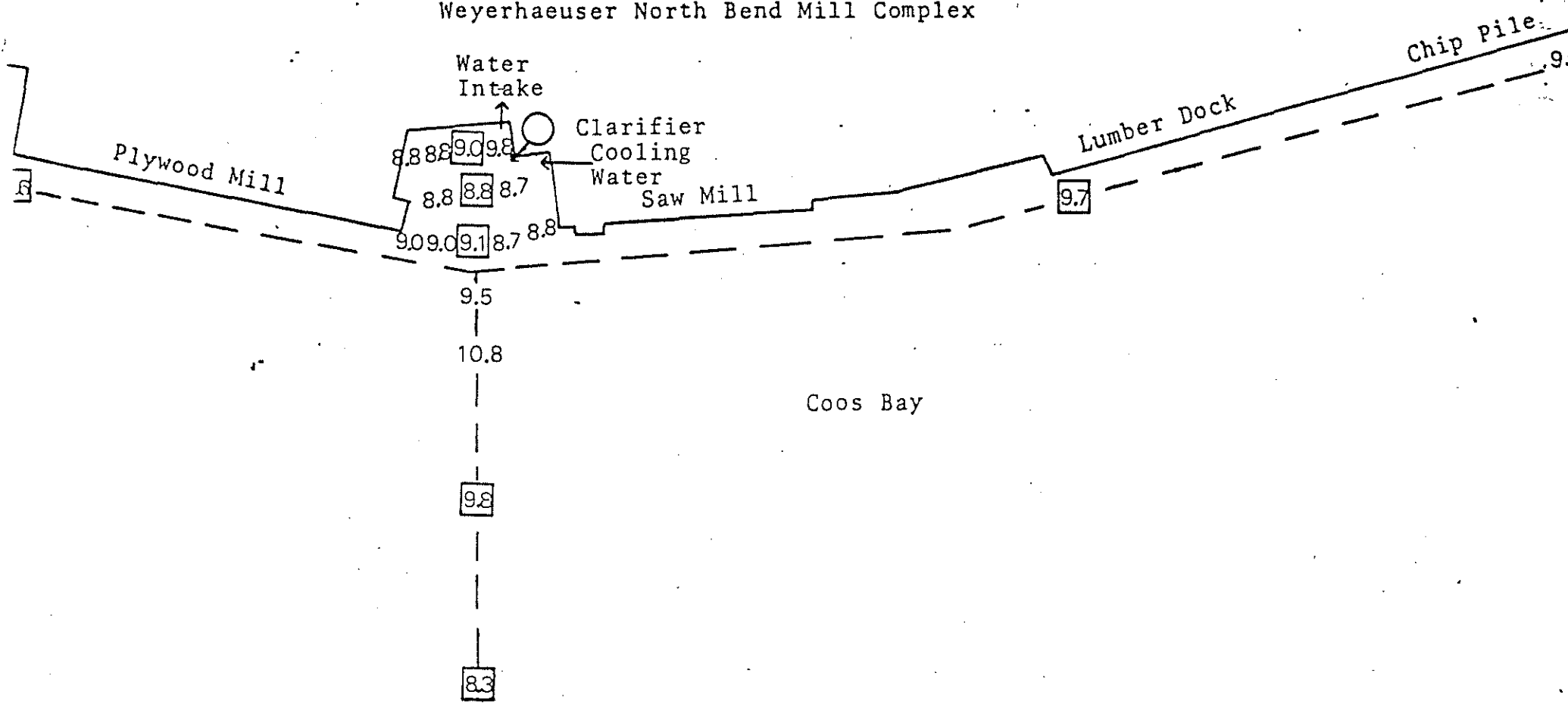


Figure 1

Weyerhaeuser Mill Complex, Log Pond and Adjacent Bay Area showing surface DO readings and water sample locations (□).

Note: Center and east channel DO values are means; log pond DO values omit pm data.

TABLE I

Weyerhaeuser Log Lane and Adjacent Coos Bay Temperature
Dissolved Oxygen and Conductivity Character; May 16, 1978

| Station (Time) | Location | Spl. Depth (m) | Temp. C | DO | | Cond. Millimhos |
|-------------------|-----------------------|-------------------|------------|--------|---------|--------------------|
| | | | | (mg/L) | (% Sat) | |
| 3(1100) (1630) | Inner Log Lane | 1 | 14.1* | 9.1* | 92.8* | 16.3 |
| | | 1 | 15.3* | 9.5* | 98.2* | 12.0 |
| 4(1130) | Cntr. Log Lane | 1 | 13.0* | 8.8* | 86.4* | 13.9 |
| | | 3 | 12.5 | 8.6 | 84.8 | 13.9 |
| 5(1200) | Outer Log Lane | 1 | 13.0* | 9.3* | 87.9* | 13.8 |
| | | 3 | 13.3* | 8.9* | 88.7* | 13.8 |
| 6(1530) | Lmbr Dock/Chip Pile | 1 | 13.7* | 9.6* | 93.8* | 9.0* |
| | | 6 | 13.2* | 8.3* | 86.2* | 27.0* |
| 7(1610) | Plywood Mill | 1 | 14.0 | 9.6 | 95.4 | 10.0 |
| | | 6 | 13.0 | 8.4 | 85.8 | 24.0 |
| 8(1500) | Shp. Chnl.; East Side | 1 | 13.0 | 6.7 | 65.0 | 11.0 |
| | | 6 | 12.0 | nd | nd | 18.0 |
| (1700) | | 1 | 14.5 | 10.0 | 101.3 | 12.0 |
| | | 6 | 13.4 | 8.6 | 91.3 | 31.0 |
| 9(1430) | Shp. Chnl.; Cntr. | 1 | 13.0 | 9.6 | 102.6 | 13.0 |
| | | 6 | 12.5 | 10.1 | 94.3 | 24.0 |
| (1710) | | 1 | 13.9 | 10.1 | 100.9 | 12.0 |
| | | 6 | 13.0 | 8.7 | 92.4 | 32.0 |
| 10(1400) | Shp. Chnl.; West Side | 1 | 13.5 | 10.8 | 83.0 | 11.0 |
| | | 6 | 12.0 | 8.1 | 106.7 | 28.0 |
| (1545) | | 1 | 13.5 | 9.5 | 94.3 | 12.0 |

*Mean value of several discrete measurements

TABLE 2

Weyerhaeuser Clarifier and Log Handling Lane Character and Adjacent
Coos Bay Water Quality (mg/L Unless Otherwise Stated); May 16, 1978

| Station (Time) | Location | TSS | VSS | SS (ml/L) | Color (APHA) | Turbidity (FTU) | BOD ₅ | COD | TKN | Sol KN | NO ₃ | Tot. P | Ortho P |
|-------------------|----------------------|-----|-----|--------------|-----------------|--------------------|------------------|------|------|--------|-----------------|--------|---------|
| 1(1035) | Clarifier Infl. | 210 | 22 | 8.5 | 1330 | 175 | 249 | 2280 | 4.41 | 0.98 | 0.23 | 0.71 | 0.45 |
| 2(1030) | Clarifier Eff. | 76 | 3 | 0.5 | 560 | 40 | 93 | 970 | 1.24 | 0.46 | 0.14 | 0.40 | 0.20 |
| 3(1230) | Inner Log Lane | 52 | 6 | 0.01 | 17 | 6.1 | 3.0 | 165 | 0.52 | 0.38 | 0.32 | 0.09 | 0.04 |
| 4(1235) | Cntr. Log Lane | 24 | 7 | <0.01 | 17 | 6.1 | 1.3 | 132 | 0.56 | 0.45 | 0.36 | 0.02 | 0.02 |
| 5(1240) | Outer Log Lane | 27 | 4 | <0.01 | 36 | 4.7 | 0.8 | 123 | 0.56 | 0.38 | 0.37 | 0.06 | 0.02 |
| 6(1550) | Lmbr Dock; South | 18 | 3 | <0.01 | 20 | 6.4 | 1.1 | nd | 0.28 | 0.27 | 0.39 | 0.02 | 0.02 |
| 7(1610) | Plywood Mill; South | 25 | 3 | <0.01 | 23 | 7.3 | 1.0 | nd | 0.27 | 0.26 | 0.42 | 0.06 | 0.02 |
| 8(1700) | Shp. Chnl; East Side | 62 | 3 | <0.01 | 17 | 5.9 | 1.5 | nd | 0.31 | 0.22 | 0.38 | 0.04 | 0.02 |
| 9 Sur. (1710) | Shp Chnl; Cntr. | 20 | 2 | <0.01 | 20 | 6.9 | 1.0 | nd | 0.26 | 0.23 | 0.39 | 0.02 | 0.02 |
| 9 Btm. (1710) | Shp Chnl; Cntr. | 32 | 7 | <0.01 | 33 | 7.7 | 1.0 | nd | 0.34 | 0.31 | 0.21 | 0.03 | 0.04 |

WEYERHEUESER COMPANY NORTH BEND, OREGON MILL
COST ESTIMATE TO REPLACE EXISTING
HYDRAULIC BARKER WITH A MECHANICAL BARKER

Sept. 21, 1978

Outside Accounts

| | |
|---------------------------------|---------------|
| Booms and Walkways (allowance) | \$20,000 |
| Log Lift Demolition (allowance) | <u>30,000</u> |
| Total Outside Accounts | \$50,000 |

Buildings

| | |
|---|-----------------|
| Barker House, 3,500 sq. ft. @ \$20/sq.ft. | <u>\$70,000</u> |
| Total Buildings | \$70,000 |

Equipment and Machinery

| | |
|--|--------------|
| Log Slip Feeder (5 ton unit) | 200,000 |
| Piling Under Slip Feeder, 40 Piling 80 ft. Long @ \$6/ft. | 19,200 |
| 140 cu.yd. Concrete @ \$225/yd. | 31,500 |
| Install Slip Feeder | 15,000 |
| Drive Piling @ \$150/Pile | <u>6,000</u> |
| Subtotal | \$271,700 |

First Section Log Haul

| | |
|---|---------------|
| 120 Piling 80 ft. long @ \$6/ft. | 57,600 |
| 200 yd. Concrete @ \$225/yd. | 45,000 |
| 160,000 lbs. Fabricated Steel @ \$1.00/lb | 160,000 |
| 300 ft. 8" Chain @ \$30/ft. | 9,000 |
| 30 Flights @ \$250/ea. | 7,500 |
| 4 Shaft Assemblies @ \$8,000 ea. | 32,000 |
| 2 Shaft Assemblies @ \$4,000 ea. | 8,000 |
| 300 ft. Riding Strips @ \$20/ft. | 6,000 |
| Drive Assembly | 75,000 |
| Apron Hoist Assembly | 10,000 |
| 150' Walkway @ \$30/ft. | 4,500 |
| Drive Piling @ \$150/Pile | 18,000 |
| Installation | <u>50,000</u> |

Subtotal \$482,600

| | |
|--|---------------|
| 72 Inch Nicholson Mechanical Barker Complete | 400,000 |
| Piling Under Barker, 60 Piling 80 ft. | |
| Long @ \$6/ft. | 28,800 |
| 100 cu. yd. Concrete @ \$225/yd. | 22,500 |
| 125 H.P. Ring Drive (D.C.) | 40,000 |
| 40 H.P. Feed Drive (D.C.) With Reducer | 35,000 |
| 90,000 lb. Support Steel @ \$1.00/lb. | 90,000 |
| Installation of Barker Support | 30,000 |
| Installation of Barker | <u>50,000</u> |

Subtotal \$696,300

| | |
|--|---------------|
| Barker Outfeed | |
| Supporting Steel For All Equipment Over | |
| Old Log Well - 60,000 lb. @ \$1.00/lb. | 60,000 |
| Install Supporting Steel | 15,000 |
| Log Haul Out of Barker - 40,000 lb @ \$1.00/lb | 40,000 |
| 300 ft. of H-132 Chain for Log Haul @ \$20/ft. | 6,000 |
| 4 Log Haul Shaft Assemblies @ \$3,000 ea. | 12,000 |
| Log Haul Drive | 25,000 |
| Install Log Haul | <u>15,000</u> |

Subtotal \$173,000

| | |
|---|---------------|
| Large Log Barker | |
| 10,000 lbs. Fabricated Steel Supports | |
| @ \$1.00/lb. | 10,000 |
| Rosser Head and Carriage | 50,000 |
| Relocate Existing Barker Trunions and Flipper | 20,000 |
| Installation of Support Steel and Rosser Head | <u>15,000</u> |

Subtotal \$ 95,000

| | |
|--|---------------|
| Kicker to Large Log Barker | |
| 16,000 lbs. Fabricated Steel Support | |
| @ \$1.00/lb. | 16,000 |
| 30,000 lbs. Fabricated Kicker Assembly | |
| @ \$1.00/lb. | 30,000 |
| Relocate Steam Cylinders for Kicker | 10,000 |
| Installation | <u>14,000</u> |

Subtotal \$ 70,000

| | |
|---|---------------|
| Kicker to Log Deck | |
| 16,000 lbs. Fabricated Steel Support @ \$1.00/lb. | 16,000 |
| 30,000 lb. Fabricated Kicker Assembly @ \$1.00/lb. | 30,000 |
| Relocate Steam Cylinder for Kicker Installation | 10,000 |
| | <u>14,000</u> |
| Subtotal | \$ 70,000 |
| | |
| Log Deck From Barker | |
| Demolition of Existing East Log Deck and Bellingham Barker | 30,000 |
| Deck Skids with Shafting and Drive | 100,000 |
| 800 ft. H0132 Chain @ \$20/ft. | 16,000 |
| Relocate Existing Drive Installation | 5,000 |
| | <u>25,000</u> |
| Subtotal | \$176,000 |
| | |
| 120 ft. Bark Conveyor Under Barker | |
| Fabricated Steel Supports and Trough | 35,000 |
| Hopper and Misc. Steel | 15,000 |
| 250 ft. 6" Chain @ \$24/ft. | 6,000 |
| 40 Flights @ \$50/ea. | 2,000 |
| Drive and Spools | 14,000 |
| Installation | <u>20,000</u> |
| Subtotal | \$ 92,000 |
| | |
| Total Equipment and Machinery | \$2,126,600 |

Electrical Installation

| | |
|-------------------------------------|---------------|
| Starters, Breakers, S&E (allowance) | \$200,000 |
| Lighting (allowance) | 20,000 |
| Labor | <u>40,000</u> |
| Total Electrical Installation | \$260,000 |

Piping Installation

| | |
|---------------------------|--------------|
| Steam Piping (allowance) | 20,000 |
| Air Piping (allowance) | 10,000 |
| Water Piping (allowance) | <u>3,000</u> |
| Total Piping Installation | \$ 33,000 |

Total Labor and Material \$2,539,600

General Accounts

| | |
|--|----------------|
| Unlisted Items @ 12% | 305,000 |
| Engineering @ 7% | 178,000 |
| Construction Supervision and Overhead @ 3% | <u>76,000</u> |
| Subtotal | \$3,098,600 |
| Contingency @11% | <u>340,800</u> |
| | \$3,439,400 |



State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

*Water Quality
Sawyer, Carter, Nichols
DSC*
INTEROFFICE MEMO

To: Files
From: Barb Burton *Barb*
Subject: IW-Coos County
Weyerhaeuser Company
File Number: 96225

Date: April 19, 1977

North Bend To Nichols + files

April 15, 1977 Tim Davison, Glen Carter and I met with numerous Weyerhaeuser representatives, including Jerry Bollen, Lee Estabrook, and Tim Slater. The purpose of the meeting was to discuss the draft log handling permit. In general, they objected to everything, including most of the general conditions.

Cover Sheet

Jerry said their lawyers were balking at accepting the permit with the standard WPCF cover sheet. The language is geared towards a wastewater control facility (Water Pollution Control Facilities, waste disposal limitations, waste water treatment facilities, etc.), in Jerry's opinion. I showed him the cover sheet I had devised last July--he said it was much better. I agree with him--this is a very different sort of permit, and I think having the old permit format has fueled considerably the controversy over the legality of our issuing a permit for log handling. Please find attached a copy of my proposed format.

Minimum Monitoring and Reporting

The information on dredging and spoils deposition are already reported to us through DSL (I was not aware we got the spoils information). It was agreed to drop that requirement.

Jerry also had trouble with the four times per year reporting on log storage. I said we needed monitoring that often, because of fluctuations of amount of storage and location (at some storage areas, any one of 3-4 companies could be using it at any time). Later on, Jerry said the inventory can vary as much at 100% to 200%, which lends weight to our quarterly monitoring requirements. They would want this information kept confidential. We said no problem, but they should mark the reports that way.

Positive Debris Control

This is one of the two major points of disagreement. They feel the logster (operating twice per week) did a good job on controlling floating

Memo to files from Barb Burton

-2- April 19, 1977

IW-Coos County
Weyerhaeuser Company
File Number: 96225

bark, and that no further control was needed. It was explained that limiting the material floating was only a small part of the reason for this--we are primarily interested in removing the bark before it sinks (Schaumberg's study showed 10% of bark sinks the first day). Jerry feels we have no basis for this requirement unless water quality standards are violated.

Requiring daily debris control has caused much opposition by many of the industries. I still strongly favor daily control, but I told Weyerhaeuser that I would bring it up at the meeting with WQD on April 20.
Thorough Dredging This Year

Weyerhaeuser dredges down below the bark layer each year--they have more problems with silt than with bark. As this condition is in all permits and was intended for those companies with huge bark deposits that only dredge the top few feet, I agreed to drop this condition.

Removal of Debris at Tops of Banks

This was another major problem. I had required a 10' setback, as at two locations log deck debris had obviously been pushed over the bank and into the Millicoma and the South Fork of the Coos River. Lee Estabrook conceded there had been a problem, but felt the 10' setback would rob them of too much room. We finally compromised on an unspecified setback so that no debris would fall in.

They are now aware that we are concerned about this. If there should be further problems, we should put a specific setback back into the permit.

Feasibility Study on Eliminating Tideland Storage

I gave Jerry a memo I'd prepared on what I expected in the study. He agreed to do it, but would like to get it in within the next month so that we could take it out of the permit. I agreed.

Jerry and Lee feel there is not as much deep water storage available as I thought, because:

1. The Marshfield Channel has silted in since the 1974 tideland map we used. This will again be deeper after the dredging, however.

Memo to files from Barb Burton

-3-

April 19, 1977

IW-Coos County
Weyerhaeuser Company
File Number: 96225

2. They will be using the south side of Marshfield Channel anyway with the normal fluctuation (increase currently) now occurring.
3. The north side of the channel has snags which will make it more difficult to store there.

They may be right. There has been little or no storage in the Marshfield Channel since I've been involved--we'll see what happens. One possibility--requiring that the Marshfield Channel be maximally utilized before tideland storage can begin. We should wait on this until the tidelands study is done, however.

Dredging Spoils Only at DEQ Site

Fish and Wildlife is already carefully monitoring the spoils sites and we also get a crack at it (through the DSL permit for dredging). I didn't realize this when the permit was drafted, and agreed to take it out since it is redundant.

No Increase of Storage in Tidelands

Jerry wants the wording changed from "no increase in tideland areas" to "no new areas". No problem with the change. He also would like us to consider trade-offs (as in abandoning one tideland area for another)--I said we would on a case by case basis.

As Low an Inventory as Practical

Jerry was unsure as to who would determine what was practical. I explained this was more of a policy statement, and would be extremely hard to enforce. He suggested "economically" be interjected, but I rejected that. I told him we would only get concerned if there were a large increase without a good reason.

Easy Let-Down Devices

Jerry wants the wording changed so that the existing easy let-down devices will not have to go through plan review. I've no problem, as their current devices are satisfactory.

Memo to files from Barb Burton

-4-

April 19, 1977

IW-Coos County
Weyerhaeuser Company
File Number: 96225

General Conditions

Jerry would like conditions G1, G2, G3, G6, G9 and G10 either ~~removed~~ ^{worded} or deleted, as they are relevant only to wastewater systems.

I agreed.

Miscellaneous

The State Highway Department has restricted log storage to 10 rafts above the lower Coos River bridge, during November 1 to April 1. A previous flood resulted in 20 rafts being loosed, almost wiping out the bridge.

Variation in amount of storage is due to market fluctuations only--the logging rate is usually constant.

The Dellwood ^{site} ~~plant~~ is dredged three times per year. ~~s per year~~

Pilings cost approximately \$300 a piece, including placing.

Weyerhaeuser ^f progresses to prefer deep water storage because of round-the-clock access.

The conveyor line easy let-down device they have would cost \$300,000 to build today. They have had considerable trouble with it because of not using strong enough materials.

Jerry would like another shot at the permit draft before it goes to formal permit process. I agreed.

Jerry would like a public hearing before a hearings officer. I said there would likely be an EQC hearing. I don't know why he feels this would be useful. He does feel that industry has not been properly involved in the log handling policy. When I mentioned all the EQC public hearings, he didn't feel this was significant. What he wants is a closed meeting during the formative stages so that industry can (unduly in my opinion) influence our policy.

It should be pointed out that Rich and I ~~sat~~ ^{saw} down with him last fall to explain the policy. There was also a public meeting last fall for all the companies to discuss the log handling policy (he was there). In

Memo to files from Barb Burton

-5- April 19, 1977

IW-Coos County
Weyerhaeuser Company
File Number: 96225

addition to the April 15 meeting, I would expect another meeting prior to the formal permit processing. I think what he objects to is that DEQ is not folding as he expected to Weyerhaeuser pressure, and not that he has not been involved. I don't think he understands we are a regulatory agency.

pk

Attachments

cc: ~~Water~~ Quality Division - Sawyer, Carter, Nichols

Regional Operations - Fred Bolton

Permit Number: _____

Expiration Date: _____

File Number: _____

Page _____ of _____

LOG HANDLING FACILITIES PERMIT

Issued pursuant to ORS 468.740

Issued to: _____ :

Log dump locations:

Name

Waterway

River mile

Log storage areas:

Name

Waterway

River mile

Plant site:

Name

Waterway

River mile

Loren Kramer, Director

Date

PERMITTED ACTIVITIES

Until this permit expires or is modified or revoked, the permittee is authorized to construct, install, modify or operate log handling and storage facilities in public waters in conformance with requirements, limitations and conditions set forth in attached schedules as follows:

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
Permit Conditions

Permit Number _____

Expiration Date: _____

Page _____ of _____

| | <u>Page</u> |
|--|-------------|
| Schedule A - Special Operating Requirements | _____ |
| Schedule B - Compliance Conditions and Schedules | _____ |
| Schedule C - Reporting Requirements | _____ |
| General Conditions | _____ |

This permit does not relieve the permittee from responsibility for compliance with other applicable Federal, state, or local laws, rules, or standards.

SKETCH



State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE MEMO

To: Jerry Bollen, Weyerhaeuser
From: Barbara Burton, Department of Environmental Quality
Subject: Proposed Feasibility Study for Eliminating Tideland Storage

Date: April 15, 1977

In general, we are looking for a quick, short picture of why tideland storage cannot be eliminated. At most, the report should be no longer than 2-3 pages and have only "ballpark" figures on costs. If it takes more than 2 days to put the report together, you are including too much detail. Included should be the following information:

General

1. Any reasons why you feel the alternatives considered are physically impossible.
2. If physically possible, what will be the costs (specify: as a piling in 10' of water costs \$100 while a piling in 5' of water costs \$50, and approximately 20 pilings will be needed).
3. Any other major problems you anticipate for the alternatives.

Outline of report

Alternatives considered

- I. Increasing storage at two existing yards or adjacent to them:
 - a. Cost of adjacent land, and cost of putting in log yard expansion.
 - b. Any problems in using adjacent land--as in present log yard is surrounded by sheer cliffs, owner refuses to sell at any price, etc.
 - c. Why more logs can't be stored at current yards.
- II. Increasing storage in open waters
 - a. Cost of pilings in open water versus that in tidal land.
 - b. Any reasons why it is physically impossible to store further from shore.

Barbara Burton

pk



Weyerhaeuser
X Water Quality Division
Weyerhaeuser Company

North Bend

P.O. Box 275
Springfield, Oregon 97477
A/C 503 • 746-2511

March 21, 1977

Ms. Barbara A. Burton
Assistant Regional Manager
1937 W. Harvard Blvd.
Roseburg, Oregon 97470

RECEIVED
MAR 30 1977

Water Quality Division
Dept. of Environmental Quality

Dear Ms. Burton:

You should be interested in reviewing the enclosed testimony which was presented by Ted Nelson at the August, 1975 hearing held by the EQC on the proposed log handling policy. His statement describes many of our concerns including economic impact if water storage of logs were to be restricted. The cost figures have of course increased during the past two and one half years.

We will look forward to meeting with you in North Bend on April 15 concerning this matter.

Sincerely,

R. Jerry Bollen
Environmental Affairs Manager

RJB:kkh
Attachments

cc: Bob Howry
Weyerhaeuser-North Bend
Raw Materials Manager

STATEMENT OF WEYERHAEUSER COMPANY ON LOG HANDLING IN OREGON'S PUBLIC WATERS

OREGON ENVIRONMENTAL QUALITY COMMISSION

PORTLAND, OREGON

AUGUST 22, 1975

Mr. Chairman, gentlemen, I am Ted Nelson, Raw Materials Manager for the Southwest Oregon Region of Weyerhaeuser Company with headquarters in North Bend, Oregon. Weyerhaeuser in Southwest Oregon employs some 1,700 people and operates a large sawmill and plywood facility as well as being engaged in the export of logs and chips. Our operations are supported by a 210,000 acre tree farm.

Weyerhaeuser has been active in efforts to protect the water environment in connection with the handling, storage and transportation of logs on the Coos River system and in Coos Bay. Within the last four years we have constructed a chain, easy letdown device at our terminal at Dellwood. We have developed and operated daily, the river sweeping logster in the bay and rivers. This vessel, built at a cost of \$150,000, is designed to clean the waters of floating debris of all sizes from leaves and twigs to floating logs.

Through our membership in the Industrial Forestry Association, and individually as a company, we have had an opportunity to work with the department staff in developing the proposed policy before you today. We have appreciated that opportunity.

We endorse the comments made by W. D. Hagenstein. In addition, I would like to briefly underscore the potential impact of the portion of the proposed policy which deals with the storage of logs where they go aground. Our concerns lie with the specific wording, the resulting logic and the potential implications of these policies as presently worded.

In item 5 of the General Summary of Problems, the statement is made and I quote, "where logs go aground during tidal changes or flow fluctuations they are a detriment to bottom dwelling aquatic life and can be the cause of increased turbidity." Then in item 3 of the attached Proposed Policy and Guidelines, beginning with the second sentence, and I quote, "Where there is evidence of resulting damages to aquatic life and/or water quality, the existing log storage areas where logs go aground shall be phased out in accordance with an approved schedule."

Our concern obviously is that the policy, as now written, first establishes the premise that grounding of logs are a detriment to bottom dwelling life and then with the premise given states that such storage areas shall be phased out. In the case of Weyerhaeuser Company in Southwest Oregon, implementation of this policy, based upon the premise, would have serious economic and environmental effects.

The carrying of log inventories is a necessary part of operating a wood products business. Inventory levels fluctuate throughout the year based upon the seasonality of log production, mill and other business requirements and expected high water conditions in the tributaries feeding our facilities. For example, during periods of high water on the Coos River system we cannot flow logs from our yards to the mills and there is the periodic risk of being unable to maintain mill production without an adequate volume of logs in the water.

Our business requirements dictate the need for water storage areas sufficient to contain 30MM board feet of logs. To accomodate this storage, we own or control 95 acres of rafted log storage area. On 42% of this area logs periodically go aground. Also, because of the nature of raft tieups, an additional 15% of this area is indirectly effected by grounding. Outboard rafts are tied to inboard

rafts and while the outboard rafts float free on any tide, removal of the inboard rafts for use as tieups would eliminate this free floating storage area. Consequently, approximately 57% of our rafted log storage area would be effected if ground storage were disallowed.

To accomodate the loss of this storage area while endeavoring to maintain our present level of business activity, our only recourse would be to store up to approximately 15M board feet of logs on dry land. This would require the development of two additional dry land storage facilities. A new bridge would be required across the Millicoma Fork of the Coos River to access one of the new yard sites and additional log handling equipment would be required. The capital required, using present costs, would be approximately \$4,500,000. The additional cost to operate the two new yards would be approximately \$300,000 per year and our annual fuel useage would be increased by 108,000 gallons. In addition, the abrasive handling of logs on dry land creates far more bark waste than that associated with easy letdown and subsequent free floating in the water. Thus, the dry waste developed in the yard handling process would create a severe solid waste disposal problem with only limited disposal sites. Finally, there would be the periodic risk of being unable to maintain mill production during periods of high water. Based upon our experience this situation could occur approximately once every four years. It would last a week and reduce payrolls by \$190,000 for each week lost. Therefore, from the point of view of our company, we do not feel that there are sufficient offsetting beneficial gains to society or to the environment to justify the expenditures of these kinds of costs and the secondary adverse environmental impact.

I would like to emphasize that we are not speaking to the development of new areas where logs go aground, but are merely talking of maintaining the opportunity to continue to use areas which have been so employed for the past 40

years. In fact, the area we now use is less than in the past and for the industry as a whole, requires only 1.6% of Oregon's total estuarine area.

In summary, we appreciate the opportunity to appear before you today and to have had an opportunity to contribute to the development of the proposed policy. We agree with the comments made by W. D. Hagenstein of IFA. Given the specific implications to our operation in Southwest Oregon we would like to underscore the need to modify the statement of item 5 in the General Summary to read that logs which go aground "may" effect bottom life and "may" cause increased turbidity and further that in the proposed policy under item 3, we recommend the word "resulting" to be deleted and the word "significant" be inserted. This would break the logic which now exists which first establishes a premise and then defines a necessary action and will allow all future considerations to be made on a case by case basis.



Weyerhaeuser Company

Southwest Oregon Region
North Bend, Oregon 97459
(503) 756-5121

November 20, 1978

Sue Allen
Water Quality Division
Department of Environmental Quality
P. O. Box 1760
Portland, Oregon 97207

Re: Weyerhaeuser Company
North Bend NPDES Renewal
Application File No. 96255

Dear Ms. Allen:

Enclosed is the \$25.00 renewal fee check, which had erroneously been omitted. It should have been attached to the November 13, 1978 letter of R. Jerry Bollen to Kent Ashbaker.

Our apologies for the delay.

Very truly yours,

Paul Halvor
Region Environmental
Coordinator

PH/k

cc: Southwest Region DEQ, Roseburg
R. Jerry Bollen

Encl.

pd
1120

November 16, 1978

5309

Weyerhaeuser Company
270 Cottage St. N.E.
Salem, Oregon 97301

Attention: R. Jerry Bollen
Oregon Public Affairs Manager

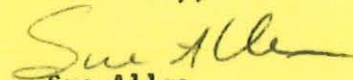
Re: NPDES Renewal Application
File No. 96255

Gentlemen:

We have received your renewal application for the North Bend facility.
We have not received the \$25.00 renewal fee with this application.

This application for renewal will be processed as soon as we receive
your remittance.

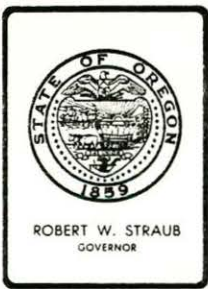
Sincerely,



Sue Allen
Clerical Specialist
Water Quality Division

SA

cc: Southwest Region - DEQ



Department of Environmental Quality

522 S.W. 5th AVENUE, P.O. BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5325

OCT 12 1978

Weyerhaeuser Company
P. O. Box 389
North Bend, Oregon 97459

Attention: R. B. Abel

Gentlemen:

Re: Waste Discharge Permit
File No. 96180

Our records indicate that your present NPDES Waste Discharge Permit will expire on Jan. 31, 1979. The enclosed application form must be completed, signed by your responsible official and returned to the Department of Environmental Quality as soon as possible for renewal of your permit.

A filing fee of \$25.00 is required to accompany application for issuance, renewal, modification or transfer of an NPDES Waste Discharge Permit. No action can be taken on the application until the fee has been paid.

If the permittee requests a significant increase in effluent discharge or disposal limitations, an additional application processing fee of \$50.00 is required.

If you have any questions regarding the permit renewal application or the associated fees, please contact this office. An invoice for the amount of the fees will be sent to you upon request. Copies of the permit fee regulations are also available upon request.

Sincerely,

Charles K. Ashbaker, Supervisor
Water Pollution Control Section
Water Quality Division

CKA:sa

Enclosure - Application

cc: Southwest Region - DEQ



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Suggested Headings: *Title, Objective, Conclusions and Recommendations*

TITLE: NORTH BEND CLARIFIER EFFLUENT DYE STUDY

OBJECTIVE

A dye distribution study of the clarifier effluent was conducted on 27 September 1978. Our objectives were:

- . Determine the amount of clarifier effluent in the raw water returning to the hydraulic barker and thence to the clarifier; i.e., effluent recirculation.
- . Determine effluent distribution and retention in the log pond.

CONCLUSIONS AND RECOMMENDATIONS

1. The reuse of previously discharged clarifier effluent by the hydraulic barker is estimated at 10%. Flushing of effluent and water, particularly in the outer part of the Company log pond, occurs in less than a day; this is more rapid than the previous four-day estimate. The rapid flushing limits effluent build-up in the pond and hence, the amount of effluent reentering the mill raw water intake.
2. Water and effluent in the inner area of the pond, nearer the mill water intake, are not so rapidly exchanged as in the outer pond. If a portion of all of the clarifier effluent were discharged directly into this region, a much higher effluent reuse would certainly occur.

PROPRIETARY "Neither this document nor the information contained therein may be 1) reproduced or 2) disclosed to anyone not confidentially bound to Weyerhaeuser without permission of its originator."

***DISTRIBUTION**

Technical Information Center

| | |
|---|-----------------|
| Author's Signature | Date 12/5/78 |
| Author's Name (typed) R. B. Herrmann | |
| Approved By (signature) | Date 12/5/78 |

*Summary Page only. Complete Report available on request from R & D Technical Information Center.



Suggested Headings: *Background, Approach, Experimental Results, References, Index Terms and Attachments*

BACKGROUND

In a study at the North Bend mill in May of this year, we determined that the clarifier effluent discharged into the Company log pond adjoining the bay was not seriously degrading water quality. Water from the log pond dispersing into the bay also did not depress water quality. Generally along the west side of the channel the dissolved oxygen (DO) at the surface was found to be 90% of DO saturation; however, this was apparently due to other man-related activities in the North Bend-Coos Bay area.

Clarifier effluent dispersion from the log pond and into the bay was believed due wholly to tidal flushing, with the theoretical flushing rate of the pond estimated at four days. Since the raw water make-up for the hydraulic barker, which feeds the clarifier, is drawn from the pond, such a long retention time suggested that significant effluent reuse might be occurring.

In a meeting with Rich Reiter, Oregon DEQ, to review the findings of the May study and the need for additional treatment of the hydraulic barker effluents, a further study was proposed to quantitatively define the effluent reuse. This report describes the results of that study.

APPROACH

The study occurred on 27 September 1978, with dye addition to the clarifier begun around high slack tide. One liter of Rhodamine WT dye was metered into the clarifier overflow over a 43-minute period. Outlet samples of clarifier effluent were taken at about one minute intervals during the entire period of dye addition. Subsequently, an Isco automatic sampler was installed at the clarifier outlet to sample the dye drawn in through the mill water intake in the log pond. Following the dye addition, about one hour into the ebb, we sampled the log pond, taking water samples every 25 m along the catwalks dividing the log chutes. The log pond sampling was repeated about four hours later, near low slack tide.

The fluorescence of the samples was determined using a Turner Model III fluorometer with a No. 546 primary filter and a No. 590 secondary filter. Dye concentrations in the effluent were determined from a dye/fluorescence curve developed using the effluent as the diluent. In the process of developing this curve it became apparent that the effluent not only possessed significant natural fluorescence of its own, but also that the effluent masked out a significant portion of the Rhodamine WT fluorescence.

Dye concentrations in the log pond and bay as developed from the fluorescence curve did not prove to be useful because of effluent interference with the dye fluorescence. Consequently, dye dilutions were determined by dividing the



Suggested Headings: *Background, Approach, Experimental Results, References, Index Terms and Attachments*

fluorescence reading of the log pond and bay samples into the average "end-of-pipe" fluorescence reading from the clarifier during the dye dump.

RESULTS

In the log pond, the dye-tagged effluent initially tended to move south, away from the clarifier discharge (Figure 1). This movement was promoted, (1) by the action of the turbine cooling water discharge, immediately to the north of the clarifier discharge; and (2) the water jets on the catwalks, used to move the peeled logs. At the same time part of the dye moved outward into the bay. The average dye strength in the outer part of the pond was 1:200 (0.5%). The dye concentrations in the inner part of the pond, near the clarifier discharge, were much lower because the dye was slow to mix into that area; the average dilution was 1:1900 (0.05%).

In the afternoon the pond was sampled again, near low slack tide, to determine the changes in dye distribution and retention. Whereas the average dye dilution in the pond in the first survey was 1:300 (0.30%), that found in the second survey was 1:1800 (0.05%), an 80% decrease. In the outer part of the pond the average dilution increased to 1:3000 (0.03%); however, in the inner portion near the raw water intake the dye strength doubled, to 1:1000 (Figure 2).

The increase in dye strength and the dye persistence in the inner part of the pond indicate the area is not as influenced by tidal currents as the outer pond area. Also, the fact that the dye strength initially was quite low in this region indicates slow mixing and hence a longer retention for effluent once it enters the region.

The average dye dilution sampled in the log pond in the first check, immediately after the clarifier dye addition, was lower than expected, apparently due to outward mixing into the ebbing tide. Using a clarifier discharge of 3.4 m³/min for 43 minutes into a log pond volume of 28 300 m³, the theoretical dye dilution was 1:200 (0.5%), this value compares favorably with the observed value of 1:300 (0.3%).

The rate of dye reduction in the pond (flushing) during ebb tide, 55%/hr, if persistent into the flood tide, would result in the complete clearance of the dye from the pond within one tide cycle (about 12 hours). On the flood tide this rate of dye removal should not be so rapid, since flood tide velocities are of a lesser order than those during the ebb. There would occur, however, a dilution of the dye in the pond from new water filling the basin to its tidal volume.



Suggested Headings: *Background, Approach, Experimental Results, References, Index Terms and Attachments*

Our previous estimate of flushing was four days, or about eight tide cycles. The original value assumed that water in the log pond was removed wholly by the emptying and filling of the tidal volume of the pond. The best estimate of the flushing rate at this time is between one and two tide cycles--approximately a day.

Dye-tagged effluent from the log pond which recirculated back through the hydraulic barker and clarifier appeared in the clarifier effluent two hours after the initial addition of the dye to the effluent. The theoretical hydraulic retention in the clarifier is 2.2 hours; thus some dye must have begun to enter the raw water intake soon after the dye addition.

The average dye dilution into the recirculated dye was 1:500 (0.2%), which is near the mean of the dilution found during the two pond surveys, 1:600 (0.16%). The level of recirculated dye in the effluent showed no indication of declining through the study period, which ended at about 1600.

To estimate the effluent reuse in the hydraulic barker system involves determining the duration of dye presence and the average concentration of dye, passing through the system. With the volume of flow, time, and dye concentration known, the volume of the original dye-tagged discharge which is reused in the system can be calculated. Unfortunately, the time duration of this study was too short to follow the entire passage of the dye-tagged effluent through the system. During the three hours we followed the passage of the dye back through the clarifier, the dye strength, 0.2%, was fairly constant and showed no indication of declining. At the same time, the dye strength in the area near the raw water intake was 0.1%.

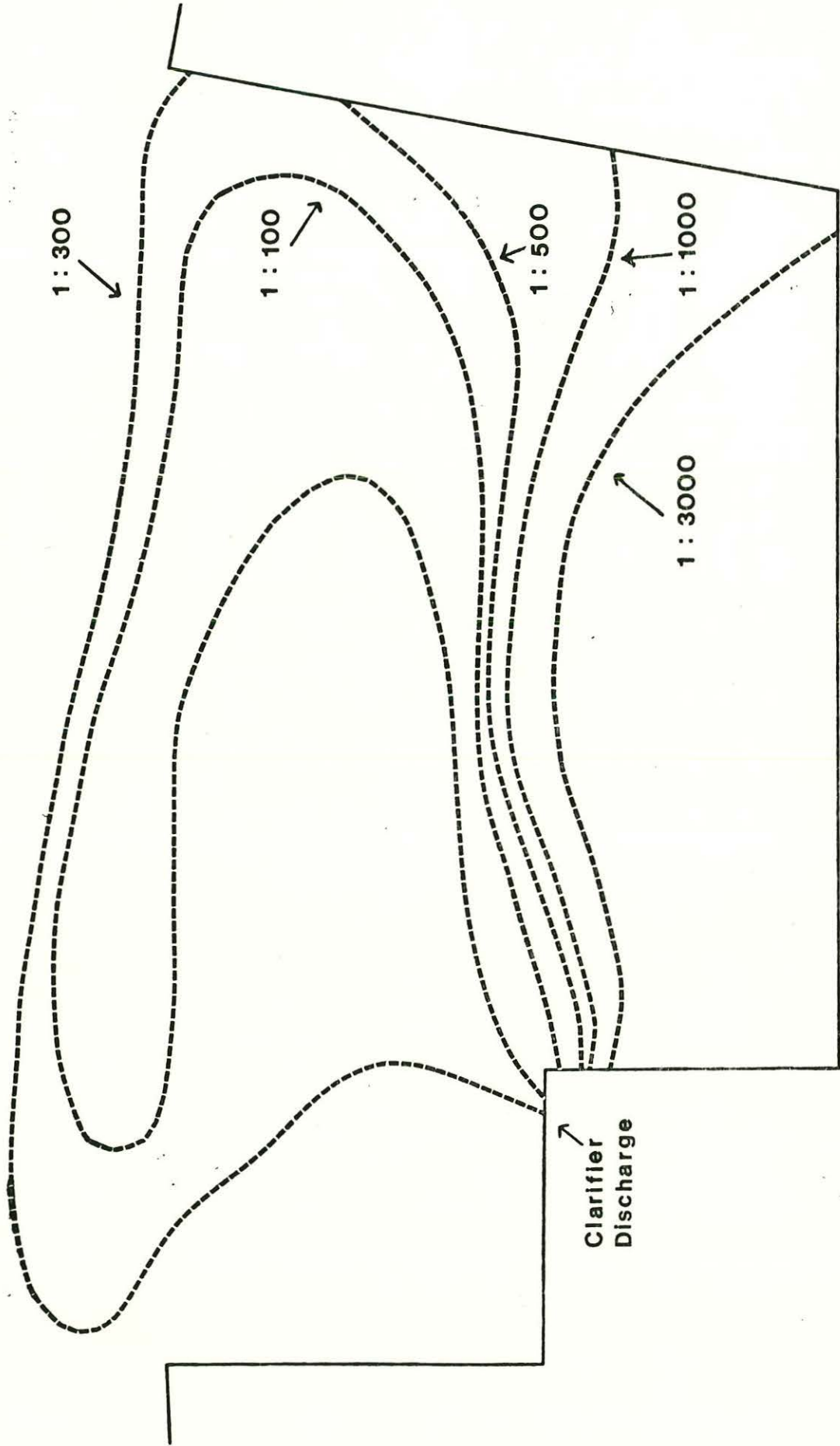
If we assume that the effluent still in the clarifier (2.2 hrs retention) at the time we concluded our study was at 0.15% strength, and that at for least another 1.8 hours the 0.1% strength dye-tagged effluent in the pond would contigue to be drawn into the system, then about 16 m³ (10%) of the original 150 m³ which were dye-tagged would be reused.

I would expect that the greatest portion of the discharged effluent reentering the system would be during the first tide cycle (12 hrs) after the initial effluent discharge. Thus, while the estimate of 10% effluent reuse is conservative, a significantly higher estimate would not be expected by monitoring the clarifier effluent dye levels for several days.

This study demonstrated that the clarifier effluent does mix throughout the log pond and that the diluted effluent is reused in the hydraulic barker system. The study also shows that the rate of flushing of the log pond is higher than previously supposed.

Direction of Current
←
1.5 Hours Into Ebb Tide

←
N



Raw Water Intake

Clarifier Discharge

Figure 1 Dye dilutions in North Bend mill log pond 1.5 hours after dye addition.

Dye Dilution at Low Slack Tide

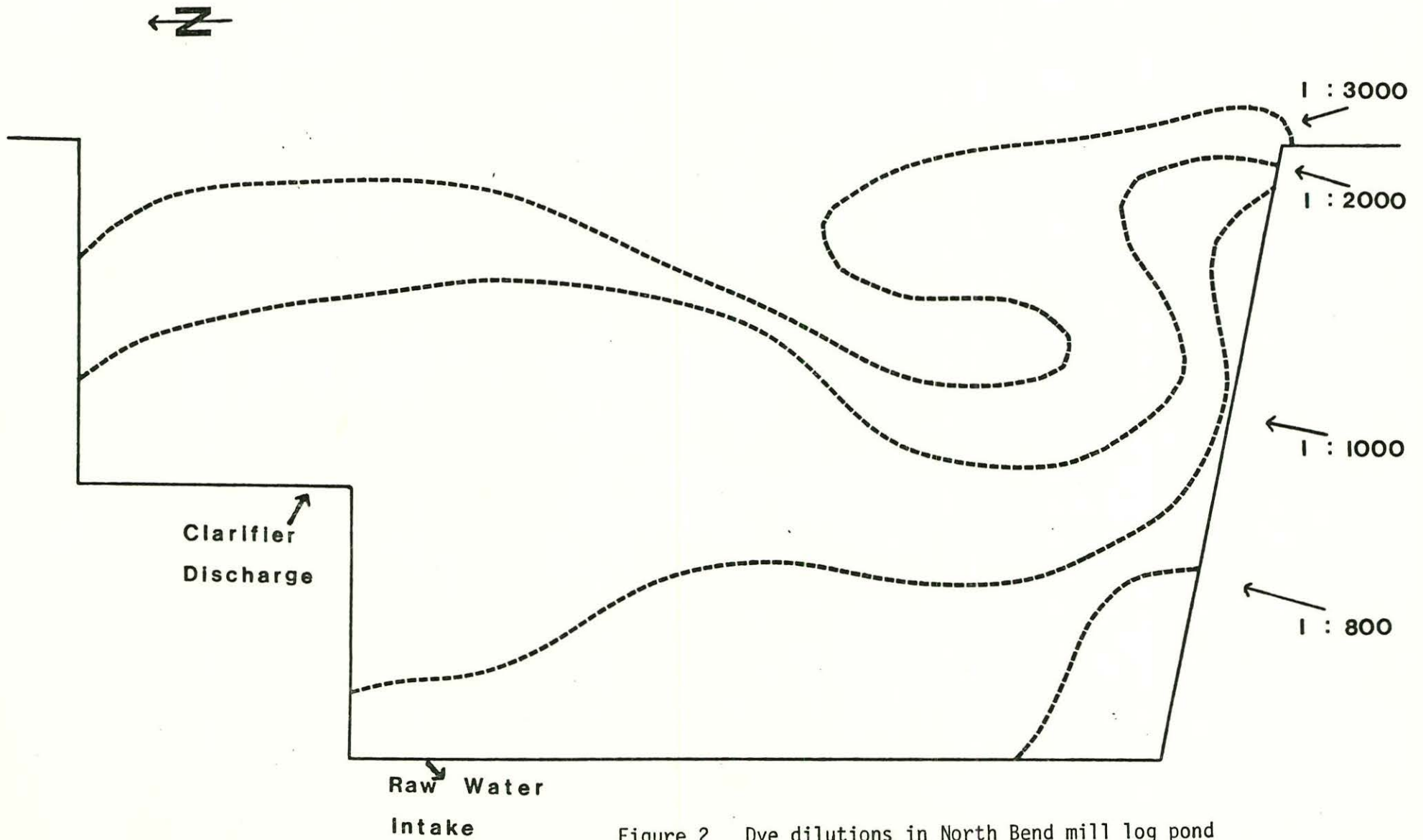
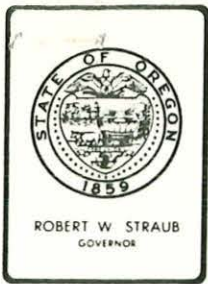


Figure 2 Dye dilutions in North Bend mill log pond 4.5 hours after dye addition.



Department of Environmental Quality
SOUTHWEST REGION

1937 W. HARVARD BLVD., ROSEBURG, OREGON 97470 PHONE (503) 672-8204 Oregon

DEPARTMENT OF ENVIRONMENTAL QUALITY

December 8, 1978

RECEIVED

DEC 20 1978

Paul Halvor
Weyerhaeuser Company
Southwest Oregon Region
North Bend, OR 97459

WATER QUALITY CONTROL

RE: IW - Coos County
Weyerhaeuser Company
File # 96194

Inspection

Dear Mr. Halvor:

November 21, 1978 we met with Jack Taylor to inspect the Allegany and Dellwood log dumps. You and I then inspected the North Bend mill site. The purpose of the inspections were to review Weyerhaeuser's log handling procedures to determine if you are operating within the limits of your Log Handling Facilities Permit.

The only major problem noted was beneath the green end of the plywood. A large accumulation of floating debris was seen in that area, which apparently had not been cleaned recently. As we discussed, floating debris at the mill site is required to be removed periodically. The permit specifies weekly clean-up.

The only other problem was noted at the Dellwood log yard. It appeared some log yard waste had been pushed over the side, and had come to rest very close to the water's edge. Care needs to be taken to avoid any of this material from entering the water.

Otherwise, everything seemed to be operating properly. The Dellwood conveyor line had been repaired, and was operating much better than on previous inspections. The floating debris on the Coos and Millicoma Rivers and at the two log dumps did not seem excessive. Further details of the inspection are included in the enclosed inspection report.

I enjoyed meeting with you. Your time during this inspection and attention in getting the floating debris removed from under the plywood mill is appreciated. If you have any questions on this or if I can be of any assistance, feel free to call me at 672-8204.

Sincerely,

Barbara A. Burton

Barbara A. Burton
Environmental Specialist

BAB:agw

cc: Water Quality Division - DEQ
Jerry Bollen, Weyerhaeuser Company

Enclosure



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DEQ/RO-601

FIELD INSPECTION REPORT

Evaluation of Permit Compliance and Adequacy of Wastewater Control

Log Handling Permit

Facility Name Weyerhaeuser Co. - Dellwood, Allegany, N. Ben File No. 96194 Permit No. 2633
 Facility Location Coos Bay area Type of Inspection: Reconnaissance Comprehensive
 Official Contacted Paul Halvor and Jack Taylor Inspection Date 11-21-78 Duration 3 hrs.

GENERAL OBSERVATIONS and REMARKS (Receiving Stream near Outfall, Facilities, Operation and Maintenance, etc.)
 Debris floating in Coos & Millionaire River not excessive. Some floating debris at log dumps, but not excessive. Log dumps (easy let down devices) working well. Still some problems with complaints by boaters to fish & Wildlife

COMPLIANCE SCHEDULE STATUS Permit Conditions B1, _____, _____, _____
 B1. Conveyor easy let down repaired

EFFLUENT APPEARANCE AND CHARACTERISTICS
 Appearance (Check if visible or present) Oil Grease Color Turbidity Settleable Solids Foam
Floating Solids Odors Other
 Field Observations and Data (See attached Sheet for Field and Lab Data)
 Sample Information (Check as Applicable)
 Type of Sample Grab 24 hr. Composite Composite, ___ hr. Other
 Method of Collection Hand DEQ Sampler Permittee Sampler Flow Proportional Timer Activated
Other
 Planned Program Split for DEQ/Permittee Comparative Analysis Collected for DEQ Analysis Only
 Comments

PERMITTEE MONITORING Permit Conditions C1, _____, _____, _____ (Check if Satisfactory and Note Applicable Details. Explain if Unsatisfactory.)
Flow Measurement and Recording Continuous Record Totaliser Other
Sample Collection and Handling Satisfactory Sample Location Sampling Frequency Grab Composite, ___ hr.
Flow Proportional Timer Activated Hand Composite Refrigerated During Collection
Other
Laboratory Procedures Proper Lab Storage of Sample Satisfactory Lab Procedures Correct Analytical Methods
Other
Records Past Records Available Observation Records Available Other
 Explanation Yearly report not due until January 31, 1979.

OTHER PERMIT CONDITIONS (Note Permit Condition and Comment on Status of Compliance)
 1. No debris from log yards into water. Some was close to water's edge at Dellwood
 2. Easy let down devices used
 3. Weekly removal of floating debris in Coos & Millionaire Rivers - rivers looked clear
 6. Weekly removal of floating debris at mill - appeared a longer accumulation under plywood mill.

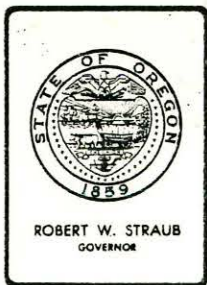
OVERALL EVALUATION OF COMPLIANCE STATUS (Check as Appropriate)

| | IN COMPLIANCE | PROBABLY OR SUBSTANTIAL COMPLIANCE | NEEDED MORE INFORMATION | POSSIBLE OR PROBABLE NON-COMPLIANCE | NON-COMPLIANCE |
|---------------------|-------------------------------------|-------------------------------------|-------------------------|-------------------------------------|----------------|
| COMPLIANCE SCHEDULE | <input checked="" type="checkbox"/> | | | | |
| EFFLUENT LIMITS | <input checked="" type="checkbox"/> | | | | |
| SELF MONITORING | | | | <input checked="" type="checkbox"/> | |
| OTHER CONDITIONS | | | | | |
| OVERALL ASSESSMENT | | <input checked="" type="checkbox"/> | | | |

ACTIONS TAKEN AT SITE
 Spoke with Paul about debris under plywood mill, at Dellwood log yard (almost in water).

RECOMMENDATIONS FOR FURTHER ACTION
 Follow up letter

Signature of Inspector Barbara A. Burton Date 12-4-78
 Reviewed By Richard P. Ritt Date 12-15-78



Department of Environmental Quality

~~4234 S.W. MORRISON STREET - PORTLAND - OREGON 97205~~ Telephone (503) 229-5325
P.O. Box 1760, Portland, OR 97207

NOV 8 1978

Weyerhaeuser Company
P. O. Box 389
North Bend, Oregon 97459

Attention: R. B. Abel
Wood Products Mgr.

Re: File No. 96180

Gentlemen:

The Department of Environmental Quality notified you on Oct. 12, 1978 of the upcoming expiration date of your NPDES Waste Discharge Permit. A renewal application was enclosed. We have not received your response.

If you feel that your situation has changed, perhaps making an NPDES permit unnecessary, please let us know immediately; otherwise we will appreciate receiving your application (another form enclosed) within the next ten days as it takes several weeks to process an application.

On July 1, 1976, a regulation went into effect which requires a filing fee of \$25.00 to accompany any application for issuance, renewal, modification or transfer of a NPDES Waste Discharge Permit or Water Pollution Control Facilities Permit. No action can be taken on the application until the fee has been paid.

If the permittee requests a significant increase in effluent discharge or disposal limitations, an additional application processing fee of \$50.00 is required.

If you have any questions about permit renewal procedures or fees, please contact me at 229-5325.

Very truly yours,

WILLIAM H. YOUNG
Director

Charles K. Ashbaker, Supervisor
Water Pollution Control Section
Water Quality Division

CKA:ts
Enclosure

cc: Southwest Region - DEQ



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LDP

Weyerhaeuser Company

270 Cottage Street, N.E.
Salem, Oregon 97301
(503) 588-0311

December 12, 1978

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
DEC 20 1978

Kent Ashbaker
Department of Environmental Quality
1234 S.W. Morrison
Portland, Oregon 97205

WATER QUALITY CONTROL

Subject: Weyerhaeuser Company North Bend NPDES Permit
Application for Renewal

Dear Mr. Ashbaker:

In our letter of November 23, 1978, we requested a waiver of Condition S 1 which requires that a program and time schedule to eliminate the hydraulic barker discharge into Coos Bay be submitted by the permit expiration date.

We indicated that a study was conducted on September 27, 1978 to determine the volume of clarifier effluent that is being drawn back into the raw water intake system. Enclosed for your review and consideration is the report which describes this study and its conclusions.

Please contact us should you need any additional information.

R. Jerry Bowen
Oregon Public Affairs Manager

cc: Richard P. Reiter, DEQ, Roseburg
Bob Abel, North Bend

Enclosure

Date: 11-14-89 9:28am
From: Julie Schmitt:OD:DEQ
To: Agency Staff:DEQ
cc: Bill Hutchison:OD
Subj: 11/30,12/1 EQC agenda

State of Oregon
ENVIRONMENTAL QUALITY COMMISSION

A G E N D A

WORK SESSION -- November 30, 1989
Department of Environmental Quality
Executive Building
811 S. W. 6th Avenue
Portland, Oregon
Room 4A

- 1:00 p.m. - 1. Stage II Vapor Recovery: Portland Area
- 2:00 p.m. - 2. Water Quality Rule Amendments: Discussion of Options
- 3:00 p.m. - 3. Strategic Plan: Review of Revisions and Discussion of Next Steps

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

REGULAR MEETING -- December 1, 1989
Department of Environmental Quality
Executive Building
811 S. W. 6th Avenue
Portland, Oregon
Room 4A
8:30 a.m.

Consent Items -- 8:30 a.m.

Note: 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 October 19-20, 1989, EQC work session and regular meeting.

B. Civil Penalties Settlements

C. Approval of Tax Credit Applications

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 the agenda for this meeting. The Commission may discontinue this forum after a reasonable time if an exceptionally large number of speakers wish to appear.

Action Items

~~E.~~ Financial Assurance for Solid Waste Sites: Proposed Temporary Rule

~~F.~~ City of Mt. Angel: Request for Waiver of Dilution Requirement [OAR 340-41-455 (1)(f)]

~~G.~~ State Revolving Loan Fund: Proposed Adoption of Temporary Rules to Address 1989 Legislative Amendments and Problems Encountered in Initial Program Implementation

~~H.~~ Plastics Tax Credits: Adoption of Temporary Rules to Implement 1989 Legislative Changes, and Authorization for Hearing on Permanent Rule Amendments

I. City of Milwaukie: Appeal from Hearings Officer's Order

Rule Adoptions

Note: Hearings have already been held on these Rule Adoption items; therefore any testimony received will be limited to comments on changes proposed by the Department in response to hearing testimony. The Commission also may choose to question interested parties present at the meeting.

~~J.~~ Kraft Mill Regulations: Modifications to Correct Deficiencies, Add Opacity Standard for Recovery Boilers, Clarify Monitoring Requirements

~~K.~~ Storm Water Control: Proposed Adoption of Rules Requiring Permanent Water Quality Control Facilities for New Development in the Tualatin and Lake Oswego Subbasins (OAR 340-41-455 and 340-41-006)

~~L.~~ Hazardous Waste Fee Rules: Revision of Compliance Fees for

Generators and Treatment Storage Disposal Facilities (TSDFs)

~~M. Underground Storage Tank Program: Adoption of Annual Permit Fee~~

~~N. Assessment Deferral Loan Program: Adoption of Interest Rate for 1989-91 Biennium~~

Hearing Authorizations

Note: Upon approval of these items, public rule making hearings will be held in each case to receive public comments. Following the hearings, the item will be returned to the Commission for consideration and final adoption of rules.

~~O. Pollution Control Tax Credits: Proposed Rule Amendments~~

~~P. Woodstove Certification Program: Proposed Rule Modifications to Conform to New Environmental Protection Agency (EPA) Requirements~~

~~Q. Solid Waste Fees: Proposed Amendment of Fee Rules~~

~~R. Enforcement Rules: Proposed Amendments to Clarify Rules~~

Informational Items

~~S. Periodic Report on Compliance with Air Pollution Control Requirements~~

T. Pulp and Paper Mill Regulatory Issues:

Status of Individual Control Strategies (ICS's) and permit modifications for existing pulp and paper mills.

Review of options for securing current information on world-wide developments pertaining to pulp and paper mill processes and regulation.

Consideration of modification of water quality standards to include sediment standards and standards for chlorinated organic compounds related to chlorine based pulp and paper mills.

U. Status of Interstate Estuary Study for the Columbia River.

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, January 12, 1990. There will be a short work session prior to this meeting on the afternoon of Thursday, January 11, 1990.

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.

| <u>Date</u> | <u>Div</u> | <u>Type</u> | <u>Topic</u> |
|---------------|------------|---------------|--|
| (11) 12-01-89 | N HSW | Rule Adoption | <p>Hazardous Waste Fee Rules: Revision of Compliance Fees for Generators and TSDF's</p> <p>Adoption of fee increase rules. Hearing scheduled for authorization in July 1989. Rescheduled from October Agenda. Temporary Rule adopted in July put fee schedule in effect and authorized public hearing. Public hearing on permanent rules scheduled for October 10, 1989. 9/5/89: Topic Form Received.</p> |
| (12) 12-01-89 | HSW | Rule Adoption | <p>Underground Storage Tank Program: Adoption of Annual Permit Fee</p> <p>Adopt permanent rule to keep fee at \$25. A temporary Rule was adopted earlier, and hearing was authorized for permanent rulemaking. 10/12/89: Topic Form Received.</p> |
| (13) 12-01-89 | P WQ | Rule Adoption | <p>Assessment Deferral Loan Program: Adoption of Interest Rate for 89-91 Biennium.</p> <p>Hearing to be authorized 9/8/89. 9/1/89: Topic Form Received.</p> |
| (14) 12-01-89 | Q WQ | Rule Adoption | <p>Storm Water: Proposed Adoption of Rules requiring permanent water quality control facilities for new development in the Tualatin and Lake Oswego Subbasins (OAR 340-41-455 and 340-41-006)</p> <p>Followup based on action at the July EQC meeting. 10/12/89: Topic Form Received.</p> |
| (15) 12-01-89 | R HSW | Approval | <p>Financial Assurance For Solid Waste Sites: Proposed Variance and Temporary Rule</p> <p>10/12/89: Topic Form Received.</p> |
| (16) 12-01-89 | S WQ | Approval | <p>City of Mt. Angel: Request for Waiver of Dilution Requirement - OAR 340-41-455(1)(f).</p> <p>10/12/89: Topic Form Received.</p> |
| (17) 12-01-89 | T AQ | Information | <p>Report Card on Compliance with Pollution Control Requirements.</p> <p>The Department is to report to the Commission on the options for such a report card and the impact on the Department 10/12/89: Topic Form Received.</p> |

*Treatment
Storage
Disposal
Facilities*

Topic Review
Monday - 10/16 → 2pm Rm 4a
Tuesday - 10/17 → 8:30 to 5:00 Rm 10a

October 13, 1989

SCHEDULE OF FUTURE EQC AGENDA TOPICS

Page 1

Date Div Type Topic

November 30, 1989 Work Session

① 11-30-89 AQ Work Session Stage II Vapor Recovery: Portland Area
 Should Oregon implement Stage II Vapor Recovery? If yes, within what area?
 Rescheduled from October 19. reason=?
 7/5/89: Topic Form Received.

December 1, 1989 Regular Meeting

② 12-01-89 ^EAQ Hearing Auth. Woodstove Certification Program: Proposed Modifications to Conform to New EPA Requirements
 Work Session Discussion Scheduled for September
 10/12/89: Topic Form Received.

③ 12-01-89 ^FECD Hearing Auth. Hazardous Waste Management Fee: Rule Amendments to reflect recent statutory changes.
 Rule amendment will make all waste brought to a management facility subject to a \$20/ton fee.
 10/6/89: Topic Form Received.

④ 12-01-89 ^GECD Hearing Auth. Proposed Inventory Rules per HB 3235
 Rules needed per HB 3235 to define Confirmed Release, amend definition of PA, propose delisting rules, develop ranking rules, etc.
 7/5/89: Topic Form Received.

⑤ 12-01-89 ^HHSW Hearing Auth. Plastics Tax Credits: Hearing Authorization on proposed Rule Amendments
 10/12/89: Topic Form Received.

⑥ 12-01-89 ^IHSW Hearing Auth. Solid Waste Fees: Authorization for Hearing on proposed Fee amendments.
 Fee of \$0.50/ton
 10/12/89: Topic Form Received.

⑦ 12-01-89 ^JHSW Hearing Auth. Waste Reduction: Hearing Authorization on Proposed Rules to Implement SB 855
 Requirement for Out of State Waste, etc.
 10/12/89: Topic Form Received.

⑧ 12-01-89 ^KMSD Hearing Auth. Pollution Control Tax Credits: Proposed Rule Amendments
 10/12/89: Topic Form Received.

⑨ 12-01-89 ^LWQ Hearing Auth. Groundwater: Proposed Standards for Groundwater Quality
 10/12/89: Topic Form Received.

⑩ 12-01-89 ^MAQ Rule Adoption Kraft Mill Regulations: Modifications to Correct Deficiencies, Add Opacity Standard for Recovery Boilers, Clarify Monitoring Requirements
 Rescheduled from September. Reason = ? REscheduled form October. REason = staff changes limited hours, unprepared staff.
 10/12/89: Topic Form Received.

Proposed EQC Agenda Item

This form will be the basis for discussion at the Agenda Topic Review Meeting. Responses to the questions should be in "talking point" or outline form. Responses may be hand written (in black ink) or typed. A copy will be provided to each participant at the review meeting.

What title do you assign to the proposed item?

Stage II Vapor Recovery

What action do you want the EQC to take?

Work Session Discussion -- Accept report and issue guidance for rule preparation and hearing authorization -- accept report from technical committee on subject.

What policy issues are involved that require EQC direction?

Shall Oregon implement Stage II Vapor Recovery?
What geographic coverage -- and should Stage I boundaries be redefined?
How does this program complement/fit with UST/LUST?

What are the other potential alternatives for dealing with the issue?

Yes/No on Implementation? Geographic Coverage? Tax credits?
Hydrocarbon (VOC) and toxic benefits to workers? Enforcement and Inspection issues?

Are there Technical Issues that people should be aware of?

Different types of Stage II systems available. DEQ will need to OK a variety of systems. Self Serve gasoline not an issue.

Are there any Legal Issues that people should be aware of?

Coordination between Weights and Measures/Fire Marshall/OSHA required.

What is the proposed schedule for actions related to the item? Any deadlines or contingent items?

October -- Work Session Discussion
Nov-Dec -- Hearing Authorization

Who will be the Author? (name, phone number)

Bill Jasper 229-5081

Proposed EQC Agenda Item

This form will be the basis for discussion at the Agenda Topic Review Meeting. Responses to the questions should be in "talking point" or outline form. Responses may be hand written (in black ink) or typed. A copy will be provided to each participant at the review meeting.

What title do you assign to the proposed item?

Hearing Authorization: WOODSTOVE CERTIFICATION PROGRAM: PROPOSED MODIFICATIONS
TO CONFORM TO NEW EPA REQUIREMENTS

What action do you want the EQC to take?

Approve Hearing Authorization

What policy issues are involved that require EQC direction?

Policy, technical and legal issues and alternatives were discussed and resolved at the September 7, 1989 EQC work session.

What are the other potential alternatives for dealing with the issue?

Policy, technical and legal issues and alternatives were discussed and resolved at the September 7, 1989 EQC work session.

Are there Technical Issues that people should be aware of?

Policy, technical and legal issues and alternatives were discussed and resolved at the September 7, 1989 EQC work session.

Are there any Legal Issues that people should be aware of?

Policy, technical and legal issues and alternatives were discussed and resolved at the September 7, 1989 EQC work session.

What is the proposed schedule for actions related to the item? Any deadlines or contingent items?

The Department should be in a position to hold a Public Hearing by January, 1990.

Who will be the Author? (name, phone number)

Stephen D. Crane, 229-5353

Proposed EQC Agenda Item

Nov 30 / Dec 1 Meeting

This form will be the basis for discussion at the Agenda Topic Review Meeting. Responses to the questions should be in "talking point" or outline form. Responses may be hand written (in black ink) or typed. A copy will be provided to each participant at the review meeting.

What title do you assign to the proposed item?

REQUEST FOR AUTHORIZATION TO CONDUCT A PUBLIC HEARING ON HAZARDOUS WASTE ~~DISPOSAL~~ MANAGEMENT FEE - ALL WASTE BROUGHT INTO FACILITY SUBJECT TO \$20/TON FEE

What action do you want the EQC to take?

Authorize the hearing.

What policy issues are involved that require EQC direction?

This rule change is necessary to update OAR 340-105-120 to reflect the change in the state statute (via HB 3235 Section 11) that subjects all waste entering a hazardous waste disposal facility to the \$20/ton fee.

What are the other potential alternatives for dealing with the issue?

N/A

Are there Technical Issues that people should be aware of?

None that I am aware of at this time.

Are there any Legal Issues that people should be aware of?

None have been identified.

What is the proposed schedule for actions related to the item? Any deadlines or contingent items?

Approve authorization for hearing at the Nov. 30 meeting

Conduct hearing

Return to EQC for approval of rule change at the February 22, 1990 meeting

Who will be the Author? (name, phone number)

Pete Dalke X-5072

Proposed EQC Agenda Item

Nov 30-Dec 1, 1989 Meeting

This form will be the basis for discussion at the Agenda Topic Review Meeting. Responses to the questions should be in "talking point" or outline form. Responses may be hand written (in black ink) or typed. A copy will be provided to each participant at the review meeting.

What title do you assign to the proposed item?

Rule Adoption required by HB 3235. (ECD)
(Define Confirmed Release, Amend Definition of PA, Propose delisting rules, develop ranking rules, develop other rules and related policies and procedures as necessary.)

What action do you want the EQC to take?

November/December -- Authorize Hearing
February 1990 -- Adopt Proposed Rules

What policy issues are involved that require EQC direction?

Unknown at this time

What are the other potential alternatives for dealing with the issue?

Unknown at this time

Are there Technical Issues that people should be aware of?

Unknown at this time

Are there any Legal Issues that people should be aware of?

Unknown at this time

What is the proposed schedule for actions related to the item? Any deadlines or contingent items?

Rules to be discussed by advisory Committee and adopted within 9 months of bill passage

Who will be the Author? (name, phone number)

Sara Laumann 229-6704

Proposed EQC Agenda Item

This form will be the basis for discussion at the Agenda Topic Review Meeting. Responses to the questions should be in "talking point" or outline form. Responses may be hand written (in black ink) or typed. A copy will be provided to each participant at the review meeting.

What title do you assign to the proposed item?

HEARINGS AUTHORIZATION ON PROPOSED ^{MODIFICATIONS TO} PLASTICS RECYCLING INVESTMENT TAX CREDIT RULES (CAR ~~340~~ 340-17-010 THROUGH 340-17-055)

What action do you want the EQC to take?

AUTHORIZE PUBLIC HEARING ON PROPOSED RULES

What policy issues are involved that require EQC direction?

- 1) THE CHANGES TO THE TAX CREDIT STATUTE EXPAND THE ELIGIBILITY REQUIREMENTS SO THAT MORE PLASTICS RECYCLERS WOULD BE ELIGIBLE FOR THE TAX CREDIT.
- 2) THE BILL TAKES EFFECT 10/3/89 HOWEVER THE RULES WILL NOT BE ADOPTED UNTIL SPRING OF 1989. THERE IS A CONFLICT BETWEEN THE EXISTING RULES (WHICH PERTAINED TO THE OLD TAX CREDIT PROGRAM) AND THE STATUTORY LANGUAGE IN THE BILL. THE EXISTING RULES ARE MORE RESTRICTIVE IN THE AREA OF ELIGIBILITY THAN THE BILL IS. NEED TO DECIDE HOW WE ARE GOING TO IMPLEMENT THIS BILL BETWEEN 10/3/89 AND WHEN THE RULES ARE IN PLACE.

What are the other potential alternatives for dealing with the issue?

NONE -

Are there Technical Issues that people should be aware of?

- 1) A PRELIMINARY CERTIFICATION IS STILL REQUIRED FOR THIS PROGRAM (IT HAS BEEN DECAPED FROM THE POLLUTION CONTROL PROGRAM). THEREFORE, APPLICANTS CAN STILL REQUEST A WAIVER OF THE PRELIMINARY REQUIREMENT IF THEY FEEL "SPECIAL CIRCUMSTANCES" APPLY.

Are there any Legal Issues that people should be aware of?

SEE # 2 UNDER POLICY ISSUES. MICHAEL HUSTON IS AWARE OF THE DISCREPANCY AND IS SUPPOSED TO BE WORKING ON HOW WE WOULD IMPLEMENT THE BILL.

What is the proposed schedule for actions related to the item? Any deadlines or contingent items?

PUBLISHED BY SECRETARY OF STATE - DECEMBER 15, 1989, HOLD PUBLIC HEARING - JANUARY 1990
ADOPT RULES - MARCH 1990

Who will be the Author? (name, phone number)

LISSA WIENHOLT, 6823

Proposed EQC Agenda Item

December Meeting

This form will be the basis for discussion at the Agenda Topic Review Meeting. Responses to the questions should be in "talking point" or outline form. Responses may be hand written (in black ink) or typed. A copy will be provided to each participant at the review meeting.

What title do you assign to the proposed item?

Solid Waste Permit fee amendments - request for authorization to conduct public hearing.

What action do you want the EQC to take?

Authorize public hearings on proposed rule for 50¢/ton fee

What policy issues are involved that require EQC direction?

(1) How often should payment be made (quarterly?)

What are the other potential alternatives for dealing with the issue?

- annually
- quarterly
- monthly

Are there Technical Issues that people should be aware of?

(1) How should tonnage be estimated at landfills with no scales?

Are there any Legal Issues that people should be aware of?

No

What is the proposed schedule for actions related to the item? Any deadlines or contingent items?

Fee to begin, as per Legislature, on July 1, 1990

Who will be the Author? (name, phone number)

Steve Greenwood, 229-5782

⑥

Spendelow meeting

Proposed EQC Agenda Item

What title do you assign to the proposed item?

Request for Authorization to Conduct a Public Hearing on Waste Reduction Program Rule Amendments to OAR 340-60-095 and OAR 340-61-100 to 340-61-110.

What action do you want EQC to take?

Authorize a public hearing to amend rules for waste reduction programs. The rule amendments are necessary due to changes in state law (SB 855, 1989 session)

What policy issues are involved that require EQC direction?

A Rule amendments should be fairly straight-forward based on SB 855. The Commission may want to address the amount of effort that should be expended by the Department in verifying that waste reduction programs are being implemented.

What are other potential alternatives for dealing with the issue?

none identified

Are there Technical Issues that people should be aware of?

none identified

Are there any Legal Issues that people should be aware of?

1. Possible conflicts with Interstate Commerce Clause of U.S. Constitution
2. New law does not permit charging a "recycling certification fee" if a waste reduction program is being implemented. Before passage of SB 855, the Department could recover expenses from the disposal site operator for the cost of verifying that the opportunity to recycle is being provided.

What is the proposed schedule for actions related to the item. Any deadlines or contingent items?

1. Public hearing January 10, 1990
2. Rule adoption scheduled for March EQC meeting

Who will be the Author? (name, phone number)

Peter Spendelow, 229-5253

Proposed EQC Agenda Item

December 1, 1989 Meeting

This form will be the basis for discussion at the Agenda Topic Review Meeting. Responses to the questions should be in "talking point" or outline form. Responses may be hand written (in black ink) or typed. A copy will be provided to each participant at the review meeting.

What title do you assign to the proposed item?

Pollution Control Tax Credits: Proposed Rule Amendments

What action do you want the EQC to take?

Authorize Public Hearing on Rule Amendments to implement 1989 legislation

What policy issues are involved that require EQC direction?

- Guidelines for principal and sole purpose are being developed
- Clarification that facilities must be in compliance with DEQ/EPA regs.
- Some revisions are to provide clarification of requirements; most are to reflect changes in the statute.

What are the other potential alternatives for dealing with the issue?

- temporary rule
- The administrative process is being revised to address statutory changes.

Are there Technical Issues that people should be aware of?

- There no longer is a perliminary certification requirement
- Technical assistance can be provided on request.

Are there any Legal Issues that people should be aware of?

No. (Statutory changes can be admindistered under current process until new rules are in place.

What is the proposed schedule for actions related to the item? Any deadlines or contingent items?

Public Hearing in January; rule adoption in February or March

Who will be the Author? (name, phone number)

Robert Young 6408

Proposed EQC Agenda Item

11/30 - 12/1/89 Meeting

This form will be the basis for discussion at the Agenda Topic Review Meeting. Responses to the questions should be in "talking point" or outline form. Responses may be hand written (in black ink) or typed. A copy will be provided to each participant at the review meeting.

What title do you assign to the proposed item?

ADOPTION OF PERMANENT RULES TO ESTABLISH INTERIM STANDARDS FOR MAXIMUM MEASURABLE LEVELS OF CONTAMINANTS IN GROUNDWATER

What action do you want the EQC to take?

AUTHORIZE RULEMAKING HEARING

What policy issues are involved that require EQC direction?

NONE

What are the other potential alternatives for dealing with the issue?

DELAY ACTION

Are there Technical Issues that people should be aware of?

TEMPORARY RULES ARE PROPOSED FOR ADOPTION AT THE OCTOBER 20, 1989 EQC MEETING. IT IS NECESSARY TO READOPT THEM WITHIN 180 DAYS AS PERMANENT RULES.

Are there any Legal Issues that people should be aware of?

THE ADOPTION OF INTERIM STANDARDS FOR MAXIMUM MEASURABLE LEVELS FOR CONTAMINANTS IN GROUNDWATER IS REQUIRED BY HB 3515 SECTION 26.

What is the proposed schedule for actions related to the item? Any deadlines or contingent items?

THE LEGISLATIVE DEADLINE FOR ADOPTION OF THE INTERIM STANDARDS IS OCTOBER 22, 1989. IF TEMPORARY STANDARDS ARE ADOPTED AT THE OCTOBER 20, 1989 MEETING, THEY NEED TO BE READOPTED AS PERMANENT RULES BY APRIL 18, 1990.

Who will be the Author? (name, phone number)

GREG PETTIT, 229-6065

Proposed EQC Agenda Item

This form will be the basis for discussion at the Agenda Topic Review Meeting. Responses to the questions should be in "talking point" or outline form. Responses may be hand written (in black ink) or typed. A copy will be provided to each participant at the review meeting.

What title do you assign to the proposed item?

Rule Adoption: KRAFT MILL REGULATIONS: MODIFICATIONS TO CORRECT DEFICIENCIES AND OPACITY STANDARD FOR RECOVERY BOILERS, CLARIFY MONITORING REQUIREMENTS.

What action do you want the EQC to take?

Adopt the proposed modifications to the Kraft Pulp Mill regulations.

What policy issues are involved that require EQC direction?

1. Whether the existing Kraft Pulp Mill rules should be amended to correct deficiencies identified by the EPA.
2. The adoption of limits on opacity from kraft recovery furnaces and compliance determination methods.
3. Whether to implement rules specific to the neutral sulfite mills to more effectively regulate emissions from the neutral sulfite industry.

What are the other potential alternatives for dealing with the issue?

1. Revise the existing Kraft Pulp Mill rules to the minimum extent required for acceptance by EPA.
2. For neutral sulfite mills, continue to use the existing sulfite pulp mill rules, which are not specific to this source class.
3. Use opacity monitors for performance indicators only and/or do not limit opacity.

Are there Technical Issues that people should be aware of?

1. The existing Kraft Pulp Mill rules are not approvable by EPA for inclusion in the SIP.
2. The standards in both rule proposals are more stringent than existing rules.
3. Specific kraft pulp mills will have problems meeting portions of the proposed rules, particularly the opacity standards.
4. A Continuous Emissions Monitoring Manual must be finalized prior to submittal of the rules to EPA.

Are there any Legal Issues that people should be aware of?

The rules have undergone some revision since originally proposed in March, 1989.

What is the proposed schedule for actions related to the item? Any deadlines or contingent items?

The SEA requires the Department to propose rule adoption by the end of 1989. Approval of the proposed modifications to the Kraft Pulp Mill rules and approval of the proposed Neutral Sulfite rules at the December 1, 1989 EQC meeting will meet this schedule.

Who will be the Author? (name, phone number)

William J. Fuller, 229-5749

Proposed EQC Agenda Item

December 1, 1989 Meeting

This form will be the basis for discussion at the Agenda Topic Review Meeting. Responses to the questions should be in "talking point" or outline form. Responses may be hand written (in black ink) or typed. A copy will be provided to each participant at the review meeting.

What title do you assign to the proposed item?

Hazardous Waste Fee Rules - Adoption of Rule Amendments to Continue Existing Temporary Fee Schedule

What action do you want the EQC to take?

Adopt the fee rule amendments as permanent rule.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

RECEIVED

SEP 06 1989

OFFICE OF THE DIRECTOR

What policy issues are involved that require EQC direction?

What should the long term funding strategy look like for the hazardous waste program?

Should incentives for following the waste management hierarchy be built into the compliance fee schedule? Should such a large proportion of the funding (~50%) come from the regulated community? Do we need to shift our program emphasis from end-of-the-pipe regulation to regulation of processes to reduce use of toxic chemicals?

What are the other potential alternatives for dealing with the issue?

Find other funding sources. We were not successful, however, in securing enough state general funds or EPA grant monies to avoid making this fee schedule change for the '89-91 biennium. Reduce the Department's activities & commitments in the RCRA program.

Are there Technical Issues that people should be aware of?

1. Obtaining & maintaining good data requires a significant resource commitment.
2. As businesses reduce the amount of hazardous waste they generate, which is a primary goal of the program, the fees will also be reduced. The program activity may not be reduced immediately because there will still be tracking & regulatory oversight. Therefore, we may need to augment funds from another source.

Are there any Legal Issues that people should be aware of?

What is the proposed schedule for actions related to the item? Any deadlines or contingent items?

Public hearing October 10, 1989. The temporary rule expires February 1, 1990. Adopt permanent rule 12/1/89. Fee collection under temporary rule in September 1989, and under permanent rule summer 1990.

Who will be the Author? (name, phone number)

Debi Sturdevant, 229-6590

11

What title do you assign to the proposed item?

"Underground Storage Tank Annual Permit Fee"

What action do you want the EQC to take?

Adopt final rule maintaining the permit fee at \$25.

What policy issues are involved that require EQC direction?

There are no policy issues to consider.

What are the other potential alternatives for dealing with the issue?

There are no alternative ways to provide the funds.

Are there Technical Issues that people should be aware of?

- The temporary rule, effective on August 1, 1989 terminates 180 days later on January 28, 1990. If the final rule is not adopted before January 28, 1990 it will be necessary to return to the Commission for authorization to extend the temporary rule or to start the temporary rule/final rule adoption process over again.
- The \$25 underground storage tank fee is the main source of funding for the underground storage tank program. Any delay in adopting the final rule would adversely affect the program by delaying collection of the fees until the rule was adopted.

Are there any Legal Issues that people should be aware of?

No.

What is the proposed schedule for actions related to the item? Any deadlines or contingent items?

| | |
|-------------------------------|-----------------------------------|
| December 1, 1989 EQC Meeting: | Adopt final rule |
| December 8, 1989 | File rule with Secretary of State |

Who will be the Author?

Larry D. Frost 229-5769

Proposed EQC Agenda Item

Pec 1
October 20, 1989 Meeting

This form will be the basis for discussion at the Agenda Topic Review Meeting. Responses to the questions should be in "talking point" or outline form. Responses may be hand written (in black ink) or typed. A copy will be provided to each participant at the review meeting.

What title do you assign to the proposed item?

Adoption of rules establishing interest rate for the Sewer Safety Net Program (Assessment Deferral Loan Program).

What action do you want the EQC to take?

Adopt a permanent rule continuing program interest rate at 5% and eliminating the requirement that a new interest rate be established every biennium by the EQC. Temporary rule regarding this issue is up for adoption at the September EQC meeting.

What policy issues are involved that require EQC direction?

1. What should be the interest rate?
2. Should the Environmental Quality Commission continue to set the interest rate each biennium or reset it only as necessary? OAR 340-81 (5) (c) states that "the interest rate shall be 5% for 87-89 biennium and shall be set by the Environmental Quality Commission, by rule-making procedures, for each subsequent biennium prior to allocation of available funds." The Department recommends amending the rules to establish the interest rate at 5% and allow the Environmental Quality Commission to reset the interest rate as necessary, rather than each biennium.

What are the other potential alternatives for dealing with the issue?

1. Continue to establish interest rate each biennium, using one of the following approaches:
 - a. re-establish 5% fixed interest rate for FY 89-91
 - b. charge 0% interest
 - c. charge some other interest rate
 - c. charge a floating or adjustable rate
2. Establish interest rate using one of the approaches listed above which is not subject to change each *Are there Technical Issues that people should be aware of?* biennium

No

Are there any Legal Issues that people should be aware of?

No

What is the proposed schedule for actions related to the item? Any deadlines or contingent items?

Safety Net Programs from Portland, Gresham and Eugene will be reviewed in a separate staff report at the October 20, 1989 EQC meeting.

Who will be the Author? (name, phone number)

Maggie Conley (229-5257)

Proposed EQC Agenda Item

This form will be the basis for discussion at the Agenda Topic Review Meeting. Responses to the questions should be in "talking point" or outline form. Responses may be hand written (in black ink) or typed. A copy will be provided to each participant at the review meeting.

What title do you assign to the proposed item?

Adoption of ^{Modified} Rules OAR 340-~~41~~41-455(3) to Require Permanent Storm Water Quality Control Facilities for New Development in the Tualatin and Oswego Lake Subbasins.

What action do you want the EQC to take?

Adopt rules.

What policy issues are involved that require EQC direction?

- 1) Should in-lieu fees be req'd? If so, should off-site locations for treatment systems be identified before in-lieu fees are allowed?
- 2) When should the rule go into effect? Jurisdictions will need time to adopt ordinances to implement DEQ rules?
- 3) What should be DEQ's role in enforcing rules?
- 4) Should EQC require DEQ to do a cost-effective analysis?

What are the other potential alternatives for dealing with the issue?

Do not adopt rules and wait for jurisdictions to develop and implement storm water ~~to~~ req'ts thru their urban runoff program plans.

~~Requires~~ Adopt rules that require each developer to get a permit from DEQ that would require storm water.

Are there Technical Issues that people should be aware of?

- 1) The removal efficiency req'd by the rule would require 65% removal if the entire site were blacktop which is unlikely. Some area will be landscaped. We could establish tighter efficiency limits that would force some portions of development to be impervious.
- 2) There may be disagreement on runoff coefficients.

Are there any Legal Issues that people should be aware of?

- 3.) On site retention will depend on soil permeability. This could be low.
- 4.) If we encourage on-site retention, do we presume GW won't be adversely affected.

What is the proposed schedule for actions related to the item?

Hearings on 10/6/89, 10/18/89

Who will be the Author? (name, phone number)

Wichro

229-6808

14

Proposed EQC Agenda Item

December Meeting

This form will be the basis for discussion at the Agenda Topic Review Meeting. Responses to the questions should be in "talking point" or outline form. Responses may be hand written (in black ink) or typed. A copy will be provided to each participant at the review meeting.

What title do you assign to the proposed item?

Request for variance from solid waste rules for financial assurance - Oregon Waste Systems, Inc.

What action do you want the EQC to take?

Adopt a temporary rule change in financial assurance rules, and authorize public hearings for a proposed rule amendment

What policy issues are involved that require EQC direction?

How to allow sufficient time for Department review of financial assurance plans, yet allow waste to be received once the plans are approved.

What are the other potential alternatives for dealing with the issue?

- (1) Keep present rule, no variance
- (2) Grant variance
- (3) Change rule

Are there Technical Issues that people should be aware of?

None

Are there any Legal Issues that people should be aware of?

None

What is the proposed schedule for actions related to the item? Any deadlines or contingent items?

OWS would like to begin accepting waste from Metro by December 1.

Who will be the Author? (name, phone number)

Ernie Schmidt, 229-5157

PROPOSED EQC AGENDA ITEM

December 1, 1989 Meeting

What title do you assign to the proposed item?

City of Mt. Angel, Waiver of Dilution Rule

What action do you want the EQC to take?

- Approve or deny request for waiver of the dilution requirement. Staff's preliminary recommendation is to approve the request for discharge downstream of Walker Ditch.

What policy issues are involved that require EQC direction?

Oregon Administrative Rule (OAR 340-41-455 (F)), commonly referred to as the dilution rule, states that: sewage treatment plant "effluent biochemical oxygen demand concentration in mg/l, divided by the dilution factor (ratio of receiving stream flow to effluent flow) shall not exceed one (1) unless otherwise approved by the Environmental Quality Commission (EQC)."

What are the other potential alternatives for dealing with the issue?

Mt. Angel has three options for wintertime effluent disposal:

1. Discharge into unnamed tributary of Pudding River near treatment plant (existing discharge location), dilution requirement never met,
2. Discharge into unnamed tributary downstream of Walker Ditch, 1/4 mile pipeline at \$60,000, dilution requirement met part of the time, or
3. Discharge directly to Pudding River, 1.5 mile pipeline at \$360,000, dilution requirement met all of time.

Are there Technical Issues that people should be aware of?

- Water quality/beneficial use data recently collected by City in unnamed tributary above and below Walker Ditch is being evaluated by staff.
- Mt. Angel intends to replace their 34 year old trickling filter plant with a lagoon/marsh treatment system (construction scheduled for summer 1990, cost approx. \$2.2 million).
- Pudding River is water quality limited for dissolved oxygen in the summertime, formal TMDL to be established.

Are there Technical Issues that people should be aware of? (Continued)

- Draft permit for new facilities restricts discharge to: from November 1 to April 30 and when flow rate in Pudding is greater than 500 cfs.
- Monthly average effluent concentration limits are being reduced from 30/30 to 20/20 mg/l.
- Future plant expansion and summertime effluent holding would result in monthly average mass discharge increase from 90 lbs per day (BOD/TSS) to 300 lbs per day (BOD/TSS).

Are there any Legal Issues that people should be aware of?

- OAR 340-41-026 (3.a.C) (modified June 2, 1989) generally prohibits the Commission or Director from granting any increase in discharge load to a water quality limited stream.
- The proposed permit includes an increase in discharge load to a water quality limited stream during a restricted discharge period.
- The proposed permit would eliminate Mt. Angel's discharge during the period of concern (summer, low flow periods) for water quality violations in the Pudding River.
- Staff's preliminary evaluation indicated that an increase in discharge load during the non-critical period would not result in water quality violations or impairment to beneficial uses.
- Modified rules allow Director to approve or deny discharge load increase requests from "minor" dischargers. Commission must approve or deny requests from "major" dischargers.

What is the proposed schedule for actions related to the item? Any deadlines or contingent items?

- Staff review of water quality/beneficial use data collected by City (current).
- Public hearing on draft permit (Oct. 25, 1989).
- Staff collection of water quality data on Pudding River for setting TMDL (current).
- Staff evaluation of water quality data for setting Pudding River TMDL (Nov.-Jan., 1989).
- Formal establishment of Pudding River TMDL (Jun.-Jul., 1990)

Who will be the Author? (name, phone number)

Ken Vigil, Water Quality Division, Ext. 5622

Proposed EQC Agenda Item

This form will be the basis for discussion at the Agenda Topic Review Meeting. Responses to the questions should be in "talking point" or outline form. Responses may be hand written (in black ink) or typed. A copy will be provided to each participant at the review meeting.

What title do you assign to the proposed item?

Informational: REPORT CARD ON COMPLIANCE WITH POLLUTION CONTROL REQUIREMENTS. THE DEPARTMENT IS TO REPORT TO THE COMMISSION ON THE OPTIONS FOR SUCH A REPORT CARD AND THE IMPACT ON THE DEPARTMENT.

What action do you want the EQC to take?

Concur with Department's recommended approach to air quality report card for Medford area, or indicate another approach.

What policy issues are involved that require EQC direction?

How much detail should be included in any discussion of enforcement actions taken (ie, should names be named, etc.) against industries or individuals.

What are the other potential alternatives for dealing with the issue?

This informational item could be delayed until another Commission meeting if discussions with local governments, industries, and environmental groups during preparation of the staff report indicate strong differences of opinion and serious controversy.

Are there Technical Issues that people should be aware of?

Are there any Legal Issues that people should be aware of?

What is the proposed schedule for actions related to the item? Any deadlines or contingent items?

Start as early as January, 1990 to include results of woodburning curtailment surveys, add industry continuous monitoring summaries once reporting begins.

Who will be the Author? (name, phone number)

Merlyn L. Hough, 229-6446

State of Oregon
ENVIRONMENTAL QUALITY COMMISSION

TENTATIVE AGENDA

WORK SESSION -- November 30, 1989

Department of Environmental Quality
Executive Building
811 S. W. 6th Avenue
Portland, Oregon
Room 4A

Author/Supervisor

Other Div. Admin Copies

Hanson Copies, A.G. Copies

Designated Reviewer

Draft Report Rec'd. Due 11/1

| | | | | |
|------------------------|---------|---|---------|--------------|
| Jasper/ Householder | Nikkita | X | Hallock | ✓ |
| | Taylor | X | Loewy | ✓ |
| | All | X | | ✓ |

- 2:30 p.m. - 1. Stage II Vapor Recovery: Portland Area
- 3:15 p.m. - 2. Water Quality Rule Amendments: Discussion of Options
- 4:00 p.m. - 3. Strategic Plan: Review of Revisions and Discussion of Next Steps

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.

REGULAR MEETING -- December 1, 1989

Department of Environmental Quality
Executive Building
811 S. W. 6th Avenue
Portland, Oregon
Room 4A
8:30 a.m.

Consent Items -- 8:30 a.m.

Note: 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.

| | | | | |
|---------------|---------|---|--------|---|
| | Bispham | X | Sawyer | ✓ |
| Roberta Young | Loewy | X | Sawyer | ✓ |

- A. Minutes of the October 19-20, 1989, EQC work session and regular meeting.
- B. Civil Penalties Settlements
- C. Approval of Tax Credit Applications
- D. Commission Member Reports:
 - Pacific Northwest Hazardous Waste Advisory Council (Hutchison)
 - Governor's Watershed Enhancement Board (Sage)
 - Strategic Planning (Wessinger)

Other DA.

Hansen Copies/AG

Desis-
Reviews

Draft Rpt. Rec'd

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

Schmidt/
Gronlund

Hallock

X

Loewy

✓

E. Financial Assurance for Solid Waste Sites: Proposed Temporary Rule

Taylor

X

Hallock

✓

F. City of Mt. Angel: Request for Waiver of Dilution Requirement [OAR 340-41-455 (1)(f)]

Taylor

✓

Hose

✓

G. State Revolving Loan Fund: Proposed Adoption of Temporary Rules to Address 1989 Legislative Amendments and Problems Encountered in Initial Program Implementation

Hallock

X

Downs

✓

H. Plastics Tax Credits: Adoption of Temporary Rules to Implement 1989 Legislative Changes, and Authorization for Hearing on Permanent Rule Amendments

I City of Milwaukee

Rule Adoptions

Note: Hearings have already been held on these Rule Adoption items; therefore any testimony received will be limited to comments on changes proposed by the Department in response to hearing testimony. The Commission also may choose to question interested parties present at the meeting.

Buller
Soren

Nikkila

X

Bispham

✓

J-I. Kraft Mill Regulations: Modifications to Correct Deficiencies, Add Opacity Standard for Recovery Boilers, Clarify Monitoring Requirements

Rose
Dunn
Bauer
Dick
Nichols

Taylor

X

Loewy

✓

K-J. Storm Water Control: Proposed Adoption of Rules Requiring Permanent Water Quality Control Facilities for New Development in the Tualatin and Lake Oswego Subbasins (OAR 340-41-455 and 340-41-006)

Dibi
Sturdevant

Hallock

X

Nikkila

✓

L-K. Hazardous Waste Fee Rules: Revision of Compliance Fees for Generators and Treatment Storage Disposal Facilities (TSDFs)

Jenny
Frost

Hallock

X

Nikkila

✓

M-L. Underground Storage Tank Program: Adoption of Annual Permit Fee

Marcie
Candy

Taylor

X

Bispham

✓

N-M. Assessment Deferral Loan Program: Adoption of Interest Rate for 1989-91 Biennium

Hearing Authorizations

Note: Upon approval of these items, public rule making hearings will be held in each case to receive public comments. Following the hearings, the item will be returned to the Commission for consideration and final adoption of rules.

Roberta
Spang

Loewy

X

Downs

✓

O-N. Pollution Control Tax Credits: Proposed Rule Amendments

Steve
Crane

Nikkila

X

Hose

✓

P-O. Woodstove Certification Program: Proposed Rule Modifications to Conform to New Environmental Protection Agency (EPA) Requirements

EC D Item → Fred says Delay & Combine to Statutory agenda

Other
DA
AG
Hanson
Design
Review
Lead.

Downs
Hallock X Taylor

~~P. Hazardous Waste Management Fee: Proposed Rule Amendments to Reflect Recent Statutory Changes~~

Hallock X Taylor ✓

Q. Solid Waste Fees: Proposed Amendment of Fee Rules

Bispham X ~~Downs~~ ✓

R. Enforcement Rules: Proposed Amendments to Clarify Rules

Informational Item

Merlyn
Hough

Nikkita X Young ✓

S. Periodic Report on Compliance with Air Pollution Control Requirements

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, January 12, 1990. There will be a short work session prior to this meeting on the afternoon of Thursday, January 11, 1990.

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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