EQCMeeting2of3DOC19891019

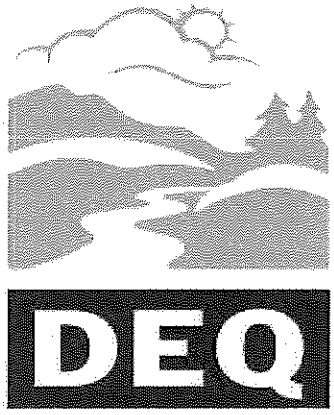
Part 2 of 3

OREGON

ENVIRONMENTAL QUALITY

COMMISSION MEETING

MATERIALS 10/19/1989



State of Oregon
Department of Environmental Quality

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NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: October 20, 1989
Agenda Item: I
Division: Water Quality
Section: Planning

SUBJECT:

Adoption of Temporary Rules to Establish Interim Numerical Standards for Maximum Measurable Levels of Contaminants in Groundwater.

PURPOSE:

Under the recently adopted Groundwater Quality Protection Act of 1989 contained in House Bill 3515, these standards shall be used to trigger the designation of groundwater management areas as defined in the House Bill 3515.

ACTION REQUESTED:

___ Work Session Discussion
___ General Program Background
___ Potential Strategy, Policy, or Rules
___ Agenda Item ___ for Current Meeting
___ Other: (specify)

___ Authorize Rulemaking Hearing
_x_ Adopt Rules
Proposed Rules — Attachment A
Statement of Need and Emergency Justification Statement for Temporary Rule Filing — Attachment B
Land Use Compatibility Statement — Attachment C
Fiscal and Economic Impact Statement — Attachment ___
Public Notice — Attachment ___

___ Issue a Contested Case Order
___ Approve a Stipulated Order
___ Enter an Order
Proposed Order — Attachment ___

___ Approve Department Recommendation

___ Variance Request	Attachment ___
___ Exception to Rule	Attachment ___
___ Informational Report	Attachment ___
___ Other: (specify)	Attachment ___

DESCRIPTION OF REQUESTED ACTION:

The requested action is the result of the adoption of the Groundwater Quality Protection Act of 1989, which was contained in Sections 17 through 66 of House Bill 3515. The Act requires that established federal standards be adopted as interim standards for Maximum Measurable Levels of Contaminants in Groundwater. The interim standards are to apply to regional nonpoint source groundwater contamination problems only. They will not affect how the Department deals with point sources.

The Act defines a federal standard as a maximum contaminant level, a national primary drinking water regulation or an interim drinking water regulation adopted by the Administrator of the U.S. Environmental Protection Agency pursuant to the federal Safe Drinking Water Act, as amended, 42 U.S.C. 300g.-1.

AUTHORITY/NEED FOR ACTION:

_x_ Required by Statute: HB 3515 Sec. 26	Attachment E
Enactment Date: July 24, 1989	
___ Statutory Authority: _____	Attachment ___
___ Pursuant to Rule: _____	Attachment ___
___ Pursuant to Federal Law/Rule: _____	Attachment ___
___ Other:	Attachment ___

_x_ Time Constraints: (explain)

House Bill 3515 requires the Environmental Quality Commission to adopt interim standards for Maximum Measurable Levels of Contaminants in Groundwater within 90 days of the effective date of the Act which was July 24, 1989.

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 ___
_x_	Supplemental Background Information:	
	-Summary of House Bill 3515, Sections 17 through 66	Attachment D
	-House Bill 3515, Sections 17 through 66	Attachment E

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The adoption of the Groundwater Quality Protection Act of 1989 was the result of a long and thorough process that involved industrial, agricultural and environmental organizations, interested citizens, state agencies, legislators, and the Governor. It was a consensus bill which had broad support in the legislature.

The interim standards are to be applied in lieu of the final standards for Maximum Measurable Levels for Contaminants in Groundwater until the Commission adopts such final standards by rule. The Department shall use these standards to declare a groundwater management area when monitoring and assessment activities indicate that suspected nonpoint source activities have resulted in:

a. Nitrate contaminants at levels greater than 70 percent of the Maximum Measurable Levels for Contaminants in Groundwater, except that it shall be 100 percent for the first two years after the effective date of the Act.

b. Any other contaminants at levels greater than 50 percent of the Maximum Measurable Levels for Contaminants in Groundwater.

Nonpoint source activities are those that result in the diffuse run-off, seepage, or leaching of pollutants to waters of the state, including groundwater. Common nonpoint source pollutants include soils eroded from farms, forestry operations, and construction sites; oils and metals washed from roads; fertilizers and pesticides from croplands; and bacteria and nutrients from animal waste and domestic gardening and landscaping.

No other use of the interim standards is required by House Bill 3515.

PROGRAM CONSIDERATIONS:

The adoption of interim standards will allow the Department to expedite the implementation of the Groundwater Quality Protection Act. Because the Act specifies the procedure and time frame within which these final standards are to be developed and adopted, it may take as long as one year and nine months before such final standards become rule.

As a result of statutory requirements for the final standards, it is extremely unlikely that the final standards will not be as stringent as the interim standards. Therefore, areas that are designated as groundwater management areas under the interim standards are likely to remain so under the final standards. The adoption of the interim standards will be beneficial in allowing the Department to address regional groundwater contamination problems under the provisions of the Act much earlier, and will be consistent with legislative expectations.

The adoption of the interim standards will not directly result in excessive resource demands for the Department.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

Alternatives considered by the Department were related to the timing and methods for the adoption of the interim standards, and whether or not to include bacteriologic and radiologic federal standards. The legislation is so specific with regard to the actual numbers to be adopted that alternatives were not available.

1. Adopt interim standards as a temporary rule in order to meet the statutory deadline, then readopt them as permanent rules within 180 days.

2. Proceed with normal rule adoption for the interim standards and miss the legislative deadline by at least six weeks. It was not feasible to conduct the required rule making process for permanent rules and meet the statutory deadline.

3. Adopt interim standards for chemical constituents only. This option was considered by the Department because there are considerable technical and administrative difficulties associated with the adoption of bacteriologic and radiologic

standards. These contaminants were not included in the Numerical Groundwater Quality Reference Levels included in the proposed Groundwater Quality Protection rules before the Commission in Agenda Item H at this meeting.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission take the action proposed in alternative number one above:

1. Adopt the findings necessary for temporary rule adoption contained in Attachment B, and

2. Adopt as interim standards for Maximum Measurable Levels of Contaminants in Groundwater the temporary rules as proposed in Attachment A.

This action is being recommended as the only feasible way of meeting the statutory deadline, and will be without negative consequence. Radiologic and bacteriologic standards were included because the legislation is quite specific in stating that if a federal standard for a substance has been adopted the Commission must adopt the federal standard.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The adoption of the proposed interim standards would be the direct implementation of legislative policy for groundwater quality management. It is also consistent with the existing and long held policy of adopting numerical water quality standards to ensure the protection of the beneficial uses of the waters of the state.

The adoption of these interim standards should in no way be construed as being in conflict with antidegradation policies and standards which are established in statute or rule and would apply to groundwater. These interim standards are meant to work in conjunction with existing antidegradation requirements to ensure a more effective management of the groundwater resource.

INTENDED FOLLOWUP ACTIONS:

1. As required by the Act, the Strategic Water Management Group (SWMG[1]) has appointed a technical advisory committee to develop criteria and methods to be recommended to the EQC for use in the adoption of final standards for Maximum Measurable Levels of Contaminants in Groundwater. These recommendations must be delivered within one year of the effective date of the Act; rulemaking must be initiated within 90 days after the recommendations are delivered; and final rules must be adopted within 180 days after rulemaking is initiated.

2. The proposed interim standards can stand as temporary rules for only 180 days. Since it will be approximately one year and nine months before final standards will be adopted, it will be necessary to readopt the interim standards as permanent rules after opportunity for public review and comment and other requirements have been met. The Department intends to request authorization to conduct public hearings on such rule adoption at the December 1, 1989 EQC meeting.

Approved:

Section: Neil J. Mullane

Division: Lydia Taylor

Director: Fred Hansen

Report Prepared By: Greg Pettit

Phone: 229-6065

Date Prepared: 9-20-89

(GAP:kjc)
(PM\WJ2292)
(10/5/89)

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[1] SWMG is a legislatively established committee chaired by the Governor's Assistant for Natural Resources, and its membership includes the directors of the state's natural resource agencies. SWMG is charged with the coordination of the state's natural resource programs.

The following is the proposed language for a new temporary rule establishing interim standards for maximum measurable levels of contaminants in groundwater:

INTERIM STANDARDS FOR MAXIMUM MEASURABLE LEVELS OF CONTAMINANTS IN GROUNDWATER TO BE USED IN THE DESIGNATION OF A GROUNDWATER MANAGEMENT AREA

340-40-090

The levels contained in Tables 4, 5, and 6 of this Division are the interim standards for maximum measurable levels of contaminants in groundwater to be used in the designation of a groundwater management area. These levels shall be used in all actions conducted by the Department where the use of maximum measurable levels for contaminants in groundwater is required.

TABLE 4

Interim Standards for Maximum Measurable Levels Measurable Levels of Contaminants in Groundwater: [1, 2]

Inorganic Contaminant	Interim Standard (mg/L)
Arsenic	0.05
Barium	1
Cadmium	0.010
Chromium	0.05
Fluoride	4.0
Lead	0.05
Mercury	0.002
Nitrate-N	10
Selenium	0.01
Silver	0.05

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[1] All reference levels are for total (unfiltered) concentrations unless otherwise specified by the Department.

[2] The source of all standards listed is 40 CFR Part 141.

TABLE 5

Interim Standards for Maximum Measurable Levels of Contaminants in Groundwater (Continued):[1, 2]

Organic Contaminant	Interim Standard (mg/L)
Benzene	0.005
Carbon Tetrachloride	0.005
p-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
1,1,1-Trichloroethane	0.20
Trichloroethylene	0.005
Total Trihalomethanes (the sum of concentrations bromodichloromethane, dibromochloromethane, tribromomethane (bromoform), and trichloromethane (chloroform))	0.10
Vinyl Chloride	0.002
2,4-D	0.1
Endrin	0.0002
Lindane	0.004
Methoxychlor	0.1
Toxaphene	0.005
2,4,5-TP Silvex	0.01

[1] All reference levels are for total (unfiltered) concentrations unless otherwise specified by the Department.

[2] The source of all standards listed is 40 CFR Part 141.

TABLE 6

Interim Standards for Maximum Measurable Levels of Contaminants in Groundwater:[1]

Radioactive Substances, Microbiological and Turbidity

Contaminant	Interim Standard
Turbidity	1 T U
Coliform Bacteria	< 1/100 mL
Radioactive Substances	
Gross Alpha[2]	15 pCi/1
Combined Radium 226 and 228	5 pCi/1
Gross Beta	50 pCi/1
I - 131	3 pCi/1
Sr - 90	8 pCi/1
Tritium	20,000 pCi/1

1 The source of all standards listed is 40 CFR Part 141.

2 Including Radium 226, but excluding Radon and Uranium.

STATE OF OREGON
ENVIRONMENTAL QUALITY COMMISSION
811 SW 6TH AVENUE
PORTLAND, OREGON

STATEMENT OF NEED AND EMERGENCY JUSTIFICATION STATEMENT TEMPORARY RULE ESTABLISHING INTERIM STANDARDS FOR MAXIMUM MEASURABLE LEVELS OF CONTAMINANTS IN GROUNDWATER

In accordance with ORS 183.335(5), the Environmental Quality Commission (EQC) makes the following findings and declarations in support of the issuance of a temporary rule establishing interim standards for maximum measurable levels of contaminants in groundwater.

1. ORS 468.015 and 468.020 provide the EQC with the authority to establish policies, rules and standards necessary and proper in performing the functions vested by law in the Commission. House Bill 3515 Section 26 requires the Commission to establish interim standards for maximum measurable levels of contaminants in groundwater within 90 days of the effective date of the Act.

2. Failure to act promptly in this instance will result in serious prejudice to the public interest, and in particular to the ability to comply with the statutory deadline for the adoption of the standards. House Bill 3515 contained an emergency clause and took effect immediately on passage. It was signed by the Governor on July 24, 1989. The standards can not be adopted within the required 90 day period if the Commission follows its established procedures for permanent rule adoption.

3. This rule is needed in order to designate groundwater management areas, and begin to develop action plans that will ameliorate groundwater contamination that threatens the beneficial use of the resource.

4. Principle documents relied upon and considered in considering the need for and preparing the rule were:

   a. House Bill 3515 Section 26
   b. ORS 183.335
   c. Code of Federal Regulations 40 CFR Part 141--National Primary Drinking Water Regulations

These documents are available for public review at the Department of Environmental Quality, Water Quality Division, 811 SW 6th Avenue, Portland Oregon 97201.

LAND USE CONSISTENCY STATEMENT

The Department has concluded that the proposal conforms with statewide planning goals and guidelines.

With regard to Goal 6, (air, water, and land resources quality), the proposed rules are intended to improve and maintain groundwater quality in the state and are considered to be consistent with the goal. The proposed rule does not appear to conflict with the other goals.

Groundwater Protection Act Summary

HB 3515 Sections 17 through 66

1. Goal: Section 18 of the Act establishes the following groundwater quality protection goal.

   "it is the goal of the people of the State of Oregon to prevent contamination of Oregon's groundwater resource while striving to conserve and restore this resource and to maintain the high quality of Oregon's groundwater resource for present and future uses."

   Following sections of the Act establish this goal in statutes governing the operations of the State Highway Division, Health Division, Water Resources Department, Department of Agriculture, DEQ, Soil and Water Conservation Districts, Strategic Water Management Group, Department of Geology and Mineral Industries, and Department of Land Conservation and Development.

2. Policies: Section 19 of the Act establishes a number of policies that shall guide the activities of the State in managing and using it's groundwater resource. In summary those policies are:

   a. Public education, research, and demonstration projects shall be utilized.

   b. All State agency programs and rules shall be consistent with the goal.

   c. State-wide groundwater characterization and identification programs must be conducted.

   d. Programs requiring the use of best practicable management practices shall be established.

   e. Groundwater contamination levels shall be used to trigger specific governmental actions designed to prevent those levels from being exceeded or to restore groundwater quality to those levels.

   f. All groundwater of the State must be protected for both existing and future beneficial uses so that they may continue to provide for whatever uses the natural quality would allow.

3. Strategy: Section 20 establishes a groundwater protection strategy to be implemented by the Strategic Water Management Group. This strategy includes such elements as: interagency coordination; promoting public awareness and education; coordinate the development of local groundwater protection plans, including well head protection; awarding grants; and establishing a centralized repository for groundwater information.

4. Grants: Sections 21 and 22 establish the conditions under which the Strategic Water Management Group can award grants for groundwater projects. Not more than one third of the funding available can be used for projects directly related to issues pertaining to a groundwater management area. This insures that the emphasis will remain on preventative programs and that all the resources will not be spent in responding to problems.

5. Groundwater Standards: Section 24 establishes a technical advisory committee whose function is to develop criteria and methods for the Environmental Quality Commission to use in adopting by rule maximum levels of contaminants in groundwater that shall be protective of public health and the environment.

   Section 25 requires the Environmental Quality Commission (EQC) to initiate rulemaking within 90 days of receiving the recommendations of the advisory committee.

   Section 26 requires the EQC to adopt within 90 days of the effective date of the Act federal drinking water standards as interim numerical standards for maximum measurable levels of contaminants in groundwater. These standards shall be used until final maximum measurable levels for contaminants in groundwater are adopted.

6. SWMG Staff Support: Section 27 states that the Department of Environmental Quality shall provide staff for project oversight and day to day operations of the Strategic Water Management Group in implementing most of the activities authorized in the Act.

7. Monitoring Program: Section 29 requires the Department of Environmental Quality to conduct a state-wide groundwater monitoring and assessment program.

8. Domestic Well Testing: Section 30 requires that domestic water supply wells be tested for nitrates and bacteria by the seller when real estate property is sold, and the results are to be submitted to the Health Division.

9. Area of Groundwater Concern: Sections 31 through 33 establish the conditions for the declaration of an area of groundwater concern. Basically, such an area shall be declared when contaminants are found in groundwater and result, at least in part, from nonpoint sources.

Section 34 establishes actions to be taken by Strategic Water Management Group upon the declaration of an area of groundwater concern. Those are:

1. Appoint a local advisory committee.

2. Focus research and public education on area.

3. Provide for necessary monitoring.

4. Assist local advisory committee in developing an action plan.

5. In absence of local advisory committee, develop action plan.

10. Local Groundwater Management: Section 35 contains the conditions and procedures for establishing local groundwater management committees and developing local action plans. The action plan developed by the local groundwater management committee for areas of groundwater concern would rely primarily on voluntary programs.

11. Groundwater Management Area: Sections 36 through 38 contain the conditions under which a groundwater management area would be declared. For all but nitrates this would occur when groundwater contaminant concentrations reach 50% of the levels established in Section 25 or 26 of the Act. For nitrates the trigger level would be 100% of the Section 25 or 26 level for 2 years after the effective date of the Act then it would drop to 70% of the level.

12. Local Committee Role: The role of the local groundwater management committee when a groundwater management area has been declared is established in Sections 39 and 40.

13. Groundwater Management Area Action Plan: Sections 41 through 43 contain the procedures and requirements for the development of an action plan for a groundwater management area. When an area moves from an area of groundwater concern to a groundwater management area, the lead role in the development and implementation of an action plan moves from the local level to the State. The Strategic Water Management Group shall designate a lead agency for the development of a groundwater management area action plan. Such an action plan could contain mandatory actions. Because of the severity of the problem at this point, the implementation of regulatory programs by the appropriate authorities may be necessary to maintain or restore groundwater quality within levels adequate to protect beneficial uses.

    The process for the development of a groundwater management area action plan includes ample opportunity for public review and comment.

14. Repealing Groundwater Management area: The criteria for repealing a declaration of a groundwater management area is established in Section 44.

15. Amendments to existing statutes: Sections 46 through 66 primarily contain amendments to existing statutes for a number of agencies to ensure the coordinated implementation of the Act and its goals and policies. These include requirements for consistency with the goal contained in Section 18 of the Act, and requirements for reporting groundwater information to the groundwater information repository.

16. Strategic Water Management Group: Section 52 establishes the Strategic Water Management Group role in coordinating the interagency management of groundwater. It requires the preparation of a biennial report to the legislature on the status of groundwater in Oregon.

17. Exempt Uses of Water: Sections 54, 55, and 57 establish authority for the Water Resources Commission to institute control over groundwater uses exempted from requirements for application for permits under ORS 537.545. Such controls could be implemented either through the classification process, or in a groundwater management area.

18. Well abandonment: Section 59 establishes authority for the Water Resources Commission to order the permanent abandonment of a well that is causing pollution of the groundwater.

19. Well Construction, Operation, and Maintenance: Section 60 establishes authority for the Water Resources Commission to require antibacksiphoning devices.

20. Fertilizer Inspection Fee: Section 65 increases the fertilizer inspection fee from 20 to 45 cents per ton, 25 cents of which will be used for funding research on the interaction of pesticides or fertilizers and groundwater. It is estimated this will generate $250,000 per biennium for those research activities.

21. Pesticide Use: Section 66 establishes that the Department of Agriculture may restrict a pesticide use or take a number of other actions upon the declaration of a groundwater management area.

HOUSE BILL 3515

SECTIONS 17 THROUGH 66

GROUNDWATER PROTECTION ACT OF 1989

SECTION 17. As used in sections 17 to 44 of this Act:

(1) "Area of ground water concern" means an area of the state subject to a declaration by the Department of Environmental Quality under section 31 of this Act or the Health Division under section 32 of this Act.

(2) "Contaminant" means any chemical, ion, radionuclide, synthetic organic compound, microorganism, waste or other substance that does not occur naturally in ground water or that occurs naturally but at a lower concentration.

(3) "Ground water management area" means an area in which contaminants in the ground water have exceeded the levels established under section 25 of this Act, and the affected area is subject to a declaration under section 36 of this Act.

(4) "Fertilizer" has the meaning given that term in ORS 633.310.

(5) "Group" means the Strategic Water Management Group.

(6) "Pesticide" has the meaning given that term in ORS 634.006.

SECTION 18. The Legislative Assembly declares that it is the goal of the people of the State of Oregon to prevent contamination of Oregon's ground water resource while striving to conserve and restore this resource and to maintain the high quality of Oregon's ground water resource for present and future uses.

SECTION 19. In order to achieve the goal set forth in section 18 of this Act, the Legislative Assembly establishes the following policies to control the management and use of the ground water resource of this state and to guide any activity that may affect the ground water resource of Oregon:

(1) Public education programs and research and demonstration projects shall be established in order to increase the awareness of the citizens of this state of the vulnerability of ground water to contamination and ways to protect this important resource.

(2) All state agencies' rules and programs affecting ground water shall be consistent with the overall intent of the goal set forth in section 2 of this Act.

(3) State-wide programs to identify and characterize ground water quality shall be conducted.

(4) Programs to prevent ground water quality degradation through the use of the best practicable management practices shall be established.

(5) Ground water contamination levels shall be used to trigger specific governmental actions designed to prevent those levels from being exceeded or to restore ground water quality to at least those levels.

(6) All ground water of the state shall be protected for both existing and future beneficial uses so that the state may continue to provide for whatever beneficial uses the natural water quality allows.

SECTION 20. (1) The Strategic Water Management Group shall implement the following ground water resource protection strategy:

(a) Coordinate projects approved by the group with activities of other agencies.

(b) Develop programs designed to reduce impacts on ground water from:

(A) Commercial and industrial activities;

(B) Commercial and residential use of fertilizers and pesticides;

(C) Residential and sewage treatment activities; and

(D) Any other activity that may result in contaminants entering the ground water.

(c) Provide educational and informational materials to promote public awareness and involvement in the protection, conservation and restoration of Oregon's ground water resource. Public information materials shall be designed to inform the general public about the nature and extent of ground water contamination, alternatives to practices that contaminate ground water and the effects of human activities on ground water quality. In addition, educational programs shall be designed for specific segments of the population that may have specific impacts on the ground water resource.

(d) Coordinate the development of local ground water protection programs, including but not limited to local well head protection programs.

(e) Award grants for the implementation of projects approved under the criteria established under section 22 of this 1989 Act.

(f) Develop and maintain a centralized repository for information about ground water, including but not limited to:

(A) Hydrogeologic characterizations;

(B) Results of local and state-wide monitoring or testing of ground water;

(C) Data obtained from ground water quality protection research or development projects; and

(D) Alternative residential, industrial and agricultural practices that are considered best practicable management practices for ground water quality protection.

(g) Identify research or information about ground water that needs to be conducted or made

available.

(h) Cooperate with appropriate federal entities to identify the needs and interests of the State of Oregon so that federal plans and project schedules relating to the protection the ground water resource incorporate the state's intent to the fullest extent practicable.

(i) Aid in the development of voluntary programs to reduce the quantity of hazardous or toxic waste generated in order to reduce the risk of ground water contamination from hazardous or toxic waste.

(2) To aid and advise the Strategic Water Management Group in the performance of its functions, the group may establish such advisory and technical committees as the group considers necessary. These committees may be continuing or temporary. The Strategic Water Management Group shall determine the representation, membership, terms and organization of the committees and shall appoint their members. The chairperson of the Strategic Water Management Group shall be an ex officio member of each committee.

SECTION 21. (1) Any person, state agency, political subdivision of this state or ground water management committee organized under section 35 or 40 of this 1989 Act may submit to the Strategic Water Management Group a request for funding, advice or assistance for a research or development project related to ground water quality as it relates to Oregon's ground water resource.

(2) The request under subsection (1) of this section shall be filed in the manner, be in the form and contain the information required by the Strategic Water Management Group. The requester may submit the request either to the group or to a ground water management committee organized under section 35 or 40 of this 1989 Act.

(3) The Strategic Water Management Group shall approve only those requests that meet the criteria established by the group under section 22 of this 1989 Act.

SECTION 22. (1) Of the moneys available to the Strategic Water Management Group to award as grants under section 21 of this 1989 Act, not more than one-third shall be awarded for funding of projects directly related to issues pertaining to a ground water management area.

(2) The Strategic Water Management Group may award grants for the following purposes:

(a) Research in areas related to ground water including but not limited to hydrogeology, ground water quality, alternative residential, industrial and agricultural practices;

(b) Demonstration projects related to ground water including but not limited to hydrogeology, ground water quality, alternative residential, industrial and agricultural practices;

(c) Educational programs that help attain the goal set forth in section 18 of this 1989 Act; and

(d) Incentives to persons who implement innovative alternative practices that demonstrate increased protection of the ground water resource of Oregon.

(3) Funding priority shall be given to proposals that show promise of preventing or reducing ground water contamination caused by nonpoint source activities.

(4) In awarding grants for research under subsection (2) of this section, the Strategic Water Management Group shall specify that not more than 10 percent of the grant may be used to pay indirect costs. The exact amount of a grant that may be used by an institution for such costs may be determined by the group.

(5) In accordance with the applicable provisions of ORS 183.310 to 183.550, the Strategic Water Management Group shall adopt by rule guidelines and criteria for awarding grants under this section.

SECTION 23. Sections 20, 21, 22 and 24 of this Act are added to and made a part of ORS

536.100 to 536.150.

SECTION 24. (1) Not later than 60 days after the effective date of this 1989 Act, the Strategic Water Management Group shall appoint a nine-member technical advisory committee to develop criteria and a method for the Environmental Quality Commission to apply in adopting by rule maximum measurable levels of contaminants in ground water. The technical advisory committee shall recommend criteria and a method for the development of standards that are protective of public health and the environment. If a federal standard exists, the method shall provide that the commission shall first consider the federal standard, and if the commission does not adopt the federal standard, the method shall require the commission to give a scientifically valid reason for not concurring with the federal standard. As used in this subsection, "federal standard" means a maximum contaminant level, a national primary drinking water regulation or an interim drinking water regulation adopted by the Administrator of the U.S. Environmental Protection Agency pursuant to the federal Safe Drinking Water Act, as amended, 42 U.S.C. 300g-1.

(2) The technical advisory committee appointed under subsection (1) of this section shall be comprised of:

(a) A toxicologist;

(b) A health professional;

(c) A water purveyor;

(d) A biologist; and

(e) Technically capable members of the public representing the following groups:

(A) Citizens;

(B) Local governments;

(C) Environmental organizations;

(D) Industrial organizations; and

(E) Agricultural organizations.

(3) The technical advisory committee may appoint individuals or committees to assist in development of the criteria and maximum measurable levels of contaminants in ground water. An individual or committee appointed by the committee under this subsection shall serve in an advisory capacity only.

(4) The technical advisory committee shall complete its initial development of criteria and methods within one year after the effective date of this 1989 Act.

SECTION 25. (1) Within 90 days after receiving the recommendations of the technical advisory committee under section 24 of this Act, the Environmental Quality Commission shall begin rulemaking to first adopt final rules establishing maximum measurable levels for contaminants in ground water. The commission shall adopt the final rules not later than 180 days after the commission provides notice under ORS 183.335.

(2) The adoption or failure to adopt a rule establishing a maximum measurable level for a contaminant under subsection (1) of this section shall not alone be construed to require the imposition of restrictions on the use of fertilizers under ORS 633.310 to 633.495 or the use of pesticides under ORS chapter 634.

SECTION 26. (1) Within 90 days after the effective date of this Act, the Environmental Quality Commission shall establish by rule interim numerical standards for maximum measurable levels of contaminants in ground water. The interim numerical standards shall be applied in lieu of maximum measurable levels for contaminants in ground water under section 25 of this Act until the commis-

sion by rule adopts such levels under section 25 of this Act. The process for establishing interim numerical standards shall be as follows:

(a) If a federal standard for a substance has been adopted by federal regulation, the commission shall adopt the federal standard.

(b) If a federal standard for a substance has not been adopted by federal regulation, but one or more federal standards have been established by methods other than by adoption of a federal regulation, the commission shall adopt the most recently established federal standard as the numerical standard.

(c) If a federal regulation has not been established either by adoption of a federal regulation or by any other method, the commission shall request the U. S. Environmental Protection Agency to establish a federal standard for the substance, either by adoption of a federal regulation, or by other method.

(2) As used in this section "federal standard" means a maximum contaminant level, a national primary drinking water regulation or an interim drinking water regulation adopted by the Administrator of the U.S. Environmental Protection Agency pursuant to the federal Safe Drinking Water Act, as amended, 42 U.S.C. 300g-1.

SECTION 27. The Department of Environmental Quality shall provide staff for project oversight and the day-to-day operation of the Strategic Water Management Group for those activities authorized under sections 20 to 25, 34, 35 and 39 to 44 of this Act, including scheduling meetings, providing public notice of meetings and other group activities and keeping records of group activities.

SECTION 28. Section 29 of this Act is added to and made a part of ORS 468.700 to 468.777.

SECTION 29. (1) In cooperation with the Water Resources Department, the Department of Environmental Quality and the Oregon State University Agricultural Experiment Station shall conduct an ongoing state-wide monitoring and assessment program of the quality of the ground water resource of this state. The program shall be designed to identify:

(a) Areas of the state that are especially vulnerable to ground water contamination;

(b) Long-term trends in ground water quality;

(c) Ambient quality of the ground water resource of Oregon; and

(d) Any emerging ground water quality problems.

(2) The department and Oregon State University Agricultural Experiment Station shall forward copies of all information acquired from the state-wide monitoring and assessment program conducted under this section to the Strategic Water Management Group for inclusion in the central repository of information about Oregon's ground water resource established pursuant to section 20 of this 1989 Act.

SECTION 30. (1) In any transaction for the sale or exchange of real estate that includes a well that supplies ground water for domestic purposes, the seller of the real estate shall, upon accepting an offer to purchase that real estate, have the well tested for nitrates and total coliform bacteria. The Health Division also may require additional tests for specific contaminants in an area of ground water concern or ground water management area. The seller shall submit the results of the test required under this section to the Health Division.

(2) The failure of a seller to comply with the provisions of this section does not invalidate an instrument of conveyance executed in the transaction.

SECTION 31. If, as a result of its state-wide monitoring and assessment activities under section 29 of this Act, the Department of Environmental Quality confirms the presence in ground water of

contaminants suspected to be the result, at least in part, of nonpoint source activities, the department shall declare an area of ground water concern. The declaration shall identify the substances confirmed to be in the ground water and all ground water aquifers that may be affected.

SECTION 32. If, as a result of its activities under ORS 448.150, the Health Division confirms the presence in ground water drinking water supplies of contaminants resulting at least in part from suspected nonpoint source activities, the division shall declare an area of ground water concern. The declaration shall identify the substances confirmed in the ground water and all ground water aquifers that may be affected.

SECTION 33. Before declaring an area of ground water concern, the agency making the declaration shall have a laboratory confirm the results that would cause the agency to make the declaration.

SECTION 34. After a declaration of an area of ground water concern, the Strategic Water Management Group shall:

(1) Within 90 days, appoint a ground water management committee in the geographic area overlying the ground water aquifer;

(2) Focus research and public education activities on the area of ground water concern;

(3) Provide for necessary monitoring in the area of ground water concern;

(4) Assist the ground water management committee in developing, in a timely manner, a draft and final local action plan for addressing the issues raised by the declaration of an area of ground water concern; and

(5) If not developed by the ground water management committee, develop a draft and final local action plan.

SECTION 35. (1) Upon the request of a local government, or as required under section 34 or 40 of this Act, the Strategic Water Management Group shall appoint a ground water management committee. The ground water management committee shall be composed of at least seven members representing a balance of interests in the area affected by the declaration.

(2) After a declaration of an area of ground water concern, the ground water management committee shall develop and promote a local action plan for the area of ground water concern. The local action plan shall include but need not be limited to:

(a) Identification of local residential, industrial and agricultural practices that may be contributing to a deterioration of ground water quality in the area;

(b) An evaluation of the threat to ground water from the potential nonpoint sources identified;

(c) Evaluation and recommendations of alternative practices;

(d) Recommendations regarding demonstration projects needed in the area;

(e) Recommendations of public education and research specific to that area that would assist in addressing the issues related to the area of ground water concern; and

(f) Methods of implementing best practicable management practices to improve ground water quality in the area.

(3) The availability of the draft local action plan and announcement of a 30-day public comment period shall be publicized in a newspaper of general circulation in the area designated as an area of ground water concern. Suggestions provided to the ground water management committee during the public comment period shall be considered by the ground water management committee in determining the final action plan.

(4) The ground water management committee may request the Strategic Water Management

Group to arrange for technical advice and assistance from appropriate state agencies and higher education institutions.

(5) A ground water management committee preparing or carrying out an action plan in an area of ground water concern or in a ground water management area may apply for a grant under section 21 of this Act for limited funding for staff or for expenses of the ground water management committee.

SECTION 36. (1) The Department of Environmental Quality shall declare a ground water management area if, as a result of information provided to the department or from its state-wide monitoring and assessment activities under section 29 of this Act, the department confirms that, as a result of suspected nonpoint source activities, there is present in the ground water:

(a) Nitrate contaminants at levels greater than 70 percent of the levels established pursuant to section 25 of this Act; or

(b) Any other contaminants at levels greater than 50 percent of the levels established pursuant to section 25 of this Act.

(2) A declaration under subsection (1) of this section shall identify the substances detected in the ground water and all ground water aquifers that may be affected.

SECTION 37. Before declaring a ground water management area under section 36 of this Act, the agency shall have a second laboratory confirm the results that cause the agency to make the declaration.

SECTION 38. Notwithstanding the requirements of section 36 of this Act, for two years after the effective date of this Act, a ground water management area shall not be established on the basis of excessive nitrate levels unless levels of nitrates in ground water are determined to exceed 100 percent of the levels established pursuant to section 25 of this Act.

SECTION 39. After the declaration of a ground water management area, a ground water management committee created under section 35 of this Act shall:

(1) Evaluate those portions of the local action plan, if any, that achieved a reduction in contaminant level;

(2) Advise the state agencies developing an action plan under sections 41 to 43 of this Act regarding local elements of the plan; and

(3) Analyze the local action plan, if any, developed pursuant to section 35 of this Act to determine why the plan failed to improve or prevent further deterioration of the ground water in the ground water management area designated in the declaration.

SECTION 40. After the declaration of a ground water management area, the Strategic Water Management Group shall appoint a ground water management committee for the affected area if a ground water management committee has not already been appointed under section 34 of this Act. If the affected area had previously been designated an area of ground water concern, the same ground water management committee appointed under section 34 of this Act shall continue to address the ground water issues raised as a result of the declaration of a ground water management area.

SECTION 41. After the Strategic Water Management Group is notified that a ground water management area has been declared, the Strategic Water Management Group shall designate a lead agency responsible for developing an action plan and assign other agencies appropriate responsibilities for preparation of a draft action plan within 90 days after the declaration. The agencies shall develop an action plan to reduce existing contamination and to prevent further contamination of the

affected ground water aquifer. The action plan shall include, but need not be limited to:

(1) Identification of practices that may be contributing to the contamination of ground water in the area;

(2) Consideration of all reasonable alternatives for reducing the contaminatio of the ground water to a level below that level requiring the declaration of a ground water management area;

(3) Recommendations of mandatory actions that, when implemented, will reduce the contamination to a level below that level requiring the declaration of ground water management area;

(4) A proposed time schedule for:

(a) Implementing the group's recommendations;

(b) Achieving estimated reductions in concentrations of the ground water contaminants; and

(c) Public review of the action plan;

(5) Any applicable provisions of a local action plan developed for the area under a declaration of an area of ground water concern; and

(6) Required amendments of affected city or county comprehensive plans and land use regulations in accordance with the schedule and requirements in ORS 197.640 to 197.647 to address the identified ground water protection and management concerns.

SECTION 42. (1) After completion and distribution of the draft action plan under section 41 of this Act, the lead agency shall provide a 60-day period of public comment on the draft action plan and the manner by which members of the public may review the plan or obtain copies of the plan. A notice of the comment period shall be published in two issues of one or more newspapers having general circulation in the counties in which the designated area of the ground water emergency is located, and in two issues of one or more newspapers having general circulation in the state.

(2) Within 60 days after the close of the public comment period, the lead agency shall complete a final action plan. All suggestions and information provided to the lead agency during the public comment period shall be considered by the lead agency and when appropriate shall be acknowledged in the final action plan.

SECTION 43. (1) The Strategic Water Management Group shall, within 30 days after completion of the final action plan, accept the final action plan or remand the plan to the lead agency for revision in accordance with recommendations of the Strategic Water Management Group. If the plan is remanded for revision, the lead agency shall return the revised final action plan to the Strategic Water Management Group within 30 days.

(2) Within 120 days after the Strategic Water Management Group accepts the final action plan, each agency of the group that is responsible for implementing all or part of the plan shall adopt rules necessary to carry out the agency's duties under the action plan. If two or more agencies are required to initiate rulemaking proceedings under this section, the agencies shall consult with one another to coordinate the rules. The agencies may consolidate the rulemaking proceedings.

SECTION 44. (1) If, after implementation of the action plan developed by affected agencies under sections 41 to 43 of this Act, the ground water improves so that the levels of contaminants no longer exceed the levels established under section 36 of this Act, the Strategic Water Management Group shall request the Department of Environmental Quality to repeal the ground water management area declaration and to establish an area of ground water concern.

(2) Before the declaration of a ground water management area is repealed under subsection (1) of this section, the Strategic Water Management Group must find that, according to the best information available, a new or revised local action plan exists that will continue to improve the ground

water in the area and that the Strategic Water Management Group finds can be implemented at the local level without the necessity of state enforcement authority.

(3) Before the Strategic Water Management Group terminates any mandatory controls imposed under the action plan created under sections 41 to 43 of this Act, the ground water management committee must produce a local action plan that includes provisions necessary to improve ground water in the area and that the Strategic Water Management Group finds can be implemented at the local level without the necessity of state enforcement authority.

SECTION 45. Section 46 of this Act is added to and made a part of ORS chapter 516.

SECTION 46. (1) In carrying out its duties related to mineral resources, mineral industries and geology, the State Department of Geology and Mineral Industries shall act in a manner that is consistent with the goal set forth in section 18 of this 1989 Act.

(2) In order to assist in the development of a state-wide repository of information about Oregon's ground water resource, the department shall provide any information, acquired by the department in carrying out its statutory duties, that is related to ground water quality to the centralized repository established pursuant to section 20 of this 1989 Act.

SECTION 47. Section 48 of this Act is added to and made a part of ORS chapter 197.

SECTION 48. (1) The commission shall take actions it considers necessary to assure that city and county comprehensive plans and land use regulations and state agency coordination programs are consistent with the goal set forth in section 18 of this 1989 Act.

(2) The commission shall direct the Department of Land Conservation and Development to take actions the department considers appropriate to assure that any information contained in a city or county comprehensive plan that pertains to the ground water resource of Oregon shall be forwarded to the centralized repository established under section 20 of this 1989 Act.

SECTION 49. ORS 366.155 is amended to read:

366.155. (1) The State Highway Engineer, under the direction of the director, among other things, shall:

(a) So far as practicable, compile statistics relative to the public highways of the state and collect all information in regard thereto which the State Highway Engineer may deem important or of value in connection with highway location, construction, maintenance, improvement or operation.

(b) Keep on file in the office of the department copies of all plans, specifications and estimates prepared by the State Highway Engineer's office.

(c) Make all necessary surveys for the location or relocation of highways and cause to be made and kept in the State Highway Engineer's office a general highway plan of the state.

(d) Collect and compile information and statistics relative to the mileage, character and condition of highways and bridges in the different counties in the state, both with respect to state and county highways.

(e) Investigate and determine the methods of road construction best adapted in the various counties or sections of the state, giving due regard to the topography, natural character and availability of road-building materials and the cost of building and maintaining roads under this Act.

(f) Prepare surveys, plans, specifications and estimates for the construction, reconstruction, improvement, maintenance and repair of any bridge, street, road and highway. In advertising for bids on any such project the director shall invite bids in conformity with such plans and specifications.

(g) Keep an accurate and detailed account of all moneys expended in the location, survey, construction, reconstruction, improvement, maintenance or operation of highways, roads and streets,

including costs for rights of way, under this Act, and keep a record of the number of miles so located, constructed, maintained or operated in each county, the date of construction, the width of such highways and the cost per mile for the construction and maintenance of the highways.

(h) Install and operate a simple but adequate accounting system in order that all expenditures and costs may be classified and that a proper record may be maintained.

(i) Prepare proper and correct statements or vouchers to make possible partial payments on all contracts for highway projects based upon estimates prepared by the State Highway Engineer or under the State Highway Engineer's direction, and submit them to the director for approval.

(j) Prepare proper vouchers covering claims for all salaries and expenses of the State Highway Engineer's office and other expenditures authorized by the director. Such claims as may be approved by the director shall be indorsed by the director and be presented for payment.

(k) Upon request of a county governing body, assist the county on matters relating to road location, construction or maintenance. Plans and specifications for bridges or culverts and standard specifications for road projects that are provided under this paragraph shall be provided without cost. The Department of Transportation shall determine an amount to be charged for assistance under this paragraph in establishing specifications and standards for roads under ORS 368.036. The costs of assistance not specifically provided for under this paragraph shall be paid as provided by agreement between the county governing body and the State Highway Engineer.

(L) Prepare and submit to the commission on or about December 31 of each year an annual report in which the State Highway Engineer shall set forth all that has been done by the Highway Division of the Department of Transportation during the year just ending, which report shall include all funds received, the source or sources from which received, the expenditure and disbursement of all funds and the purposes for which they were expended. The report shall contain a statement of the roads, highways or streets constructed, reconstructed and improved during the period, together with a statement showing in a general way the status of the highway system.

(2) The director may, in the director's discretion, relieve the State Highway Engineer of such portions of the State Highway Engineer's duties and responsibilities with respect to audits, accounting procedures and other like duties and responsibilities provided for in ORS 366.155 to 366.165 as the director considers advisable. The director may require such portion of such duties to be performed and such responsibilities to be assumed by the fiscal officer of the department appointed under ORS 184.637.

(3) In carrying out the duties set forth in this section, the State Highway Engineer shall act in a manner that is consistent with the goal set forth in section 18 of this 1989 Act.

SECTION 50. ORS 448.123 is amended to read:

448.123. (1) It is the purpose of ORS 448.119 to 448.285, 454.235, 454.255 and 757.005 to:

[*(1)*] **(a)** Assure all Oregonians safe drinking water.

[*(2)*] **(b)** Provide a simple and effective regulatory program for drinking water systems.

[*(3)*] **(c)** Provide a means to improve inadequate drinking water systems.

(2) In carrying out the purpose set forth in subsection (1) of this section, the Health Division shall act in accordance with the goal set forth in section 18 of this 1989 Act.

(3) If, in carrying out any duty prescribed by law, the Health Division acquires information related to ground water quality in Oregon, the Health Division shall forward a copy of the information to the centralized repository established pursuant to section 20 of this 1989 Act.

SECTION 51. ORS 448.150 is amended to read:

448.150. (1) The division shall:

[*(1)*] (a) Conduct periodic sanitary surveys of drinking water systems and sources, take water samples and inspect records to insure the system is not creating an unreasonable risk to health. The division shall provide written reports of such examinations to the local health administrator and to the water supplier.

[*(2)*] (b) Require regular water sampling by water suppliers. These samples shall be analyzed in a laboratory approved by the division. The results of the laboratory analysis shall be reported to the division, the local health department and to the water supplier.

[*(3)*] (c) Investigate any water system that fails to meet the water quality standards established by the division.

[*(4)*] (d) Require every water supplier that provides drinking water that is from a surface water source to conduct sanitary surveys of the watershed as may be considered necessary by the division for the protection of public health. The water supplier shall make written reports of such sanitary surveys of watersheds promptly to the division and to the local health department.

[*(5)*] (e) Investigate reports of waterborne disease pursuant to its authority under ORS 431.110 and take necessary actions as provided for in ORS 446.310, 448.030, 448.115 to 448.285, 454.235, 454.255, 455.680 and 757.005 to protect the public health and safety.

(f) Notify the Department of Environmental Quality of a potential ground water management area if, as a result of its water sampling under paragraphs (a) to (e) of this subsection, the division detects the presence in ground water of:

(A) Nitrate contaminants at levels greater than 70 percent of the levels established pursuant to section 25 of this 1989 Act; or

(B) Any other contaminants at levels greater than 50 percent of the levels established pursuant to section 25 of this 1989 Act.

(2) The notification required under paragraph (f) of subsection (1) of this section shall identify the substances detected in the ground water and all ground water aquifers that may be affected.

SECTION 52. ORS 536.120 is amended to read:

536.120. (1) The Strategic Water Management Group shall coordinate all of the following:

[*(1)*] (a) Agency activities insofar as those activities affect the water resources of this state. Such activities include the periodic review and updating by the agencies of the agencies' water related data, policies and management plans.

[*(2)*] (b) The responses of state agencies to problems and issues affecting the water resources of this state when such responses require the participation of numerous state agencies.

(c) Interagency management of ground water as necessary to achieve the goal set forth in section 18 of this 1989 Act.

(d) The regulatory activities of any affected state agency responding to the declaration of a ground water management area under section 36 of this 1989 Act. As used in this subsection "affected state agency" means any agency having management responsibility for, or regulatory control over the ground water resource of this state or any substance that may contaminate the ground water resource of this state.

[*(3)*] (e) The development of the water related portions of each member agency's biennial budget as submitted to the Governor that affect the water related activities of other state agencies.

(2) In addition to its duties under subsection (1) of this section, the Strategic Water Management Group shall, on or before January 1 of each odd-numbered year, prepare a report to the Legislative Assembly. The report shall include the status of ground water in Oregon, efforts made in the immediately preceding year to protect, conserve and restore Oregon's ground water resources, grants awarded under section 21 of this 1989 Act and any proposed legislation the group finds necessary to accomplish the goal set forth in section 18 of this 1989 Act.

SECTION 53. ORS 536.220 is amended to read:

536.220. (1) The Legislative Assembly recognizes and declares that:

(a) The maintenance of the present level of the economic and general welfare of the people of this state and the future growth and development of this state for the increased economic and general welfare of the people thereof are in large part dependent upon a proper utilization and control of the water resources of this state, and such use and control is therefore a matter of greatest concern and highest priority.

(b) A proper utilization and control of the water resources of this state can be achieved only through a coordinated, integrated state water resources policy, through plans and programs for the development of such water resources and through other activities designed to encourage, promote and secure the maximum beneficial use and control of such water resources, all carried out by a single state agency.

(c) The economic and general welfare of the people of this state have been seriously impaired and are in danger of further impairment by the exercise of some single-purpose power or influence over the water resources of this state or portions thereof by each of a large number of public authorities, and by an equally large number of legislative declarations by statute of single-purpose policies with regard to such water resources, resulting in friction and duplication of activity among such public authorities, in confusion as to what is primary and what is secondary beneficial use or control of such water resources and in a consequent failure to utilize and control such water resources for multiple purposes for the maximum beneficial use and control possible and necessary.

(2) The Legislative Assembly, therefore, finds that:

(a) It is in the interest of the public welfare that a coordinated, integrated state water resources policy be formulated and means provided for its enforcement, that plans and programs for the development and enlargement of the water resources of this state be devised and promoted and that other activities designed to encourage, promote and secure the maximum beneficial use and control of such water resources and the development of additional water supplies be carried out by a single state agency which, in carrying out its functions, shall give proper and adequate consideration to the multiple aspects of the beneficial use and control of such water resources with an impartiality of interest except that designed to best protect and promote the public welfare generally.

(b) The state water resources policy shall be consistent with the goal set forth in section 18 of this 1989 Act.

SECTION 54. ORS 536.340 is amended to read:

536.340. Subject at all times to existing rights and priorities to use waters of this state, the commission:

(1) May, by a water resources statement referred to in ORS 536.300 (2), classify and reclassify the lakes, streams, underground reservoirs or other sources of water supply in this state as to the highest and best use and quantities of use thereof for the future in aid of an integrated and balanced

program for the benefit of the state as a whole. The commission may so classify and reclassify portions of any such sources of water supply separately. Classification or reclassification of sources of water supply as provided in the subsection has the effect of restricting the use and quantities of use thereof to the uses and quantities of uses specified in the classification or reclassification, and no other uses or quantities of uses except as approved by the commission under ORS 536.370 to 536.390. **Restrictions on use and quantities of use of a source of water supply resulting from a classification or reclassification under this section shall apply to the use of all waters of this state affected by the classification or reclassification, and shall apply to uses listed in ORS 537.545 that are initiated after the classification or reclassification that imposes the restriction.**

(2) Shall diligently enforce laws concerning cancellation, release and discharge of excessive unused claims to waters of this state to the end that such excessive and unused amounts may be made available for appropriation and beneficial use by the public.

(3) May, by a water resources statement referred to in ORS 536.300 (2) and subject to the preferential uses named in ORS 536.310 (12), prescribe preferences for the future for particular uses and quantities of uses of the waters of any lake, stream or other source of water supply in this state in aid of the highest and best beneficial use and quantities of use thereof. In prescribing such preferences the commission shall give effect and due regard to the natural characteristics of such sources of water supply, the adjacent topography, the economy of such sources of water supply, the economy of the affected area, seasonal requirements of various users of such waters, the type of proposed use as between consumptive and nonconsumptive uses and other pertinent data.

SECTION 55. ORS 536.410 is amended to read:

536.410. (1) When the Water Resources Commission determines that it is necessary to insure compliance with the state water resources policy or that it is otherwise necessary in the public interest to conserve the water resources of this state for the maximum beneficial use and control thereof that any unappropriated waters of this state, including unappropriated waters released from storage or impoundment into the natural flow of a stream for specified purposes, be withdrawn from appropriation for all or any uses **including exempt uses under ORS 537.545**, the commission, on behalf of the state, may issue an order of withdrawal.

(2) Prior to the issuance of the order of withdrawal the commission shall hold a public hearing on the necessity for the withdrawal. Notice of the hearing shall be published in at least one issue each week for at least two consecutive weeks prior to the hearing in a newspaper of general circulation published in each county in which are located the waters proposed to be withdrawn.

(3) The order of withdrawal shall specify with particularity the waters withdrawn from appropriation, the uses for which the waters are withdrawn, the reason for the withdrawal and the duration of the withdrawal. The commission may modify or revoke the order at any time.

(4) Copies of the order of withdrawal and notices of any modification or revocation of the order of withdrawal shall be filed in the Water Resources Department.

(5) While the order of withdrawal is in effect, no application for a permit to appropriate the waters withdrawn for the uses specified in the order and no application for a preliminary permit or license involving appropriations of such waters shall be received for filing by the Water Resources Commission.

SECTION 56. ORS 537.525 is amended to read:

537.525. The Legislative Assembly recognizes, declares and finds that the right to reasonable

control of all water within this state from all sources of water supply belongs to the public, and that in order to insure the preservation of the public welfare, safety and health it is necessary that:

(1) Provision be made for the final determination of relative rights to appropriate ground water everywhere within this state and of other matters with regard thereto through a system of registration, permits and adjudication.

(2) Rights to appropriate ground water and priority thereof be acknowledged and protected, except when, under certain conditions, the public welfare, safety and health require otherwise.

(3) Beneficial use without waste, within the capacity of available sources, be the basis, measure and extent of the right to appropriate ground water.

(4) All claims to rights to appropriate ground water be made a matter of public record.

(5) Adequate and safe supplies of ground water for human consumption be assured, while conserving maximum supplies of ground water for agricultural, commercial, industrial, recreational and other beneficial uses.

(6) The location, extent, capacity, quality and other characteristics of particular sources of ground water be determined.

(7) Reasonably stable ground water levels be determined and maintained.

(8) Depletion of ground water supplies below economic levels, impairment of natural quality of ground water by pollution and wasteful practices in connection with ground water be prevented or controlled within practicable limits.

(9) Whenever wasteful use of ground water, impairment of or interference with existing rights to appropriate surface water, declining ground water levels, interference among wells, overdrawing of ground water supplies or pollution of ground water exists or impends, controlled use of the ground water concerned be authorized and imposed under voluntary joint action by the Water Resources Commission and the ground water users concerned whenever possible, but by the commission under the police power of the state when such voluntary joint action is not taken or is ineffective.

(10) Location, construction, depth, capacity, yield and other characteristics of and matters in connection with wells be controlled in accordance with the purposes set forth in this section.

(11) All activities in the state that affect the quality or quantity of ground water shall be consistent with the goal set forth in section 18 of this 1989 Act.

SECTION 57. ORS 537.545 is amended to read:

537.545. (1) **Except as provided in subsection (3) of this section,** no registration, certificate of registration, application for a permit, permit, certificate of completion or ground water right certificate under ORS 537.505 to 537.795 is required for the use of ground water for:

(a) Stockwatering purposes;

(b) Watering any lawn or noncommercial garden not exceeding one-half acre in area;

(c) Watering the grounds, three acres in size or less, of schools that have less than 100 students and that are located in cities with a population of less than 10,000;

(d) Single or group domestic purposes in an amount not exceeding 15,000 gallons a day;

(e) Down-hole heat exchange purposes; or

(f) Any single industrial or commercial purpose in an amount not exceeding 5,000 gallons a day.

(2) The use of ground water for [*any such purpose*] **a use exempt under subsection (1) of this section,** to the extent that it is beneficial, constitutes a right to appropriate ground water equal to that established by a ground water right certificate issued under ORS 537.700. The Water Resources

Commission may require any person or public agency using ground water for any such purpose to furnish information with regard to such ground water and the use thereof.

(3) After declaration of a ground water management area, any person intending to make a new use of ground water that is exempt under subsection (1) of this section shall apply for a ground water permit under ORS 537.505 to 537.795 to use the water. Any person applying for a permit for an otherwise exempt use shall not be required to pay a fee for the permit.

SECTION 58. ORS 537.665 is amended to read:

537.665. **(1) Upon its own motion, or upon the request of another state agency or local government,** the Water Resources Commission, **within the limitations of available resources,** shall proceed as rapidly as possible to identify and define tentatively the location, extent, depth and other characteristics of each ground water reservoir in this state, and shall assign to each a distinctive name or number or both as a means of identification. The commission may make any investigation and gather all data and information essential to a proper understanding of the characteristics of each ground water reservoir and the relative rights to appropriate ground water from each ground water reservoir.

(2) In identifying the characteristics of each ground water reservoir under subsection (1) of this section, the commission shall coordinate its activities with activities of the Department of Environmental Quality under section 29 of this 1989 Act in order that the final characterization may include an assessment of both ground water quality and ground water quantity.

(3) Before the commission makes a final determination of boundaries and depth of any ground water reservoir, the director shall proceed to make a final determination of the rights to appropriate the ground water of the ground water reservoir under ORS 537.670 to 537.695.

(4) The commission shall forward copies of all information acquired from an assessment conducted under this section to the central repository of information about Oregon's ground water resource established pursuant to section 20 of this 1989 Act.

SECTION 59. ORS 537.775 is amended to read:

537.775. (1) Whenever the Water Resources Commission finds that any well, including any well exempt under ORS 537.545, is by the nature of its construction, operation or otherwise causing wasteful use of ground water, is unduly interfering with other wells or surface water supply **is a threat to health** or is polluting ground water or surface water supplies contrary to ORS 537.505 to 537.795, the commission may order discontinuance of **the use of the well,** [*or*] impose conditions upon the use of such well to such extent as may be necessary to remedy the defect **or order permanent abandonment of the well according to specifications of the commission.**

(2) In the absence of a determination of a critical ground water area, any order issued under this section imposing conditions upon interfering wells shall provide to each party all water to which the party is entitled, in accordance with the date of priority of the water right.

SECTION 60. ORS 537.780 is amended to read:

537.780. In the administration of ORS 537.505 to 537.795, the Water Resources Commission may:

(1) Require that all flowing wells be capped or equipped with valves so that the flow of ground water may be completely stopped when the ground water is not actually being applied to a beneficial use.

(2) Enforce:

(a) General standards for the construction and maintenance of wells and their casings, fittings,

valves, [*and*] pumps[,] and **back-siphoning prevention devices**; and

(b) Special standards for the construction and maintenance of particular wells and their casings, fittings, valves and pumps.

(3)(a) Adopt by rule and enforce when necessary to protect the ground water resource, standards for the construction, maintenance, abandonment or use of any hole through which ground water may be contaminated; or [.]

(b) Enter into an agreement with, or advise, other state agencies that are responsible for holes other than wells through which ground water may be contaminated in order to protect the ground water resource from contamination.

[*(3)*] **(4)** Enforce uniform standards for the scientific measurement of water levels and of ground water flowing or withdrawn from wells.

[*(4)*] **(5)** Enter upon any lands for the purpose of inspecting wells, including wells exempt under ORS 537.545, casings, fittings, valves, pipes, pumps [*and*], measuring devices **and back-siphoning prevention devices.**

[*(5)*] **(6)** Prosecute actions and suits to enjoin violations of ORS 537.505 to 537.795, and appear and become a party to any action, suit or proceeding in any court or before any administrative body when it appears to the satisfaction of the commission that the determination of the action, suit or proceeding might be in conflict with the public policy expressed in ORS 537.525.

[*(6)*] **(7)** Call upon and receive advice and assistance from the Environmental Quality Commission or any other public agency or any person, and enter into cooperative agreements with a public agency or person.

[*(7)*] **(8)** Adopt and enforce rules necessary to carry out the provisions of ORS 537.505 to 537.795 including but not limited to rules governing:

(a) The form and content of registration statements, certificates of registration, applications for permits, permits, certificates of completion, ground water right certificates, notices, proofs, maps, drawings, logs and licenses;

(b) Procedure in hearings held by the commission; and

(c) The circumstances under which the helpers of persons operating well drilling machinery may be exempt from the requirement of direct supervision by a licensed water well constructor.

[*(8)*] **(9)** In accordance with applicable law regarding search and seizure, apply to any court of competent jurisdiction for a warrant to seize any well drilling machine used in violation of ORS 537.747 or 537.753.

SECTION 61. ORS 540.610 is amended to read:

540.610. (1) Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state. Whenever the owner of a perfected and developed water right ceases or fails to use the water appropriated for a period of five successive years, the right to use shall cease, and the failure to use shall be conclusively presumed to be an abandonment of water right. Thereafter the water which was the subject of use under such water right shall revert to the public and become again the subject of appropriation in the manner provided by law, subject to existing priorities.

(2) Subsection (1) of this section shall not:

(a) Apply to, or affect, the use of water, or rights of use, acquired by cities and towns in this state, by appropriation or by purchase, for all reasonable and usual municipal purposes.

(b) Be so construed as to impair any of the rights of such cities and towns to the use of water, whether acquired by appropriation or purchase, or heretofore recognized by act of the legislature,

or which may hereafter be acquired.

(c) Apply to, or affect, the use of water, or rights of use, appurtenant to property obtained by the Department of Veterans' Affairs under ORS 407.135 or 407.145 for three years after the expiration of redemptions as provided in ORS 23.530 to 23.600 while the land is held by the Director of Veterans' Affairs, even if during such time the water is not used for a period of more than five successive years.

(d) Apply to, or affect the use of water, or rights of use, under a water right, if the owner of the property to which the right is appurtenant is unable to use the water due to economic hardship as defined by rule by the commission.

(e) Apply to, or affect, the use of water, or rights of use, under a water right, if the use of water under the right is discontinued under an order of the commission under ORS 537.775.

(3) The right of all cities and towns in this state to acquire rights to the use of the water of natural streams and lakes, not otherwise appropriated, and subject to existing rights, for all reasonable and usual municipal purposes, and for such future reasonable and usual municipal purposes as may reasonably be anticipated by reason of growth of population, or to secure sufficient water supply in cases of emergency, is expressly confirmed.

SECTION 61a. If Senate Bill 153 becomes law, section 61 of this Act is repealed and ORS 540.610, as amended by section 1, chapter _____, Oregon Laws 1989 (Enrolled Senate Bill 153), is further amended to read:

540.610. (1) Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state. Whenever the owner of a perfected and developed water right ceases or fails to use all or part of the water appropriated for a period of five successive years, the failure to use shall establish a rebuttable presumption of forfeiture of all or part of the water right. Thereafter the water which was the subject of use under such water right shall revert to the public and become again the subject of appropriation in the manner provided by law, subject to existing priorities.

(2) Upon a showing of failure to use beneficially for five successive years, the appropriator has the burden of rebutting the presumption of forfeiture by showing one or more of the following:

(a) The water right is for use of water, or rights of use, acquired by cities and towns in this state, by appropriation or by purchase, for all reasonable and usual municipal purposes.

(b) A finding of forfeiture would impair the rights of such cities and towns to the use of water, whether acquired by appropriation or purchase, or heretofore recognized by act of the legislature, or which may hereafter be acquired.

(c) The use of water, or rights of use, are appurtenant to property obtained by the Department of Veterans' Affairs under ORS 407.135 or 407.145 for three years after the expiration of redemptions as provided in ORS 23.530 to 23.600 while the land is held by the Director of Veterans' Affairs, even if during such time the water is not used for a period of more than five successive years.

(d) The use of water, or rights of use, under a water right, if the owner of the property to which the right is appurtenant is unable to use the water due to economic hardship as defined by rule by the commission.

(e) The period of nonuse occurred during a period of time within which land was withdrawn from use in accordance with the Act of Congress of May 28, 1956, chapter 327 (7 U.S.C. 1801-1814; 1821-1824; 1831-1837), or the Federal Conservation Reserve Program, Act of Congress of December 23, 1985, chapter 198 (16 U.S.C. 3831-3836, 3841-3845). If necessary, in a cancellation proceeding un-

der this section, the water right holder rebutting the presumption under this paragraph shall provide documentation that the water right holder's land was withdrawn from use under a federal reserve program.

(f) The end of the alleged period of nonuse occurred more than 15 years before the date upon which evidence of nonuse was submitted to the commission or the commission initiated cancellation proceedings under ORS 540.631, whichever occurs first.

(g) The owner of the property to which the water right was appurtenant is unable to use the water because the use of water under the right is discontinued under an order of the commission under ORS 537.775.

(3) The right of all cities and towns in this state to acquire rights to the use of the water of natural streams and lakes, not otherwise appropriated, and subject to existing rights, for all reasonable and usual municipal purposes, and for such future reasonable and usual municipal purposes as may reasonably be anticipated by reason of growth of population, or to secure sufficient water supply in cases of emergency, is expressly confirmed.

SECTION 62. ORS 561.020 is amended to read:

561.020. (1) The department shall have full responsibility and authority for all the inspectional, regulatory and market development work provided for under the provisions of all statutes which the department is empowered and directed to enforce.

(2) The department shall encourage and work toward long-range planning to develop and promote the agricultural resources of Oregon that they may contribute as greatly as possible to the future economy of the state.

(3) The Director of Agriculture shall coordinate any activities of the department related to a watershed enhancement project approved by the Governor's Watershed Enhancement Board under ORS 541.375 with activities of other cooperating state and federal agencies participating in the project.

(4) The Director of Agriculture shall conduct any activities of the department in a manner consistent with the goal set forth in section 18 of this 1989 Act.

SECTION 63. ORS 568.225 is amended to read:

568.225. **(1)** In recognition of the ever-increasing demands on the renewable natural resources of the state and of the need to conserve, protect and develop such resources, it is hereby declared to be the policy of the Legislative Assembly to provide for the conservation of the renewable natural resources of the state and thereby to conserve and develop natural resources, control and prevent soil erosion, control floods, conserve and develop water resources and water quality, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, conserve natural beauty, promote recreational development, protect the tax base, protect public lands and protect and promote the health, safety and general welfare of the people of this state.

(2) It is further the policy of the Legislative Assembly to authorize soil and water conservation [*local advisory committees*] **districts** established under ORS 568.210 to 568.805 to participate in effectuating the [*above*] policy **set forth in subsection (1) of this section** and for such purposes to cooperate with landowners, land occupiers, other natural resource users, other local governmental units, and with agencies of the government of this state and of the United States, in projects, programs and activities calculated to accelerate such policies. **In effectuating the policy set forth in subsection (1) of this section, the soil and water conservation districts also shall strive to**

achieve the goal set forth in section 18 of this 1989 Act.

SECTION 64. ORS 633.440 is amended to read:

633.440. (1) The department shall administer and enforce ORS 633.310 to 633.495, and for that purpose may make rules and regulations not inconsistent with law.

(2) The department shall prosecute any violations of those sections.

(3) Upon the declaration of a ground water management area under section 36 of this 1989 Act, or when the department has reasonable cause to believe any quantity or lot of fertilizer, agricultural mineral, agricultural amendment or lime is being sold or distributed in violation of ORS 633.310 to 633.495 or rules promulgated thereunder [*it*] the department may, in accordance with ORS 561.605 to 561.620, issue and enforce a written "withdrawal from distribution" order directing the distributor thereof not to dispose of the quantity or lot of fertilizer, agricultural minerals, agricultural amendments or lime in any manner until written permission is first given by the department. The department shall release the quantity or lot of fertilizer, agricultural minerals, agricultural amendments or lime so withdrawn when said law or rules have been complied with.

(4) Any quantity or lot of fertilizer, agricultural minerals, agricultural amendments or lime found by the department not to be in compliance with ORS 633.310 to 633.495 or rules promulgated thereunder may be seized by the department in accordance with the provisions of ORS 561.605 to 561.620.

SECTION 65. ORS 633.460 is amended to read:

633.460. (1) Each person who as set forth in subsection (3) of this section is a first purchaser of fertilizers, agricultural minerals, agricultural amendments or lime in this state shall pay to the department an inspection fee established by the department by rule of:

(a) Not to exceed [*20*] **45 cents** for each ton of fertilizer, agricultural minerals, or agricultural amendments purchased by such person during each calendar year, **25 cents of which shall be continuously appropriated to the State Department of Agriculture for the purpose of funding grants for research and development related to the interaction of pesticides or fertilizers and ground water.**

(b) Not to exceed five cents for each ton of gypsum, land plaster and every agricultural mineral the principal constituent of which is calcium sulphate ($CaSO_4 \cdot 2H_2O$), purchased by such person during each calendar year.

(c) Not to exceed five cents for each ton of lime purchased by such first purchaser during each calendar year.

(2) In computing the tonnage on which the inspection fee must be paid as required in subsection (1) of this section, sales or purchases of fertilizers, agricultural minerals, agricultural amendments and lime in individual packages weighing five pounds net or less, and sales of fertilizers, agricultural minerals, agricultural amendments and lime for shipment to points outside this state, may be excluded.

(3) "First purchaser" or "purchased" for the purpose of this section, except as otherwise prescribed by the department, means the first person in Oregon who buys or purchases, or who takes title to, or who handles, receives or obtains possession of, fertilizer, agricultural minerals, agricultural amendments or lime. The department after public hearing and as authorized under ORS 183.310 to 183.550, may further define and may prescribe "first purchaser" for practical and reasonable rules necessary to effectuate the provisions of this section.

(4) The provisions of ORS 561.450 also apply to any person who refuses to pay inspection fees

due the department.

SECTION 66. ORS 634.016 is amended to read:

634.016. (1) Every pesticide, including each formula or formulation, manufactured, compounded, delivered, distributed, sold, offered or exposed for sale in this state shall be registered each year with the department.

(2) Every device, manufactured, delivered, distributed, sold, offered or exposed for sale in this state, shall be registered each year with the department.

(3) The registration shall be made by the manufacturer or a distributor of the pesticide.

(4) The application for registration shall include:

(a) The name and address of the registrant.

(b) The name and address of the manufacturer if different than the registrant.

(c) The brand name or trade-mark of the pesticide.

(d) A specimen or facsimile of the label of each pesticide, and each formula or formulation, for which registration is sought, except for annual renewals of the registration when the label remains unchanged.

(e) The correct name and total percentage of each active ingredient.

(f) The total percentage of inert ingredients.

(5) The application for registration shall be accompanied by a registration fee to be established by the department for each pesticide, and each formula or formulation, which shall not exceed $40 for each such pesticide, or each formula or formulation.

(6) The department, at the time of application for registration of any pesticide **or after a declaration of a ground water management area under section 36 of this 1989 Act** may:

(a) Restrict or limit the manufacture, delivery, distribution, sale or use of any pesticide in this state.

(b) Refuse to register any pesticide which is highly toxic for which there is no effective antidote under the conditions of use for which such pesticide is intended or recommended.

(c) Refuse to register any pesticide for use on a crop for which no finite tolerances for residues of such pesticide have been established by either the department or the Federal Government.

(d) In restricting the purposes for which pesticides may be manufactured, delivered, distributed, sold or used, or in refusing to register any pesticide, give consideration to:

(A) The damage to health or life of humans or animals, or detriment to the environment, which might result from the distribution and use of such pesticide.

(B) Authoritative findings and recommendations of agencies of the Federal Government and of any advisory committee or group established under ORS 634.306 (10).

(C) The existence of an effective antidote under known conditions of use for which the material is intended or recommended.

(D) Residual or delayed toxicity of the material.

(E) The extent to which a pesticide or its carrying agent simulates by appearance and may be mistaken for human food or animal feed.

(7) The provisions of this section shall not, except as provided herein, apply to:

(a) The use and purchase of pesticides by the Federal Government or its agencies.

(b) The sale or exchange of pesticides between manufacturers and distributors.

(c) Drugs, chemicals or other preparations sold or intended for medicinal or toilet purposes or for use in the arts or sciences.

(d) Common carriers, contract carriers or public warehousemen delivering or storing pesticides, except as provided in ORS 634.322.

SECTION 67. ORS 459.005 is amended to read:

459.005. As used in ORS 275.275, 459.005 to 459.385, unless the context requires otherwise:

(1) "Affected person" means a person or entity involved in the solid waste collection service process including but not limited to a recycling collection service, disposal site permittee or owner, city, county and metropolitan service district.

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

(3) "Board of county commissioners" or "board" includes county court.

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

(5) "Collection service" means a service that provides for collection of solid waste or recyclable material or both.

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

(7) "Conditionally exempt small quantity generator" means a person that generates a hazardous waste but is conditionally exempt from substantive regulation because the waste is generated in quantities below the threshold for regulation adopted by the commission pursuant to ORS 466.020.

[*(7)*] **(8)** "Department" means the Department of Environmental Quality.

[*(8)*] **(9)** "Disposal site" means land and facilities used for the disposal, handling or transfer of or resource recovery from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, transfer stations, resource recovery facilities, incinerators for solid waste delivered by the public or by a solid waste collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site; but the term does not include a facility subject to the permit requirements of ORS 468.740; a landfill site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar nondecomposable material, unless the site is used by the public either directly or through a solid waste collection service; or a site operated by a wrecker issued a certificate under ORS 822.110.

(10) "Hazardous waste" has the meaning given that term in ORS 466.005.

(11) "Hazardous waste collection service" means a service that collects hazardous waste from exempt small quantity generators and from households.

(12) "Household hazardous waste" means any discarded, useless or unwanted chemical, material, substance or product that is or may be hazardous or toxic to the public or the environment and is commonly used in or around households which may include, but is not limited to, some cleaners, solvents, pesticides, and automotive and paint products.

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

[*(10)*] **(14)** "Land reclamation" means the restoration of land to a better or more useful state.

[*(11)*] **(15)** "Local government unit" means a city, county, metropolitan service district formed under ORS chapter 268, sanitary district or sanitary authority formed under ORS chapter 450, county service district formed under ORS chapter 451, regional air quality control authority formed under ORS 468.500 to 468.530 and 468.540 to 468.575 or any other local government unit responsible

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Environmental Quality Commission

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

ACTION ITEM

Meeting Date: October 20, 1989
Agenda Item: J
Division: Water Quality
Section: Administration

SUBJECT:

Response to the request by Northwest Environmental Defense Center (NEDC) for the Environmental Quality Commission (EQC) to initiate rulemaking to codify internal department procedures regarding the content of public notices for wastewater discharge permits. The request also indicated that equivalent requirements should be imposed for air contaminant and solid waste contaminant permit applications.

PURPOSE:

The purpose of the report is to explore: (1) whether the proposal submitted by NEDC would result in the Water Quality Program's public notice on proposed wastewater discharge permits being more meaningful to the public, would result in the public being able to better respond with useful testimony, would result in better permits being issued and thus, improve or better protect the water quality in Oregon; (2) whether including the water quality public notice provisions in the Oregon Administrative Rules is the best means to assure implementation of such public notice requirements.

ACTION REQUESTED:

___ Work Session Discussion
___ General Program Background
_X_ Potential Strategy, Policy, or Rules
___ Agenda Item ___ for Current Meeting
_X_ Other: Future Agenda item
___ Authorize Rulemaking Hearing

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

___ Issue a Contested Case Order
___ Approve a Stipulated Order
___ Enter an Order
- Proposed Order — Attachment ___

___Approve Department Recommendation
- ___ Variance Request — Attachment ___
- ___ Exception to Rule — Attachment ___
- ___ Informational Report — Attachment ___
- ___ Other: (specify) — Attachment ___

DESCRIPTION OF REQUESTED ACTION:

Provide direction to the Department of Environmental Quality (Department, DEQ) whether to revise its present water quality public notice; provide direction whether to do so through the Oregon Administrative Rules; advise the Department whether to approach such revisions agency wide (include air contaminant and solid waste contaminant permit application public notices) or solely for water quality.

AUTHORITY/NEED FOR ACTION:

___ Required by Statute: _____ — Attachment ___
Enactment Date: _____
___ Statutory Authority: _____ — Attachment ___
___ Pursuant to Rule: _____ — Attachment ___
___ Pursuant to Federal Law/Rule: _____ — Attachment ___

_X_ Other: Request by NEDC that the Commission initiate rulemaking — Attachment _A_

___ Time Constraints: (explain)

DEVELOPMENTAL BACKGROUND:

___ Advisory Committee Report/Recommendation — Attachment ___
___ Hearing Officer's Report/Recommendations — Attachment ___
___ Response to Testimony/Comments — Attachment ___
___ Prior EQC Agenda Items: (list) — Attachment ___

___ Other Related Reports/Rules/Statutes: Attachment ___

___ Supplemental Background Information Attachment ___

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

If existing Water Quality Program rules on public notice for permit applications is broadened to include detailed direction about the information to be included in the public notice, any error, omission or information which one may wish to dispute could be subject to litigation.

Some of the information suggested by NEDC is not presently available or not readily available. Some of the suggestions could result in the Department requiring additional monitoring and assessment information from the regulated community.

There is some restriction on the volume of material which may be included in public notices published by the Secretary of State's Office in the official bulletin.

PROGRAM CONSIDERATIONS:

Some of the information requested by NEDC is regularly developed and maintained by the Water Quality Program. The information which is not presently available is shown on attachment B. Principally among it is TMDL information where the Division has not yet completed the TMDL process on water quality limited streams and cumulative impact analysis by basin. Other information is not retained for the time periods suggested for coverage in the notice. Staffing impact to perform these activities would be fairly substantial with regard to cumulative impact analysis which would have to be done manually.

The NEDC request states that similar rules be considered for air contaminant discharges and solid waste contaminant permit application notices. If the Commission advises the Department to proceed to rulemaking, direction needs to be provided whether it is to be done in an agencywide effort.

The principal program consideration, however, is whether the increased information in the public notice would enhance the public's ability to respond to permits under consideration.

The Air Quality Program presently provides public notice on all air permits. Notice is described under OAR 340-14-025.

The Water Quality Program provides public notice on NPDES permits. The notice is described under OAR 340-45-045.

The solid waste program presently provides public notice based on the agency's internal policy used to determine when public notice is advisable. They are not codified in rule.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. The Department considered continuing the present practice without modification of the information provided. The Department concludes that the notice presently provided may not always be as good as it could be to alert the public to the implications of the announced action. Therefore, the Department feels some revisions should be explored.

2. The Department considered asking the Commission to direct that it revise its present public notice without going to rulemaking to include information suggested which is available, to evaluate suggested information which is not presently accumulated for future inclusion, to devise a means to evaluate whether the modified public notice results in more meaningful notice and participation by the public, with a subsequent report to the Commission for recommended rules action.

3. The Department considered asking the Commission to authorize the Department to go to rulemaking with the suggestion made by NEDC.

4. The Department considered asking the Commission for authorization to go to rulemaking after requesting and receiving detailed suggestions from the affected public about what information should be included and which permits should require public notice for wastewater discharge, air contaminant discharge and solid waste contaminant permit applications.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends alternative 4 which would provide a uniform approach by the Department on public notice on permits and would provide appropriate accountability by placing the requirements in rule form.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The proposed alternative is consistent with the agency policy to provide public access and comment on Department actions.

ISSUES FOR COMMISSION TO RESOLVE:

1. Should the public notice be modified to include more information?
2. Should the public notice be codified in Department rules?
3. Should any action be for Water Quality alone, with later actions taken on Air and solid Waste as appropriate?

INTENDED FOLLOWUP ACTIONS:

1. Develop proposed public notice rules with input from the public.
2. Return to the Commission for authorization to go to rulemaking.
3. Hold public hearing on the proposed rules
4. Return to the Commission for adoption of rules.

Approved:

Section: Lydia Taylor

Division: Lydia Taylor

Director: Jill Hamm

Report Prepared By: Lydia Taylor

Phone: 229-5324

Date Prepared: Oct. 3, 1989

Lydia R. Taylor:crw/hs
WC5629
(10/6/89)

Department comments are noted in ***italics***. Where no comment is offered it can be assumed the Department already collects such information to some extent.

PROPOSED GUIDELINES FOR CONTENTS OF PUBLIC NOTICES

Presented before the Environmental Quality Commission on September 7, 1989 by David S. Mann on behalf of the Northwest Environmental Defense Center (NEDC).

(Please note that these model requirements are for wastewater discharges, equivalent requirements should be imposed for air contaminant and solid waste contaminant permit application notices.)

PROPOSED RULE

All public notices pertaining to proposed new, modified, or renewals of discharge permit must contain, at the minimum, the following information:

ALL PERMITS

1. General Information:

    a. Name of applicant.

    b. Type of facility.

    c. Location of facility, discharge.

    d. Wastes received/Wastes generated.

        Not all wastes received are identified for municipal facilities; for example, industrial wastes served by sewage treatment plants.

    e. Type of products/Quantity of product.

    f. Treatment and/or control facilities currently in place.

2. Basis of need for permit (i.e., problems, regulations, technology change, change in Water Quality standards).

3. Water Quality Impacts:

    a. Description of the Water Quality of the receiving stream, both upstream <u>and</u> downstream.

        We presently may not have upstream or downstream monitoring data. The Division is moving in this direction, but we aren't in this position yet.

b. If the stream is water quality limited, list the TMDLs that have been established and how the permit will fit within the TMDLs.

TMDLs have been established for three of the water quality limited streams (Tualatin, Yamhill, Bear Creek). We are scheduled to complete two per year. A description of where proposed permits fit into the TMDL process and the opinion of Division staff about how the proposed can fall within anticipated solutions might be more appropriate.

c. Description of how the permit will impact the water quality.

This can be done generally, but specific quantitative data may not be available.

d. Summary list, by date, of all evaluations done by the Department or the applicant concerning the water quality impacts.

The Division may or may not retain evaluations more than five years old.

4. Special Conditions:

Assessment of future control needs based on findings on water quality, and a schedule for compliance.

(No #5 listed by NEDC)

6. List and location of documents used to prepare permit proposal.

FOR PERMIT RENEWALS AND MODIFICATIONS

7. If a permit modification, why? (i.e., change in technology, change in water quality, failure to meet previous conditions).

8. Permit History.

a. Type of Discharge.

b. Dates of previous permits.

This information was not computerized in years past. A file search would be required in all cases.

c. Compliance History for at least the last two permit cycles.

Most permit cycles are five years. This would require 10 year file search.

1) Evaluation and summary of DMRs with explanation of previous NPDES violations.

2) Summary of inspections performed by DEQ on influents and effluents to verify DMRs.

If more than recent inspections were included, file seaches would be required.

3) Summary of complaints received and Department actions.

4) Enforcement History, including; Notice of Violations, Notice of Intents, and enforcement actions taken.

5) Evaluations of special conditions in previous permits and whether they were met. Explanation for any previous conditions that were not met.

6) Documentation of any load increases allowed and the basis for the allowance, including dates of EQC approval.

d. Location of DEQ cumulative impacts analysis to assure basin water quality standards or plans are not being violated.

The Division does not currently perform cumulative impact analysis outside the TMDL process.

9. An assessment of future control needs based on the adequacy of present controls, records of compliance, and applicable rules and regulations, and the proposed schedule for permittee to meet these conditions.

This is provided when appropriate, but an assessment of future control needs is not a standard application by the Division.

The above proposed rules should serve as guidelines for promulgating minimum standards for public notices of proposed discharge permits. NEDC requests that the Commission initiate rulemaking proceedings within the next 30 days in accordance with applicable procedures for Commission rulemaking.

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: October 20, 1989
Agenda Item: K
Division: Office of Director
Section:

SUBJECT:

Petition for Declaratory Ruling -- Salt Caves Hydroelectric Project §401 Certification.

PURPOSE:

To determine whether to issue a Declaratory Ruling pursuant to a petition filed by Save Our Klamath River, the Northwest Environmental Defense Center, the Sierra Club, Oregon Trout, Oregon Natural Resources Council, and the Oregon Rivers Council.

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 ___

_X_ Approve Department Recommendation
___ Variance Request — Attachment ___
___ Exception to Rule — Attachment ___
___ Informational Report — Attachment ___
_X_ Other: (specify)
Re: Petition for Declaratory Ruling — Attachment _A_

DESCRIPTION OF REQUESTED ACTION:

Petitioners seek a declaratory ruling from the Environmental Quality Commission (EQC) on three questions as follows:

"(A) Whether the submission of a new design, the designation of the affected river as a scenic waterway and the receipt of new water quality analysis showing significant water quality impacts constitute substantial changed conditions;

(B) Whether the Department, in light of the substantially changed conditions, [should] revoke the City's certification; and

(C) Whether the applicant's failure to complete the required studies constitutes violations of the conditions sufficient to warrant revocation or suspension of the certification." [Petition for Declaratory Ruling, page 8]

Background

- The Director of the Department of Environmental Quality (DEQ) issued a conditional §401 certification of the City of Klamath Falls' proposed Salt Caves Hydroelectric Project on July 7, 1988 based upon documents included and referenced in the Application transmittal letter dated February 11, 1988.

- A coalition of environmental organizations, including most of the organizations petitioning for this Declaratory Ruling, have petitioned the Multnomah County Circuit Court to review the Director's decision to issue the certification for the Salt Caves Project. **The matter is still pending before the court.**

- The Klamath River segment where the Salt Caves Project is located was designated as a State Scenic Waterway by the voters on November 8, 1988.

- The Federal Energy Regulatory Commission (FERC), on August 11, 1989, published notice of opportunity to comment on their Draft Environmental Impact Statement (DEIS) for the Salt Caves Project. The DEIS presents analysis on the City's proposed project, the City's project with some modifications to mitigate impacts, a FERC proposed "no dam" alternative, and a no-build

alternative. The DEIS designates the FERC proposed "no dam" alternative as the preferred alternative.

- OAR 340-48-040(1) provides as follows:

  (1) Certification granted pursuant to these rules may be suspended or revoked if the Director determines that:

  .....

  (d) Conditions regarding the project are or have changed since the application was filed.

  (e) Special conditions or limitations of the certification are being violated.

- DEQ has not received any submission or notice from either the City of Klamath Falls or FERC of intent to pursue a new design for the Salt Caves Hydroelectric Project.

- By letter dated September 22, 1989, the Department notified FERC and the City of Klamath Falls that the §401 certification granted by DEQ for the City's proposed project is not valid for the FERC-preferred "no dam" alternative, and that the City will have to file a new application in order to obtain §401 certification review of the FERC proposed "no dam" alternative. [See Attachment B]

AUTHORITY/NEED FOR ACTION:

___ Required by Statute: _____ Attachment ___
Enactment Date: _____
_X_ Statutory Authority: ORS 183.410 Attachment ___
_X_ Pursuant to Rule: OAR 340-11-061 & 137-02-010 Attachment ___
___ Pursuant to Federal Law/Rule: _____ Attachment ___

___ Other: Attachment ___

_X_ Time Constraints: (explain)
Pursuant to rules adopted by the EQC, the Commission must, within 60 days of filing of a petition for declaratory ruling, notify the petitioner whether it will issue a ruling. The petition was filed with in the Director's Office on August 28, 1989.

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 ___
_X_	Supplemental Background Information Letter to FERC and City of Klamath Falls	Attachment _B_

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The City of Klamath Falls, as the proponent of the Salt Caves Hydroelectric Project, could be directly affected by a decision in this matter.

Other potentially interested parties, in addition to the petitioners, include the Oregon Water Resources Department, the Oregon Department of Parks and Recreation, Oregon Department of Fish and Wildlife, and the Federal Energy Regulatory Commission.

PROGRAM CONSIDERATIONS:

The Department is involved in case preparation for the proceeding in Multnomah County Circuit Court challenging the issuance of the §401 certification for the Salt Caves Project.

The Department is also involved in detailed review of the Draft Environmental Impact Statement in an effort to meet a deadline of October 25, 1989 for the filing of coordinated state comments.

The issues raised in the petition may become moot if the City of Klamath Falls decides to pursue licensing of the "no dam" alternative which FERC has proposed in the DEIS as the preferred alternative. In that event, the City will have to file a new application for §401 certification for the "no dam" alternative as a new project.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Notify the Petitioners that the Commission declines to issue a Declaratory Ruling.

   If this alternative is selected, the Department will notify the petitioners of the Commission's decision.

2. Notify the Petitioners that the Commission will issue a Declaratory Ruling.

   Under this alternative, Commission rules in OAR 340-11-061 provide that the Attorney Generals Model Rules for Declaratory Rulings (OAR 137-02-010 through 137-02-060) be followed. This includes mailing to all persons listed in the petition (persons known by the petitioner to be interested in the matter) a copy of the petition, a copy of the agency's rules of practice, and notice of the proceeding at which the petition will be considered (including time, place, and designation of the presiding officer).

   Thus, if this alternative is pursued, it will be necessary to determine procedures for the proceeding: Whether the matter will be presided over by the full Commission, a member of the Commission, or the Commission's designated Hearings Officer; procedures and timing for filing of briefs and for oral argument; etc.

   The Department would generally support designation of a presiding officer who would establish the schedule for briefs and oral arguments, and would return to the Commission with a draft order setting forth the proposed ruling for consideration and adoption.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

It is recommended that the Petitioners be notified that the Commission declines to issue a Declaratory Ruling.

The rationale for the recommendation is as follows:

(a) The matter is presently before the Circuit Court in Multnomah County;

(b) The City might elect to withdraw the certified project proposal in the near future; and

(c) The Department retains the ability under OAR 340-48-040 to initiate revocation or suspension proceedings, if appropriate.

This recommendation is concurred in by Department legal counsel.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The Department believes the above recommendation is consistent with agency policies.

ISSUES FOR COMMISSION TO RESOLVE:

(See Alternatives and Department Recommendation sections above.)

INTENDED FOLLOWUP ACTIONS:

Notify the Petitioners of the Commission decision.

Approved:

Section: Harold Sawyer

Division: Lydia Taylor

Director: Fred Hansen

Report Prepared By: Harold Sawyer

Phone: 229-5776

Date Prepared: October 5, 1989

HLS:l
DECLRUL2
10/5/89

JOLLES, SOKOL & BERNSTEIN, P.C.

ATTORNEYS AT LAW

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721 SOUTHWEST OAK STREET
PORTLAND, OREGON 97205-3791
41

TELEPHONE
(503) 228-6474

August 25, 1989

Fred Hansen, Director
Department of Environmental Quality
811 SW Sixth Ave.
Portland, OR 97204

Re: 401 Certification for the Salt Caves Hydroelectric Project, FERC No. 10199 "Calt Caves III"
Petition for Declaratory Ruling

Dear Mr. Fred Hansen:

Enclosed for filing is Petition for Declaratory Ruling.

Sincerely,

Karl G. Anuta

KGA:pl

Enclosure

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
AUG 28 1989
OFFICE OF THE DIRECTOR

STATE OF OREGON

ENVIRONMENTAL QUALITY COMMISSION

In Re 401 Certification for the Salt Caves Hydroelectric Project, FERC No. 10199 "Salt Caves III".	PETITION FOR DECLARATORY RULING

NATURE OF REQUEST

Pursuant to ORS 183.410 and OAR 340-11-062, Save Our Klamath River, the Northwest Environmental Defense Center, the Sierra Club, Oregon Trout, Oregon Natural Resources Council and the Oregon Rivers Council petition for a declaratory ruling that the Conditional 401 Water Quality Certification issued to the City of Klamath Falls ("City") on June 30, 1988 be revoked.

This petition is based on the City's change to a new project design, failure to comply with permit conditions, the November 1988 designation of the Salt Caves reach of the Upper Klamath River as an Oregon Scenic Waterway, and new water quality information received from the federal government. These items show substantial changes in conditions and a failure to comply with the permit conditions. Pursuant to OAR 340-48-040(d) and (e), the June 30, 1988 Conditional 401 Certification should be revoked.

FACTS

In July 1986 the City first applied to the Federal Energy Regulatory Commission ("FERC") for a license to construct a hydroelectric project on the Upper Klamath River. Pursuant

to Section 401 of the Clean Water Act and Chapter 340, Division 48 of the Oregon Administrative Rules, the City applied ("Salt Caves I") to the Oregon Department of Environmental Quality (DEQ) to obtain a certification of state and federal water quality compliance. The City later withdrew this 401 application.

On August 26, 1986, after significantly altering the nature of the proposed project, the City filed a second application for 401 certification ("Salt Caves II"). On August 19, 1987, after soliciting public comments, holding public hearings and analyzing the possible water quality impacts of this project, DEQ denied 401 certification for Salt Caves II.

On February 11, 1988, after again altering the nature of the proposed project, the City filed a third application for 401 certification ("Salt Caves III"). On June 30, 1988, DEQ issued a Conditional 401 Certification. That certification is now being challenged by petitioners in Multnomah County Circuit Court as outside the authority of the agency and improperly issued. A copy of the complaint in that action is attached as Exhibit A.

The Salt Caves III 401 certification was conditioned upon the completion by the City of additional studies showing compliance of the project with the state temperature and anti-degradation standards. To-date, well over one year later, the required studies have not been completed.

On November 28, 1988, the voters of Oregon approved

Ballot Measure No. 7 and amended ORS 390.825 by designating the Salt Caves stretch of the Upper Klamath River as an Oregon Scenic Waterway. Designation was based primarily on the Upper Klamath's recreational and scenic values. The Scenic Waterways Act prohibits the construction of dams on any scenic waterway. A recent interpretation by the Oregon Supreme Court indicates that any diversion of water which could affect the purposes for which the waterway was designated is unlawful. See, Diack v. City of Portland, 306 Or 287, 759 P2d 1070 (1988).

On January 25, 1989, the Oregon Water Resources Commission and the Oregon Energy Facility Siting Council denied the City a water right and an siting permit for Salt Caves III, based primarily on Scenic Waterway designation.

On June 8, 1989, the City filed yet another water right application with the Water Resources Department (WRD) for yet another newly designed Salt Caves project ("Salt Caves IV"). This proposal eliminates the dam. Instead it diverts the entire main flow of the Klamath River through a 10-mile concrete diversion canal, to the proposed powerhouse. WRD has already rejected this application, again based on the Scenic Waterways designation of this stretch of the Klamath River. See, A.G. Opinion #6334 (copy attached as Exhibit B).

On August 4, 1989, FERC issued a Draft Environmental Impact Statement (DEIS) on these projects. Salt Caves IV is designated as the preferred alternative. The DEIS contains extensive water quality analysis on the projected impacts of

both Salt Caves III and Salt Caves IV.

PETITIONERS' INTERESTS

Petitioners have numerous members from Oregon and throughout the nation who use the Upper Klamath River because of its scenic and recreational values. See Exhibit A, Complaint, ¶ 3-7. Petitioners will be substantially harmed if the City of Klamath Falls is allowed to proceed with Salt Caves III or IV. Unless the Salt Caves III Conditional 401 Certification is revoked, the City may well be able to proceed with Salt Caves III. This would dam up the flow of the Klamath River, despite Scenic Waterway designation and the repeated refusals by other state agencies to issue permits to these ill conceived, poorly planned and environmentally devastating proposals.

RULE INVOLVED

OAR 340-48-040(1) states:

> "Certification granted pursuant to these rules may be suspended or revoked if the Director determines that
>
> *****
>
> "(d) Conditions regarding the project are or have changed since the application was filed.
>
> "(e) Special conditions or limitations of the certification are being violated."

ARGUMENT

The Rule appears to be premised on the idea that if the assumptions or conditions relied upon in the 401 permitting process are altered, the permit should be invalidated. The reason behind this requirement is obvious. Applicants should

not be allowed to alter their project after certification and rely on previous water quality compliance findings. If conditions change, the Department must reevaluate the previous decision. See also, ORS 468.734 (Requiring certification or denial of proposed changes within 60 days of FERC notice.)

The City's Salt Caves IV proposal indicates a significant and dramatic change in the City's Salt Caves plans. Thankfully, Salt Caves IV does not involve a dam or a reservoir. However, this proposal will still almost completely "de-water" the river. With a completely new design, greater rafting releases and other changes, the water quality impacts of Salt Caves IV will be dramatically different from those previously evaluated. The FERC DEIS shows that Salt Caves III and IV will cause significant changes in temperature and other water quality related. See, e.g., Figure 4-12 "Predicted hourly water temperatures" DEIS p. 4-105.

Perhaps more important, since the Salt Caves III 401 evaluation, the Klamath River has been designated an Oregon Scenic Waterway. When DEQ receives new information indicating that a particular waterway is of unique value for its recreational, scenic, historical and environmental resources, DEQ is required to strictly apply the anti-degradation policy contained in OAR 340-41-026(1)(a) and 340-41-965(1) and allow no degradation. See, "Salt Caves III" 401 Evaluation and Findings, 6/30/88, pp. 78-80. See also, Evaluation and Findings, 5/3/87, Proposed "Lava Diversion" Hydroelectric Project, FERC No. 5025.

DEQ has previously determined that scenic waterway designation can have a significant impact on water quality standards and that the state and federal anti-degradation standards will be violated by a hydroelectric project which removes the main flow of the water from the river. See, Lava Diversion Findings, at pp. 10-11.

Moreover, the FERC DEIS provides additional new information on water quality impacts expected from Salt Caves III. The DEIS specifically notes that:

> "The project as proposed would adversely affect suspended sediment, water temperature, dissolved oxygen, and algae growth in the river. Relative to water quality standards and effects on aquatic biota, these impacts would be potentially significant."
> DEIS Section 4.1.2.2 Water Quality, p. 4-8.

> "Long-term unavoidable adverse impacts would occur to water quality, the rainbow trout population, and the Copco reservoir endangered sucker populations. Nuisance levels of algae could occur in the diversion reach, which along with increases in water temperatures during portions of the day, accumulated organic sediment and reduced flows, would result in dissolved oxygen levels below the state standard to protect trout habitat of 7 mg/l during summer in the diversion reach."
> DEIS Section 4.1.2.6 Unavoidable Adverse Impacts on the Aquatic Environment, p. 4-27.

> "Some long-term adverse impacts would be eliminated or reduced with recommended mitigative measures; however, adverse effects would remain to water quality, the rainbow trout population, and the Copco reservoir endangered sucker populations. Nuisance levels of algae could still occur in the diversion reach, which along with increased water temperature, accumulated organic sediment, and stabilized flows, could result in dissolved oxygen levels below the state standard of 7 mg/l during the summer in the diversion reach."
> DEIS Section 4.2.2.2 Aquatic Resources, p. 4-94.

These statements indicate that the information and assumptions

relied upon by DEQ in issuing the Salt Caves III conditional 401 certification may have changed or were incorrect from the start.[1/] In light of this situation revocation under OAR 340-48-040(1) is appropriate.

The City may argue that Salt Caves IV is only an alternative proposal and that the City should be allowed to promote that proposal separately while simultaneously pursuing Salt Caves III. DEQ should not be required to expend the extensive amount of funds and time necessary to continue defending an outdated certification, after conditions have substantially changed. This is particularly true when the Department is, at the same time, preparing to evaluate yet another project on the same river, from the same applicant. This is exactly the type of abuse that OAR 340-48-040 should be protecting against.

Finally, to-date it appears that the City has failed to complete the studies required by DEQ as conditions in the Salt Caves III 401 Certification. Fisheries studies (Condition No. 11) and dead zone modeling studies (Condition No. 10) have not been finished. Thus, the City's certification should be revoked or suspended under OAR 340-48-040(1)(e), as well.

1/ Petitioners note with some irony that the water quality impacts projected by FERC are virtually identical to those raised by petitioners during the Salt Caves III 401 administrative proceedings, i.e., increased sediment and temperatures, as well as problems with dissolved oxygen and nuisance algae growth (also known as: "floating mats of putrifying algal scum").

The conditions surroundings the Salt Caves III certification have significantly changed. Extensive and critical new information has been made available. In addition, the City has proposed a significantly modified alternative project. Petitioners request an immediate declaratory ruling acknowledging the changes and directing the Department to: (1) revoke Salt Caves III Conditional 401 Certification, and (2) immediately perform a new evaluation of the City's latest proposal, taking into account the recent scenic waterway designation, as well as other important and similar water quality related factors.

QUESTION PRESENTED

The questions presented are: (A) whether the submission of a new design, the designation of the affected river as a scenic waterway and the receipt of new water quality analysis showing significant water quality impacts constitute substantial changed conditions; (B) whether the Department should, in light of the substantially changed conditions, revoke the City's certification; and (C) whether the applicant's failure to complete the required studies constitutes violations of the conditions sufficient to warrant revocation or suspension of the certification.

INDENTIFYING DATA

The names and addresses of the petitioners are:

/////

/////

Save Our Klamath River
P. O. Box 1956
Klamath Falls, OR

Northwest Environmental Defense Center
10015 SW Terwilliger
Portland, OR 97219

Sierra Club
1431 NW Vista Pl.
Corvallis, OR 97330

Oregon Trout
6261 SW 47th Pl.
Portland, OR 97221

Oregon Rivers Council
P. O. Box 7771
Eugene, OR 97401

Oregon Natural Resources Council
522 SW 5th Ave., Suite 1050
Portland, OR 97204

The names and addresses of other interested parties are:

Oregon Water Resources Dept.
3850 Portland Rd., NE
Salem, OR 97303

Oregon Dept. of Fish & Wildlife
P. O. Box 59
Portland, OR 97207

Oregon State Parks and Recreation Division
525 Trade St., SE
Salem, OR 97310

Federal Energy Regulatory Commission
Attention: Frank Karwoski
825 North Capitol St., NE
Washington, DC 20426

City of Klamath Falls, c/o:
Richard Glick
RAGEN, TREMAINE, et al.
1300 SW 5th Ave., Suite 2300
Portland, OR 97201

Peter Glaser
DOHERTY RUMBLE & BUTLER
1625 M St., NW
Washington, DC 20036

National Wildlife Federation
519 SW Third, Suite 606
Portland, OR 97204

Wilderness Society
Larry Tuttle
610 SW Alder, #915
Portland, OR 97205

Sierra Club Legal Defense Fund
Denise Antolini
216 First Ave., S., Suite 330
Seattle, WA 98104

RESPECTFULLY SUBMITTED this 25th day of August, 1989.

Karl G. Anuta
Attorney for Petitioners

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

SAVE OUR KLAMATH RIVER, THE NORTHWEST ENVIRONMENTAL DEFENSE CENTER, OREGON TROUT, INC., OREGON RIVERS COUNCIL, OREGON NATURAL RESOURCES COUNCIL, Oregon non-profit corporations; and THE SIERRA CLUB, a non-profit foreign corporation; Petitioners, v. THE DEPARTMENT OF ENVIRONMENTAL QUALITY, an Agency of the State of Oregon; and FRED HANSEN, Director of the Department of Environmental Quality, in his Official Capacity, Respondents.	No. A8808-04641 PETITION FOR REVIEW OF A STATE AGENCY ORDER UNDER ORS 183.484

1.

Petitioners are non-profit, public-interest, organizations, several of whom have their principle place of businness in Portland, Multnomah County, Oregon. Petitioners represent numerous individual users of the Upper Klamath River. Respondent Department of Environmental Quality ("DEQ") is an agency of the state of Oregon which excercises its permanent functions at 811 S.W. Sixth Avenue, Portland, Multnomah County, Oregon. Respondent Fred Hansen is the Director of DEQ.

2.

Respondents are charged under ORS 468.732 with certifying whether hydroelectric projects subject to Section 401

EXHIBIT A
Page 1

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of the federal Clean Water Act comply with the provisions of the Act (33 USC §1251 et seq.) and with the water quality related laws of the state of Oregon (ORS 468.700 et seq.). Petitioners appeal from a final order issued by respondents, which erroneously certifies that contruction of a proposed hydroelectric project on the Upper Klamath River (the "Salt Caves Dam") will not violate the provisions of the Clean Water Act or the water quality related laws of the State of Oregon. Petitioners actively participated throughout the agency proceedings which give rise to this action. Petitioners have exhausted all reasonably available administrative remedies.

3.

Petitioner Save Our Klamath River ("SOKR") is an Oregon non-profit corporation with its principal place of business in Klamath Falls, Oregon. SOKR has members who reside throughout Oregon, as well as other states. SOKR's members use the Upper Klamath River for a variety of recreational purposes, including fishing, rafting, camping, swimming, wildlife observation, and hiking.

4.

Petitioner Northwest Environmental Defense Center ("NEDC") is an Oregon non-profit corporation which participates in, and when necessary litigates, environmental resource allocation and policy decisions made by, in, or affecting the state of Oregon. NEDC has members throughout Oregon. A number

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of these members use the recreational and aesthetic resources of the Upper Klamath River.

4.

Petitioner Oregon Trout, Inc. is an Oregon non-profit corporation dedicated to protecting and restoring self-sustaining populations of salmon, trout and steelhead, and their habitats. Oregon Trout has approximately 1,100 members throughout the state. Oregon Trout's members use and enjoy the high quality fishery currently present on the Upper Klamath River, as well as other recreational resources available in the area.

5.

Petitioner Oregon Rivers Council ("ORC") is a non-profit Oregon corporation created by a coalition of 16 conservation organizations, 12 recreational river user groups, and over 300 individual river activists. ORC is devoted to protecting free flowing rivers which have outstanding recreational, scenic, fisheries, historic, and archeological resources. ORC members use and enjoy the Upper Klamath River, in large part because all of these prized values are present there.

6.

Petitioner Oregon Natural Resources Council ("ONRC") is an Oregon non-profit corporation which consists of over 85 conservation, sportsmen, educational, business and outdoor recreation organizations. ONRC has over 3,000 individual members in Oregon. ONRC is dedicated to protecting and enhancing the environment of the Pacific Northwest. Members of ONRC use and

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enjoy the Upper Klamath River for a variety of recreational purposes.

7.

Petitioner Sierra Club is a non-profit California corporation. The purposes of the Sierra Club are to explore, enjoy, and protect the wild places of the earth, while promoting responsible use of the earth's ecosystems and resources, as well as educating and enlisting humanity to protect and restore the quality of the natural and human environment. The Sierra Club has over ~~390,000~~ 600,000 members nationally. The Oregon Chapter of the Sierra Club has more than ~~7,000~~ 8,300 members. Members of both the Oregon Chapter and the National Club use and enjoy the recreational and aesthetic resources of the Upper Klamath River.

8.

Violations of the Clean Water Act and the water quality related laws of the state of Oregon, including degradation of the water quality, damage to the fisheries, and impacts on the designated beneficial uses on the Upper Klamath River will injure petitioner's members by limiting their use and enjoyment of the Upper Klamath River.

9.

On February 11, 1988, the City of Klamath Falls, Oregon, applied to DEQ for 401 Certification of the proposed Salt Caves Dam hydroelectric project. On or about July 7, 1988, respondents issued a final order, including an "Evaluation Report and Findings" dated June 30, 1988, which granted a 401

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Certification to the City of Klamath Falls for the proposed Salt Caves project.

10.

Prior to respondent's issuance of the Salt Caves 401 Certification petitioners and others submitted extensive comments to the respondents, raising concerns which included:

(a) Lack of sufficient information in the Salt Caves 401 application to support the applicants conclusion that the water quality standards and policies of the State of Oregon and of the Clean Water Act would not be violated by construction of the project;

(b) Projected violations of Oregon's temperature standard, OAR 340-41-965(2)(b), due to measurable increases in the minimum and average water temperatures;

(c) Changes in water quality that could cause injury to existing wild trout populations by increasing diseases and stress mortality;

(d) Failure of the application to adequately demonstrate that Oregon's dissolved oxygen standard, OAR 340-41-965(2)(a), would not be violated;

(e) Failure of the application to adequately demonstrate that excessive nuisance algal growth, and its attendant floating mats of putrifying algal scum, would not occur in the Salt Caves impoundment causing violations of OAR 340-41-965(2)(g,h,i,j,k & l);

(f) The requirement in OAR 340-41-150 that prior to issuance of a 401 Certification for the Salt Caves project respondents would have to make a finding that the proposed project would not impact

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existing beneficial uses;

(g) Failure of the application to adequately demonstrate that the proposed Salt Caves Dam would not violate Section 303(c)(2) of the Clean Water Act (33 USC §1313) and Oregon's anti-degradation policy [OAR 340-41-026(1)(a) & OAR 340-41-965(1)] by degrading the water quality of the Klamath River below that necessary to support and protect each of the designated beneficial uses in the relevant section of the river;

(h) Respondents' improper refusal to apply the policies and regulations mandated by Sections 3 & 5 of Chapter 569, Oregon Laws 1985, to the proposed Salt Caves project.

11.

Respondents' issuance of a 401 Certification for the Salt Caves project, and the "Evaluation Report and Findings" which accompanied that Certification, were without a reasonable basis in law or fact. Respondents erroneously interpreted provisions of the applicable laws, including but not limited to, HB 2990 Sections 3 & 5 of Chapter 569, Oregon Laws 1985, OAR 340-41-965(2)(b), and OAR 340-41-150. Temp. Algal Growth A correct interpretation would have compelled a different result.

12.

Respondents' Certification and Findings were based on acts and decisions which were outside the range of the ageny's delegated discretion, including:

(1) failing and refusing to perform any scientific analysis of the potential water quality impacts of the proposed project,

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including but not limited to, possible nuisance algae growth and temperature increases;

(2) refusing to give creedance to the analysis, advice and conclusions of other state agencies;

(3) ignoring concerns among respondent's own staff, regarding the sufficiency of the application;

(4) substituting for a required finding, a condition for further study of a potentially devestating impact on wild fish populations; and

(5) improperly reversing the burden of proof by requiring petitioners and others to prove that violations of the applicable laws would occur, rather than requiring the applicant to prove that such violations would not occur.

13.

Respondents' Certification and Findings were inconsistent with the agency's own rules, with its statutory directives and mandates, and were otherwise in violation of ORS 183.484(4).

WHEREFORE, petitioners request that this court:

1. Set aside the 401 Certification issued by respondents for the Salt Caves Dam project;

2. Direct respondents to issue a denial of 401 Certification for the Salt Caves project;

3. Remand the case to respondents for further action in accordance with the findings of the court;

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4. Award petitioners reasonable attorney fees pursuant to ORS 183.497;

5. Award petitioners their costs and disbursements incurred herein; and

6. Award petitioners such other relief as the court deems just.

Respectfully submitted,

JOLLES, SOKOL & BERNSTEIN, P.C.

By _____
KARL G. ANUTA OSB #86142
of Attorneys for Petitioners

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DAVE FROHNMAYER
ATTORNEY GENERAL
STATE OF OREGON

JAMES E. MOUNTAIN, JR.
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400

July 28, 1989

William H. Young, Director
Water Resources Department
3850 Portland Road NE
Salem, OR 97310

Re: Opinion Request OP-6334

Dear Mr. Young:

You have asked whether the hydroelectric project proposed by the City of Klamath Falls on June 8, 1989 (Salt Caves III), falls within the exemption found in Oregon Laws 1985, chapter 569, section 27. For the reasons discussed below, we conclude that it does not. The application, therefore, would be subject to the strict licensing standards of the 1985 enactment, and to the Water Resources Commission's (WRC) division 51 administrative rules.

Discussion

1. Background

In January 1985, the City of Klamath Falls (city) applied to state and federal licensing agencies for permission to construct and operate a hydroelectric facility on the Klamath River. In March of that year the city council authorized the issuance of $250 million in revenue bonds to finance the project. The city ordinance described the project as follows:

> "The Project, as proposed, would consist of an embankment dam, spillway and power diversion facility located at river mile 214.3 creating a reservoir 4.8 miles long; 4.1 miles of open channel power conduit leading to twin steel penstocks 1320 feet long; and a powerhouse containing two (2) 40 MW turbine-generator units located at river mile 209.9 near the Oregon - California border. * * * Minor revisions may be necessitated through the licensing process."

EXHIBIT B
Page 1

In early 1986, before the WRC completed review of that application, the city modified the project, withdrew its original applications, and submitted revised applications to state and federal regulatory bodies (Salt Caves II). In July 1986, the city authorized new bonds to fund this project. Although the ordinance did not describe the project in detail, the Preliminary Official Statement made clear that the project included a dam and reservoir, albeit considerably scaled down from those proposed in Salt Caves I, with a longer open channel conduit leading to the powerhouse.[1] The ordinance authorizing the 1986 bonds stated that the project had been redesigned to satisfy environmental and regulatory concerns raised during the administrative review process.

In February 1989, both the WRC and the Energy Facility Siting Council (EFSC) rejected the city's Salt Caves II application. Both agencies determined that the project could not be licensed because it would be constructed in the Klamath Scenic Waterway. The city's appeals of these decisions are currently pending before the Oregon Supreme Court.

On June 8, 1989, the city filed an application for a new project (Salt Caves III) with the Water Resources Department (WRD). Salt Caves III would divert waters directly from the tailrace of the J.C. Boyle powerhouse, to be transported through a series of conduits to a channeling forebay and into this project's powerhouse. The proposed project would not involve construction of a dam or reservoir. To our knowledge, the city has enacted no new ordinance authorizing the issuance of bonds to finance Salt Caves III.

2. Analysis

In 1985, the Oregon legislature enacted strict new standards to apply to siting and licensing of hydroelectric projects. Or Laws 1985, ch 569 (HB 2990). These standards are codified at ORS 543.015 and 543.017. With one exception, the new standards apply not only to applications received after the effective date of the law but to all pending applications for which the hearing record had not closed on the effective date of HB 2990. The exception appears in section 27 of HB 2990, which provides:

> "Nothing in this Act applies to any hydroelectric project in excess of 25 megawatts for which funding has been approved by the governing body of a city on or before May 15, 1985."

Or Laws 1985, ch 569, § 27 (uncodified).

EXHIBIT B
Page 2

The WRC adopted rules consistent with the standards of HB 2990 to govern review of hydroelectric applications.[2] These rules incorporated the same exemption. Therefore, any project that is exempt under section 27 of HB 2990 would be reviewed under WRC's "old" hydroelectric rules found at OAR chapter 690, division 50.

The issue here is whether Salt Caves III comes within the exemption from HB 2990. For the following reasons we conclude that it does not.

We have previously addressed a similar issue. In April 1987, we considered whether the Salt Caves II proposal was exempt from HB 2990. See Letter of Advice dated April 2, 1987, to Fred Hansen, Director, Department of Environmental Quality (OP-6043). In attempting to ascertain the scope of the exemption, we reviewed the statutory language in light of the legislative history. Our review persuaded us that "the legislature's reference to funding approval was [not] intended to invoke the technicalities of municipal bonding law." OP-6043 at 8. Rather, we concluded that through the exemption the legislature had attempted "to exempt a specific project, the 'Salt Caves Project,' by describing certain characteristics possessed by only that project." Id. The legislature thus had attempted through section 27 "to allow a long-standing proposed project to proceed under legal standards applicable at the project's inception."[3] Id. at 10. That exemption resulted from the legislature's apparent desire to avoid any unfairness that would result from applying new and stricter standards to a project long in the planning stages under a different set of standards. Id. at 12. Additionally, the reference in the legislative history to the administrative "process" underway

> "demonstrates legislative awareness of multi-agency review procedures which were then ongoing or contemplated. Those processes themselves contemplate that the final configuration of the project might be altered from that embodied in the initial application. The legislature may fairly be charged with this knowledge."

Id. at 10. We reasoned, therefore, that an alteration in the project design did not necessarily remove it from the exemption. Nonetheless, we cautioned:

> "There may be a theoretical occasion * * * to argue that configuration of a previously approved project has been so altered that it no longer fits the legislative purpose in exempting Salt Caves."

Id. at 12.

Reviewing the Salt Caves II application in light of the legislative intent, we concluded that Salt Caves II fell within the exemption. When HB 2990 was enacted, joint review of the Salt Caves I configuration was underway but not completed. Nor had the review been completed when the city withdrew its first application and submitted a new application for Salt Caves II. Although the city had changed the project design to accommodate environmental and regulatory concerns, that change did not exceed the bounds contemplated by the legislature when it enacted the exemption for the "Salt Caves Project." Accordingly, we concluded that Salt Caves II satisfied the section 27 exemption from HB 2990.

For the reasons that follow, however, the rationale of OP-6043 does not extend so broadly as to include Salt Caves III within section 27.

In three key ways, the circumstances surrounding Salt Caves III differ markedly from those surrounding Salt Caves I and II, rendering the policies underlying section 27 inapplicable here. First, the city offered Salt Caves II as a modified alternative to Salt Caves I. Finding Salt Caves II within the scope of section 27 furthered the legislative intent to encourage and accept "compromise and accommodation by the project's sponsors when confronted by objections in the ongoing administrative process." OP-6043 at 11. In contrast, the city submitted its application for Salt Caves III only after both the EFSC and the WRC rejected Salt Caves II and the city sought judicial review of those actions. Salt Caves III does not substitute for or modify Salt Caves II; rather, the city is pursuing two mutually exclusive projects simultaneously. Thus, unlike its predecessor, Salt Caves III did not result from beneficial compromise expected in typical administrative review procedures. Hence, the basis for our conclusion in OP-6043 that the alterations in the project did not remove it from section 27--that those alterations were a contemplated product of the ongoing administrative review process--is absent here.

Second, the Salt Caves III configuration is an entirely new concept for hydroelectric development on this stretch of the Klamath River. When we concluded in OP-6043 that Salt Caves II was covered by the grandfather clause, we premised our answer on the legislature's desire to "avoid any unfairness that would result from applying new and stricter standards to a project long in the planning stages." OP-6043 at 12. Salt Caves III, however, was not in the planning stages when section 27 was enacted. Rather, the city developed that proposal only recently in response to a suggestion by staff of the Federal Energy Regulatory Commission. Consequently, the "grandfathering" policy that led to our conclusion in OP-6043 does not apply here.

Third, Salt Caves III differs radically from both Salt Caves I and II. Unlike the earlier proposals, Salt Caves III involves no dam or reservoir. Instead, the city proposes to divert the entire return flow from the dam immediately upstream and transport it approximately ten miles to the powerhouse. In OP-6043, we concluded that, despite the changes in design from Salt Caves I to Salt Caves II, the project "remained the same 'hydroelectric project' referred to in Oregon Laws 1985, chapter 569, section 27." OP-6043 at 11. We so concluded because the two proposals remained fundamentally similar in character. As already noted above, however, we cautioned that "configuration of a previously approved project [might be] so altered that it no longer fits the legislative purpose in exempting Salt Caves." Id. at 11-12. We conclude that Salt Caves III deviates so radically from Salt Caves I and II that the legislature could not have intended the exemption to apply.[4]

Because we conclude that Salt Caves III falls outside the exemption set out in section 27 of HB 2990 and in OAR 690-51-020(3), the city's application necessarily would be subject to OAR chapter 690, division 51. These rules prohibit the WRC from accepting an application for a project in a scenic waterway designated under ORS chapter 390.[5] Although Salt Caves III would involve no new dam or reservoir in the bed of the stretch of the Klamath River so designated, the Klamath Scenic Waterway includes "associated uplands": that is, uplands within 1/4 mile of the riverbed. The canals conveying the water would fall within that 1/4 mile. The project, therefore, would be within the scenic waterway and subject to the WRC's division 51 rules.[6]

We conclude, therefore, that the WRD lacked the authority to accept the city's application for Salt Caves III. Consequently, the director should inform the city that it intends to return the application and fees.

Sincerely,

Dave Frohnmayer

DAVE FROHNMAYER
Attorney General

DF:AWS:WPIII:RDW
tmt/0389H

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[1] The Preliminary Official Statement described the project as follows:

> "The Project will consist of a diversion embankment structure approximately 75 feet high and 580 feet long, a spillway and a power diversion facility. The diversion facility would create a diversion pool about 1.4 miles long with an active storage capacity of about 500 acre-feet and a surface area of 70 acres at normal high pool elevation of 3,250 feet. A 7.3 mile long open channel power conduit will connect to twin steel penstocks 1,320 feet long serving a powerhouse containing two 40 MW (nameplate) turbine generating units."

[2] OAR 690-51-020(3) makes division 51 applicable to projects "[e]xcept as provided by Oregon Laws, (OL) 1985, chapter 569, section 27." It further provided that "[p]rojects to which OL, 1985 Chapter 569 do not apply, shall be subject to the provisions of OAR Chapter 690, Division 50 and 74."

[3] The purpose of the exemption was, in Representative Agrons' words, "to permit a process which has been underway for several years to proceed without changing the goal posts on it. Judgments relative to the merits of that project, whether or not it succeeds, I think should be judged on the process in which it is currently involved." Joint Water Policy Committee (HB 2990), May 28, 1985, tape 82, side B, at 161-402.

[4] We do not address whether the bonds approved to finance Salt Caves I or Salt Caves II would apply to Salt Caves III. If that financing would not apply, then for that reason as well Salt Caves III would not be a "hydroelectric project * * * for which funding has been approved by the governing body of a city on or before May 15, 1985." Or Laws 1985, ch 569, § 27.

[5] We do not intend to suggest that the applicability of OAR chapter 640, division 51 will alone determine the fate of the application. Even if the application were properly accepted, water rights for the project could not be approved if the project would interfere with maintaining the "free-flowing character of * * * waters [within the scenic waterway] in quantities necessary for recreation, fish and wildlife uses." ORS 390.835(1) (emphasis added).

[6] The City of Klamath Falls has suggested that the WRC's order rejecting Salt Caves II contains language that could be read to limit the WRC's power to ban all hydroelectric projects in a scenic waterway. We disagree with that reading of the law and of the WRC's order.

In its Salt Caves II order, the WRC noted several reasons why Oregon's Scenic Waterways Act, ORS 390.805-390.925, does not conflict with the Klamath River Basin Compact. In response to an assertion that the Compact forbids the state from banning hydroelectric development, the WRC observed that the Scenic Waterways Act does not preclude development of all hydroelectric projects, but only those projects that contain dams or reservoirs. The city has seized on that language to support its contention here. That reliance is mistaken.

The WRC's discussion in its order does not lead to the conclusion that the Klamath Compact bars the state from imposing by rule a complete ban on any projects within a scenic stretch of the river. The Compact leaves to the states the power to determine how to allocate the water to the various beneficial purposes. As we stated in our Letter of Advice dated September 21, 1988, to William H. Young (OP-6268) at 10, the Compact "creates neither a state nor a federal obligation to grant a hydroelectric permit, or a water right for hydroelectric generation. Nor does it create a preference for hydroelectric uses over other uses." The Compact's recognition of hydroelectric generation as a beneficial use does not impair the WRC's authority to set a stream aside for recreational and fishery purposes, nor its authority to prohibit any project within the scenic waterway area in furtherance of those uses. The city's argument thus confuses authority with duty.

Moreover, the WRC's rule prohibiting it from accepting an application for a project in a scenic waterway is plainly within the WRC's statutory authority.

In sum, nothing in the Klamath Compact, the Scenic Waterways Act, or the WRC's Salt Caves II order is contrary to the conclusion we reach in this opinion.

NEIL GOLDSCHMIDT
GOVERNOR

Department of Environmental Quality

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

September 22, 1989

Federal Energy Regulatory Commission
825 North Capitol Street, N. E.
Washington, D. C. 20426

City of Klamath Falls
P. O. Box 237
Klamath Falls, Oregon 97601

Re: §401 Certification - for the Salt Caves DEIS "No Dam" Alternative (FERC No. 10199)

The draft Environmental Impact Statement (EIS) for the Salt Caves Hydroelectric Project (FERC 10199-000) evaluates the City's proposed project, the City's project with modifications proposed by the Federal Energy Regulatory Commission (FERC), and a new "no dam" alternative proposed by FERC. The draft EIS indicates a clear preference for and recommends licensing of the "no dam" alternative.

The Department has reviewed the matter of §401 certification for the FERC-recommended alternative and concludes that a §401 certification for such alternative does not exist. The Department previously acted upon an application received from the City of Klamath Falls pursuant to OAR 340-48-005 et. seq., and granted §401 certification on July 7, 1988. The FERC-preferred "no dam" alternative is a substantially different project from the project evaluated by the Department, and constitutes a new project with respect to §401 certification. The FERC-preferred project is larger in electric generating capacity, diverts water from the Klamath River at a different location, significantly alters stream flow patterns in the project area, diverts water for a spawning channel, utilizes different alignment and nature of the conduit and forbay system for delivering water to the powerhouse, etc. The only similarity to the City's proposed project is the location of a proposed powerhouse.

The potential water quality impacts resulting from construction and operation of the FERC-preferred alternative have not been evaluated by the Department of Environmental Quality (DEQ) for §401 water quality certification purposes. The FERC-preferred "no dam" alternative can only be evaluated for §401 certification upon filing of an application for §401 certification by the City pursuant to OAR 340-48-020. DEQ has received no §401 certification application for the FERC-preferred alternative to date.

The Department has reviewed ORS 468.734 as it relates to review of a granted §401 certification upon notification that a federal agency is considering a change in a previously certified project. It should be noted that DEQ has not received notice of project modification from the City as required under OAR 340-48-025(2)(h) and condition 7.a.(7) of the July 7, 1988, certification. More importantly, as noted above, the Department considers the FERC-preferred "no dam" alternative to be a new project--not a modification of a previously certified project. If the project were considered a modification, the Department would have no choice but to notify FERC that there is no longer reasonable assurance that the project as changed complies with the applicable provisions of the Clean Water Act because of changes in the proposed project since I issued the §401 certification. The draft EIS does not contain sufficient information upon which to base the required §401 certification evaluation of water quality standards compliance. Thus, without a new application being filed pursuant to OAR 340-48-020, the Department would be unable to conclude that the proposed project qualifies for §401 certification.

For similar reasons, review under 33 USC §1341(a)(3) is not applicable. First, subsection (a)(3) applies only to a federal license proposed to be issued by an agency other than FERC. Further, as under ORS 468.734, DEQ has not received notice and the FERC-preferred "no dam" alternative constitutes a new project in any event.

The City, in the letter from George Flitcraft to Lois Cashell, dated September 15, 1989, states its belief that the "no dam" alternative is merely a modification of the previously certified project. As explained above, the City's position is incorrect. The City's position is also contradicted, ironically, by the position taken by the City in state court. In a motion filed in the pending appeal of the existing §401 certification, the City's counsel stated:

> After this lawsuit was initiated, the Federal Energy Regulatory Commission ("FERC") proposed to the City that it consider an alternative project. This project would not involve building a dam, and is therefore a substantially different project than the one challenged by this lawsuit.... [T]he City can represent to this court that it endorses the "no dam" alternative plan in concept, but simply needs more time to study the proposed project. If the City pursue [sic] the alternative project, it will not pursue the project challenged in this lawsuit. In addition, if the City pursues the alternative project, it will have to submit a new application with DEQ.
>
> Motion to Stay Proceedings, dated September 5, 1989, at 2 (emphasis supplied) [copy attached].

This interpretation is correct. Further, regardless of the City's contrary and mistaken interpretation set forth in its September 15, 1989 letter, DEQ's determination of the need for a new §401 application is controlling. See City of Fredricksburg v. FERC, No. 88-3616 (4th Cir. June 9, 1989). FERC may not license the "no dam" alternative until DEQ has reviewed and certified the new project.

This letter constitutes notification by the Oregon Department of Environmental Quality of the following:

1. The §401 certification granted by DEQ for the City's proposed project is not valid for the FERC-preferred "no dam" alternative. This alternative is substantially different in its design, operation, and potential impacts on water quality and is considered to be a new project requiring DEQ review and certification under ORS 468.732 and 33 USC §1341(a)(1).

2. In order to obtain §401 certification review of the FERC-proposed "no dam" alternative, the City will have to file a new application for certification with DEQ pursuant to OAR 340-48-005 et. seq. In accordance with its rules, DEQ would act upon the application for certification within 90 days of receiving a complete application, or within such other time as DEQ deems necessary up to one year.

Sincerely,

Fred Hansen
Director

Attachment

cc: Peter S. Glaser, Attorney
Richard M Glick, Attorney
Ronald O. Nichols, Project Director, RMI
Hydro Task Force
Oregon Department of Justice

HLS:kp

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

SAVE OUR KLAMATH RIVER, THE NORTHWEST ENVIRONMENTAL DEFENSE CENTER, OREGON TROUT, INC., OREGON NATURAL RESOURCES COUNCIL, Oregon non-profit corporations; and the SIERRA CLUB, a non-profit foreign corporation, Petitioners, vs. THE DEPARTMENT OF ENVIRONMENTAL QUALITY, an agency of the State of Oregon, et al., Respondents. CITY OF KLAMATH FALLS, Intervenor-Respondent.	No. 8808-04641 INTERVENOR-RESPONDENT'S MOTION TO STAY PROCEEDINGS ORAL ARGUMENT REQUESTED

Intervenor-Respondent (the City of Klamath Falls, hereinafter "the City") moves for an order staying the above-described matter. This matter is currently scheduled for trial on September 25, 1989. This motion is made in the interests of judicial economy, as the matter in dispute may well be rendered moot, as set forth below. The Department of Environmental Quality does not oppose this motion. We were unable to contact plaintiff's counsel as he was out of his office.

This lawsuit arises out of the City's attempts to construct a dam on the Klamath River. The Department of Environmental Quality has certified the City's proposed project. Plaintiff initiated this suit against the Department of Environmental Quality, challenging

that department's approval of the City's project. After this lawsuit was initiated, the Federal Energy Regulatory Commission ("FERC") proposed to the City that it consider an alternative project. This project would not involve building a dam, and is therefore a substantially different project than the one challenged by this lawsuit. In addition, FERC has issued a draft environmental impact statement supporting the "no dam" project. The City is currently studying the draft environmental impact statement regarding the "no dam" project. The draft statement is several hundred pages long, and the various aspects of the alternative "no dam" project must be carefully studied by the City. At this point, however, the City can represent to this court that it endorses the "no dam" alternative plan in concept, but simply needs more time to study the proposed project. If the City pursue the alternative project, it will not pursue the project challenged in this lawsuit. In addition, if the City pursues the alternative project, it will have to submit a new application with DEQ. Therefore, this suit against DEQ for approving the prior project will be completely moot.

The City previously filed a motion to extend the original trial date, which this court granted. That motion for extension was filed for essentially the same reason as the present motion, however, the City now has the favorable draft environmental statement, and has even greater incentive for staying this proceeding. Because of the increasingly high likelihood that the City will pursue the "no dam"

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plan, and in the interest of judicial economy, the City respectfully requests that this motion for stay be granted.

DATED this 5th day of September, 1989.

Respectfully submitted,

RAGEN, TREMAINE, KRIEGER, SCHMEER & NEILL

BY: /s/ Amy R. Alpern
Douglas G. Beckman, OSB #72022
Amy R. Alpern, OSB #84024
Of Attorneys for Intervenor-Respondents

f:\5\5403C016\STAY.MOT

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of September, 1989, I served the foregoing INTERVENOR-RESPONDENT'S MOTION TO STAY PROCEEDINGS on the attorneys listed below, by mailing to said attorneys a certified true copy thereof and depositing the same in the United States mail, first class, at Portland, Oregon, contained in a sealed envelope, with postage prepaid, and addressed to said attorneys at their last known address, to wit:

Mr. Karl G. Anuta
Jolles, Sokol & Barnstein, P.C.
721 SW Oaks Street
Portland, OR 97205-3791

Mr. Kendall M. Barnes, Jr.
Assistant Attorney General
450 Justice Building
Salem, Oregon 97310

RAGEN, TREMAINE, KRIEGER
SCHMEER & NEILL

By: _____
Richard M. Glick, OSB #79238
Amy R. Alpern, OSB #84024
Of attorneys for Intervenor-
Respondent City of Klamath Falls

CERTIFIED TO BE A TRUE COPY:

Amy R. Alp

Richard M. Glick, OSB #79238
Amy R. Alpern, OSB #84024
Of attorneys for Intervenor-
Respondent City of Klamath Falls

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: October 20, 1989
Agenda Item: L
Division: Water Quality
Section: Construction Grants

SUBJECT:

Sewer Safety Net Program - Approval of Applications for Funding during the 1989-91 Biennium

PURPOSE:

Attain Environmental Quality Commission (EQC) approval of applications for Sewer Safety Net Funding (Assessment Deferral Loan Program) from Portland, Gresham, and Eugene.

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 ___

_x_ Approve Department Recommendation
___ Variance Request Attachment ___
___ Exception to Rule Attachment ___
___ Informational Report Attachment ___
_x_ Other: Background Attachment _A_

Review of Sewer Safety Net Applications
Attachment B
Allocation of Sewer Safety Net Funds
Attachment C

DESCRIPTION OF REQUESTED ACTION:

In 1987, the Oregon legislature created the Assessment Deferral Loan Program to provide assistance to property owners who will experience extreme financial hardship resulting from sewer assessments for sewer connections required by a federal grant agreement or an order issued by a state commission or agency. Under this program, public agencies apply to the Department for a loan and in turn provide loans to individual property owners for their sewer assessments.

The Department has received applications for loan funds during the 1989-91 biennium from Portland, Gresham, and Eugene. The Cities' proposed programs have been reviewed by the Department. This staff report recommends approval of all of the programs.

AUTHORITY/NEED FOR ACTION:

___ Required by Statute: _____ Attachment ___
Enactment Date: _____
_x_ Statutory Authority: ORS 468.970 and 454.010 Attachment D
_x_ Pursuant to Rule: OAR 340-81-110 Attachment E
___ Pursuant to Federal Law/Rule: _____ Attachment ___

___ Other: Attachment ___

_x_ Time Constraints: The Cities of Portland and Gresham are anxious to receive approval of their programs. Portland has 89 applications which are already approved and are awaiting funding. Gresham is anticipating receipt of several applications in the near future and needs funding in order to provide eligible applicants loans.

DEVELOPMENTAL BACKGROUND:

___ Advisory Committee Report/Recommendation Attachment ___
___ Hearing Officer's Report/Recommendations Attachment ___
___ Response to Testimony/Comments Attachment ___
_x_ Prior EQC Agenda Items: Temporary Rule establishing interest rate for the 1989-91 biennium for the Sewer Safety Net Program (September 7,1989, EQC meeting). Attachment E

___ Other Related Reports/Rules/Statutes: Attachment ___

___ Supplemental Background Information Attachment ___

REGULATED AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

Under this program, public agencies receive loan funds from DEQ and, in turn, provide loans to individual property owners. The loans to property owners will be for the costs of construction or connection to the sewer system including connection charges and sewer assessments. Public agencies applying for Sewer Safety Net funds may not receive any money until their applications are approved by the EQC.

PROGRAM CONSIDERATIONS:

Gresham and Eugene's Sewer Safety Net programs have not yet been implemented. Portland's program has only been operating for a year. Amendments to these public agency programs are anticipated during the startup period. Program amendments must be submitted and approved by the Department before implementation.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

The Commission could require all amendments to approved Sewer Safety Net Programs to be reviewed by the Commission. This would allow the Commission on-going involvement in monitoring plan amendments. The Department, however, does not recommend this alternative because program amendments are generally related to procedural rather than policy issues.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

Based on the findings in Attachment B, the Department finds that these programs comply with the rules and statutes related to sewer safety net programs. The Department, therefore, recommends EQC approval of the applications for sewer safety net funding submitted by Portland, Gresham, and Eugene. Then applications describe each community's sewer safety net program including how funds will be allocated, how the program will be administered and how loans will be repaid.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The programs described in Attachment B are consistent with the statutory intent of providing financial assistance to low income property owners who would experience extreme financial hardship from payment of sewer assessments.

ISSUES FOR COMMISSION TO RESOLVE:

None.

INTENDED FOLLOWUP ACTIONS:

A temporary rule was adopted at the September 7, 1989, EQC Meeting establishing the interest rate at 5 percent for the Sewer Safety Net Loans to public agencies. The Department will hold a hearing on October 16, 1989 to accept public comments before adoption of a permanent rule. The Department will return to the EQC on December 1, 1989 for adoption of the permanent rule.

Approved:

Section: 

Division: 

Director: 

Report Prepared By: Maggie Conley

Phone: 229-5257

Date Prepared: September 28, 1989

MG:crw
CG\WC5549
9/20/89

Sewer Safety Net Program

Background

In the early 1970's, the Department of Environmental Quality (DEQ) began studies in Mid-Multnomah County that showed that the groundwater contained abnormally high levels of nitrates. Later, the Legislature passed the Threat to Drinking Water Act (ORS 454.275 - .380), which established a procedure to determine if a threat existed based on three out of four specific criteria. Following nearly two years of hearings and evaluation, the EQC found that three of four of the criteria have been met or exceeded in Mid-Multnomah County: more than 50% of the area contains rapidly draining soils; the groundwater is a potential source of drinking water; and more than 50% of the area's sewage is discharged into the ground via cesspools. As a result, on April 25, 1986, the Environmental Quality Commission (EQC) issued an order requiring sewer service to be provided in this area by the year 2005 by the Cities of Portland and Gresham. A very important issue to the EQC in making this decision was the affordability of the project to local homeowners. The Commission was very concerned about being able to assure homeowners that they would not be forced out of their homes due to the inability to pay for sewer charges.

One of the financial programs developed by the 1987 legislature to assist property owners in Mid-Multnomah County, and other areas required to connect to sewers, was the Assessment Deferral Loan Program (also known as the Safety Net Program). Under this program, public agencies apply to the Department for a loan and in turn provide loans to individual property owners. In order for a public agency to receive a loan, the EQC must approve the public agency's proposed loan program and the Department must enter into a loan agreement with the public agency.

In December 1987, the Environmental Quality Commission adopted rules to implement the loan program (OAR 340-81-110). Under these rules, all public agencies must apply for funding in odd numbered years for each biennium. Assessment deferral loan applications were received from Portland and Gresham for the Mid-Multnomah County area and from Eugene for the River Road/Santa Clara area. The Mid-Multnomah County area is required, under an EQC order issued pursuant to ORS 454.305, to connect to sewers due to the threat to drinking water. The programs for Portland and Gresham cover the entire Mid-Multnomah County area required to be sewered by the EQC order, including the unincorporated area in Multnomah County. The River Road/Santa Clara area is required, under a federal grant agreement, to connect to sewers due to the threat to groundwater.

The EQC approved applications from Portland, Gresham and Eugene during the 1987-89 biennium. Of the $300,000 available in the Sewer Safety Net Fund last biennium, Portland borrowed $186,000 which was the full amount the City was eligible to borrow. Gresham and Eugene have not yet borrowed any money from the Sewer Safety Net Fund because project construction is behind schedule. During the 1989-91 biennium, $950,000 of general fund monies are available for the Sewer Safety Net.

In conjunction with the Environmental Quality Commission's review of these programs, the Department will enter into a loan agreement with each jurisdiction. This agreement will cover items not covered in the proposed programs such as procedures for repayment of the loan to DEQ and the schedule for loan payments by DEQ to the public agency. These agreements will be finalized after the programs are reviewed by the EQC.

Review of 1989-91 Sewer Safety Net Applications

OAR 340-81-110 sets out a list of criteria which must be addressed in assessment deferral loan programs proposed by public agencies. These criteria are reviewed below for each jurisdiction which has applied for 1989-91 loan funds.

I. Portland

A. Program

1. Sewer connections to be made in the affected area as required by EQC order.

   A total of 6,544 sewer connections are anticipated by July 1, 1991. The City of Portland submitted a proposed schedule for sewer connection through 1991. This schedule is available in DEQ's Water Quality Division office.

2. Analysis of the income levels for the affected property owners.

   OAR 340-81-110 (4) identifies 200 percent of the federal poverty level as the basis for determining the amount of funds for which the City of Portland will be eligible. The City also uses this figure as a cut-off for assessment deferral loan eligibility. The City of Portland has estimated that 27 percent of the households in the affected area are at or below 200 percent of the federal poverty level. (Source: Mid-Multnomah County Sewer Safety Net Project, Tables 2-8, CH2M Hill, February 1987.)

3. Approximate cost of sewer assessments in the affected area.

   The City of Portland has estimated the approximate cost of sewer assessments in the affected area at $5,800 per household. This is based on an average lot size of 7,000 square feet and an assessment cost/sq. ft. of 70 cents, and a connection charge of $900.

4. Allocation of funds among eligible property owners.

   The City of Portland adopted eligibility criteria based on the premise that no one should suffer financial hardship or the loss of their home because of sewers. Under Portland's program, assessment deferrals are not available for businesses.

   Owners who occupy their homes and meet the following criteria will automatically qualify for a loan to defer all or part of their assessment:

a. The gross income of all members of the household less any unreimbursable medical expenses must be 200 percent of the federal poverty level or less; and

b. Net assets of all members of the household excluding the primary residence and it's contents and one vehicle must not exceed $20,000.

Assessment deferral loans will be granted to homeowners eligible for Safety Net assistance in the order that applications are received and approved.

5. Administration of the Assessment Deferral Loan Program.

a. Accounting and Record-Keeping Procedures: -- Monthly reports are prepared indicating funds disbursed from the Safety Net Fund.

Each quarter, a report is prepared summarizing the amount and number of deferrals granted in that quarter, the total amount and number of deferrals currently outstanding and the amount of loans paid off because of the sale of property, death of a property owner or any other reason.

b. Liens: -- Portland's Financial Administration Agency will prepare documents necessary to record Safety Net loans as liens against the property. Recorded liens will be filed by the Auditor's Office. The City adopted a collection process in 1988 which is intended to maximize the collection of delinquent loans.

c. Repayments: -- For loan recipients under 65 years old, the term of the loan is until the home is sold or five years, whichever comes first. If the loan recipient wants to extend the loan, he/she must reapply every five years. Otherwise the loan would have to be repaid. The City would allow the deferral loan to be converted to an amortized loan which would allow loan repayments to be on a monthly basis.

For applicant's 65 years old or older, loans are due when the property is sold, transferred, or until December 31, 2005, whichever occurs first.

d. Interest Rate: -- The City plans to charge a 5% interest rate on assessment deferral loans.

6. Public Involvement.

The City of Portland provided adequate public involvement in adoption of the program in accordance with the requirements of OAR 340-81-110 (3)(a)(F). The City developed a Citizen's Advisory Board in November, 1986, which approved the loan program in April 1987. In addition, the City held a public hearing to accept testimony on the proposed program on March 9, 1987.

The City meets the requirement for ongoing citizen participation in the Mid-Multnomah County sewer project as required by ORS 454.370. The Citizens' Advisory Board currently has a membership of nine. Of these nine, three members are safety net eligible, eight live in the area, and one works in the area. The Board's membership complies with the requirements of ORS 454.370 (2) because more than two-thirds of the members reside in the area, and one-third of the members are eligible for financial relief under the safety net plan. The Board meets at least bimonthly.

7. Resolution Adopting the Program.

The City submitted a copy of a resolution passed by the City Council on June 27, 1987, which adopted the program.

B. Program Evaluation

The Department finds that Portland's program meets the intent of the Assessment Deferral Loan Program Revolving Fund to provide assistance to property owners who would experience extreme financial hardship from payment of sewer assessments.

II. Gresham

A. Program

1. Sewer connections to be made in the affected area as required by EQC order.

A total of 1,587 sewer connection are anticipated in Gresham by July 1, 1991. The City has submitted a schedule for construction of collector sewers through 1991.

2. Analysis of the income levels for the affected property owners.

The City of Gresham has estimated that 26 percent of the households in the affected area are at or below 200 percent of the federal poverty level (Source: Mid-Multnomah County Sewer Safety Net Project, Table 2-8, CH2M Hill, February 1987).

3. Approximate cost of sewer assessments in the affected area.

The City of Gresham has estimated the approximate cost of sewer assessments in the affected area will be $6,653 for a 7,000 sq. ft. lot. This includes a systems development charge, a house branch change 31 cents/sq. ft. frontage charge and an interceptor charge.

4. Allocation of funds among eligible property owners.

The City of Gresham developed eligibility criteria to provide assistance to the very needy who have no alternative means of financing the sewer costs.

a. Homeowners

Homeowners are eligible if they meet the following criteria.

1) Income -- Homeowners who occupy the assessed property and have a gross household income, less non-reimbursed medical expenses, at 200 percent of the federal poverty level or less.

2) Housing Costs -- Homeowners whose housing costs exceed 30 percent of household income.

3) Assets -- Homeowners who have net household assets, excluding the primary residents, its contents and one vehicle, of $20,000 or less.

All three criteria would have to be met in order for a homeowner to automatically qualify for assistance. Homeowners who meet all three criteria are eligible for a deferred loan from 20 to 100 percent of their sewer assessments.

Homeowners who do not qualify under the three basic criteria but may need a safety net loan to avoid losing their homes may receive assistance if:

1) The income criteria is met and one of the other two criteria -- housing costs of assets -- is also met; and

2) The City determines that a homeowner has extraordinary costs associated with the sewer implementation program.

b. Business assessment deferral loans are available to businesses that own the building in which they conduct their primary business if they meet the above listed income, building costs and assets criteria.

The City's Financial Operations Division will re-verify eligibility of applicants every three years.

Assessment deferral loans will be allocated to eligible applicants on a first-come, first-serve basis, as long as Safety Net funds are available.

5. Administration of the Assessment Deferral Loan Program.

   a. Accounting and Record-Keeping Procedures: -- The City's Management Services Department will maintain a list of all loans and outstanding balances. A weekly summary of loans granted will be produced. Each quarter, a summary report will be prepared showing the amount and number of connection deferrals granted in that quarter, connection deferrals now outstanding, loan granted and loans paid.

   b. Liens: -- Gresham will prepare documents necessary to record Safety Net loans as liens against the property. The City will monitor the liens and require the liens to be satisfied at the time of title transfer. If the property owner becomes ineligible for the safety net deferral or if loans are not repaid, the City will institute foreclosure proceedings similar to those followed for delinquent Bancroft assessments.

   c. Repayments: -- All payments are deferred until the property is sold, transferred or until December 31, 2005 whichever comes first.

   d. Interest Rates: -- Gresham plans to charge a 5% interest rate on assessment deferral loans.

6. Public Involvement.

   The Assessment Deferral Loan Program rules (OAR 340-81-110 (3)(a)(F)) require citizen involvement during program development. Gresham provided copies of the program at the September 29, 1987 Gresham City Council meeting when the draft plan was first presented to the council. Subsequently the City held a public hearing where public testimony on the proposed program was taken.

The City meets the requirement for on-going involvement in the safety net program as required by ORS 454.370 (2). The City has established a citizens sewer advisory committee with five members which meets monthly. Two of the members are homeowners who are safety-net eligible, and the other three reside or do business in the affected area. The Committee's membership complies with the requirements of ORS 454.370(2), because more than two-thirds of the members reside in the area and more than one-third of the members are eligible for financial relief under the safety net plan.

7. Resolution Adopting Program.

Gresham submitted a copy of the resolution passed by the City Council on November 3, 1987, adopting the program.

B. Program Evaluation

The Department finds that Gresham's program meets the intent of the Assessment Deferral Loan Program Revolving Fund to provide financial assistance to low-income property owners who would experience extreme financial hardship from payment of sewer assessments.

III. Eugene

A. Program

The City of Eugene currently offers its own assessment deferral program targeted at the elderly and those at the lowest income levels. The City's program implements the State's Assessment Deferral Loan Program and supplements this existing local program.

1. Sewer connections to be made in the affected area as required by a federal grant agreement:

A total of 1,161 sewer connections in the affected area are expected during the 1987-89 biennium. The City submitted an estimated schedule of sewer construction in the River Road/Santa Clara areas for the period through July 1, 1991.

2. Analysis of the income levels for the affected property owners.

The City of Eugene has estimated that 25 percent of the households are at or below 200 percent of the federal poverty level. (Source: Cost Implications of a Safety Net Program for the City of Eugene. Moore Breithaupt and Associates, Inc., May 1987).

3. Approximate cost of sewer assessments in the affected area.

   The City of Eugene has estimated the approximate cost of sewer assessments in the affected area at $5,200 per service connection. This is based on an average lot size of 9,200 square feet.

4. Proposed plan for allocating funds among eligible property owners.

   The City of Eugene developed eligibility criteria with the goal of reducing the immediate financial impact of sewer assessments to low-income households. No deferral loans are given to businesses.

   The City relies on the federal poverty level guidelines to determine eligibility. An applicant is eligible if the household income is at or below 200 percent of the federal poverty level, if applicant's non-income producing assets do not exceed four times the income eligibility level for which the application is made, and the applicant has received no deferrals on other property. Similar to the Portland and Gresham programs, the amount of costs deferred depends on how far the applicant's income is above the poverty level.

   The City plans to review the eligibility of program participants every two years. Assessment deferral loans will be granted to property owners with the lowest income levels first and in the order of their original application.

5. Administration of the assessment deferral program.

   a. Accounting and Record-Keeping Procedures: -- The funds will be accounted for separately by the City of Eugene. Information regarding the amount of the assessments, payment schedules, principal and interest balances and all loan activity will be recorded on a property-by-property basis. State loan funds, deferrals granted, and accrued interest due will be recorded in the accounting system.

   b. Liens: -- Eugene will place liens on all property receiving assessment deferrals and will enforce the liens when the assessment becomes due.

   c. Repayments: -- Upon sale or transfer of the property or upon determination that the applicant is no longer eligible, the assessment must be paid in full.

   d. Interest Rate: -- Eugene will charge 5% interest on assessment deferral loans.

6. Public Involvement.

In 1984, a 15-member River Road/Santa Clara Citizens' Advisory Team (CAT) was formed to allow input to the planning process of the Sanitary Sewer Service Element of the River Road/Santa Clara Urban Facilities Plan. Over 70 informal CAT public meetings and three formal public hearing were held.

The Eugene City Council, Lane County, and the City of Springfield formally adopted the financing recommendations presented by the CAT.

Eugene does not currently have a citizen advisory group for the River Road/Santa Clara sewer project. There is no statutory requirement for Eugene to have on-going citizen involvement as there is for Portland or Gresham, since the requirements of ORS Chapter 454 regarding citizen involvement only apply to cities in counties of over 400,000 population.

7. Resolution Adopting the Proposed Program.

The program was adopted by ordinance by the City Council on May 23, 1988.

B. Program Evaluation

The Department finds that Eugene's program meets the intent of the Assessment Deferral Loan Program Revolving Fund by providing financial assistance to low income property owners who would experience extreme financial hardship from payment of sewer assessments.

Allocation of Sewer Safety Net Loan Funds to Public Agencies

A total of $950,000 is available during the 1989-91 biennium for the Assessment Deferral Loan Fund.

DEQ has statutory authority to,"use the money in the Assessment Deferral Program Revolving Fund to pay the expenses of the Department in administering" the program (ORS 468.977(2)).

DEQ will set aside 4% ($38,000) for program administration during this biennium. This will fund .2 FTE to administer the program, plus .2 FTE for support staff. The remainder ($912,000) will be allocated to Portland, Gresham and Eugene as listed in the Table below. These determinations were made according to the procedures outlined in 3400-81-110(4)(C) as follows:

(A) Calculate the number of connections to low income households for each public agency:

(total number of sewer connections in project area) X (% of households in project area where household income is at or below 200 percent of the federal poverty level.)

= number of connections to low income households

(B) Add the total number of connections to low income households for all qualifying public agencies;

(C) Calculate a percentage of the total sewer connections to low income households for each qualifying agency divide (A) above by (B) above);

(D) Multiply the percentage calculated in (C) above by the total funds available.

City	Total Number Connections During 1989-91	Percent of Connections in Project Area Where Household Income is at or below 200% of the Federal Poverty Level	Number of Connections to Low-Income Property Owners	Percent of Total Number of Connections to Low-Income Property Owners	Allocation Loan Funds to Public Agencies
Portland	6,544	27 %	1,767	71 %	647,520
Gresham	1,587	26 %	412	17 %	155,040
Eugene	1,161	25 %	290	12 %	109,440
Total			2,469		912,000

ASSESSMENT DEFERRAL LOAN PROGRAM

468.970 Definitions for ORS 468.970 to 468.983. As used in ORS 468.970 to 468.983:

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

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

(3) "Extreme financial hardship" has the meaning given within the assessment deferral programs adopted by public agencies and approved by the Department of Environmental Quality.

(4) "Public agency" means any state agency, incorporated city, county, sanitary authority, county service district, sanitary district, metropolitan service district or other special district authorized to construct water pollution control facilities.

(5) "Treatment works" means a sewage collection system. [1987 c.695 §1]

Note: 468.970 to 468.983 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 468 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

468.973 Policy. It is declared to be the policy of this state:

(1) To provide assistance to property owners who will experience extreme financial hardship resulting from payment of assessed costs for the construction of treatment works required by a federal grant agreement or an order issued by a state commission or agency.

(2) To provide assistance through an interest loan program to defer all or part of property assessments.

(3) To capitalize an assessment deferral loan program with moneys available in the Pollution Control Fund, available federal funds or available local funds. [1987 c.695 §2]

Note: See note under 468.970.

468.975 Assessment Deferral Loan Program Revolving Fund; uses; sources. (1) There is established the Assessment Deferral Loan Program Revolving Fund separate and dis-

tinct from the General Fund in the State Treasury. The moneys in the Assessment Deferral Loan Program Revolving Fund are appropriated continuously to the Department of Environmental Quality to be used for the purposes described in ORS 468.977.

(2) The Assessment Deferral Loan Program Revolving Fund may be capitalized from any one or a combination of the following sources of funds in an amount sufficient to fund assessment deferral loan programs provided for in ORS 468.977:

(a) From the Water Pollution Control Revolving Fund.

(b) From capitalization grants or loans from the Pollution Control Fund.

(3) In addition to those funds used to capitalize the Assessment Deferral Loan Program Revolving Fund, the fund shall consist of:

(a) Any other revenues derived from gifts, grants or bequests pledged to the state for the purpose of providing financial assistance to water pollution control projects;

(b) All repayments of money borrowed from the fund;

(c) All interest payments made by borrowers from the fund;

(d) Any other fee or charge levied in conjunction with administration of the fund; and

(e) Any available local funds.

(4) The State Treasurer may invest and reinvest moneys in the Assessment Deferral Loan Program Revolving Fund in the manner provided by law. All earnings from such investment and reinvestment shall be credited to the Assessment Deferral Loan Program Revolving Fund. [1987 c.695 §§3, 11]

Note: See note under 468.970.

468.977 Conditions for program; administrative expenses; priority; report. (1) The Department of Environmental Quality shall use the moneys in the Assessment Deferral Loan Program Revolving Fund to provide funds for assessment deferral loan programs administered by public agencies that meet all of the following conditions:

(a) The program demonstrates that assessments or charges in lieu of assessments levied against benefited properties for construction of treatment works required by a federal grant agreement or by an order issued by a state commission or agency will subject property owners to extreme financial hardship.

(b) The governing body has adopted a program and the department has approved the program.

(c) The treatment works meets the requirements of section 2, Article XI-H of the Oregon Constitution concerning eligibility of pollution control bond funds.

(2) The department also may use the moneys in the Assessment Deferral Loan Program Revolving Fund to pay the expenses of the department in administering the Assessment Deferral Loan Program Revolving Fund and to repay capitalization loans.

(3) In administering the Assessment Deferral Loan Program Revolving Fund, the department shall:

(a) Allocate funds to public agencies for assessment deferral loan programs in accordance with a priority list adopted by the Environmental Quality Commission.

(b) Use accounting, audit and fiscal procedures that conform to generally accepted government accounting standards.

(c) Prepare any reports required by the Federal Government as a condition to the award of federal capitalization grants.

(4) The Department of Environmental Quality shall submit an informational report to the Joint Committee on Ways and Means or, if during the interim between sessions of the Legislative Assembly, to the Emergency Board before awarding the first loan from the Assessment Deferral Loan Program Revolving Fund. The report shall describe the assessment deferral loan program and set forth in detail the operating procedures of the program. [1987 c.695 §§4, 5, 8]

Note: See note under 468.970.

468.980 Application for loan; terms and conditions. Any public agency desiring funding of its assessment deferral loan program from the Assessment Deferral Loan Program Revolving Fund may borrow from the Assessment Deferral Loan Program Revolving Fund in accordance with the procedures contained in ORS 468.220 and 468.970 to 468.983. The public agency shall submit an application to the department on a form provided by the department. After final approval of the application, the department shall offer the public agency funds from the Assessment Deferral Loan Program Revolving Fund through a loan agreement with terms and conditions that:

(1) Require the public agency to repay the loan with interest according to a repayment schedule corresponding to provisions governing repayment of deferred assessments by property owners as defined in the public agency's adopted assessment deferral loan program;

(2) Require the public agency to secure the loan with an assessment deferral loan program financing lien as described in ORS 468.983; and

(3) Limit the funds of the public agency that are obligated to repay the loan to proceeds from repayment of deferred assessments by property owners participating in the assessment deferral loan program adopted by the public agency. [1987 c.695 §6]

Note: See note under 468.970.

468.983 Lien against assessed property; docket; enforcement. (1) Any public agency that pays all or part of a property owner's assessment pursuant to the public agency's adopted assessment deferral loan program shall have a lien against the assessed property for the amount of the public agency's payment and interest thereon as specified in the public agency's assessment deferral loan program.

(2) The public agency's auditor, clerk or other officer shall maintain a docket describing all payments of assessments made by the public agency pursuant to its adopted assessment deferral loan program. The liens created by such payments shall attach to each property for which payment is made at the time the payment is entered in this docket. The liens recorded on this docket shall have the same priority as a lien on the bond lien docket maintained pursuant to ORS 223.230. A lien shall be discharged upon repayment to the public agency of all outstanding principal and interest in accordance with the requirements of the public agency's adopted assessment deferral loan program.

(3) The lien may be enforced by the public agency as provided by ORS 223.505 to 223.650. The lien shall be delinquent if not paid according to the requirements of the public agency's adopted assessment deferral loan program. [1987 c.695 §7]

Note: See note under 468.970.

PENALTIES

468.990 Penalties. (1) Wilful or negligent violation of ORS 468.720 or 468.740 is a misdemeanor and a person convicted thereof shall be punishable by a fine of not more than $25,000 or by imprisonment in the county jail for not more than one year, or by both. Each day of violation constitutes a separate offense.

(2) Violation of ORS 468.775 is a Class A misdemeanor. Each day of violation constitutes a separate offense.

(3) Violation of ORS 468.760 (1) or (2) is a Class A misdemeanor.

(4) Violation of ORS 454.425 or 468.742 is a Class A misdemeanor.

(5) Violation of ORS 468.770 is a Class A misdemeanor. [1973 c.835 §28; subsection (5) formerly part of 448.990, enacted as 1973 c.835 §177a]

468.992 Penalties for pollution offenses. (1) Wilful or negligent violation of any rule, standard or order of the commission relating to water pollution is a misdemeanor and a person convicted thereof shall be punishable by a fine of not more than $25,000 or by imprisonment in the county jail for not more than one year, or by both. Each day of violation constitutes a separate offense.

(2) Refusal to produce books, papers or information subpenaed by the commission or the regional air quality control authority or any report required by law or by the department or a regional authority 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 is a Class A misdemeanor.

(3) Violation of the terms of any permit issued pursuant to ORS 468.065 is a Class A misdemeanor. Each day of violation constitutes a separate offense. [1973 c.835 §26]

468.995 Penalties for air pollution offenses. (1) Violation of any rule or standard adopted or any order issued by a regional authority relating to air pollution is a Class A misdemeanor.

(2) Unless otherwise provided, each day of violation of any rule, standard or order relating to air pollution constitutes a separate offense.

(3) Violation of ORS 468.475 or of any rule adopted pursuant to ORS 468.460 is a Class A misdemeanor. Each day of violation constitutes a separate offense.

(4) Violation of the provisions of ORS 468.605 is a Class A misdemeanor. [1973 c.835 §27; subsection (6) enacted as 1975 c.366 §3; 1983 c.338 §938]

468.997 Joinder of certain offenses. Where any provision 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 provides that each day of violation of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 or a section of this chapter constitutes a separate offense, violations of that section that occur within the same court jurisdiction may be joined in one indictment, or complaint, or information, in several counts. [Formerly 449.992]

TREATMENT WORKS

454.010 Definitions for ORS 454.010 to 454.040. As used in ORS 454.010 to 454.040, unless the context requires otherwise:

(1) "Construction" means any one or more of the following: Preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items.

(2) "Industrial user" means a recipient of treatment works services for 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.

(3) "Municipality" means any county, city, special service district or other governmental entity having authority to dispose of or treat or collect sewage, industrial wastes or other wastes, or any combination of two or more of the foregoing acting jointly.

(4) "Replacement" means those expenditures for obtaining and installing equipment, accessories, or appurtenances during the useful life of the treatment works necessary to maintain the capacity and performance for which such works are designed and constructed.

(5)(a) "Treatment works" means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes, of a liquid nature, necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of residues resulting from such treatment.

(b) In addition to the definition contained in paragraph (a) of this subsection, "treatment works" means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems. [1973 c.101 §2]

454.020 Compliance with state and federal standards; enforcement. The Environmental Quality Commission may require each user of the treatment works of a municipality to comply with the toxic and pretreatment effluent standards and inspection, monitoring and entry requirements of the Federal Water Pollution Control Act, as enacted by Congress, October 18, 1972, and acts amendatory thereof or supplementary thereto, and federal regulations and guidelines issued pursuant thereto. The commission may institute actions or proceedings for legal or equitable remedies to enforce such compliance. [1973 c.101 §5; 1979 c.284 §146]

454.030 Rates and charges to meet costs of treatment works; use of funds; enforcement. (1) A municipality is authorized to adopt a system of charges and rates to assure that each recipient of treatment works services within the municipality's jurisdiction or service area will pay its proportionate share of the costs of operation, maintenance and replacement of any treatment works facilities or services provided by the municipality.

(2) A municipality is authorized to require industrial users of its treatment works to pay to the municipality that portion of the cost of construction of the treatment works which is allocable to the treatment of such industrial user's wastes. The Department of Environmental Quality is authorized to determine whether the payment required of the industrial user for the portion of the cost of the construction of the treatment works is properly allocable to the treatment of the industrial user's wastes.

(3) A municipality is authorized to retain the amounts of the revenues derived from the payment of costs by industrial users of its treatment works services and expend such revenues, together with interest thereon, for:

(a) Repayment to applicable agencies of government of any grants or loans made to the municipality for construction of the treatment works; and

(b) Future expansion and reconstruction of the treatment works; and

(c) Other municipal purposes.

(4) A municipality shall keep records, financial statements and books regarding its rates and charges and amounts collected on account of its treatment works and how such revenues are allocated. The Department of Environmental Qual-

ity may inspect such records, financial statements and books, audit them, or cause them to be audited, at such intervals as deemed necessary.

(5) In the event a municipality fails, neglects or refuses when required by the Environmental Quality Commission to adopt the system of charges and rates authorized by this section, or fails, neglects or refuses to comply with ORS 454.010 to 454.060, the commission may adopt a system of charges and rates as provided for in subsection (1) of this section and collect, administer and apply such revenues for the purposes of subsection (3) of this section.

(6) In lieu of proceeding in the manner set forth in subsection (5) of this section, the commission may institute actions or proceedings for legal or equitable remedies to enforce compliance with, or restrain violations of, ORS 454.010 to 454.060. [1973 c.101 §3; 1979 c.284 §147]

454.040 Determination of costs payable by users. In determining the amount of treatment works costs to be paid by recipients of treatment works services, the municipality or, if applicable, the Environmental Quality Commission shall consider the strength, volume, types and delivery flow rate characteristics of the waste; the nature, location and type of treatment works; the receiving waters; and such other factors as deemed necessary. [1973 c.101 §4]

454.050 Rules. The Environmental Quality Commission may adopt, modify or repeal rules, pursuant to ORS 183.310 to 183.550, for the administration and implementation of ORS 454.010 to 454.060. [1973 c.101 §6]

454.060 Powers in addition to other municipal or commission powers. The powers and authority granted to a municipality or the Environmental Quality Commission by ORS 454.010 to 454.050 are in addition to, and not in lieu of, or derogation of any other powers and authority vested in a municipality or the commission pursuant to law. [1973 c.101 §7]

FINANCING OF DISPOSAL SYSTEMS

454.105 Definitions for ORS 454.105 to 454.175. As used in ORS 454.105 to 454.175, unless the context requires otherwise:

(1) "Disposal system" means that term as defined in ORS 468.700.

(2) "Municipality" means a city, county, county service district, sanitary authority or sanitary district. [Formerly 449.405]

454.115 Authority over disposal systems. (1) In order to facilitate the abatement, elimination or control of the pollution of waters and streams, any municipality may:

(a) Construct, reconstruct, improve, extend, repair, equip or acquire disposal systems, within or without the municipality.

(b) Accept grants or loans or other aid from the United States or any other source.

(c) Enter into all necessary agreements.

(d) Issue revenue bonds of the municipality without limitation as to amount.

(2) The powers conferred by ORS 454.105 to 454.175 are in addition to and supplemental to the powers conferred by any other law and not in substitution for any right, powers or privileges vested in a municipality. [Formerly 449.410]

454.125 Bond election. Before any bonds may be issued under ORS 454.115, their issuance must first be approved by a majority of the electors voting on the proposition at either a general election or at a special election, to be called, held and conducted in the same manner as special elections on the proposition of issuing general obligation bonds. [Formerly 449.415]

454.135 Bonds issued to finance disposal system. (1) The bonds issued under ORS 454.115 shall be payable from that portion of the earnings of the disposal system of the municipality which is pledged to their payment, and they shall have a lien of such priority on the earnings as is specified in the proceedings providing for their issuance.

(2) The governing body may provide that the bonds, or such ones thereof as may be specified, shall, to the extent and in the manner prescribed, be subordinated and be junior in standing, with respect to their payment of principal, interest and security, to such other bonds of the municipality as are designated.

(3) The bonds shall bear such date, may be issued in such amounts, may be in such denominations, may mature in such amounts and at such time, shall be payable at such place, may be redeemable, either with or without premium, or nonredeemable, may carry such registration privileges, and may be executed by such officers and in such manner as is prescribed by the governing body.

(4) In case any of the officers whose signatures appear on the bonds or coupons cease to be officers before delivery of the bonds, the signatures, whether manual or facsimile shall, nevertheless, be valid and sufficient for all purposes, the same as if such officers had remained in office until delivery.

(5) The bonds so issued shall bear interest at a rate to be fixed by the governing body payable at times to be fixed by the governing body.

(6) The bonds shall be sold at public sale. However, they may be sold at private sale to the United States or to the State of Oregon or any of their agencies or instrumentalities. [Formerly 449.420; 1981 c.94 §41]

454.145 Bond content. Bonds issued under ORS 454.115 or the proceedings of the governing body authorizing their issuance may contain such covenants as the governing body considers advisable concerning:

(1) Rates or fees to be charged for services rendered by the disposal system, the revenue of which is pledged to the payment of such bonds.

(2) Deposit and use of the revenue of such disposal system.

(3) Issuance of additional bonds payable from the revenue of such disposal system.

(4) Rights of the bondholders in case of default in the payment of the principal of or interest on the bonds, including the appointment of a receiver to operate such disposal system. [Formerly 449.425]

454.155 Refunding bonds. (1) The governing body of every municipality by ordinance or resolution without prior approval of the electors may issue and exchange or sell refunding revenue bonds to refund, pay or discharge all or any part of its outstanding revenue bonds, including interest thereon, if any, in arrears or about to become due.

(2) All other relevant provisions in ORS 454.105 to 454.175 pertaining to revenue bonds shall be applicable to the refunding revenue bonds, including their terms and security, the rates and other aspects of the bonds. [Formerly 449.430]

454.165 Joint agreements for construction and financing of disposal systems. (1) Any two, or more, municipalities, counties or other political subdivisions, notwithstanding any limitation or provision of municipal charter to the contrary, may, through their respective governing bodies, enter into and perform such contracts and agreements as they consider proper for or concerning the planning, construction, lease or other acquisition and the financing of the disposal system and the maintenance and operation thereof.

(2) Municipalities, counties or other political subdivisions so contracting with each other may also provide in any contract or agreement for a board, commission or h other body as their governing bodies consi- roper for the supervision and general mar- ment of the disposal system and for the op- tion thereof, and may prescribe its powers and -uties and fix the compensation of the men -ers thereof. [Formerly 449.435]

454.175 Agreements with industrial establishment. When determined by its governing body to be in the public interest and necessary for the protection of the public health, any municipality may enter into and perform contracts, whether long-term or short-term, with any industrial establishment for the provision and operation by the municipality of the disposal system to abate or reduce the pollution of waters caused by discharges of industrial wastes by the industrial establishment and the payment periodically by the industrial establishment to the municipality of amounts at least sufficient, in the determination of such governing body, to compensate the municipality for the cost of providing, including payment of principal and interest charges, and of operating and maintaining the disposal system serving such industrial establishment. [Formerly 449.440]

DISPOSAL OF SEWAGE

454.205 "Municipality" defined. As used in ORS 454.205 to 454.255, "municipality" includes an incorporated city, a metropolitan service district, a sanitary district, a sanitary authority, a county service district, or any other special district authorized to treat and dispose of sewage. [1973 c.213 §2]

454.215 Authority over disposal systems. (1) Any municipality may own, acquire, construct, equip, operate and maintain, either within or without its statutory or corporate limits, in whole or in part, disposal systems with all appurtenances necessary, useful or convenient for the collection, treatment and disposal of sewage. The municipality may acquire by gift, grant, purchase or condemnation necessary lands and rights of way therefor, either within or without its statutory or corporate limits. For the purpose of acquiring property for such uses, the municipality may invoke and shall have the rights, powers and privileges granted to public corporations under the provisions of existing or future laws pertaining to this subject.

(2) The authority given by ORS 454.205 to 454.255 shall be in addition to, and not in derogation of any power existing in the municipality under any constitutional, statutory or charter provisions now or hereafter existing. [1973 c.213 §3]

454.225 Rates and charges; collection. The governing body of the municipality may establish just and equitable rates or charges to be paid for the use of the disposal system by each person, firm or corporation whose premises are served thereby, or upon subsequent service thereto. If the service charges so established are not paid when due, the amounts thereof, together with such penalties, interests and costs as may be provided by the governing body of the municipality may be recovered in an action at law, or may be certified and presented after July 15 and on or before the following July 15 to the tax assessor of the county in which the municipality is situated and be by the assessor assessed against the premises serviced on the next assessment and tax roll prepared after July 15. Once the service charges are certified and presented to the assessor, the payment for the service charges must be made to the tax collector pursuant to ORS 311.370. Such payment shall be made by the person responsible for the delinquent service charge or by the municipality who has received payment for the delinquent service charge. These charges shall thereupon be collected and paid over in the same manner as other taxes are certified, assessed, collected and paid over. [1973 c.213 §4; 1979 c.350 §19]

454.235 Election; bonds; when election required; compelling elections; when bonds can be ordered sold. (1) The governing body of the municipality, by proposed charter amendment or ordinance, may refer the question of acquiring and constructing a disposal or water system, as defined in ORS 448.115, to a vote of its electors, and after approval thereof by a majority of such electors, may authorize the issuance of and cause to be issued bonds of the municipality for such purposes. The bonds may be general obligation, limited obligation or self-liquidating in character in a sum not more than the amount authorized at such election and shall be subject to ORS 454.205 to 454.255. The bonds may provide for payment of principal and interest thereon from service charges to be imposed by the governing body for services to be extended through employment and use of the disposal or water system. If service charges are imposed to be paid as provided in ORS 454.225, such portion thereof as may be deemed sufficient shall be set aside as a sinking fund for payment of interest on the bond and the principal thereof at maturity.

(2)(a) When the Environmental Quality Commission or the Health Division enters an order pursuant to ORS 183.310 to 183.550 that requires the acquisition or construction of a disposal system or a water system in a municipality, respectively, the governing body of the municipality shall refer to its electors the question of a bond issue in an amount sufficient to finance the necessary acquisition or construction of such disposal or water system. The election shall be held within one year of the date the order of the commission or division is entered.

(b) If, within eight months after the order of the commission or division, the governing body of the municipality has not called an election in compliance with paragraph (a) of this subsection, the commission or division, whichever is appropriate, may apply to the circuit court of the county in which the municipality is located, or to the Circuit Court of Marion County for an order compelling the holding of an election.

(c) If the electors do not approve the disposal system bond issue, submitted pursuant to paragraph (a) or (b) of this subsection, the commission may apply to the circuit court of the county in which the municipality is located or to the Circuit Court of Marion County for an order directing that self-liquidating bonds of the municipality be issued and sold pursuant to ORS 454.205 to 454.255, and directing that the proceeds be applied to the acquisition or construction of a disposal system required to comply with the final order of the commission. If the court finds that the disposal system required by the final order of the commission is necessary under the rules or standards of the commission, it shall issue an order directing that such bonds be issued and sold without elector approval in such an amount as the court finds necessary to acquire or construct such disposal system, and that the proceeds be applied for such purposes.

(d) Any court proceeding authorized by paragraphs (b) and (c) of this subsection shall be advanced on the court docket for immediate hearing. [1973 c.213 §5; 1981 c.749 §22]

454.245 Serial bonds; term and content; interest; amount. (1) The governing body of the municipality may determine the maturities and tenor of the bonds issued under ORS 454.235. However, the bonds shall be serial in character in accordance with present or future provisions of law or the charter. They shall be payable in not to exceed 40 years from the date of issuance thereof, and shall be sold at a price to net the municipality not less than the par value thereof with accrued interest. They shall bear interest at not to exceed six percent per annum payable semiannually.

(2) The amount of any bonds issued under ORS 454.205 to 454.255 shall not be within any limitation of indebtedness fixed by law or charter, but shall be in addition thereto. [1973 c.213 §§6, 7]

454.255 Plans and cost estimates; examination by electors. Before calling any election under ORS 454.235, the governing body of the municipality shall cause to be prepared plans, specifications and estimates of costs of any proposed disposal or water system, as defined in ORS 448.115, to be voted upon, which may be examined by any elector of the municipality. [1973 c.213 §8; 1981 c.749 §23]

CONSTRUCTION OF SEWAGE TREATMENT WORKS; PROVISION OF SERVICES

454.275 Definitions for ORS 454.275 to 454.380. As used in ORS 454.275 to 454.380:

(1) "Affected area" means an area subject to an order of the commission issued under ORS 454.305.

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

(3) "Governing body" means a board of commissioners, county court or other managing board of a municipality.

(4) "Municipality" means a city, county, county service district, sanitary district, metropolitan service district or other special district authorized to treat or dispose of sewage in any county with a population exceeding 400,000 according to the latest federal decennial census.

(5) "Subsurface sewage disposal system" has the meaning given that term in ORS 454.605.

(6) "Threat to drinking water" means the existence in any area of any three of the following conditions:

(a) More than 50 percent of the affected area consists of rapidly draining soils;

(b) The ground water underlying the affected area is used or can be used for drinking water;

(c) More than 50 percent of the sewage in the affected area is discharged into cesspools, septic tanks or seepage pits and the sewage contains biological, chemical, physical or radiological agents that can make water unfit for human consumption; or

(d) Analysis of samples of ground water from wells producing water that may be used for human consumption in the affected area contains levels of one or more biological, chemical, physical or radiological contaminants which, if allowed to increase at historical rates, would produce a risk to human health as determined by the local health officer. Such contaminant levels must be in excess of 50 percent of the maximum allowable limits set in accordance with the Federal Safe Drinking Water Act.

(7) "Treatment works" has the meaning given that term in ORS 454.010. [1981 c.358 §1; 1983 c.235 §7; 1987 c.627 §8]

454.280 Construction of treatment works by municipality; financing. Notwithstanding the provisions of ORS chapters 450, 451 and 454, or any city or county charter, treatment works may be constructed by a municipality and financed by the sale of general obligation bonds, revenue bonds or assessments against the benefited property without a vote in the affected area or municipality or without being subject to a remonstration procedure, when the findings and order are filed in accordance with ORS 454.310. The provisions of ORS 223.205 to 223.295, 223.770 and 287.502 to 287.515 shall apply in so far as practicable to any assessment established as a result of proceedings under ORS 454.275 to 454.380. [1981 c.358 §2]

454.285 Resolution or ordinance. (1) The governing body may adopt by resolution or ordinance a proposal to construct sewage treatment works and to finance the construction by revenue bonds, general obligation bonds or by assessment against the benefited property.

(2) The resolution or ordinance shall:

(a) Describe the boundaries of the affected area which must be located within a single drainage basin as identified in regional treatment works plans; and

(b) Contain findings that there is a threat to drinking water.

(3) The proposal must be approved by a majority vote of the governing body and does not require the approval of the residents or landowners in the affected area or municipality.

(4) The governing body shall forward a certified copy of the resolution or ordinance to the commission. Preliminary plans and specifications for the proposed treatment works shall be submitted to the commission with the resolution or ordinance. [1981 c.358 §3; 1983 c.235 §8]

454.290 Study; preliminary plans. (1) The governing body shall order a study and the preparation of preliminary plans and specifications for the treatment works.

(2) The study shall include:

(a) Engineering plans demonstrating the feasibility of the treatment works and conformance of the plan with regional treatment works plans.

(b) Possible methods for financing the treatment works.

(c) The effect of the treatment works on property in the affected area. [1981 c.358 §4]

454.295 Commission review; hearing; notice. (1) After receiving a certified copy of a resolution or ordinance adopted under ORS 454.285, the commission shall review and investigate conditions in the affected area. If substantial evidence reveals the existence of a threat to drinking water, the commission shall set a time and place for a hearing on the resolution or ordinance. The hearing shall be held within or near the affected area. The hearing shall be held not less than 50 days after the commission completes its investigation.

(2) The commission shall give notice of the time and place of the hearing on the resolution or ordinance by publishing the notice of adoption of the resolution or ordinance in a newspaper of general circulation within the affected area once each week for two successive weeks beginning not less than four weeks before the date of the hearing and by such other means as the commission deems appropriate in order to give actual notice of the hearing. [1981 c.358 §5]

454.300 Conduct of hearing; notice of issuance of findings; petition for argument. (1) At the hearing on the resolution or ordinance, any interested person shall have a reasonable opportunity to be heard or to present written testimony. The hearing shall be for the purpose of determining whether a threat to drinking water exists in the affected area, whether the conditions could be eliminated or alleviated by treatment works and whether the proposed treatment works are the most economical method to alleviate the conditions. The hearing may be conducted by the commission or by a hearings officer designated by the commission. After the hearing the commission shall publish a notice of issuance of its findings and recommendations in the newspaper used for the notice of hearing under ORS 454.295 (2), advising of the opportunity for argument under subsection (2) of this section.

(2) Within 15 days after the publication of notice of issuance of findings any person or municipality that will be affected by the findings may petition the commission to present written or oral arguments on the proposal. If a petition is received, the commission shall set a time and place for argument. [1981 c.358 §6]

454.305 Effect of findings; exclusion of areas; filing of findings. (1) If the commission finds a threat to drinking water does exist but treatment works would not alleviate the conditions, the commission shall terminate the proceedings.

(2) If the commission finds a threat to drinking water exists within the territory and the conditions could be removed or alleviated by the construction of treatment works, the commission shall order the governing body to proceed with construction of the treatment works.

(3) If the commission finds that a threat to drinking water exists in only part of the affected area or that treatment works would remove or alleviate the conditions in only part of the affected area, the commission may reduce the affected area to the size in which the threat to drinking water could be removed or alleviated. The findings shall describe the boundaries of the affected area as reduced by the commission.

(4) In determining whether to exclude any area, the commission must consider whether or not exclusion would unduly interfere with the removal or alleviation of the threat to drinking water and whether the exclusion would result in an illogical boundary for the provision of services.

(5) If the commission determines that a threat to drinking water exists but that the proposed treatment works are not the most economical method of removing or alleviating the conditions, the commission may issue an order terminating the proceedings under ORS 454.275 to 454.380, or referring the resolution or ordinance to the municipality to prepare alternative plans, specifications and financing methods.

(6) At the request of the commission the municipality or a boundary commission shall aid in determining the findings made under subsections (3) and (4) of this section.

(7) The commission shall file its findings and order with the governing body of the municipality. [1981 c.358 §7]

454.310 Construction authorized upon commission approval; final plans. (1) When a certified copy of the findings and order approving the proposal is filed with the governing body, the governing body shall order construction of the treatment works and proceed with the financing plan as specified in the order.

(2) Within 12 months after receiving the commission's order the municipality shall prepare final plans and specifications for the treatment works and proceed in accordance with the time schedule to construct the facility. [1981 c.358 §8]

454.315 [1973 c.424 §2; repealed by 1975 c.167 §13]

454.317 Resolution or ordinance authorizing levy and collection of seepage charge. (1) When a certified copy of the findings and order approving the proposal is filed

with the governing body as provided in ORS 454.305, the governing body may adopt a resolution or ordinance authorizing the levy and collection of a seepage charge upon all real properties served by onsite subsurface sewage disposal systems, as defined in ORS 454.605, within the boundaries of the affected area.

(2) A resolution or ordinance adopted under this section shall authorize the levy and collection of a seepage charge only in an affected area located entirely within a single drainage basin as identified in regional treatment works plans.

(3) A resolution or ordinance adopted under this section shall:

(a) Describe the boundaries of the affected area; and

(b) Contain an estimate of the commencement and completion dates for the proposed treatment works and a proposed schedule for the extension of sewer service into the affected area. [1983 c.235 §2]

454.320 Hearing on resolution or ordinance; notice of levy. (1) The governing body shall give notice of the time and place of the hearing on the resolution or ordinance by publishing the notice of the intent to adopt the resolution or ordinance in a newspaper of general circulation within the affected area once each week for four successive weeks and by such other means as the governing body deems appropriate in order to give actual notice of the hearing. The hearing shall be held within or near the affected area described in the resolution or ordinance. At the hearing on the resolution or ordinance, any interested person shall have a reasonable opportunity to be heard or to present written testimony. The hearing shall be for the purpose of determining whether a seepage charge should be levied and collected.

(2) After the hearing held under this section, the governing body shall publish a notice of the levy of the seepage charge and thereafter proceed to levy and collect the seepage charge in such amount as in the discretion of the governing body will provide revenues for the payment of the principal and interest, in whole or in part, due on general obligation bonds or on revenue bonds issued by the governing body to construct the treatment works or to provide capital funds for the construction of treatment works. [1983 c.235 §3]

454.325 [1973 c.424 §3; repealed by 1975 c.167 §13]

454.330 County to collect seepage charge for municipality. (1) The county in which a municipality is levying a seepage charge under ORS 454.317 to 454.350 shall collect the seepage charge for the municipality.

(2) The county shall establish a separate account for each ordinance or resolution adopted by a municipality and imposing a seepage charge within the county. The seepage charges collected under an ordinance or resolution shall be credited only to the account established for that ordinance or resolution.

(3) Moneys in an account established under this section shall be disbursed only to the municipality for which the account was established.

(4) In order to receive funds under this section, a municipality must notify the county that the commission has ordered the governing body to proceed with construction of treatment works as provided in ORS 454.305 (2). Upon such notification, the county shall release funds from the appropriate account to the municipality. [1983 c.235 §4]

454.335 [1973 c.424 §4; repealed by 1975 c.167 §13]

454.340 Use of seepage charge; credit for systems development charge; seepage charge to cease if user fee imposed. (1) All seepage charges levied and collected by the governing body shall be used for the construction of treatment works.

(2) Systems development charges for the installation or replacement of cesspools or septic tanks shall not be imposed by a municipality in any area in which seepage charges are imposed and collected under ORS 454.317 to 454.350. If an owner of real property against which seepage charges are imposed has already paid a systems development charge for the installation or replacement of cesspools or septic tanks for that real property, the owner shall be allowed a credit against the seepage charge otherwise payable in an amount equal to the systems development charge.

(3) When a user fee for the use of treatment works is imposed upon real property, all seepage charges levied against that real property shall cease.

(4) The governing body shall, by ordinance, allocate all of the seepage charges collected under ORS 454.317 to 454.350 for the purpose of allowing owners of real properties against which the seepage charges are imposed a credit against the future connection charges or systems development charges otherwise due when those real properties are connected to treatment works.

(5) If the municipality levying the seepage charges is not the municipality imposing the connection charges or systems development charges imposed at the time of connection to the treatment works, then the municipality levying

the seepage charges shall transfer those seepage charges it has collected to the municipality imposing the connection charges or systems development charges imposed at the time of connection to the treatment works. [1983 c.235 §6; 1985 c.680 §1]

454.345 [1973 c.424 §5; repealed by 1975 c.167 §13]

454.350 Effect of ORS 454.317 to 454.350 on contracts between municipalities. Nothing in ORS 454.317 to 454.350 prohibits contracts between municipalities under which a municipality may provide treatment facilities or services to another municipality. [1983 c.235 §5]

454.355 [1973 c.424 §6; repealed by 1975 c.167 §13]

454.360 Areawide 208 Plan as master plan for provision of sewage services. The Areawide 208 Plan, adopted pursuant to the Federal Water Pollution Control Act of 1972, P.L. 92-500, as amended, and any sewer implementation plan approved by the commission under ORS 454.275 to 454.380 shall be the governing master plan for the provision of sewage collection, treatment and disposal services by municipalities in an affected area. Any substantial amendment to such plan shall be submitted to and approved by the commission before taking effect. [1987 c.627 §2]

454.365 Safety net program to provide financial relief. (1) Any municipality providing sewage collection, treatment and disposal services within an affected area shall approve and adopt a safety net program designed to provide financial relief to eligible property owners who would experience extreme financial hardship if required to pay costs associated with the construction of and connection to treatment works.

(2) A safety net program adopted under subsection (1) of this section:

(a) May include funds provided pursuant to ORS 468.220 and 468.970 to 468.983.

(b) May include, at the option of a municipality, funds contributed by the municipality. However, a municipality shall not be required to contribute such additional funds. [1987 c.627 §3]

454.370 Citizens sewer advisory committee; membership; duties. (1) Each municipality providing sewage collection, treatment and disposal services within an affected area shall, after consultation with elected officials of the affected area, establish a citizens sewer advisory committee composed of persons directly affected by the order issued under ORS 454.305. The committee shall advise the commission and the governing body of the municipality on matters relating to the implementation of the commission's order.

(2) The members of each citizens sewer advisory committee shall represent a cross section of businesses, homeowners and renters in the affected area and others affected by the order. At least two-thirds of the members shall reside or do business within the affected area. At least one-third of the members shall be persons eligible for financial relief under the safety net plan provided for in ORS 454.365.

(3) The citizens sewer advisory committee shall provide the commission and the governing body of the municipality with a copy of its minutes and recommendations. The municipality shall respond to any recommendation made by the advisory committee.

(4) Members of the citizens sewer advisory committees shall serve without compensation.

(5) The citizens sewer advisory committees within the affected area may meet jointly as necessary to carry out their responsibilities. [1987 c.627 §4]

454.375 Filing documentation of sewer charges; prohibited charges. (1) Before any property owner is required to pay for construction of or connection to treatment works constructed pursuant to ORS 454.275 to 454.380, the local governing body shall file with the commission documentation that connection charges and user charges levied for sewer service are based upon the cost of providing sewer service, according to reasonable cost-of-service sewer utility ratemaking principles. The existence of a city boundary shall not be used as a basis for imposing a sewer user rate or connection fee differential unless there are documented cost causative factors to justify the differential.

(2) Any assessment imposed by a local improvement district for the construction of treatment works pursuant to an order of the commission under ORS 454.305 shall not include costs incurred before September 27, 1987, that are associated with responding to litigation to amend or reverse the order or with development of the plan for constructing treatment works prepared pursuant to ORS 454.290. [1987 c.627 §§5, 6]

454.380 Limitation on spending for nonconstruction items; exception. (1) Not more than 20 percent of an assessment imposed by a municipality through a local improvement district for the construction of treatment works in an affected area pursuant to an order of the commission under ORS 454.305 shall be used to pay for nonconstruction items.

OREGON ADMINISTRATIVE RULES

Chapter 340, Division 81 - Department of Environmental Quality
(Includes temporary rule amendments adopted by the EQC on Sept. 7, 1989)

Assessment Deferral Loan Program Revolving Fund

340-81-110 Purpose. The Department will establish and administer an Assessment Deferral Loan Program Revolving Fund for the purpose of providing assistance to property owners who will experience extreme financial hardship from payment of sewer assessments. Assessment deferrals will be made available to qualifying property owners from approved assessment deferral loan program administered by public agencies.

(1) Loans from the Assessment Deferral Loan Program Revolving Fund may be made to provide funds for assessment deferral loan programs administered by public agencies that meet all of the following conditions:

(a) The public agency is required by federal grant agreement or by an order issued by the Commission or the Oregon Health Division to construct a sewage collection system, and sewer assessments or charges in lieu of assessments levied against some benefitted properties will subject property owners to extreme financial hardship;

(b) The public agency has adopted an assessment deferral loan program and the Commission has approved the program; and

(c) The sewage collection system meets the requirement of section 2 Article XI-H of the Oregon Constitution regarding eligibility of pollution control bond funds.

(2) Any public agency requesting funding for its assessment deferral loan program from the Assessment deferral Loan Program Revolving Fund shall submit a proposed program and application to the Department on a form provided by the Department. Applications for loans and the proposed program shall be submitted by the following dates:

(a) By no later than February 1, 1988 for loans to be issued in the 1987-89 biennium;

(b) The subsequent bienniums, by no later than February 1 of odd numbered years preceding the biennium.

(3) Any public agency administering funds from the Assessment Deferral Loan Program Revolving Fund shall have an assessment deferral loan program approved by the Department.

(a) The proposed program submitted to the Department shall contain the following:

(A) The number of sewer connections to be made as required by grant agreement or State order;

(B) An analysis of the income level and cost of sewer assessments for affected property owners;

(C) A description of how the public agency intends to allocate loan funds among potentially eligible property owners, including the following:

(i) Eligibility criteria;

(ii) Basis of choosing the eligibility criteria;

(iii) How funds will be distributed for assessment deferrals among eligible property owners.

(D) A schedule for construction of collector sewers;

(E) A description of how the public agency intends to administer the assessment deferral program, including placing liens on property, repayment procedures, and accounting and record keeping procedures;

(F) Assurance that the public was afforded adequate opportunity for comment on the proposed program, and that public comments were considered prior to adoption of the proposed program by the public agency; and

(G) A resolution that the public agency has adopted the program.

(b) The Department shall review proposed programs submitted by public agencies within 30 days of receipt. The Department shall use the following criteria in reviewing submitted programs:

(A) The degree to which the public agency and it's proposed program will meet the intent of the Assessment Deferral Loan Program revolving Fund as specified in Section (1)(a) of this rule; and

(B) Whether the required sewers will be constructed and made available to affected property owners within the biennium for which funds are being requested.

(c) The Department shall submit to the Commission recommendations for approval or disapproval of all submitted applications and proposed assessment deferral loan programs.

(4) All public agencies meeting the requirements of OAR 340-81-110(1) shall receive an allocation of up to the amount of funds available based on the following criteria:

(a) The number of sewer connections to be made, as described in the approved program;

(b) The percentage of households within the area described in the program that are at or below 200 percent of the federal poverty level as published by the U.S. Bureau of Census.

(c) The allocation of available funds for qualifying public agencies shall be determined as follows:

(A) Calculate the number of connections to low income households for each public agency:

(total number of sewer connections in project area) X (% of households in project area where household income is at or below 200 percent of the federal poverty level.)

= number of connections to low income households

(B) Add the total number of connections to low income households for all qualifying public agencies;

(C) Calculate a percentage of the total sewer connections to low income households for each qualifying agency divide (A) above by (B) above);

(D) Multiply the percentage calculated in (C) above by the total funds available.

(5) Within 60 days of Commission approval of the application and allocation of loan funds, the Department shall offer the public agency funds from the Assessment Deferral Loan Program Revolving fund through a loan agreement that includes terms and conditions that:

(a) Require the public agency to secure the loan with assessment deferral loan program financing liens;

(b) Require the public agency to maintain adequate records and follow accepted accounting procedures;

(c) Contain a repayment program and schedule for the loan principal and simple annual interest. The interest rate shall be 5% [for the 1987-1989 biennium, and shall be set by the Commission , by rule-making procedures for each subsequent biennium prior to allocation of available funds];

(d) Require an annual status report from the public agency on the assessment deferral loan program; and

(e) Conform with the terms and conditions listed in OAR 340-81-046.

(f) Other conditions as deemed appropriate by the Commission.

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

DATE: October 20, 1989

TO: Environmental Quality Commission

FROM: Fred Hansen

SUBJECT: Agenda Item M
October 20, 1989 EQC Meeting

A previous memo to the Commission dated October 17, 1989 addressed recommended changes to the proposed temporary rules for the underground storage tank loan guarantee and income tax credit programs as a result of the Attorney General's review of the Department's proposed temporary rules on the Oregon income tax credit program.

On October 19, 1989 the Department met with representatives from the banking community to review the proposed temporary rules. They also expressed concern over several items in the rules that would effectively preclude most commercial lending institutions from entering into a loan for an underground storage tank construction project. We agreed to bring these items to your attention for consideration.

Several changes relate to the nonsubsidized interest rate that will be used to calculate the income tax credit; e.g. the difference between 7.5% and the nonsubsidized interest rate for a loan made under like terms and conditions.

1. Their first request is that you do not establish an upper limit for the nonsubsidized interest rate. In the proposed rules the Department had established the upper limit at 15%. The banks argue that in many cases these loans will be among the riskiest, from an ability to repay over the full term, of any in their portfolio. Consequently, they believe they must be given maximum latitude on the interest rate to be charged today that may apply for the duration of a 5 to 10 year term loan. Recognizing the Department's needs to be able to forecast expenses, they are willing to have a rule that would only provide for fixed interest rate loans where a subsidized interest rate is used. We are recommending that the interest rate cap be deleted at this time and that only fixed interest rate loans be eligible for an Oregon income tax credit.

2. Secondly they recommended deletion of the requirement for an agreement between Department and each commercial lending

institution to establish the nonsubsidized interest rate to be used to calculate the income tax credit. Their first concern is that they believe the legislature intended, when it determined that commercial lending institutions would make the credit determination, that they would use their existing business judgement on any loan. That judgement is used on a loan application by loan application basis and many times involves using experience with the local business economy to make the decisions. Secondly, they believe the language is unclear as to whether one agreement per institution is contemplated or a separate agreement is required for every loan the Department guarantees. They also believe it would be very time consuming to prepare these agreements since it would be necessary to involve both their credit and legal departments. We are recommending that the language requiring an interest rate agreement be deleted at this time.

3. A third issue is the Department's determination of an adequate reserve to cover potential defaults. In light of the fact that these loans will be riskier than most, and that the loan is being made for environmental improvement rather than contributing toward improving the business operation, they believe we should plan for the maximum default rate rather than the average. In reviewing information from the Small Business Administration it appears that the maximum yearly default rate is more like 20% rather than 10%. Therefore we are recommending that the note on Page A-9 reflect an allocation of $1,375,000 as a default reserve rather than $687,000. The revenue to cover this larger reserve is available from recently identified savings in administrative expenses over the life of the program.

4. The fourth change to the proposed temporary rules involves clarifying the collection process and the portion of collected funds that are paid to the Department by the commercial lending institution after a loan is in default. We are recommending, where a loan guarantee has been paid, that the commercial lending institution reimburse the Department an amount equal to the percentage shown on the loan guarantee certificate on any collection from the borrower rather than 80% as proposed in the rule.

The attached amendments incorporate both the changes necessary to address the Attorney General Office's concerns and the issues discussed above.

Enclosure:
1. Attachment A, Agenda M, 10-20-89, Pages 9 through 14

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institution, or

(c) when the loan guarantee provided by the Department is replaced by a loan guarantee provided by the SBA (U.S. Small Business Administration).

(3) The commercial lending institution shall notify the Department promptly when a loan guaranteed by the Department is paid in full or replaced with a S.B.A. loan guarantee.

(4) The payment of the loan guarantee is subject to monies being allocated and being available from the Underground Storage Tank Compliance and Corrective Action Fund.

Note: The funds available for payment of loan guarantees upon loan default is estimated to be $1,375,000 [$687,600], where 20% [10%] of the loans default during the life of the program. The Department expects to provide $13,752,000 in loan guarantees for approximately 245 loans, where the Department provides the guarantee throughout the life of the loan. It is expected that the SBA (U.S. Small Business Administration) will agree to provide their loan guarantee (takeout the loan) after the soil cleanup and UST construction work is complete, approximately six months after the Department issued the original loan guarantee. The Department encourages transfer of loan guarantees to the SBA or to conventional financing in order to increase the number of loan guarantees provided by the Department.

NOTICE OF DEFAULT ON A GUARANTEED LOAN

340-180-080 (1) Any commercial leading institution wishing to obtain payment from the Department under the Department's loan guarantee shall provide the following:

(a) Written notice from the commercial lending institution in the form of a demand for payment of the loan guarantee, stating:

(A) the guaranteed loan to the borrower is in default,

(B) the commercial lending institution has made a good faith effort to work with the borrower, using the institution's established procedures, to bring the loan back into good standing,

(C) demand for payment in full has been made to the borrower by the commercial lending institution, and

(D) the borrower has not paid the loan in full.

(b) The demand for payment of the loan guarantee shall include:

(A) a copy of the demand letter to the borrower from the commercial lending institution, and

(B) a statement showing the principal balance outstanding on the demand letter sent to the borrower.

(2) Subject to the availability of funds from the Underground Storage Tank Compliance and Corrective Action Fund, the Department shall, within 30 days after receipt of the default notice,

(a) pay to the commercial lending institution the lesser of:

(A) the amount guaranteed by the Department, or

(B) the principal balance outstanding on the date of the default notice, or

(b) where agreed upon by the commercial lending institution and where the borrower is unable to pay, the Department may make partial payments of the loan guarantee equal to the monthly loan payment for up to twelve monthly loan

payments. If the loan is still in default after the Department has made twelve monthly payments, the Department will pay the loan guarantee, pursuant to subsection (2)(a) of this section.

(3) If the commercial lending institution receives payment of the loan, in whole or in part, after the date of the default notice, the commercial lending institution shall promptly notify the Department in writing of such payment.

(4) Once the Department has paid the loan guarantee certificate in whole or in part, the commercial lending institution shall reimburse the Department for [eighty percent (80%) of] any collection on the unpaid loan at the guarantee percentage shown on the loan guarantee certificate. The reimbursement shall be in legal tender. The expenses of collection may be deducted from the reimbursement paid to the Department.

Note: The Department understands that collection may consist of cash, securities, notes, personal property, real property or any other form of payment accepted by the commercial lending institution. The reimbursement to the Department shall be in legal tender and represent the portion [80%] of the true cash value of any such collected asset at the guarantee percentage shown on the loan guarantee certificate.

(5) Payment to the Department by the commercial lending institution shall be made within thirty days after any collection is converted into legal tender [a negotiable financial instrument or note].

GENERAL PROVISIONS, INTEREST RATE SUBSIDY AND TAX CREDIT CERTIFICATE

340-180-090 (1) Commercial lending institutions making loans for soil remediation, UST upgrading, and replacement of UST systems containing motor fuel may qualify to receive an Oregon income [interest rate subsidy in the form of a] tax credit.

(2) The [Department may approve an] Oregon income tax credit may not [to] exceed the difference between the amount of finance charge charged during the taxable year including interest on the loan and interest on any loan fee financed at an annual rate of seven and one half percent (7.5%) and [the difference between seven and one half percent (7.5%) and] the amount of finance charge that would have been charged [annual interest rate, either fixed or variable rate, charged] by the commercial lending institution during the taxable year, including any interest on the loan and interest on any loan fee financed at an annual rate charged for [a] nonsubsidized loans made under like terms and conditions at the time the loan is made. The determination of what interest rate is charged on a nonsubsidized loan made under like terms and conditions shall be established by a written agreement executed between the Department and each lending institution intending to make use of the interest rate subsidy and tax credit program.

(3) [Such i]Income tax credits may be received [approved] where:

(a) the borrower pays [a maximum of] seven and one half percent (7.5%) interest,

[(b) funds to provide the interest rate subsidy have been allocated by the Department and are available from the Underground Storage Tank Compliance and Corrective Action Fund,]

(b[c]) the loan is not in default,

[(d) the annual interest rate charged by the commercial lending loan has a maximum interest rate not to exceed fifteen percent (15%) per annum,]

(c[e]) the loan is amortized with equal payments over the term of the loan,

(d[f]) the loan maturity date [of the loan] does not exceed 10 years from the initial closing date,

(e) the loan has a fixed annual interest rate,

[(g) the applicant has received a Category A priority ranking under OAR 340-180-020, and]

(f[h]) the borrower has received a tax credit certificate for an interest rate subsidy[.], and

(g) the loan applicant has provided the terms of the loan to the Department. The terms of the loan include but are not limited to:

(A) Amount of loan,

(B) Down Payment,

(C) Interest rate, and

(D) Loan maturity date.

(4[3]) Only one interest rate subsidy may be issued to each facility.

[(4) Interest rate subsidies shall be issued on the same priority basis as the loan guarantee certificates, in accordance with OAR 340-180-020, OAR 340-180-110 and OAR 340-180-120.]

(5) The interest rate subsidy is limited to loans for work for soil remediation at a facility where USTs contain motor fuel and work to upgrade or replace the underground storage tank systems containing an accumulation of motor fuel located at a facility where:

(a) the USTs are regulated by OAR 340-150-010 through -150, 40CFR 280, and 40CFR 281,

(b) UST system upgrading, retrofitting and replacement is performed by registered or licensed service providers in accordance with OAR 340-160-005 through -150,

(c) UST tightness testing and/or soil assessment was performed prior to application for a loan,

(d) UST tightness testing and soil assessment was performed in accordance with Department regulations, [and]

(e) each regulated underground storage tank has a valid UST permit[.], and

(f) the loan is provided by a commercial lending institution.

(6) An Oregon income tax credit [interest rate subsidy] may be paid on loans provided by a commercial lending institution that are not guaranteed by the Department where the borrower has received a tax credit certificate from the Department.

(7) The commercial lending institution shall apply for the Oregon income tax credit during their regular state income tax filing.

[(8) Payment of tax credits are subject to money being available in the Underground Storage Tank Compliance Fund.]

Note: The funds available for Oregon tax credits are estimated to total $3,874,000 over the life of the program, providing tax credits for approximately 245 loans. These 245 loans may be the same as or different from the proposed 245 loans guaranteed under OAR 340-180-070. When the Department has issued tax credit certificates that create a demand of approximately $3,874,000 on the UST Compliance and Corrective Action Fund the Department will recommend to the Environmental Quality Commission to set the maximum interest rate on

loans at 7.5%. At that point it is doubtful that any commercial lending institution will issue a 7.5% loan, thus effectively stopping the subsidized interest rate program. The Department believes that this intended action is consistent with the legislative intent to fund the Oregon income tax credit out of the UST Compliance and Corrective Action Fund.

APPLICATION FOR TAX CREDIT CERTIFICATE

340-180-100 (1) Any person wishing to obtain a Tax Credit Certificate for an interest rate subsidy on a loan for soil remediation, UST upgrading, and replacement of UST systems containing motor fuel shall submit a written application on a form provided by the Department.

(2) The underground storage tank loan interest rate subsidy application shall include all information required under Section 340-180-050(1)(a) through (i) of these rules [shall be provided with the application for the Tax Credit Certificate for an interest subsidy].

(3) Applications which are obviously incomplete, unsigned, or which do not contain the required exhibits will not be accepted by the Department for filing and will be returned to applicant.

(4) Applications which appear complete will be accepted by the Department. If the Department determines that the application is not complete, it will promptly request the needed information from the applicant. The application will not be considered complete for processing until the requested information is received. The application will be considered to be withdrawn if the applicant fails to submit the requested information within 180 days of the request.

(5) Within 30 days after filing, the Department will determine the completeness of the application.

(6) Within 30 days after the application is complete for processing, the Department will[:]

[(a) assign a priority category in accordance with OAR 340-180-020, and]

[(b)] approve or deny the issuance of a Tax Credit Certificate.

(7) If, upon review of an application, the Department determines that the application does not meet the requirements of the statutes and rules, the Department shall notify the applicant in writing of this determination. Such notification shall constitute final action by the Department on this application.

Note: Work qualifying for the Tax Credit Certificate includes:

1. Modification, replacement, and installation of any portion of the an UST system containing motor fuel including replacement of paving and structures located immediately over the UST systems.
2. Replacement of an underground storage tank system with an above ground storage tank system that meets existing state and local codes.
3. Installation of the underground portion of any required Stage I vapor recovery system or anticipated future Stage II vapor recovery system.
4. Soil remediation for soil contaminated with motor fuel including replacing excavated soil, paving and structures that are required to be removed during soil remediation.

(9) The Department shall have access to books, documents, papers and records of the applicant which are directly pertinent to qualifying for the loan guarantee for the purpose of making audit, examination, excerpts and transcripts.

TAX CREDIT CERTIFICATE

340-180-110 (1) In accordance with this part, the Department shall issue a tax credit certificate to an applicant who has filed a complete application [where the facility receives a numerical ranking of 30 points or greater when ranked in accordance with OAR 340-180-020].

(2) [At the beginning of each month the Department shall determine the portion of the f]Funds collected and deposited into the Underground Storage Tank Compliance and Corrective Action Fund may [that shall] be used to pay this Oregon income tax credit [for the expenses of approved tax credit applications during the month].

(3) [Funds set aside during any month shall be used to provide funds for t]Tax credit certificates [applications received during a month] shall be issued on a first come first serve basis.[, first providing certificates to those applications with the highest numerical ranking, then to applications with the next highest numerical ranking, and so on in numerical order, except:]

[(a) Any tax credit application not receiving a tax credit certificate during a month shall receive a tax credit certificate before any application received during the next month.]

[(b) Where applications have the same numerical ranking, t]The application with the earliest filing date shall receive a tax credit certificate first.

[(4) At the end of the month, funds not used to provide tax credit certificates shall be added to the funds the Department makes available for tax credit certificates during the following month.]

[(5) Applications that do not receive a tax credit certificate within that month shall be funded first in time and in priority order during the following month, and so on in subsequent months.]

(4[6]) The applicant may not assign any right, title, and interest in the tax credit certificate to any person other than a subsequent owner of the underground storage tank facility.

(5[7]) Tax credit certificates shall be valid for 180 days or the termination date shown on the tax credit certificate.

[LOAN INTEREST RATE SUBSIDY]

**** Section 340-180-120 is deleted in its entirety. ****

[340-180-120 (1) The Department may approve an interest rate subsidy in the form of an Oregon income tax credit equal to the difference between seven and one half percent (7.5%) and the annual interest rate, either fixed or variable rate, charged by the commercial lending institution for a nonsubsidized loan made under like terms and conditions where:]

[(a) the loan provides for soil remediation, UST upgrading, and replacement of USTs at a facility containing motor fuel,]

[(b) a tax credit certificate has been issued to the loan applicant,]

[(c) the tax credit certificate does not provide an interest rate subsidy for work other than approved work authorized in 340-180-100,]

[(d) the loan has a fixed or variable interest rate not to exceed fifteen percent (15%) and is amortized with equal payments over the term of the loan,]

[(e) the maturity date of the loan does not exceed 10 years from the initial loan closing date,]

[(f) the commercial lending institution has approved the loan, subject to receiving approval of the interest rate subsidy from the Department, and]

[(g) the loan applicant has provided the terms of the loan to the Department. The terms of the loan include but are not limited to:]

[(A) Amount of loan,]

[(B) Down Payment,]

[(C) Interest rate, and]

[(D) Loan maturity date.]

[(2) The interest rate subsidy shall terminate at the loan maturity date, including all extensions or renewals, but not later than ten years after issuance of the loan.]

[(3) The payment of the interest rate subsidy is subject to monies being allocated and being available from the Underground Storage Tank Compliance and Corrective Action Fund.]

[Note: The funds available for interest rate subsidies are estimated to total $3,874,000 over the life of the program, providing tax credits for approximately 245 loans. These 245 loans may be the same as or different from the 245 loans guaranteed under OAR 340-180-070.]

NOTICE OF COMPLIANCE FOR SOIL REMEDIATION

340-180-<u>120</u>[110] (1) A person wishing to obtain a written notice of compliance for soil remediation shall submit a written application on a form provided by the Department. The application shall include:

(a) The name and mailing address of the applicant,

(b) The signature of the applicant,

(c) The UST facility name and location,

(d) The UST permit numbers,

(e) The date of the application,

(f) The completion date of the soil remediation,

(g) Description, including a sketch showing, but not limited to, property boundaries, location of structures, location and identification of tanks including tank contents, and identification of soil assessment sites, and

(h) Findings including, but not limited to, results of laboratory tests, soil matrix calculations, and tank tightness tests.

(2) Applications which are obviously incomplete, unsigned, or which do not contain the required exhibits (clearly identified) will not be accepted by the department for filing and will be returned to the applicant for completion.

(3) Applications which appear complete will be accepted by the department for filing.

(4) Within 30 days after filing, the Department will determine if the facility meets the Departments cleanup standards and will provide a written determination of compliance.

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: October 20, 1989
Agenda Item: M
Division: Hazardous & Solid Waste
Section: Underground Storage Tanks

SUBJECT:

Underground Storage Tanks - Adoption of Temporary Rules to Implement Loan Guarantee and Interest Rate Subsidy Programs Enacted in House Bill 3080

PURPOSE:

Provide assistance in the form of guaranteed loans to property owners, tank owners, or permittees for upgrading or replacing underground storage tank facilities that contain motor fuel and interest rate subsidies to commercial lending institutions.

ACTION REQUESTED:

___ Work Session Discussion
___ General Program Background
___ Potential Strategy, Policy, or Rules
___ Agenda Item ___ for Current Meeting
___ Other: (specify)

_X_ Authorize Rulemaking Hearing
_X_ 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 legislature passed House Bill 3080 to establish a reimbursement grant, loan guarantee, and interest rate subsidy program which provides financial assistance to persons responsible for underground storage tanks which must meet Environmental Protection Agency (EPA) requirements and obtain financial responsibility coverage. The legislation required the program to become operative on September 1, 1989.

The proposed rules establish the loan guarantee and interest rate subsidy portion of the legislation by allowing the Department to provide a loan guarantee and an interest rate subsidy to commercial lending institutions who provide loans for soil remediation and upgrading or replacing underground storage tank systems containing motor fuel. The loan guarantee is limited to 64 percent of the total eligible project cost, up to a maximum of $64,000. A 7.5 percent interest rate subsidy is made possible by providing the commercial lending institutions an income tax credit for the difference in loan interest expenses on a 7.5 percent loan and a nonsubsidized loan made under like terms and conditions at the same institution but not to exceed 15 percent.

The temporary rule establishes a priority qualification process that gives preference to:

1. Financial condition of the applicant.
2. Availability of motor fuel to rural population centers.
3. Small business.
4. Facilities retailing motor fuel.

These four criteria address the stated public purpose in HB3080; to insure an adequate supply of competitively priced motor fuel throughout the state, to sustain and support economic development, to protect Oregon's growing tourism industry, and to encourage private insurance carriers to reenter or create an UST insurance market.

AUTHORITY/NEED FOR ACTION:

___ Required by Statute: _____ Attachment ___
Enactment Date: _____
_X_ Statutory Authority: ORS 466.907 - .995 Attachment _E_
Chapter 1071 Oregon Law 1989
___ Pursuant to Rule: _____ Attachment ___
___ Pursuant to Federal Law/Rule: _____ Attachment ___

___ Other: Attachment ___

_X_ Time Constraints:

Adoption of temporary rules is necessary to assure that the underground storage tank loan guarantee and interest rate subsidy programs will start soon after September 1, 1989, as required by statute.

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:

The federal underground storage tank regulations require owners and operators of USTs to demonstrate financial responsibility of at least $1,000,000 no later than October 26, 1990 to pay for cleanup and third party damages caused by releases from USTs. Firms offering UST insurance are likely to require that UST sites be upgraded to the EPA standards for new USTs before insurance will be provided. Businesses that pump small quantities of motor fuel may not be able to afford the cost of both the upgrading and the financial responsibility coverage.

The UST loan guarantee program proposed by HB 3080 provides for financial assistance through loan guarantees and interest rate subsidies in the form of income tax credits for commercial lending institutions that loan money to tank owners, property owners and UST permittees for soil

remediation and upgrading or replacement of UST facilities where the tanks contain motor fuel.

The proposed temporary rules place these financial assistance programs into separate and distinct programs that may be used separately or together for any project. Both programs use a numerical priority ranking system to place applications into three separate categories, Category A (30 points or greater), Category B (16 through 29 points), and Category C (15 points or less). The numerical ranking provides a maximum of 10 points and a minimum of 2 points each for:

1. Construction cost,
2. Distance to the further of the two nearest retail motor fueling facilities,
3. Population of the community where the motor fueling facility is located, by the regional rural population or the incorporated city population,
4. Annual motor fuel throughput, and
5. Annual gross receipts sales at a retail motor fueling facility.

(Points for #4 and #5 are the most quantifiable and objective, in the Department's opinion, to evaluate the "financial condition of the applicant" as required by the statute.)

At the end of each month, as funds are received into the Underground Storage Tank Compliance and Corrective Action Fund, the Department will assign monies to cover the expenses of loan guarantee applications received that month by assigning 60 percent to Category A, 30 percent to Category B, and 10 percent to Category C. Funds will be committed within a category by numerical ranking first then by date received. Applications in each category not funded within a month will receive funds before any new application. Funds not committed within a month will be added to the monies available in the next month for distribution to the three categories.

The loan guarantee program will provide guarantees for an estimated 245 facilities. Early discussions with the U.S. Small Business Administration indicate that they are interested in "taking out" the loan and providing an SBA loan guarantee for up to 90 percent of all construction work at the facility. These take outs" may free additional monies and allow the Department to provide loan guarantees for more than 245 facilities.

The proposed temporary rules limit the interest rate subsidy program to those facilities and projects that are numerically ranked in Category A. This program provides an Oregon income tax credit to financial lending institutions who provide loans a 7.5 percent for qualified UST projects. The amount of the tax credit is limited to the difference between the loan expenses on a 7.5 percent loan and a nonsubsidized loan made under like terms and conditions at the same institution, but not to exceed 15 percent. The Department believes that it is necessary to limit interest rate subsidies to Category A projects to prevent committing all of the funds collected for HB 3080 activities to paying interest rate subsidies. Funds available for interest rate subsidies over the life of the program are estimated to be $3,874,400.

The loan guarantee and interest rate subsidy programs benefit the environment by providing an incentive to approximately 245 UST facility systems which without the incentive may not have upgraded and replaced their systems.

The public should benefit by being able to purchase fuel from additional retail motor fuel facilities in the rural and remote sections of Oregon since the proposed priority system gives preference to small rural businesses retailing motor fuel and, hopefully, will help them stay in business.

Funds for the loan guarantee and interest rate subsidy tax credit program are provided by a regulatory fee on petroleum products of $10 per withdrawal from a bulk loading facility and $10 per cargo tank or barge for petroleum products that are imported for delivery into an underground storage tank. This fee also funds the UST grant reimbursement program and the administrative expenses associated with both programs.

The Department has been working with an Underground Storage Tank Financial Assistance Advisory Committee to develop these proposed rules. The committee is supportive of the program and the temporary rules. In addition the Department has worked with technical experts from the commercial lending institutions to develop workable loan guarantee and interest rate subsidy rules. Those portions of the regulated community with whom we have had contact are supportive of both the loan guarantee program and the interest rate subsidy program.

The Department will be seeking input through public meetings and rules hearings on the methods proposed in the rules for prioritizing the applications and distributing the funds for

both the loan guarantee and the interest rate subsidy programs.

PROGRAM CONSIDERATIONS:

There are approximately 6,000 locations in Oregon with USTs that contain motor fuel. The loan guarantee and interest rate subsidy programs will provide funding for the expenses of tax credit and loan defaults for approximately 245 facilities if:

1. An upgraded facility receives a $25,600 loan guarantee,
2. A facility where USTs are replaced receives a $64,000 loan guarantee,
3. Ten percent of the loans default during life of the program (13 years), and
4. All facilities receive an interest rate subsidy.

Approximately $687,600 will be spent for loan defaults and $3,874,400 for payment of interest rate subsidies, a total of $4,562,000.

The remainder of the $10 regulatory fee will be used for program administration and to fund the grant reimbursement portion of the legislation (HB 3080). These funds will provide grants for reimbursement of 50 percent, up to $3,000 maximum, for expenses of soil assessment and tank tightness testing at USTs that contain motor fuel. The temporary rules for the grant portion of the program were adopted by the Commission on September 15, 1989.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Propose EQC adoption of a Temporary Rule for the loan guarantee and interest rate subsidy/tax credit portions of House Bill 3080.

   This alternative will allow the loan guarantee program to start soon after September 1, 1989 allowing an UST system to be upgraded or replaced prior to October 26, 1990 when under EPA requirements the tank owner or operator must demonstrate financial responsibility for cleanup of releases and third party damages resulting from releases. The average time to accomplish an UST upgrade or replacement is 8 months.

2. Undertake normal rulemaking.

The normal rulemaking process takes a minimum of 90-120 days to accomplish (Commission authorization for hearing, notice publication in the Secretary of State's Bulletin, hearing, evaluation, then return to EQC for adoption of final rule).

The delay would adversely affect small businesses that retail motor fuel by delaying the availability of loans. The public may not be able to purchase fuel in the rural and remote sections of Oregon.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission:

1. Adopt the Findings of Need for adoption of a temporary rule as presented in Attachment B.

2. Adopt the Temporary Rule as presented in Attachment A.

3. Authorize hearings for the temporary rule.

The Department expects to return to the Commission in early 1990 for adoption of the final rules for both the loan guarantee program and the grant reimbursement program.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The recommended action is consistent with legislative policy.

ISSUES FOR COMMISSION TO RESOLVE:

1. On September 15, 1989 the Commission authorized a grant reimbursement program. There is some question as to whether sufficient money is available to handle all prospective grant applicants. One alternative is to either temporarily or permanently delay the loan guarantee and interest rate subsidy program. The $4,562,000 of revenue proposed to be allocated to the loan guarantee and interest rate subsidy programs would support an additional 1520 grant applications. We do not recommend this approach since there are legislative expectations that all programs will be carried out at some minimal level.

2. Does the priority process for qualifying loan applicants meet the intent of the legislature? We think it does. The loan qualification process used by the commercial lending institutions considers the financial condition of the applicant. The loan guarantee priority system gives preference to financial condition of the applicant, small business, the availability of motor fuel to rural population centers and facilities retailing motor fuel.

3. The temporary rule allows loans both with and without incentives. Do these alternatives meet the intent of the legislature? The Department believes that the legislative intended for the loan guarantee and interest rate subsidies to be separate programs. The temporary rules allow:

   1. Loans with eighty percent guarantees, with and without subsidized interest.
   2. Loans without guarantees, with and without subsidized interest. (Loans without guarantees and without subsidized interest will not involve the Department but would be private transactions between lender and borrower.)

4. The rule allows a loan guarantee to be assumed by another person, such as the U.S. Small Business Administration (SBA). Initial discussions with the commercial lending institutions and the SBA developed a scenario where the Department would guarantee the loan during the soil cleanup and construction phases of the project then the SBA would "take out" the loan and replace the Department's guarantee with the SBA guarantee (up to 90 percent) during the remainder of the loan. The soil cleanup and construction phases would last approximately six months. This arrangement would free up monies to be used for additional loan guarantees by the Department.

   Does this alternative meet the intent of the legislature?

   The Department believes that allowing the SBA to "take out" our loan meets the intent of the legislature by increasing the number of loans that can be written.

5. The Department is proposing to make loan guarantees totaling $13,752,000 over the eight-year life of the program with $687,600 of income. The Department will be leveraging the income approximately 20:1. If the loan default rate should exceed the predicted 10 percent, the Department may not be able to pay all loan guarantees. Is this appropriate action?

6. Should interest rate subsidies be independent or linked to the loan guarantee? If linked, the commercial financial institutions would receive interest rate subsidies on all

guaranteed loans. The Department would help fewer applicants because of the expense of subsidies. Guaranteed loans would be limited to the first 245 loan applicants over the life of the program. Where the interest rate subsidy is discretionary a needs test, such as the numerical ranking system in the proposed rules, that would allow a candidate who might not otherwise qualify for a loan to qualify for a guaranteed loan with an interest rate subsidy. Additionally, an unlinked loan would encourage the commercial financial institutions to work with the Small Business Administration on takeout financing with the SBA guarantee.

The temporary rules, Attachment A, unlink the loan guarantee and the interest rate subsidies. The rules provide both a numerical ranking that takes into consideration the needs of the applicant and the needs of the public. The rules allow the Commission to determine the amount of money that will be available for interest rate subsidies after estimating the long term expenses for the subsidies.

7. Should the rules fix the interest rate that the commercial financial institutions may charge on interest rate subsidized loans? The interest rate has been fixed at a maximum of 15 percent so that the Department can predict and control the expenses associated with the subsidy to insure that adequate money is collected and is available to meet these expenses over the period of the loans.

INTENDED FOLLOWUP ACTIONS:

File the Temporary Rule with the Secretary of State immediately upon EQC adoption.

Distribute fact sheets promoting the loan guarantee program.

Work with the Underground Storage Tank Financial Assistance Advisory Committee to evaluate early implementation of the program and modify the final rules where improvement is needed.

Hold statewide hearings on the temporary rule.

Approved:

Section: Richard P. Rice

Division: Stephanie Hallock

Director: Jeffrey J. Hamer

Report Prepared By: Larry D. Frost

Phone: 229-5769

Date Prepared: October 9, 1989

LDF:lf
STAF1020.FNL
October 9, 1989

OREGON ADMINISTRATIVE RULES
CHAPTER 340, DIVISION 180 - DEPARTMENT OF ENVIRONMENTAL QUALITY

UNDERGROUND STORAGE TANK LOAN GUARANTEE AND INTEREST RATE SUBSIDY PROGRAM

AUTHORITY, PURPOSE, AND SCOPE

340-180-005 (1) These rules are promulgated in accordance with and under the authority of ORS 466.705 through ORS 466.995 as amended by Chapter 1071, Oregon Laws, 1989 (House Bill 3080).

(2) The purpose of these rules is to provide for the regulation of:

(a) persons who receive guaranteed loans for soil remediation, upgrading of underground storage tanks, and replacement of underground storage tanks where the underground storage tanks contain motor fuel and are regulated by ORS 466.705 through ORS 466.995; to provide assistance to owners of underground storage tanks in meeting Environmental Protection Agency requirements and obtaining financial responsibility coverage, and

(b) commercial lending institutions who issue guaranteed underground storage tank loans.

(3) These rules establish requirements and standards for:

(a) loan guarantees of up to 80 percent of the loan principal not to exceed $64,000 for UST upgrading, UST replacement, and soil remediation,

(b) applying and qualifying for a guaranteed loan through a commercial lending institution,

(c) loan interest rates,

(d) applying and qualifying for interest rate subsidies to commercial lending institutions,

(e) loan default, and

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

(4) Scope:

(a) OAR 340-180-005 through -080 applies to persons who receive loan guarantee certificates and loan guarantees for soil remediation, underground storage tank upgrading, and underground storage tank replacement.

(b) OAR 340-180-090 through -100 applies persons who receive tax credit certificates and loan interest rate subsidies on loans for soil remediation, underground storage tank upgrading, and underground storage tank replacement.

(c) OAR 340-180-110 applies to persons seeking a written notice of compliance from the Department for soil remediation.

DEFINITIONS

340-180-010, As used in these rules,

(1) "Collection Expenses" means out of pocket expenses, attorney fees, administrative expenses, filing fees, recording fees, and other expenses related to collection of unpaid loan monies.

(2) "Commercial lending institution" means any bank, mortgage banking

company, trust company, stock savings bank, saving and loan association, credit union, national banking association, federal savings and loan association or federal credit union maintaining an office in this state.

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

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

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

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

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

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

(7) "Facility" means any one or combination of underground storage tanks and underground pipes connected to the tanks, used to contain an accumulation of motor fuel, including gasoline or diesel oil, that are located at one contiguous geographical site.

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

(9) "Grant" means reimbursement for costs incurred for UST tightness testing and soil assessment at a facility with underground storage tanks containing motor fuel.

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

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

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

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

(14) "Motor fuel" means a petroleum or a petroleum-based substance that is a motor gasoline, aviation gasoline, No.1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

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

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

(17) "Property owner" means the legal owner of the property where the underground storage tank resides.

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

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

(19) "Soil assessment" means evaluating the soil adjacent to the UST system for contamination from motor fuel.

(20) "Soil remediation" means those corrective actions taken to excavate, remove, treat or dispose of soil contaminated with motor fuel so as to bring a site containing underground storage tanks into compliance with the Department's Cleanup Rules for Leaking Petroleum UST System, OAR 340-122-205 through OAR 340-122-360.

Note: Soil remediation does not include cleanup or decontamination of contaminated groundwater or surface water, provisions for alternate water supplies or any related remediation work.

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

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

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

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

(25) "Underground storage tank" or "UST" means an underground storage tank as defined in OAR 340-150-010 (11) and is not an exempted tank as defined in OAR 340-150-015.

DISTRIBUTION PRIORITY OF FUNDS FOR LOAN GUARANTEE EXPENSES

340-180-020 (1) A portion of the funds collected and deposited into the Underground Storage Tank Compliance and Corrective Action Fund during each individual month shall be assigned by the Department to pay for the expenses of providing loan guarantees to commercial lending institutions for loans that fund soil remediation, UST upgrading, and UST replacement at facilities that contain an accumulation of motor fuel. Loan guarantees shall be approved giving priority, in order of date of receipt of the complete application, in accordance with the numerical ranking system described in this section.

(2) In order to determine the numerical ranking, the loan application must first be evaluated by:

(a) Assigning a numerical score to each of the parameters in subsection 340-180-020 (4); and

(b) Totaling the parameter scores to arrive at the Total Score.

(3) The Total Score shall then be used to establish priority categories for providing funds to loan guarantee applications. Priority categories shall be established where a Total Score of 30 points or greater is an "A" category, a Total Score of 16 points but less than 30 points is a "B" category, and a Total Score less than 16 points is a "C" category.

(4) Numerical parameters are:

(a) For construction work to upgrade or replace USTs containing motor fuel at a facility:

(A) Assign 10 points for total construction costs up to $40,000.
(B) Assign 8 points for total construction costs of $40,000 to $60,000.
(C) Assign 6 points for total construction costs of $60,000 to $80,000.
(D) Assign 4 points for total construction costs of $80,000 to $100,000.
(E) Assign 2 points for total construction costs of $100,000 or more.
(b) For a facility that retails motor fuel:
(A) Assign 10 points where no more than two facilities that retail motor fuel are within 30 road miles.
(B) Assign 8 points where no more than two facilities that retail motor fuel are within 25 road miles.
(C) Assign 6 points where no more than two facilities that retail motor fuel are within 20 road miles.
(D) Assign 4 points where no more than two facilities that retail motor fuel are within 15 road miles.
(E) Assign 2 points where no more than two facilities that retail motor fuel are within 10 road miles.
(c) For facilities that retail motor fuel within an incorporated city:
(A) Assign 10 points for a facility located within a city with a population under 2,000.
(B) Assign 8 points for a facility located within a city with a population of 2,000 to 5,000.
(C) Assign 6 points for a facility located within a city with a population of 5,000 to 10,000.
(D) Assign 4 points for a facility located within a city with a population of 10,000 and 20,000.
(E) Assign 2 points for a facility located within a city with a population of 20,000 and greater.
(d) For facilities that retail motor fuel located outside an incorporated city:
(A) Assign 10 points for a facility located outside of an incorporated city and east of the Cascade mountain range summit including all of Hood River and Klamath counties.
(B) Assign 8 points for a facility located outside of an incorporated city and west of the Coast mountain range summit including all of Columbia county.
(C) Assign 6 points for a facility located outside of an incorporated city, east of the Coast mountain range summit, and west of the Cascade mountain range summit within Benton, Douglas, Jackson, Josephine, Lane, Linn, Marion, Polk, and Yamhill counties.
(D) Assign 4 points for a facility located outside of an incorporated city, east of the Coast mountain range summit, west of the Cascade mountain range summit, and outside of the Portland Metropolitan Service District within Clackamas, Multnomah and Washington counties.
(E) Assign 2 points for a facility located outside of an incorporated city and within the Portland Metropolitan Service District.
(e) Annual motor fuel throughput at a facility in gallons:
(A) Assign 10 points where the throughput is less than 100,000 gallons.
(B) Assign 8 points where the throughput is 100,000 to 200,000 gallons.
(C) Assign 6 points where the throughput is 200,000 to 300,000 gallons.
(D) Assign 4 points where the throughput is 300,000 to 400,000 gallons.
(E) Assign 2 points where the throughput is 400,000 gallons and greater.
(f) For a retail motor fuel facility:
(A) Assign 10 points where the previous two year average annual gross sales receipts are less than $250,000.

(B) Assign 8 points where the previous two year average annual gross sales receipts are $250,000 to $500,000.

(C) Assign 6 points where the previous two year average annual gross sales receipts are $500,000 to $750,000.

(D) Assign 4 points where the previous two year average annual gross sales receipts are $750,000 to $1,000,000.

(E) Assign 2 points where the previous two year average annual gross sales receipts are $1,000,000 or greater.

Note: Provide documentation for the gross sales receipts from all income sources at the facility. If the facility is less than two years old or the business records are not available for the past two years, the applicant may provide other documentation to establish the two year average annual gross sales receipts.

GENERAL PROVISIONS, GUARANTEED UNDERGROUND STORAGE TANK FACILITY LOAN

340-180-030 (1) Property owners, tank owners, and permitees of a UST facility that contains motor fuel may qualify to receive a guaranteed loan for soil remediation, UST upgrading, and UST replacement.

(2) The guaranteed loan must be issued by a commercial lending institution.

(3) The Department may provide a loan guarantee of up to 64 percent of the costs of soil remediation, upgrading or replacement of underground storage tanks systems, not to exceed $64,000 maximum at any facility location, on a loan provided by a commercial lending institution.

(4) The loan guarantee provided by the Department may be up to eighty percent of the loan principal, not to exceed $64,000 at any facility location.

(5) Loan guarantees shall be issued in a priority order, in accordance with OAR 340-180-020 and OAR 340-180-020.

(6) Only one loan guarantee may be issued to each facility.

(7) The loan guarantee is limited to work for soil remediation at a facility where USTs contain motor fuel and work to upgrade or replace the underground storage tank systems containing an accumulation of motor fuel located at a facility where:

(a) the USTs are regulated by OAR 340-150-010 through -150, 40CFR 280, and 40CFR 281,

(b) UST system upgrading, retrofitting and replacement is performed by registered or licensed service providers in accordance with OAR 340-160-005 through -150,

(c) UST tightness testing and/or soil assessment was performed prior to issuance of a loan guarantee,

(d) performance of UST tightness testing and/or soil assessment was in accordance with OAR 340-170-010 through -080, and

(e) each regulated underground storage tank has a valid UST permit.

(f) work has started after September 1, 1989 and is completed before August 31, 1992.

APPLICATION FOR UNDERGROUND STORAGE TANK LOAN GUARANTEE CERTIFICATE

340-180-040 (1) Any person wishing to apply for a loan guarantee certificate for an underground storage tank loan shall submit a written

application on a form provided by the Department. Applications shall be submitted within 180 days after completion of the UST tightness testing and/or soil assessment. All applications must be complete.

(2) Application which are obviously incomplete, unsigned, or which do not contain the required exhibits (clearly identified) will not be accepted by the Department for filing and will be returned to the applicant for completion.

(3) Applications which appear complete will be accepted by the Department.

(4) Within 30 days after filing, the Department will determine the completeness of the application. If the Department determines that the application is not complete, it will promptly request the needed information from the applicant. The application will not be considered complete for processing until the requested information is received. The application will be considered to be withdrawn if the applicant fails to submit the requested information within 180 days of the request.

(5) Within 30 days after the application is complete for processing, the Department will:

(a) assign a priority category, and

(b) establish a loan guarantee amount.

(6) If, upon review of an application, the Department determines that the loan guarantee application does not meet the requirements of the statutes and rules, the Department shall notify the applicant in writing of this determination. Such notification shall constitute final action by the Department on this application.

INFORMATION REQUIRED ON THE UST LOAN GUARANTEE CERTIFICATE APPLICATION

340-180-050 (1) The underground storage tank loan guarantee certificate application shall include:

(a) name, mailing address and telephone number of the applicant,

(b) name, mailing address and telephone number of the property owner, UST owner, and the permittee,

(c) signatures of the applicant, the property owner, the UST owner, and the permittee,

(d) UST facility name and location,

(e) UST permit numbers,

(f) date of the application,

(g) description of work at the UST facility including:

(A) Description of the work area including a sketch showing, but not limited to, property boundaries, location of structures, location and identification of the underground storage tanks containing an accumulation of motor fuel,

(B) Description of tank upgrade or replacement items and activities, including those items and activities that are not incidental to a UST system but are required because of construction interference, and

Note: Work qualifying for the loan guarantee certificate includes:

1. Modification, replacement, and installation of any portion of the an UST system containing motor fuel including replacement of paving and structures located immediately over the UST systems and are required to be removed and replaced due to work on the UST systems.
2. Replacement of an underground storage tank system with an above ground

storage tank system that meets existing state and local codes.

3. Installation of the underground portion of any required Stage I vapor recovery system or anticipated future Stage II vapor recovery system.
4. Soil remediation for soil contaminated with motor fuel including replacing excavated soil, paving and structures that are required to be removed during soil remediation.

(h) total project cost in the form of a bid or estimate from a licensed UST service provider, identifying those items that qualify for the loan guarantee certification described by these rules,

Note: The total project cost will affect the priority for the loan guarantee application and the amount of the guarantee. The Department recommends that the applicant obtain three bids or estimates to identify an accurate total project cost.

(i) a copy of the soil assessment and UST tightness testing Notice of Compliance from the Department, and

(j) the information required to determine the priority category for the facility:

(A) County,

(B) Location of the facility east or west of the summits of the Coast and Cascade mountain ranges,

(C) City and city population as shown in the current Oregon Blue Book, if the facility is located within an incorporated city,

(D) Location of the facility inside or outside of the Portland Metropolitan Service District,

(E) Distance to nearest two facilities that retail motor fuel, in the shortest highway miles,

(F) Motor fuel throughput during the last 12 months in gallons,

(G) Annual gross sales receipts for previous two years for the business conducted at the facility, and

(H) Type of business at the facility including SIC code.

(2) The Department shall have access to books, documents, papers and records of the applicant which are directly pertinent to qualifying for the loan guarantee for the purpose of making audit, examination, excerpts and transcripts.

LOAN GUARANTEE CERTIFICATE

340-180-060 (1) In accordance with this part, the Department shall issue a loan guarantee certificate to an applicant who has filed a complete application.

(2) At the beginning of each month the Department shall determine the portion of the funds collected and deposited into the Underground Storage Tank Compliance and Corrective Action Fund that shall be used for the expenses of approved loan guarantee applications during the month. The portion dedicated to the loan guarantee expenses shall be distributed in the following manner.

(a) Sixty percent (60%) of the month funds shall be set aside for the expenses of category "A" loan guarantees.

(b) Thirty percent (30%) of the month funds shall be set aside for the expenses of category "B" loan guarantees.

(c) Ten percent (10%) of the month funds shall be set aside for the expenses of category "C" loan guarantees.

(d) Funds set aside within a category during any month shall be used to provide loan guarantee certificates for loan applications received during the previous month, first providing loan guarantee certificates to applications with the highest numerical ranking within the category, then to applications with the next highest numerical ranking within the category, and so on in numerical order, except:

(A) Within a category, any loan guarantee application not receiving a loan guarantee certificate during a month shall receive a loan guarantee certificate before any new application received during any subsequent month.

(B) Where loan applications have the same numerical ranking, the loan application with the earliest filing date shall receive a loan guarantee certificate first,

(e) At the end of the month, funds not used to provide loan guarantee certificates shall be added to the funds the Department makes available during the next month.

(f) Loan guarantee applications within a category that do not receive a loan guarantee certificate within the current month shall be funded first in time and in priority order within that category during the following month, and so on in subsequent months.

(3) The loan applicant may not assign any right, title, and interest in the loan guarantee certificate or the loan guarantee to any person other than a subsequent owner of the underground storage tank facility.

(4) Loan guarantee certificates shall be valid for 180 days or the termination date shown on the loan guarantee certificate.

LOAN GUARANTEE

340-180-070 (1) The Department shall issue a loan guarantee, not to exceed the lesser of sixty four percent (64%) of the approved project or $64,000, to a commercial lending institution for a loan to provide soil remediation, UST upgrading, and replacement of USTs at a facility containing motor fuel where:

(a) a loan guarantee certificate has been issued to the loan applicant,

(b) the loan guarantee does not provide a guarantee for work other than approved work authorized in 340-180-050,

(c) the loan has a fixed or variable interest rate,

(d) the loan is amortized with equal payments over the term of the loan,

(e) the loan maturity date of the loan does not exceed 10 years from the initial closing date,

(f) the commercial lending institution has approved the loan, subject to receiving the loan guarantee from the Department, and

(g) the loan applicant has provided the terms of the loan to the Department. The terms of the loan include but are not limited to:

(A) Amount of loan,

(B) Down Payment,

(C) Interest rate, and

(D) Loan maturity date.

(2) The loan guarantee shall terminate:

(a) thirty (30) days after loan maturity date, including all extensions or renewals,

(b) upon payment of the loan guarantee to the commercial lending

institution, or

(c) when the loan guarantee provided by the Department is replaced by a loan guarantee provided by the SBA (U.S. Small Business Administration).

(3) The commercial lending institution shall notify the Department promptly when a loan guaranteed by the Department is paid in full or replaced with a S.B.A. loan guarantee.

(4) The payment of the loan guarantee is subject to monies being allocated and being available from the Underground Storage Tank Compliance and Corrective Action Fund.

Note: The funds available for payment of loan guarantees upon loan default is estimated to be $687,600, where 10% of the loans default during the life of the program. The Department expects to provide $13,752,000 in loan guarantees for approximately 245 loans, where the Department provides the guarantee throughout the life of the loan. It is expected that the SBA (U.S. Small Business Administration) will agree to provide their loan guarantee (takeout the loan) after the soil cleanup and UST construction work is complete, approximately six months after the Department issued the original loan guarantee. The Department encourages transfer of loan guarantees to the SBA or to conventional financing in order to increase the number of loan guarantees provided by the Department.

NOTICE OF DEFAULT ON A GUARANTEED LOAN

340-180-080 (1) Any commercial leading institution wishing to obtain payment from the Department under the Department's loan guarantee shall provide the following:

(a) Written notice from the commercial lending institution in the form of a demand for payment of the loan guarantee, stating:

(A) the guaranteed loan to the borrower is in default,

(B) the commercial lending institution has made a good faith effort to work with the borrower, using the institution's established procedures, to bring the loan back into good standing,

(C) demand for payment in full has been made to the borrower by the commercial lending institution, and

(D) the borrower has not paid the loan in full.

(b) The demand for payment of the loan guarantee shall include:

(A) a copy of the demand letter to the borrower from the commercial lending institution, and

(B) a statement showing the principal balance outstanding on the demand letter sent to the borrower.

(2) Subject to the availability of funds from the Underground Storage Tank Compliance and Corrective Action Fund ,the Department shall, within 30 days after receipt of the default notice,

(a) pay to the commercial lending institution the lesser of:

(A) the amount guaranteed by the Department, or

(B) the principal balance outstanding on the date of the default notice, or

(b) where agreed upon by the commercial lending institution and where the borrower is unable to pay, the Department may make partial payments of the loan guarantee equal to the monthly loan payment for up to twelve monthly loan

payments. If the loan is still in default after the Department has made twelve monthly payments, the Department will pay the loan guarantee, pursuant to subsection (2)(a) of this section.

(3) If the commercial lending institution receives payment of the loan, in whole or in part, after the date of the default notice, the commercial lending institution shall promptly notify the Department in writing of such payment.

(4) Once the Department has paid the loan guarantee certificate in whole or in part, the commercial lending institution shall reimburse the Department eighty percent (80%) of any collection on the unpaid loan. The reimbursement shall be in legal tender. The expenses of collection may be deducted from the reimbursement paid to the Department.

Note: The Department understands that collection may consist of cash, securities, notes, personal property, real property or any other form of payment accepted by the commercial lending institution. The reimbursement to the Department shall be in legal tender and represent 80% of the true cash value of any such collected asset.

(5) Payment to the Department by the commercial lending institution shall be made within thirty days after any collection is converted into a negotiable financial instrument or note.

GENERAL PROVISIONS, INTEREST RATE SUBSIDY AND TAX CREDIT CERTIFICATE

340-180-090 (1) Commercial lending institutions making loans for soil remediation, UST upgrading, and replacement of UST systems containing motor fuel may qualify to receive an interest rate subsidy in the form of a tax credit.

(2) The Department may approve an Oregon income tax credit not to exceed the difference between seven and one half percent (7.5%) and the annual interest rate, either fixed or variable rate, charged by the commercial lending institution for a nonsubsidized loan made under like terms and conditions. The determination of what interest rate is charged on a nonsubsidized loan made under like terms and conditions shall be established by a written agreement executed between the Department and each lending institution intending to make use of the interest rate subsidy and tax credit programs. Such income tax credits may be approved where:

(a) the borrower pays a maximum of seven and one half percent (7.5%) interest,

(b) funds to provide the interest rate subsidy have been allocated by the Department and are available from the Underground Storage Tank Compliance and Corrective Action Fund,

(c) the loan is not default,

(d) the loan has a maximum interest rate not to exceed fifteen percent (15%) per annum,

(e) the loan is amortized with equal payments over the term of the loan,

(f) the loan maturity date of the loan does not exceed 10 years from the initial closing date,

(g) the applicant has received a Category A priority ranking under OAR 340-180-020, and

(h) the borrower has received a tax credit certificate for an interest rate subsidy.

(3) Only one interest rate subsidy may be issued to each facility.

(4) Interest rate subsidies shall be issued on the same priority basis as the loan guarantee certificates, in accordance with OAR 340-180-020, OAR 340-180-110 and OAR 340-180-120.

(5) The interest rate subsidy is limited to loans for work for soil remediation at a facility where USTs contain motor fuel and work to upgrade or replace the underground storage tank systems containing an accumulation of motor fuel located at a facility where:

(a) the USTs are regulated by OAR 340-150-010 through -150, 40CFR 280, and 40CFR 281,

(b) UST system upgrading, retrofitting and replacement is performed by registered or licensed service providers in accordance with OAR 340-160-005 through -150,

(c) UST tightness testing and/or soil assessment was performed prior to application for a loan,

(d) UST tightness testing and soil assessment was performed in accordance with Department regulations, and

(e) each regulated underground storage tank has a valid UST permit.

(f) the loan is provided by a commercial lending institution.

(6) An interest rate subsidy may be paid on loans provided by a commercial lending institution that are not guaranteed by the Department where the borrower has received a tax credit certificate from the Department.

(7) The commercial lending institution shall apply for the Oregon income tax credit during their regular state income tax filing.

(8) Payment of tax credits are subject to money being available in the Underground Storage Tank Compliance Fund.

APPLICATION FOR TAX CREDIT CERTIFICATE

340-180-100 (1) Any person wishing to obtain a Tax Credit Certificate for an interest rate subsidy on a loan for soil remediation, UST upgrading, and replacement of UST systems containing motor fuel shall submit a written application on a form provided by the Department.

(2) The underground storage tank loan interest rate subsidy application shall include all information required under Section 340-180-050 of these rules shall be provided with the application for the Tax Credit Certificate for an interest subsidy.

(3) Applications which are obviously incomplete, unsigned, or which do not contain the required exhibits will not be accepted by the Department for filing and will be returned to applicant.

(4) Applications which appear complete will be accepted by the Department. If the Department determines that the application is not complete, it will promptly request the needed information from the applicant. The application will not be considered complete for processing until the requested information is received. The application will be considered to be withdrawn if the applicant fails to submit the requested information within 180 days of the request.

(5) Within 30 days after filing, the Department will determine the completeness of the application.

(6) Within 30 days after the application is complete for processing, the Department will:

(a) assign a priority category in accordance with OAR 340-180-020, and

(b) approve or deny the issuance of a Tax Credit Certificate.

(7) If, upon review of an application, the Department determines that the application does not meet the requirements of the statutes and rules, the Department shall notify the applicant in writing of this determination. Such notification shall constitute final action by the Department on this application.

Note: Work qualifying for the Tax Credit Certificate includes:

1. Modification, replacement, and installation of any portion of the an UST system containing motor fuel including replacement of paving and structures located immediately over the UST systems.
2. Replacement of an underground storage tank system with an above ground storage tank system that meets existing state and local codes.
3. Installation of the underground portion of any required Stage I vapor recovery system or anticipated future Stage II vapor recovery system.
4. Soil remediation for soil contaminated with motor fuel including replacing excavated soil, paving and structures that are required to be removed during soil remediation.

(9) The Department shall have access to books, documents, papers and records of the applicant which are directly pertinent to qualifying for the loan guarantee for the purpose of making audit, examination, excerpts and transcripts.

TAX CREDIT CERTIFICATE

340-180-110 (1) In accordance with this part, the Department shall issue a tax credit certificate to an applicant who has filed a complete application where the facility receives a numerical ranking of 30 points or greater when ranked in accordance with OAR 340-180-020.

(2) At the beginning of each month the Department shall determine the portion of the funds collected and deposited into the Underground Storage Tank Compliance and Corrective Action Fund that shall be used for the expenses of approved tax credit applications during the month.

(3) Funds set aside during any month shall be used to provide funds for tax credit certificate applications received during a month, first providing certificates to those applications with the highest numerical ranking, then to applications with the next highest numerical ranking, and so on in numerical order, except:

(a) Any tax credit application not receiving a tax credit certificate during a month shall receive a tax credit certificate before any application received during the next month.

(b) Where applications have the same numerical ranking, the application with the earliest filing date shall receive a tax credit certificate first.

(4) At the end of the month, funds not used to provide tax credit certificates shall be added to the funds the Department makes available for tax credit certificates during the following month.

(5) Applications that do not receive a tax credit certificate within that month shall be funded first in time and in priority order during the following month, and so on in subsequent months.

(6) The applicant may not assign any right, title, and interest in the tax credit certificate to any person other than a subsequent owner of the underground storage tank facility.

(7) Tax credit certificates shall be valid for 180 days or the termination date shown on the tax credit certificate.

LOAN INTEREST RATE SUBSIDY

340-180-120 (1) The Department may approve an interest rate subsidy in the form of an Oregon income tax credit equal to the difference between seven and one half percent (7.5%) and the annual interest rate, either fixed or variable rate, charged by the commercial lending institution for a nonsubsidized loan made under like terms and conditions where:

(a) the loan provides for soil remediation, UST upgrading, and replacement of USTs at a facility containing motor fuel,

(b) a tax credit certificate has been issued to the loan applicant,

(c) the tax credit certificate does not provide an interest rate subsidy for work other than approved work authorized in 340-180-100,

(d) the loan has a fixed or variable interest rate not to exceed fifteen percent (15%) and is amortized with equal payments over the term of the loan,

(e) the maturity date of the loan does not exceed 10 years from the initial loan closing date,

(f) the commercial lending institution has approved the loan, subject to receiving approval of the interest rate subsidy from the Department, and

(g) the loan applicant has provided the terms of the loan to the Department. The terms of the loan include but are not limited to:

(A) Amount of loan,

(B) Down Payment,

(C) Interest rate, and

(D) Loan maturity date.

(2) The interest rate subsidy shall terminate at the loan maturity date, including all extensions or renewals, but not later than ten years after issuance of the loan.

(3) The payment of the interest rate subsidy is subject to monies being allocated and being available from the Underground Storage Tank Compliance and Corrective Action Fund.

Note: The funds available for interest rate subsidies are estimated to total $3,874,000 over the life of the program, providing tax credits for approximately 245 loans. These 245 loans may be the same as or different from the 245 loans guaranteed under OAR 340-180-070.

NOTICE OF COMPLIANCE FOR SOIL REMEDIATION

340-180-110 (1) A person wishing to obtain a written notice of compliance for soil remediation shall submit a written application on a form provided by the Department. The application shall include:

(a) The name and mailing address of the applicant,

(b) The signature of the applicant,

(c) The UST facility name and location,

(d) The UST permit numbers,

(e) The date of the application,

(f) The completion date of the soil remediation,

(g) Description, including a sketch showing, but not limited to, property boundaries, location of structures, location and identification of tanks including tank contents, and identification of soil assessment sites, and

(h) Findings including, but not limited to, results of laboratory tests, soil matrix calculations, and tank tightness tests.

(2) Applications which are obviously incomplete, unsigned, or which do not contain the required exhibits (clearly identified) will not be accepted by the department for filing and will be returned to the applicant for completion.

(3) Applications which appear complete will be accepted by the department for filing.

(4) Within 30 days after filing, the Department will determine if the facility meets the Departments cleanup standards and will provide a written determination of compliance.

Attachment B
Agenda Item
10-20-89 EQC Meeting

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
811 S. W. 4th AVENUE
PORTLAND, OREGON 97204

STATEMENT OF NEED AND EMERGENCY JUSTIFICATION STATEMENT TEMPORARY RULE ESTABLISHING UNDERGROUND STORAGE LOAN GUARANTEE PROGRAM

FINDINGS AND DECLARATIONS:

(a) ORS 466.705 through 466.995, as amended by Chapter 1071, Oregon Law 1989, authorizes the Commission to adopt rules establishing a loan guarantee and interest rate subsidy program for commercial lending institutions who provide loans for soil remediation and upgrading or replacing underground storage tanks that contain an accumulation of motor fuel. The loan guarantee is limited to sixty four percent (64%) of the project cost, up to a maximum of $64,000. The interest subsidy is provided to the commercial lending institution as an income tax credit and is limited to the difference in loan expenses on a seven and one half percent (7.5%) loan and a nonsubsidized loan made under like terms and conditions at the same institution.

(b) ORS 466.705 through 466.995, as amended by Chapter 1071, Oregon Law 1989, directs the Department of Environmental Quality to conduct a loan guarantee and interest rate subsidy program for underground storage tank containing an accumulation of motor fuel beginning September 1, 1989.

(c) Funding for the loan guarantee and interest rate subsidy program is provided by an UST regulatory fee of $10 on import or withdrawal of petroleum products from a bulk loading facility.

(d) Early adoption of the loan guarantee and interest rate subsidy program rules is necessary to start the program with little delay.

(e) Failure to establish a loan guarantee and interest rate subsidy program for soil remediation and upgrading and replacement of underground storage tanks containing an accumulation of motor fuel will result in serious prejudice to the public interest, and particularly to persons responsible for underground storage tanks containing motor fuel, because reduced financial aid could cause significant financial hardship to the tank owner, resulting in closure of businesses retailing motor fuel. Closure of retail motor fuel facilities would reduce fuel supplies to the motoring public, particularly in the rural and remote areas of Oregon.

October 4, 1989

Attachment C
Agenda Item M
10-20-89 EQC Meeting

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF ADOPTING OAR Chapter 340 Division 170 and Modifying Portions of Division 150	)))))	STATEMENT OF NEED FOR RULES

Statutory Authority

ORS 466.705 through ORS 466.995 authorizes rule adoption for the purpose of regulating underground storage tanks. Chapter 1071, Oregon Law 1989 (HB3080) authorizes the Commission to adopt rules establishing a reimbursement grant, loan guarantee, and interest subsidy program to provide financial assistance to persons responsible for underground storage tanks, containing an accumulation of motor fuel, so that they may meet Environmental Protection Agency (EPA) requirements and obtain financial responsibility coverage.

Need for the Rules

The proposed rules are needed to carry out the authority given to the Commission to adopt rules for establishing the loan guarantee and interest rate subsidy program for commercial lending institutions who provide loans for soil remediation and upgrading or replacing underground storage tanks that contain an accumulation of motor fuel. The loan guarantee is limited to sixty four percent (64%) of the project cost, up to a maximum of $64,000. The interest subsidy is provided to the commercial lending institution as an income tax credit and is limited to the difference in loan expenses on a seven and one half percent (7.5%) loan and a nonsubsidized loan made under like terms and conditions at the same institution.

Failure to adopt the rules will result in serious prejudice to the public interest, and particularly to persons responsible for underground storage tanks containing motor rule, because reduced financial could cause significant financial hardship to the tank owner resulting in closure of businesses retailing motor fuel. Closure of retail motor fuel facilities would reduce fuel supplies to the motoring public, particularly in the rural and remote areas of Oregon.

Principal Documents Relied Upon

Chapter 1071, Oregon Law, 1989 (HB 3080)

Fiscal and Economic Impact

Fiscal Impact

The revenue for the reimbursement grant and loan guarantee program is generated by a regulatory fee on petroleum products of $10 per withdrawal from a bulk loading facility. The revenue is expected to total $3,000,000 per year. Failure to adopt the rules would allow the Department to use the revenue set aside for the loan guarantee and interest rate reimbursement program for other expenses of the underground storage tank program.

Small Business Impact

The majority of businesses owning and operating underground storage tanks (USTs) are classified as small business. Federal regulations require owners and operators of underground storage tanks to demonstrate financial responsibility of up to $1,000,000 by October 26, 1990 for cleanup and third party damages resulting from a release from an underground storage tank. Underwriters will likely require a contamination free facility plus requiring that the tanks be upgraded to federal standards for new tanks. The proposed loan guarantee and interest rate subsidy program will encourage commercial lending institutions to provide loans for upgrading underground storage tanks to businesses that would not otherwise qualify because of the environmental risk associated with underground storage tanks. The program allows the Department to guarantee up to sixty four percent of the project cost to a maximum of $64,000 on a loan made by a commercial lending institution for soil remediation and upgrading or replacement of USTs. Additionally, the program may provide interest rate an subsidy for the difference between seven and one half percent interest rate and the interest rate that would be charged for a nonsubsidized loan made under like terms and conditions at the same institution. This program will allow qualified persons to upgrade their facility and qualifying for insurance to meet the financial responsibility requirements of the EPA regulations. The program will be able to provide loan guarantees and interest rate subsidies for 245 facilities, an expenditure of $4,462,000.

October 4, 1989

Attachment D
Agenda Item M
10-20-89 EQC Meeting

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Proposed Temporary Rules, Underground Storage Tank Loan Guarantee Program

WHO IS AFFECTED: Persons who own or are in control of underground storage tanks used to store motor fuel. Persons affected may be tank owners or operators or owners of land in which the tanks are located and commercial lending institutions who make loans to these persons. Underground storage tanks are found at gasoline stations, marinas, automobile dealerships, nurseries, commercial fleets, manufacturing firms, and farming operations. Federal military and non-military facilities, state agencies, school districts, port districts, and local governments are also included within this regulatory program.

BACKGROUND: Chapter 1071, Oregon Law 1989 (HB 3080 1989 Legislature) requires the Environmental Quality Commission to adopt rules establishing a loan guarantee and interest rate subsidy program for soil remediation, UST upgrading and UST replacement at facilities where underground storage tanks contain an accumulation of motor fuel. Commercial lending institutions may qualify for loan guarantees up to 64% of the project cost, up to a maximum of $64,000, and an interest rate subsidy in the form of an income tax credit. The interest rate subsidy is limited to the difference in loan expenses on a 7.5% loan and a nonsubsidized loan made under like terms and conditions at the same institution.

WHAT IS PROPOSED: The purpose of the temporary rules is to establish loan guarantee and interest rate subsidy programs for commercial lending institutions who provide loans for soil remediation and upgrading and replacement of USTs containing an accumulation of motor fuel.

WHAT ARE THE HIGHLIGHTS:

Underground Storage Tank Loan Guarantee Program

1. The loan applicant must apply for a loan guarantee certificate and a tax credit certificate prior to applying for a loan from a financial lending institution. Granting of the certificates will give priority to the financial condition of the applicant, the availability of motor fuel to rural population centers, small businesses, and facilities retailing motor fuel.

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.

2. Loan guarantee certificates will be issued, as funds are available, to guarantee up to 64% of the qualified project expenses up to a maximum of $64,000 in the event of loan default.

3. Tax credit certificates will be issued, as funds are available, to allow a commercial lending institution to recover the difference in interest income for a 7.5% loan and a nonsubsidized loan made under like terms and conditions at the same institution.

5. Procedures and standards are defined for the purpose of obtaining loan guarantees and interest rate subsidies.

HOW TO COMMENT: Public Hearings Schedule

Bend
December 11, 1989
3:00 to 5:00 P.M.
Cascade Natural Gas
334 N.E. Hawthorne
Bend, Oregon

Pendleton
December 12, 1989
3:00 to 5:00 P.M.
Blue Mountain Community College
Room P12, Pioneer Hall
2411 N.W. Garden
Pendleton, Oregon

Portland
December 12, 1989
3:00 to 5:00 P.M.
DEQ Headquarters
Fourth Floor
811 S.W. Sixth Ave.
Portland, Oregon

Medford
December 14, 1989
3:00 to 5:00 P.M.
City Council Chambers
Medford City Hall
Medford, Oregon

Eugene
December 15, 1989
3:00 to 5:00 P.M.
Lane Community College
Room 308, The Forum
4000 E. 30th Ave.
Eugene, Oregon

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

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

The comment period will end December 29, 1989. All comments should be received at the Department by 5:00 P.M.

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

WHAT IS THE NEXT STEP: After public testimony has been received and evaluated, the proposed rules will be revised as appropriate and presented to the Environmental Quality Commission in February 1990. The Commission may adopt the Department's recommendation, amend the Department's recommendation, or take no action.

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: October 20, 1989
Agenda Item: N (1)
Division: HSW
Section: SW/WTP

SUBJECT:

Waste Tire Pile Cleanup - Use of funds for Cleanup of the DuBois Auto Recycling site, St. Helens, Oregon

PURPOSE:

The purpose is to allow use of funds from the Waste Tire Recycling Account to expedite cleanup of approximately 50,000 waste tires at a permitted site.

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 ___

_X_ Approve Department Recommendation
___ Variance Request Attachment ___
___ Exception to Rule Attachment ___
___ Informational Report Attachment ___
_X_ Other: (specify) Attachment ___

Allow Waste Tire Recycling Account cleanup funds to be made available to partially pay for immediate cleanup of approximately 50,000 waste tires from the DuBois Auto Recycling permitted waste tire storage site, pursuant to OAR 340-62-160(1).

DESCRIPTION OF REQUESTED ACTION:

The Waste Tire Recycling Account is funded by a $1 fee on new replacement tires. The purpose of the account is to enhance the market for waste tires by giving a subsidy for their reuse, and to help clean up waste tire piles.

The statute requires the Environmental Quality Commission to make a finding before the Department may use funds to assist a permittee in removing tires. The Commission must find that special circumstances allow for use of the funds, or that strict compliance with a tire removal date set by the Department would result in "substantial curtailment or closing of the permittee's business or operation or the bankruptcy of the permittee." (ORS 459.780 (2)(b) and OAR 340-62-150.)

The DuBois auto wrecking yard accumulated waste tires over time through the auto salvage business. Charles DuBois (deceased on September 27, 1988) and his nephew, Gary Rauch, were partners in the business, DuBois Auto Recycling & Towing, an Oregon corporation. The corporation applied for and obtained Waste Tire Storage Site Permit WTSII12 on August 3, 1989. The permit requires removal of half of the waste tires by January 1, 1990, and of all waste tires by January 1, 1991. The corporation has applied for financial assistance to remove the tires by the permit deadline. Strict compliance with permit requirements for removal would result in substantial curtailment or closing of the permittee's business.

The permittee has obtained three bids for tire removal and has selected the bid of RMAC International, Inc. RMAC's bid is $39,500 for removal of all waste tires from the site. This is the lowest of the three bids and is considered by staff to be a reasonable amount for tire removal. It would take several years to remove the tires at the rate that the corporation could afford.

The Department's rule (OAR 340-62-155) specifies in part that:

1. The Department shall base its recommendations on use of cleanup funds on potential degree of environmental risk created by the tire pile. The following special circumstances shall serve as criteria in determining the degree of environmental risk. The criteria, listed in priority order, include but are not limited to:

   a. Susceptibility of the tire pile to fire...

   b. Other characteristics of the site contributing to environmental risk, including susceptibility to mosquito infestation.

2. In determining the degree of environmental risk involved in the two criteria above, the Department shall consider:

   a. Size of the tire pile...[and]

   b. How close the tire pile is to population centers...

The Waste Tire Program developed a point system to quantify the environmental risk created by each waste tire site. The DuBois Auto Recycling site ranks moderately high in environmental risk, based on the Waste Tire Program point system (42 out of a potential 94 points, or fifth among permittees who have indicated they will request financial help). A tire fire at this site could substantially impact the air quality of St. Helens, and pyrolytic oil flows could potentially enter surface or ground waters of the state.

The rule (OAR 340-62-155(3)) further states that:

> Financial hardship on the part of the permittee shall be an additional criterion in the Department's determination. Financial hardship means that strict compliance with OAR 340-62-005 through 340-62-045 would result in substantial curtailment or closing of the permittee's business or operation, or the bankruptcy of the permittee...

The Department developed guidelines (Attachment C) to ensure equitable evaluation of a permittee's ability to pay for cleanup without causing "substantial curtailment" of the permittee's business or operation. The financial guidelines for corporations are based on Multnomah County's "safety net"

sewer program. The criteria for assistance are a household income below 80 percent of the Housing and Urban Development median area income, and $20,000 in corporate assets. A permittee must spend his or her own funds up to the threshold; the Department will partially assist with expenses above the threshold. Following the guidelines, the Department assistance would be 80 percent of the cost of the cleanup. If the cleanup costs $39,500, the assistance given would be $31,600. Gary Rauch believes that he will be able to obtain financing for the remaining 20 percent of the cost.

AUTHORITY/NEED FOR ACTION:

X	Required by Statute: 459.780 Enactment Date: 1987	Attachment A
___	Statutory Authority:	Attachment ___
X	Pursuant to Rule: OAR 340-62-150 to 160	Attachment B
___	Pursuant to Federal Law/Rule:	Attachment ___
___	Other:	Attachment ___

___ Time Constraints: (explain)

The permit allows the permittee until January 1, 1991, to remove the waste tires. It is environmentally desirable, however, to have the permittee remove the tires as quickly as possible.

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 ___
X	Supplemental Background Information	Attachment ___
	- Guidelines, Financial Assistance	Attachment C
	- Analysis: How permittee fits guidelines	Attachment D
	- Permittee's request for financial assistance	Attachment E
	- CPA Letter of Certification	Attachment F

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

During summer 1989, the Waste Tire Advisory Committee developed and adopted a position formally supporting program guidelines for determining the amount of financial assistance available to an applicant who is an individual, sole proprietorship or partnership. At their September 6, 1989 meeting, the Committee recommended similar guidelines to be used for corporations. DuBois Auto Recycling is a corporation, so guidelines for corporations must be used.

There are nearly 20 permitted waste tire storage sites, and at least 10 are expected to request financial assistance. The Commission approved the first request for financial assistance at its September 8, 1989 meeting. Some sites rank higher in environmental risk than DuBois Auto Recycling, but have not yet submitted complete financial information and cleanup plans to the Department.

PROGRAM CONSIDERATIONS:

Piles of waste tires represent potential environmental hazards from mosquitoes and fire. One of the Waste Tire Program directives is to use Waste Tire Recycling Account money to clean up existing tire piles. There are two methods to do this (the "carrot and stick"):

a. The Department can assist a permittee in removing or processing the waste tires. The cleanup occurs in a spirit of cooperation, because the permittee has requested the help, has found a contractor to remove the tires and has agreed to pay part of the cost. The Department and the permittee work together to rid the community of a potential environmental problem; or

b. The Department can follow legal procedures and abate the site. This involves serving an order and notice of intent to abate on the responsible parties, requesting bids through the Department of General Services, selecting the bidder, authorizing removal and contractor payment, and finally collecting abatement and legal costs from the responsible parties. The respondents can appeal the process and delay removal of the tires for months, perhaps years.

The preferable method is to assist the permittee.

The program currently has about $1.5 million available for reimbursement to users of waste tires, and for site cleanup. By June 30, 1990, the Department estimates that this figure will increase to $2.1 million. Thus, we anticipate having adequate funds to meet permittees' requests for financial assistance to remove tires.

The permittee has submitted all financial documents requested by the Department and a waste tire removal plan describing the proposed action, time schedule and cost estimate, as required by rule.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Removal of the tires over a 5-year or longer period by the permittee without financial assistance from the Waste Tire Recycling Account.

2 Removal of the tires by January 1, 1991, or earlier with assistance from the Waste Tire Recycling Account, basing assistance on the existing rule and Department guidelines.

3. Postponement of this request for financial assistance until early in 1990, when guidelines for all categories of permittee (including corporations and municipalities) could be adopted as rule.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

Alternative 2. We recommend proceeding immediately with financial assistance for the following reasons:

1. The site is located close to populated areas (St. Helens); a tire fire would negatively impact the air quality for this community, and resulting pyrolytic oils could also enter surface and ground waters.

2. The statute gives us the legal authority to provide the assistance.

3. The permittee's financial situation meets the statutory requirement, as interpreted by Department guidelines, that strict compliance with the Department's cleanup schedule would cause substantial curtailment or closing of the permittee's business or the bankruptcy of the permittee.

4. The Waste Tire Advisory Committee has recommended guidelines for use of the funds by corporations.

5. Budget is not an issue; the Waste Tire Recycling Account has an adequate fund balance. Use of funds now would fulfill a legislative intent to clean up tire piles as quickly as possible.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The permittee meets statutory and regulatory criteria for receiving financial assistance to clean up the waste tires. The action would follow agency policy and legislative intent in getting the site cleaned of tires as quickly as possible, thus eliminating the potential environmental problems associated with tire piles.

ISSUES FOR COMMISSION TO RESOLVE:

1. Should approval of funding await adoption of the financial assistance guidelines as rule? (The Attorney General has advised the Department that financial assistance can be given based on the statute.)

INTENDED FOLLOWUP ACTIONS:

If the request for financial assistance is approved, the Department will notify the permittee to proceed with the cleanup, and will prepare a repayment agreement with the permittee.

The permittee will arrange for cleanup; the Department will inspect and approve the cleanup operation, and then issue a check for the Department's financial share of the cleanup costs.

Approved:
Section: Steve Greenwood
Division: Steve Greenwood for Stephanie Hallock
Director: Jeff Haun

Report Prepared By: Anne Cox
Phone: 229-6912
Date Prepared: October 4, 1989

Cox:k
WT\SK2271
October 4, 1989

459.780 Tire removal or processing plan; financial assistance; department abatement. (1) The department, as a condition of a waste tire storage site permit issued under ORS 459.715 to 459.760, may require the permittee to remove or process the waste tires according to a plan approved by the department.

(2) The department may use moneys from the Waste Tire Recycling Account to assist a permittee in removing or processing the waste tires. Moneys may be used only after the commission finds that:

(a) Special circumstances make such assistance appropriate; or

(b) Strict compliance with the provisions of ORS 459.705 to 459.790 would result in substantial curtailment or closing of the permittee's business or operation or the bankruptcy of the permittee.

(3) The department may use subsections (4) to (7) of this section if:

(a) A person fails to apply for or obtain a waste tire storage site permit under ORS 459.715 to 459.760; or

(b) A permittee fails to meet the conditions of such permit.

(4) The department may abate any danger or nuisance created by waste tires by removing or processing the tires. Before taking any action to abate the danger or nuisance, the department shall give any persons having the care, custody or control of the waste tires, or owning the property upon which the tires are located, notice of the department's intentions and order the person to abate the danger or nuisance in a manner approved by the department. Any order issued by the department under this subsection shall be subject to appeal to the commission and judicial review of a final order under the applicable provisions of ORS 183.310 to 183.550.

(5) If a person fails to take action as required under subsection (4) of this section within the time specified the director may abate the danger or nuisance. The order issued under subsection (4) of this section may include entering the property where the danger or nuisance is located, taking the tires into public custody and providing for their processing or removal.

(6) The department may request the Attorney General to bring an action to recover any reasonable and necessary expenses incurred by the department for abatement costs, including administrative and legal expenses. The department's certification of expenses shall be prima facie evidence that the expenses are reasonable and necessary.

(7) Nothing in ORS 459.705 to 459.790 shall affect the right of any person or local government unit to abate a danger or nuisance or to recover for damages to real property or personal injury related to the transportation, storage or disposal of waste tires. The department may reimburse a person or local government unit for the cost of abatement. [1987 c.706 §15]

Note: See note under 459.705.

ATTACHMENT B

Use of Waste Tire Site Cleanup Funds

340-62-150 (1) The Department may use cleanup funds in the Waste Tire Recycling Account to:

(a) Partially pay to remove or process waste tires from a permitted waste tire storage site, if the Commission finds that such use is appropriate pursuant to OAR 340-62-160.

(b) Pay for abating a danger or nuisance created by a waste tire pile, subject to cost recovery by the attorney general pursuant to OAR 340-62-165.

(c) Partially reimburse a local government unit for the cost it incurred in abating a waste tire danger or nuisance.

(2) Priority in use of cleanup funds shall go to sites ranking high in criteria making them an environmental risk, pursuant to OAR 340-62-155.

(3) For the Department to reimburse a local government for waste tire danger or nuisance abatement, the following must happen:

(a) The Department must determine that the site ranks high in priority criteria for use of cleanup funds, OAR 340-62-155.

(b) The local government and the Department must have an agreement on how the waste tires shall be properly disposed of.

B - p. 1

Criteria for Use of Funds to Clean Up Permitted Waste Tire Sites

340-62-155 (1) The Department shall base its recommendations on use of cleanup funds on potential degree of environmental risk created by the tire pile. The following special circumstances shall serve as criteria in determining the degree of environmental risk. The criteria, listed in priority order, include but are not limited to:

(a) Susceptibility of the tire pile to fire. In this, the Department shall consider:

(A) The characteristics of the pile that might make it susceptible to fire, such as how the tires are stored (height and bulk of piles), the absence of fire lanes, lack of emergency equipment, presence of easily combustible materials, and lack of site access control;

(B) How a fire would impact the local air quality; and

(C) How close the pile is to natural resources or property owned by third persons that would be affected by a fire at the tire pile.

(b) Other characteristics of the site contributing to environmental risk, including susceptibility to mosquito infestation.

(2) In determining the degree of environmental risk involved in the two criteria above, the Department shall consider:

(a) Size of the tire pile (number of waste tires).

(b) How close the tire pile is to population centers. The Department shall especially consider the population density within five miles of the pile, and location of any particularly susceptible populations such as hospitals.

(3) Financial hardship on the part of the permittee shall be an additional criterion in the Department's determination. Financial hardship means that strict compliance with OAR 340-62-005 through 340-62-045 would result in substantial curtailment or closing of the permittee's business or operation, or the bankruptcy of the permittee. The burden of proof of such financial hardship is on the permittee.

Procedure for Use of Cleanup Funds for a Permitted Waste Tire Storage Site

340-62-160. (1) The Department may recommend to the Commission that cleanup funds be made available to partially pay for cleanup of a permitted waste tire storage site, if all of the following are met:

(a) The site ranks high in the criteria making it an environmental risk, pursuant to OAR 340-62-155.

(b) The permittee submits to the Department a compliance plan to remove or process the waste tires. The plan shall include:

(A) A detailed description of the permittee's proposed actions;

(B) A time schedule for the removal and or processing, including interim dates by when part of the tires will be removed or processed.

(C) An estimate of the net cost of removing or processing the waste tires using the most cost-effective alternative. This estimate must be documented.

(c) The plan receives approval from the Department.

(2) A permittee claiming financial hardship under OAR 340-62-155 (3) must document such claim through submittal of the permittee's state and federal tax returns for the past three years, business statement of net worth, and similar materials. If the permittee is a business, the income and net worth of other business enterprises in which the principals of the permittee's business have a legal interest must also be submitted.

(3) If the Commission finds that use of cleanup funds is appropriate, the Department shall agree to pay part of the Department-approved costs incurred by the permittee to remove or process the waste tires. Final payment shall be withheld until the Department's final inspection and confirmation that the tires have been removed or processed pursuant to the compliance plan.

Attachment C

WASTE TIRE PROGRAM

GUIDELINES FOR USE OF CLEANUP FUNDS

POLICIES AND PROCEDURES

Incorporating recommendations made by the Waste Tire Advisory Committee at their April 19 and September 6, 1989 meetings

DEPARTMENT OF ENVIRONMENTAL QUALITY

September 15, 1989

Contact Person: Deanna Mueller-Crispin
Waste Tire Program Coordinator
229-5808

I. Purpose

Help persons comply with the waste tire program statute while avoiding "substantial curtailment or closing" of the person's business, and avoiding bankruptcy of the person or business.

II. Program Summary

This program may partially reimburse waste tire storage site permittees for costs incurred in waste tire removal. It also provides funds to contract to abate (clean up) unpermitted tire piles, subject to cost recovery from the responsible person. It may partially reimburse the tire removal costs incurred by a local government in abating a waste tire pile.

III. Eligibility Criteria

a. In General. The law provides that cleanup funds may be used to assist in removing or processing waste tires from a permittee's site if special circumstances make such assistance appropriate, or if strict compliance with the waste tire law would:

- Result in substantial curtailment or closing of a waste tire permittee's business or operation; or

- Result in the bankruptcy of the permittee.

b. The "Applicant" must be the permittee holding a waste tire storage site permit from the Department.

c. For Individuals. DEQ will assume that waste tire removal would result in "substantial curtailment" of the individual's "operation," or in his/her bankruptcy, and thus financial assistance would be provided, if costs of such removal would:

- Result in the reduction of the individual's gross household income to below 80 percent of the area median income (as determined by HUD); and/or

- Result in the reduction of the net household assets (excluding the primary residence, its contents, and one car) to below $20,000.

c. For Sole Proprietorships & Partnerships. DEQ will assume that waste tire removal would result in "substantial

curtailment or closing" of the business's operation, or in its bankruptcy, and thus financial assistance would be provided, if costs of such removal would:

- Result in the reduction of the gross household income (including all sources of income) of the owner(s) or officers to below 80 percent of the area median income (for sole proprietorships and partnerships only, based on "net income" to the owners from the business excluding depreciation); and/or

- Result in the reduction of the assets of the business to below $20,000 (excluding basic assets of building, equipment and inventory. Cash, investments, stock, real property and accounts receivable will be decreased by any outstanding liabilities [loans, wages payable to others than owner(s), and accounts payable]).

- Partners in a partnership will be held accountable for tire cleanup costs ("paydown" requirement) in proportion to their partnership share in the business.

d. Corporations. DEQ will assume that waste tire removal would result in "substantial curtailment" of the corporation's business, or in its bankruptcy, and thus financial assistance would be provided, if costs of such removal would:

- Result in the reduction of the corporate officers' and corporate owners' gross household income to below 80 percent of the area median income (as determined by HUD); and/or

- Result in the reduction of the net corporate assets to below $20,000 (excluding basic assets of building, equipment and inventory. Cash, investments, stock, real property and accounts receivable will be decreased by any outstanding liabilities [loans, wages payable to others than officers and officers' household members, and accounts payable]); and

- If the corporation's accountant or attorney submits a certified statement that the cost would cause substantial curtailment or closing of the corporation, or bankruptcy.

- Corporate officers and owners will be held accountable for tire cleanup costs ("paydown" requirement) in proportion to their share in the corporation.

e. Municipalities. DEQ will assume that the following special circumstances make it appropriate to provide financial assistance to municipalities:

- The tire pile to be cleaned up existed before January 1, 1988;

- The tires collected were from the public, and the municipality did not charge to collect them for disposal.

Summary:

Class:	Income Threshold	Asset Threshold
Individuals	gross household: 80% median	household $20,000 (excl. homestead & family car)
Sole proprietor, partnership	modified gross (net from bus.) household: 80% med.	business $20,000 (excl. building, equip. & invent'y)
Corporation	gross household, all corporate officers: 80% median	corporation $20,000 (excl. building, equip. & invent'y)
Municipalities	NA (see above)	NA (see above)

IV. Definitions

a. Gross Income: Before tax income for the preceding 12 months from all sources of all occupants of the household unless verified as a paying boarder, including but not limited to wages, commissions, bonus, overtime, Social Security and retirement benefits, Veteran's benefits, public assistance, child support and alimony, interest and dividends, rental or boarder rent income, support from a non-member of the household, unemployment compensation and disability payments, net profits from sole or joint proprietorship or home businesses, and the living expenses portion of student grants for those students residing in the home for the 12 months preceding the date of application.

An exception to the prior 12 month rule is allowed if the applicant or co-applicant is 65 or over and has retired during the prior 12 month period. In these cases, income is from the date of retirement and projected forward 12 months. If this information is not available, the Department shall use the best and most recent information available, including averaging income from the most recent three years of tax returns.

b. Allowable Deductions to Gross Income: All non-reimbursed medical, dental, optical expenses, including nursing home costs, home nursing costs; child support and alimony.

c. Net Assets: Resources that can be liquidated or used as collateral for a private loan in order to fund waste tire removal, such as: real property, stocks and bonds, savings accounts, credit union shares, cash on hand, vehicles, equipment, less the principal balance of outstanding loans, excluding the mortgage(s) on the primary residence. Value of real property should be county assessor's appraisal; for the cleanup/abatement site, value should be the property's value with tires removed.

d. 80 Percent of Area Median Income: The current level of 80 percent of the median income of the county or SMSA in which the applicant lives, as determined annually by the U.S. Department of Housing and Urban Development (HUD). Income is based on household size.

e. Household Members: All persons, regardless of relationship or age, who are considered dependents of the applicant as defined by the Internal Revenue Service. Those persons not determined to be dependents but who reside permanently in the household may be counted. Under these circumstances their gross annual income from all sources will be added to that of the applicant.

V. Application Process

1. DEQ assigns points to all sites on our list for cleanup or abatement funds. Sites with highest number of points are acted upon first. (Points are based on "Cleanup/Abatement of Waste Tire Piles Point System" paper, 12/28/88)

2. Permittee fills out application form for financial assistance. Application includes detailed description of proposed tire removal actions, time schedule, cleanup bids, etc. Application requires three years of Federal and State income tax returns.

3. DEQ approves plan (or returns to permittee for changes). DEQ determines amount of cleanup funds site would be allowed.

4. Staff prepares staff report to EQC for approval of determined amount of cleanup funds.

5. Permittee cleans up site; DEQ verifies cleanup; DEQ issues voucher for agreed-on amount.

VI. Amount of Financial Help to be Given

1. No financial help shall be given unless the applicant meets the "financial hardship" criteria.

2. "Paydown" requirement: The applicant is required to first contribute his or her own funds to the tire cleanup up to the point at which household income (on an annual basis) and/or net assets would be reduced below the thresholds listed under III, Eligibility Criteria.

3. For individuals, sole proprietorships and partnerships:

   a. On the remaining cost of the cleanup, the Department's contribution will be based on the following criteria:

Criteria	% Cost to be Forgiven
A. Financial hardship	70%
B. "Cooperative"	10% (or max. $1000[1])
C. Unknowingly dumped on	10% (or max. $1000[1])
Maximum assistance:	90% (+ permit fees, bond, but not to exceed 100%)

4. For corporations and municipalities: up to 80% of the cost.

5. The applicant's own in-kind contribution (such as labor) to the cleanup of his site may be considered by DEQ as part of applicant's required cost contribution. However, previous costs incurred by a permittee in removing tires from his site before January 1, 1989, should not be considered part of the permittee's own "financial contribution."

5. No applicant may receive financial assistance to clean up waste tires more than once under this program.

guidelin.per

Attachment D

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY **INTEROFFICE MEMORANDUM**

TO: Financial Assistance File **DATE:** September 15, 1989

FROM: Anne AVC Cox, Waste Tire Specialist

SUBJECT: Review of DuBois Auto Recycling's Application for Financial Assistance to Remove Tires

Situation

Dubois Auto Recycling & Towing is an auto wrecking yard and a waste tire storage site permittee who has requested financial assistance from the Department to remove about 50,000 waste tires from the site. The site ranks moderately high in "environmental risk" criteria under the Department's point system, making it potentially eligible to receive financial assistance. Gary Rauch, corporation officer, has submitted a document which contains the following: application for financial assistance, three bids, financial statement by a CPA, profit and loss statements for three years, corporate and personal tax returns for three years, death certificate of the other corporate officer (Charles DuBois).

Gary Rauch is the surviving corporate officer of DuBois Auto Recycling & Towing, and he is the only person in his household.

Guidelines

Following guidelines recommended by the Waste Tire Advisory Committee, the Department is drafting rules for determining financial hardship and for determining the amount of financial aid to be given to permittees who apply for help. The proposed wording is:

340-62-155(4)(b) In the case of a permittee which is a corporation, the cost of complying with the tire removal schedule required by the Department:

(A) Would cause the annual gross household income of each of the corporate officers and owners to fall below 80 percent of the area median income as determined by the U.S. Department of Housing and Urban Development; and

(B) Would reduce the net assets (excluding basic assets of building, equipment and inventory) of the corporation to below $20,000; and

(C) Would, as certified in a statement from the corporation's accountant or attorney, cause substantial curtailment or closing of the corporation, or bankruptcy.

(5) The permittee is required to contribute its own funds to the cost of tire removal up to the point where "financial hardship," as specified in (4) above, would ensue; the Department may assist the permittee with the remaining cost of tire removal to the following extent:

(a) For a permittee who is not a corporation or a local government: up to 90 percent of the cost (plus any cost of waste tire storage permit fees paid by the permittee);

(b) For a corporation: up to 80 percent of the cost.

Discussion

The death of Charles DuBois on September 28, 1988, caused unusual, but temporary, changes in the financial situation of both the corporation and of Gary Rauch.

The corporation's income for 1988 is unusually inflated due to proceeds received from a life insurance policy on Charles DuBois. The funds, however, are being held in trust pending closure of the corporation's buy-out of Mr. DuBois' stock, and are not available for any other purpose, according to the corporation's attorney. Staff recommends that the life insurance proceeds be disregarded in reviewing the corporation's financial situation.

Gary Rauch's income from wages and rent (a negative figure), excluding interest income was $8,942 for 1986, $14,475 for 1987, and $14,515 for 1988. He listed $1 interest for 1986, no interest for 1987, and $9,622 for 1988.

I called Gary Rauch to ask about the unusual interest income shown for 1988 to see if it reflected a permanent change in his financial status. Schedule A shows that he received $9,428 in interest from a U.S. Government bond. Mr. Rauch explained that in 1972 a friend made a gift to him and to his uncle of two $10,000 bonds. His uncle insisted on having both names on both bonds. When his uncle became very ill in 1988, it became necessary to turn in both bonds while the uncle was still living and able to sign. The aunt and uncle kept proceeds from one bond, Mr. Rauch received the other. This interest income caused a temporary increase of $9,428 in Mr. Rauch's 1988 income. It does not reflect a permanent increase or change in his income.

Guidelines state that the Department is to consider the personal income of the applicant from the previous 12 months. The Department asks for three years of tax returns to see if the most recent return is comparable to recent tax returns.

If the Department adheres strictly to guidelines and considers only the 1988 tax return of Gary Rauch, he would be required to spend down an additional $6,000 to reach the point of "financial hardship," at which point the Department would begin assistance.

The review of the past three years of tax returns indicates that Gary Rauch's recent average wage income is about $14,000. Even if the incomes from 1986, 1987 and 1988 are averaged with the 16 years of interest from the bond included, the resulting average income for the three years is $15,852 and below the Housing and Urban Development (HUD) income threshold of $18,050 established for Columbia County. If Gary Rauch's income is below the threshold, he would still be required to pay 20 percent of the cost of cleanup or $7,900.

Staff recommends that the bond interest be distributed over the 16-year period it was accruing and that the interest fraction be used in determining Mr. Rauch's 1988 income level. This will take into account the unique circumstances of 1988.

Analysis

Gary Rauch 3-Year Income

	1988	1987	1986
Wages	14,820	14,820	9,247
Interest	194	---	1
U.S. Government Bond interest	9,428	---	---
Business income	---	---	---
Capital gain	---	---	---
Pension	---	---	---
Rents	<305>	<345>	<305>
Unemployment	---	---	---
Schedule C	---	---	---
	24,137	14,475	8,943
Adj. Depreciation	---	---	---
Medical	---	---	---
Child care	---	---	---

3-year Income Average: $15,852

1988 Income with U.S. Government Bond interest spread over 16 years: $15,298

DuBois Auto Recycling

Current Assets

Cash in Bank	$8,750.09
Cash in Money Mkt.	21,628.05
Prepaid taxes	1,230.00
Total assets:	$31,608.14

Liabilities

Notes payable	$21,392.06
Federal tax	4,121.36
Oregon Excise tax	1,614.42
Interest due on stock re-buy	9,787.50
Payroll tax	6,676.58
Total liabilities:	$43,591.92

Amount of Assistance

The recommended level of assistance for corporations after the required "paydown" is 80 percent.

Conclusions

HUD's 80 percent of median household income for a one-person family in Columbia County is $18,050. Mr. Rauch's adjusted household income for 1988 is $15,298.

Excluding the buildings, equipment and inventory, the balance sheet for the business shows assets of $31,608.14 and liabilities of $43,591.92.

Under the proposed rule, Mr. Rauch and the corporation are eligible for financial assistance with tire removal based on financial hardship. My recommendation is to proceed with a request for EQC approval of the amount of financial assistance determined below.

Amount of Financial Assistance Recommended

The financial assistance guidelines apply to this case in the following manner:

Applicant: corporation and one-person household in Columbia County

HUD income threshold: $18,050

1988 adjusted gross household income: $15,298
Assets of corporation: <$11,983.78>

Estimated cost of tire cleanup: $39,500

Required applicant contribution to reach "financial hardship":

	Corporation Officer		Threshold	
Income:	$15,298	-	$18,050 (80% of median)	= 0

Corporation Balance sheet:

Assets: $31,608.14
Liabilities: 43,591.92

Net assets: <$11,983.78> - $20,000 (base) = 0

Cost eligible for DEQ assistance: $39,500 - 0 = $39,500

DEQ contribution: to base of 39,500 = @ 80% = $31,600

Summary

Total est. cleanup cost: $39,500
DEQ contribution: 31,600
Applicant contribution: 7,900

AC:k
WT\SK2278

Attachment E

(Revised 4/28/89)

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
Application for
WASTE TIRE CLEANUP FUNDS/REDUCTION OF ABATEMENT COST RECOVERY
Authority: Oregon Revised Statutes 459.780

Please fill out the application completely. Place n/a for those answers that are not applicable.

I. CHECK ONE:

XX I hold a Stage II Waste Tire Storage Site Permit. I hereby apply for waste tire cleanup funds from the Waste Tire Recycling Account to partially pay to remove or process waste tires stored under my permit.

I am submitting a plan to remove or process the waste tires on my site, including a proposed time schedule and estimated net cost of removal or processing.

____ The Department of Environmental Quality (DEQ) has notified me of its intent to abate, or I believe that DEQ may wish to abate, the danger or nuisance caused by waste tires of which I have the care, custody or control, and/or which are stored on property which I own. I hereby request that DEQ reduce the amount of abatement costs which it could otherwise bring an action to recover.

II. TIRE SITE INFORMATION

1. Site name (if any) DuBois Auto Recycling & Towing
2. Site Location 717 North Columbia River Hy. St. Helens, Or.
   Street, Road, or Junction
3. Legal Description 5 (TWP) 1 (Range) 33 (Section) 3 (Tax Lot#) 4 (Tax Acct#)
   County Columbia
4. Site operator (if any) Gary A. Rauch
   Address 14 DuBois Ln. (Street) St. Helens, Oregon (City) 97051 (ZIP)
   Telephone 503-397-0626
5. Property owner's name Gary A. Rauch
   Address 14 DuBois Ln. (Street) St. Helens (City) Oregon 97051 (ZIP)
   Telephone 503-397-0626
6. Description of WASTE TIRES to be removed:
   a. Approximate number of -
      Car tires (off-rim): 50,000
      " (on rim): 1,000
      Truck tires (off-rim): 300

ATTACHMENT F

MICHAEL J. EMERT
CERTIFIED PUBLIC ACCOUNTANT
1430 S.E. 35TH AVENUE
PORTLAND, OREGON 97214

233-5931

September 19, 1989

Department of Environmental Quality
Attn: Annie Cox
811 S.W. 6th Ave.
Portland, Oregon 97204

Re: DuBois Auto Recycling and Towing, Inc.

Dear Ms. Cox:

I am writing at the request of Gary Rauch, President of DuBois Auto Recycling and Towing, Inc. There are several reasons why complying with the tire removal program over two years could cause the substantial curtailment of the business with the potential of closing the business with a resulting bankruptcy.

The business last year benefited from an approximate five year accumulation of scrap that resulted in approximately $20,000.00 of net revenue. This is not available for the next fiscal year.

The corporation is obligated to purchase Charles DuBois 50% stock ownership for approximately $150,000.00 from his estate. This obligation has been planned but stretches the business financial capacity to the maximum.

Banks are not favorable to business loans on an auto wrecking venture.

Gary Rauch does not have assets outside of the business sufficient to borrow any substantial funds.

The land has contamination problems, the extent of which are unknown and which also require corrective measures. Financial institutions are unwilling to make loans against such property as they can not ascertain the equity.

Gary Rauch has been unable to hire a key person to replace Charles DuBois. The salary needed for such key person will reduce short term profits. Gary cannot run the business operations and the office without assistance.

The best estimate of tire removal costs is $40,000. A seven year program would appear to be feasible but still would appear to stretch the financial strength of the business.

I have been the company's accountant for many years and am available to explain any financial questions you may have.

Very Truly Yours,

Michael J. Emert

Michael J. Emert

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: October 20, 1989
Agenda Item: N (2)
Division: HSW
Section: SW/WTP

SUBJECT:

Waste Tire Pile Cleanup - Use of funds for Cleanup of the Mishler Wreckers site, Willamina, Oregon

PURPOSE:

The purpose is to allow use of funds from the Waste Tire Recycling Account to expedite cleanup of approximately 200,000 waste tires at a permitted site. The permittee is Ed Flater, lessee of the waste tire storage site.

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 ___

_X_ Approve Department Recommendation
- ___ Variance Request — Attachment ___
- ___ Exception to Rule — Attachment ___
- ___ Informational Report — Attachment ___
- _X_ Other: (specify) — Attachment ___

Allow Waste Tire Recycling Account cleanup funds to be made available to partially pay for immediate cleanup of approximately 200,000 waste tires from Mishler Wreckers permitted waste tire storage site, pursuant to OAR 340-62-160(1).

DESCRIPTION OF REQUESTED ACTION:

The Waste Tire Recycling Account is funded by a $1 fee on new replacement tires. The purpose of the account is to enhance the market for waste tires by giving a subsidy for their reuse, and to help clean up waste tire piles.

The statute requires the Environmental Quality Commission to make a finding before the Department may use funds to assist a permittee in removing tires. The Commission must find that special circumstances allow for use of the funds, or that strict compliance with a tire removal date set by the Department would result in "substantial curtailment or closing of the permittee's business or operation or the bankruptcy of the permittee." (ORS 459.780(2)(b) and OAR 340-62-150.)

The site is a wrecking yard owned by Rick Mishler. In 1988, Mr. Mishler entered a lease agreement with Mr. Flater and another individual, Pierre Renaud, and their corporation, North West Tire Disposal Services Inc., for part of the wrecking yard to operate a waste tire processing site. The lease agreement transfers ownership of all waste tires at the site to the lessees. There were an estimated 50,000 waste tires at the site at the time. The corporation added an estimated 150,000 waste tires during 1988. The corporation is now inactive and Mr. Renaud has shown no interest in helping to clean up the site. Mr. Flater has been forced by personal financial difficulties to relocate to Alaska where he is working to get out of debt. He applied as one of the lessees of the site for a Waste Tire Storage Site Permit. The permit requires all tires to be chipped by June 30, 1990, and removal of all waste tires by January 1, 1991. Mr. Flater has applied for financial assistance to process the tires by the permit deadline. Mr. Flater is not financially able to comply with permit requirements for removal.

The permittee has obtained three bids for tire removal or processing and has selected the bid of Franz Rotter. Mr. Rotter's bid is $150,000 for removal of all waste tires from the site. This bid is considered by staff to be a reasonable amount for tire processing. Mr. Flater cannot afford to remove the tires, as his finances are severely limited.

The Department's rule (OAR 340-62-155) specifies in part that:

1. The Department shall base its recommendations on use of cleanup funds on potential degree of environmental risk created by the tire pile. The following special circumstances shall serve as criteria in determining the degree of environmental risk. The criteria, listed in priority order, include but are not limited to:

   a. Susceptibility of the tire pile to fire...

   b. Other characteristics of the site contributing to environmental risk, including susceptibility to mosquito infestation.

2. In determining the degree of environmental risk involved in the two criteria above, the Department shall consider:

   a. Size of the tire pile...[and]

   b. How close the tire pile is to population centers...

The Waste Tire Program developed a point system to quantify the environmental risk created by each waste tire site. The Mishler Wreckers site ranks very high in environmental risk, based on the Waste Tire Program point system (49.2 out of a potential 94 points, or second among permittees who have indicated they will request financial help). A tire fire at this site could substantially impact the air quality of Willamina, and pyrolytic oil flows could potentially enter surface or ground waters of the state. A fire at this site would be especially difficult to control or extinguish because of the size of the pile.

The rule (OAR 340-62-155(3)) further states that:

> Financial hardship on the part of the permittee shall be an additional criterion in the Department's determination. Financial hardship means that strict compliance with OAR 340-62-005 through 340-62-045 would result in substantial curtailment or closing of the permittee's business or operation, or the bankruptcy of the permittee...

The Department developed guidelines (Attachment C) to ensure equitable evaluation of a permittee's ability to

pay for cleanup without causing "substantial curtailment" of the permittee's business or operation. The financial guidelines are based on Multnomah County's "safety net" sewer program. The criteria for assistance are a household income below 80 percent of the Housing and Urban Development median area income, and $20,000 in assets. A permittee must spend his or her own funds up to the threshold; the Department will partially assist with expenses above the threshold. The Department assistance would be 80 percent of the cost of the cleanup. The Department's share of the $150,000 cleanup costs would be $120,000.

Franz Rotter, the selected bidder, has agreed to carry Mr. Flater on a contract for his share of $30,000 for cleanup.

AUTHORITY/NEED FOR ACTION:

X	Required by Statute: 459.780	Attachment A
	Enactment Date: 1987	
___	Statutory Authority: ___	Attachment ___
X	Pursuant to Rule: OAR 340-62-150 to 160	Attachment B
___	Pursuant to Federal Law/Rule: ___	Attachment ___
___	Other:	Attachment ___
___	Time Constraints: (explain)	

The permit allows the permittee until December 31, 1990, to process or remove the waste tires. It is environmentally desirable, however, to have the permittee process or remove the tires as quickly as possible.

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 ___
X	Supplemental Background Information	Attachment ___
	- Guidelines, Financial Assistance	Attachment C
	- Analysis: How permittee fits guidelines	Attachment D
	- Applicant's request for financial assistance	Attachment E

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

During summer 1989, the Waste Tire Advisory Committee developed and adopted a position formally supporting program guidelines for determining the amount of financial assistance available to an applicant who is an individual, sole proprietorship or partnership. Mr. Flater is applying as an individual.

There are nearly 20 permitted waste tire storage sites, and at least 10 are expected to request financial assistance. The Commission approved the first request for financial assistance at the September 8, 1989 meeting. This site ranks second highest in environmental risk of all sites, both permitted and nonpermitted.

PROGRAM CONSIDERATIONS:

Piles of waste tires represent potential environmental hazards from mosquitoes and fire. One of the Waste Tire Program directives is to use Waste Tire Recycling Account money to clean up existing tire piles. There are two methods to do this (the "carrot and stick"):

a. The Department can assist a permittee in removing or processing the waste tires. The cleanup occurs in a spirit of cooperation, because the permittee has requested the help, has found a contractor to remove the tires and has agreed to pay part of the cost. The Department and the permittee work together to rid the community of a potential environmental problem; or

b. The Department can follow legal procedures and abate the site. This involves serving an order and notice of intent to abate on the responsible parties, requesting bids through the Department of General Services, selecting the bidder, authorizing removal and contractor payment, and finally collecting abatement and legal costs from the responsible parties. The respondents can appeal the process and delay removal of the tires for months, perhaps years.

The preferable method is to assist the permittee.

The program currently has about $1.5 million available for reimbursement to users of waste tires, and for site cleanup. By June 30, 1990, the Department estimates that this figure will increase to $2.1 million. Thus, we anticipate having

adequate funds to meet permittees' requests for financial assistance to remove tires.

The permittee has not submitted all financial documents requested by the Department. He needs to supply one item that was omitted on the application for financial assistance.

As required by rule, the permittee has submitted to the Department a waste tire removal plan describing the proposed action, time schedule and cost estimate.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Removal of the tires over a 5-year or longer period by the permittee without financial assistance from the Waste Tire Recycling Account.

2 Removal/processing of the tires by December 31, 1990, or earlier with assistance from the Waste Tire Recycling Account, basing assistance on the existing rule and Department guidelines, but conditioned on receipt of the missing item on the financial assistance application. Department to pay 80 percent ($120,000) of cleanup costs; permittee to pay 20 percent ($30,000).

3. Postponement of this request for financial assistance until early in 1990, when guidelines could be developed for all categories of permittee (including corporations and municipalities) and their essentials adopted as rules.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

Alternative 2. We recommend proceeding immediately with financial assistance for the following reasons:

1. The site is located close to populated areas (Willamina); a tire fire would negatively impact the air quality for this community, and resulting pyrolytic oils could also enter surface and ground waters. A tire fire at this site would be difficult to control.

2. The statute gives us the legal authority to provide the assistance.

3. The permittee's financial situation (subject to verification upon receipt of omitted item) meets the statutory requirement, as interpreted by Department guidelines, that strict compliance with the Department's cleanup schedule would cause substantial curtailment or closing of the permittee's operation or the bankruptcy of the permittee.

4. The Waste Tire Advisory Committee has approved guidelines for use of the funds.

5. Budget is not an issue; the Waste Tire Recycling Account has an adequate fund balance. Use of funds now would fulfill a legislative intent to clean up tire piles as quickly as possible.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The permittee meets statutory and regulatory criteria for receiving financial assistance to clean up the waste tires. The action would follow agency policy and legislative intent in getting the site cleaned of tires as quickly as possible, thus eliminating the potential environmental problems associated with tire piles.

ISSUES FOR COMMISSION TO RESOLVE:

1. Should the guidelines for financial assistance be put in rule form? (The Attorney General has advised the Department that financial assistance can be given based on the statute.)

INTENDED FOLLOWUP ACTIONS:

If the request for financial assistance is approved, the Department will notify the permittee to proceed with the cleanup.

The permittee will arrange for cleanup; the Department will inspect and approve the cleanup operation, and then issue a check for the Department's portion of the cost of cleanup.

Approved:

Section: Steve Greenwood

Division: Steve Greenwood for Sch.

Director: Fred Hawn

Report Prepared By: Anne Cox

Phone: 229-6912

Date Prepared: October 4, 1989

Cox:k
WT\SK2270
October 4, 1989

459.780 Tire removal or processing plan; financial assistance; department abatement. (1) The department, as a condition of a waste tire storage site permit issued under ORS 459.715 to 459.760, may require the permittee to remove or process the waste tires according to a plan approved by the department.

(2) The department may use moneys from the Waste Tire Recycling Account to assist a permittee in removing or processing the waste tires. Moneys may be used only after the commission finds that:

(a) Special circumstances make such assistance appropriate; or

(b) Strict compliance with the provisions of ORS 459.705 to 459.790 would result in substantial curtailment or closing of the permittee's business or operation or the bankruptcy of the permittee.

(3) The department may use subsections (4) to (7) of this section if:

(a) A person fails to apply for or obtain a waste tire storage site permit under ORS 459.715 to 459.760; or

(b) A permittee fails to meet the conditions of such permit.

(4) The department may abate any danger or nuisance created by waste tires by removing or processing the tires. Before taking any action to abate the danger or nuisance, the department shall give any persons having the care, custody or control of the waste tires, or owning the property upon which the tires are located, notice of the department's intentions and order the person to abate the danger or nuisance in a manner approved by the department. Any order issued by the department under this subsection shall be subject to appeal to the commission and judicial review of a final order under the applicable provisions of ORS 183.310 to 183.550.

(5) If a person fails to take action as required under subsection (4) of this section within the time specified the director may abate the danger or nuisance. The order issued under subsection (4) of this section may include entering the property where the danger or nuisance is located, taking the tires into public custody and providing for their processing or removal.

(6) The department may request the Attorney General to bring an action to recover any reasonable and necessary expenses incurred by the department for abatement costs, including administrative and legal expenses. The department's certification of expenses shall be prima facie evidence that the expenses are reasonable and necessary.

(7) Nothing in ORS 459.705 to 459.790 shall affect the right of any person or local government unit to abate a danger or nuisance or to recover for damages to real property or personal injury related to the transportation, storage or disposal of waste tires. The department may reimburse a person or local government unit for the cost of abatement. [1987 c.706 §15]

Note: See note under 459.705.

ATTACHMENT B

Use of Waste Tire Site Cleanup Funds

340-62-150 (1) The Department may use cleanup funds in the Waste Tire Recycling Account to:

(a) Partially pay to remove or process waste tires from a permitted waste tire storage site, if the Commission finds that such use is appropriate pursuant to OAR 340-62-160.

(b) Pay for abating a danger or nuisance created by a waste tire pile, subject to cost recovery by the attorney general pursuant to OAR 340-62-165.

(c) Partially reimburse a local government unit for the cost it incurred in abating a waste tire danger or nuisance.

(2) Priority in use of cleanup funds shall go to sites ranking high in criteria making them an environmental risk, pursuant to OAR 340-62-155.

(3) For the Department to reimburse a local government for waste tire danger or nuisance abatement, the following must happen:

(a) The Department must determine that the site ranks high in priority criteria for use of cleanup funds, OAR 340-62-155.

(b) The local government and the Department must have an agreement on how the waste tires shall be properly disposed of.

B - p. 1

Criteria for Use of Funds to Clean Up Permitted Waste Tire Sites

340-62-155 (1) The Department shall base its recommendations on use of cleanup funds on potential degree of environmental risk created by the tire pile. The following special circumstances shall serve as criteria in determining the degree of environmental risk. The criteria, listed in priority order, include but are not limited to:

(a) Susceptibility of the tire pile to fire. In this, the Department shall consider:

(A) The characteristics of the pile that might make it susceptible to fire, such as how the tires are stored (height and bulk of piles), the absence of fire lanes, lack of emergency equipment, presence of easily combustible materials, and lack of site access control;

(B) How a fire would impact the local air quality; and

(C) How close the pile is to natural resources or property owned by third persons that would be affected by a fire at the tire pile.

(b) Other characteristics of the site contributing to environmental risk, including susceptibility to mosquito infestation.

(2) In determining the degree of environmental risk involved in the two criteria above, the Department shall consider:

(a) Size of the tire pile (number of waste tires).

(b) How close the tire pile is to population centers. The Department shall especially consider the population density within five miles of the pile, and location of any particularly susceptible populations such as hospitals.

(3) Financial hardship on the part of the permittee shall be an additional criterion in the Department's determination. Financial hardship means that strict compliance with OAR 340-62-005 through 340-62-045 would result in substantial curtailment or closing of the permittee's business or operation, or the bankruptcy of the permittee. The burden of proof of such financial hardship is on the permittee.

Procedure for Use of Cleanup Funds for a Permitted Waste Tire Storage Site

340-62-160. (1) The Department may recommend to the Commission that cleanup funds be made available to partially pay for cleanup of a permitted waste tire storage site, if all of the following are met:

(a) The site ranks high in the criteria making it an environmental risk, pursuant to OAR 340-62-155.

(b) The permittee submits to the Department a compliance plan to remove or process the waste tires. The plan shall include:

(A) A detailed description of the permittee's proposed actions;

(B) A time schedule for the removal and or processing, including interim dates by when part of the tires will be removed or processed.

(C) An estimate of the net cost of removing or processing the waste tires using the most cost-effective alternative. This estimate must be documented.

(c) The plan receives approval from the Department.

(2) A permittee claiming financial hardship under OAR 340-62-155 (3) must document such claim through submittal of the permittee's state and federal tax returns for the past three years, business statement of net worth, and similar materials. If the permittee is a business, the income and net worth of other business enterprises in which the principals of the permittee's business have a legal interest must also be submitted.

(3) If the Commission finds that use of cleanup funds is appropriate, the Department shall agree to pay part of the Department-approved costs incurred by the permittee to remove or process the waste tires. Final payment shall be withheld until the Department's final inspection and confirmation that the tires have been removed or processed pursuant to the compliance plan.

Attachment C

WASTE TIRE PROGRAM

GUIDELINES FOR USE OF CLEANUP FUNDS

POLICIES AND PROCEDURES

Incorporating recommendations made by the Waste Tire Advisory Committee at their April 19 and September 6, 1989 meetings

DEPARTMENT OF ENVIRONMENTAL QUALITY

September 15, 1989

Contact Person: Deanna Mueller-Crispin
Waste Tire Program Coordinator
229-5808

I. Purpose

Help persons comply with the waste tire program statute while avoiding "substantial curtailment or closing" of the person's business, and avoiding bankruptcy of the person or business.

II. Program Summary

This program may partially reimburse waste tire storage site permittees for costs incurred in waste tire removal. It also provides funds to contract to abate (clean up) unpermitted tire piles, subject to cost recovery from the responsible person. It may partially reimburse the tire removal costs incurred by a local government in abating a waste tire pile.

III. Eligibility Criteria

a. In General. The law provides that cleanup funds may be used to assist in removing or processing waste tires from a permittee's site if special circumstances make such assistance appropriate, or if strict compliance with the waste tire law would:

- Result in substantial curtailment or closing of a waste tire permittee's business or operation; or

- Result in the bankruptcy of the permittee.

b. The "Applicant" must be the permittee holding a waste tire storage site permit from the Department.

c. For Individuals. DEQ will assume that waste tire removal would result in "substantial curtailment" of the individual's "operation," or in his/her bankruptcy, and thus financial assistance would be provided, if costs of such removal would:

- Result in the reduction of the individual's gross household income to below 80 percent of the area median income (as determined by HUD); and/or

- Result in the reduction of the net household assets (excluding the primary residence, its contents, and one car) to below $20,000.

c. For Sole Proprietorships & Partnerships. DEQ will assume that waste tire removal would result in "substantial

curtailment or closing" of the business's operation, or in its bankruptcy, and thus financial assistance would be provided, if costs of such removal would:

- Result in the reduction of the gross household income (including all sources of income) of the owner(s) or officers to below 80 percent of the area median income (for sole proprietorships and partnerships only, based on "net income" to the owners from the business excluding depreciation); and/or

- Result in the reduction of the assets of the business to below $20,000 (excluding basic assets of building, equipment and inventory. Cash, investments, stock, real property and accounts receivable will be decreased by any outstanding liabilities [loans, wages payable to others than owner(s), and accounts payable]).

- Partners in a partnership will be held accountable for tire cleanup costs ("paydown" requirement) in proportion to their partnership share in the business.

d. Corporations. DEQ will assume that waste tire removal would result in "substantial curtailment" of the corporation's business, or in its bankruptcy, and thus financial assistance would be provided, if costs of such removal would:

- Result in the reduction of the corporate officers' and corporate owners' gross household income to below 80 percent of the area median income (as determined by HUD); and/or

- Result in the reduction of the net corporate assets to below $20,000 (excluding basic assets of building, equipment and inventory. Cash, investments, stock, real property and accounts receivable will be decreased by any outstanding liabilities [loans, wages payable to others than officers and officers' household members, and accounts payable]); and

- If the corporation's accountant or attorney submits a certified statement that the cost would cause substantial curtailment or closing of the corporation, or bankruptcy.

- Corporate officers and owners will be held accountable for tire cleanup costs ("paydown" requirement) in proportion to their share in the corporation.

e. Municipalities. DEQ will assume that the following special circumstances make it appropriate to provide financial assistance to municipalities:

- The tire pile to be cleaned up existed before January 1, 1988;

- The tires collected were from the public, and the municipality did not charge to collect them for disposal.

Summary:

Class:	Income Threshold	Asset Threshold
Individuals	gross household: 80% median	household $20,000 (excl. homestead & family car)
Sole proprietor, partnership	modified gross (net from bus.) household: 80% med.	business $20,000 (excl. building, equip. & invent'y)
Corporation	gross household, all corporate officers: 80% median	corporation $20,000 (excl. building, equip. & invent'y)
Municipalities	NA (see above)	NA (see above)

IV. Definitions

a. Gross Income: Before tax income for the preceding 12 months from all sources of all occupants of the household unless verified as a paying boarder, including but not limited to wages, commissions, bonus, overtime, Social Security and retirement benefits, Veteran's benefits, public assistance, child support and alimony, interest and dividends, rental or boarder rent income, support from a non-member of the household, unemployment compensation and disability payments, net profits from sole or joint proprietorship or home businesses, and the living expenses portion of student grants for those students residing in the home for the 12 months preceding the date of application.

An exception to the prior 12 month rule is allowed if the applicant or co-applicant is 65 or over and has retired during the prior 12 month period. In these cases, income is from the date of retirement and projected forward 12 months. If this information is not available, the Department shall use the best and most recent information available, including averaging income from the most recent three years of tax returns.

b. Allowable Deductions to Gross Income: All non-reimbursed medical, dental, optical expenses, including nursing home costs, home nursing costs; child support and alimony.

c. Net Assets: Resources that can be liquidated or used as collateral for a private loan in order to fund waste tire removal, such as: real property, stocks and bonds, savings accounts, credit union shares, cash on hand, vehicles, equipment, less the principal balance of outstanding loans, excluding the mortgage(s) on the primary residence. Value of real property should be county assessor's appraisal; for the cleanup/abatement site, value should be the property's value with tires removed.

d. 80 Percent of Area Median Income: The current level of 80 percent of the median income of the county or SMSA in which the applicant lives, as determined annually by the U.S. Department of Housing and Urban Development (HUD). Income is based on household size.

e. Household Members: All persons, regardless of relationship or age, who are considered dependents of the applicant as defined by the Internal Revenue Service. Those persons not determined to be dependents but who reside permanently in the household may be counted. Under these circumstances their gross annual income from all sources will be added to that of the applicant.

V. Application Process

1. DEQ assigns points to all sites on our list for cleanup or abatement funds. Sites with highest number of points are acted upon first. (Points are based on "Cleanup/Abatement of Waste Tire Piles Point System" paper, 12/28/88)

2. Permittee fills out application form for financial assistance. Application includes detailed description of proposed tire removal actions, time schedule, cleanup bids, etc. Application requires three years of Federal and State income tax returns.

3. DEQ approves plan (or returns to permittee for changes). DEQ determines amount of cleanup funds site would be allowed.

4. Staff prepares staff report to EQC for approval of determined amount of cleanup funds.

5. Permittee cleans up site; DEQ verifies cleanup; DEQ issues voucher for agreed-on amount.

VI. Amount of Financial Help to be Given

1. No financial help shall be given unless the applicant meets the "financial hardship" criteria.

2. "Paydown" requirement: The applicant is required to first contribute his or her own funds to the tire cleanup up to the point at which household income (on an annual basis) and/or net assets would be reduced below the thresholds listed under III, Eligibility Criteria.

3. For individuals, sole proprietorships and partnerships:

   a. On the remaining cost of the cleanup, the Department's contribution will be based on the following criteria:

Criteria	% Cost to be Forgiven
A. Financial hardship	70%
B. "Cooperative"	10% (or max. $1000[1])
C. Unknowingly dumped on	10% (or max. $1000[1])
Maximum assistance:	90% (+ permit fees, bond, but not to exceed 100%)

4. For corporations and municipalities: up to 80% of the cost.

5. The applicant's own in-kind contribution (such as labor) to the cleanup of his site may be considered by DEQ as part of applicant's required cost contribution. However, previous costs incurred by a permittee in removing tires from his site before January 1, 1989, should not be considered part of the permittee's own "financial contribution."

5. No applicant may receive financial assistance to clean up waste tires more than once under this program.

guidelin.per

ATTACHMENT D

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY **INTEROFFICE MEMORANDUM**

TO: Financial Assistance File **DATE:** September 15, 1989

FROM: Anne Cox, Waste Tire Specialist

SUBJECT: Review of Ed Flater's Application for Financial Assistance to Remove Tires

Situation

Ed Flater is an individual and a waste tire storage site permittee who has requested financial assistance from the Department to remove about 200,000 waste tires from a site in Willamina, Oregon. The site ranks very high in "environmental risk" criteria under the Department's point system, making it potentially eligible to receive financial assistance. Ed Flater has submitted an application for financial assistance and a compliance/closure plan for removal of the tires, and tax returns for three years.

The site is a wrecking yard owned by Rick Mishler. In 1988 Mishler entered a lease agreement with Mr. Flater and another individual, Pierre Renaud, and their corporation, North West Tire Disposal Co. Inc. The lease allowed operation of a waste tire processing business. The lease agreement transfers ownership of all waste tires at the site to the lessees. There were an estimated 50,000 waste tires at the site at the time. The corporation added an estimated 150,000 waste tires during 1988. Mr. Flater is applying as one of the lessees for financial assistance. The corporation is inactive and Pierre Renaud has shown no interest in helping to clean up the site.

Guidelines

Following the guidelines of the Waste Tire Advisory Committee, the Department is drafting rules for determining financial hardship and for determining the amount of financial aid to be given. The proposed wording is:

340-62-155(4)(a) In the case of a permittee who is not a corporation or a local government, the cost of cleaning up the tires:

(A) would cause the permittee's annual gross income to fall below 80 percent of the area median income as determined by the U.S. Department of Housing and Urban Development; and/or

(B) would reduce the permittee's net assets (excluding one automobile and homestead) to below $20,000.

(b) In the case of a permittee which is a corporation, the cost of complying with the tire removal schedule required by the Department:
(A) Would cause the annual gross household income of each of the corporate officers and owners to fall below 80 percent of the area median income as determined by the U.S. Department of Housing and Urban Development; and
(B) Would reduce the net assets (excluding basic assets of building, equipment and inventory) of the corporation to below $20,000; and
(C) Would, as certified in a statement from the corporation's accountant or attorney, cause substantial curtailment or closing of the corporation, or bankruptcy.

(5) The permittee is required to contribute its own funds to the cost of tire removal up to the point where "financial hardship," as specified in (4) above, would ensue; the Department may assist the permittee with the remaining cost of tire removal to the following extent:
(a) For a permittee who is not a corporation or a local government: up to 90 percent of the cost (plus any cost of waste tire storage permit fees paid by the permittee);
(b) For a corporation: up to 80 percent of the cost.

Discussion

Guidelines state that the Department is to consider the personal income of the applicant from the previous 12 months. The Department asks for three years of tax returns to determine if the most recent return is comparable to other recent tax returns.

Mr. Flater says that he invested heavily in North West Tire Disposal Services Inc. and that he lost virtually everything when the corporation, a proposed waste tire processing business, failed. His income, as adjusted by the Department, was $51,730 in 1986, $24,047 in 1987 and $11,597 in 1988. He has obtained a waste tire storage site permit and has applied for financial assistance in order to remove the pre-existing waste tires and the tires that were brought to the site in 1988 by the corporation.

Mr. Flater has selected the bid of Franz Rotter, who proposes to chip all of the tires by June 30, 1990, for $100,000 and to gasify the chips by December 31, 1990, for an additional $50,000. Total bid: $150,000. Mr. Rotter has agreed to carry Mr. Flater on contract for Mr. Flater's share of the cost.

Because of financial losses, Mr. Flater has been forced to relocate to Alaska where he is working to get out of debt. He is not actively operating the waste tire storage site at Willamina; however, he feels responsible for the tires he brought there in 1988. He applied for the storage site permit and for financial assistance in order to clean up the site.

Analysis

Flater - Sole Proprietorship - Financial Analysis

	1988	1987	1986
Wages	--	14,436	44,676
Interest	1,165	10	191
Business income	<1,418>	<1,518>	<9,238>
Capital gain	13,461	--	--
Pensions	--	--	4,123
Rents	<1,611>	<1,460>	<1,917>
Unemployment	--	2,273	708
Schedule C	--	--	--
Subtotal:	11,597	13,741	40,269
Adjustments:			
Depreciation	--	10,306	11,461
Medical	--	--	--
Total:	$11,597	$24,047	$51,730

Assets: (?) -0-

Amount of Assistance		Cost: $150,000
Financial Hardship	70%	$105,000
Cooperative	10%	15,000
		$120,000
Applicant's share:		$ 30,000

Conclusions

HUD's 80% of median household income for a two person family in Clackamas County is $23,150. Mr. Flater's average household income for the 86-88 period was $29,124. His financial aid application shows that he has no assets. His 1988 income was $11,597.

Under the proposed rule, Mr. Flater is eligible for financial assistance for tire removal based on financial hardship. My recommendation is to proceed with a request for EQC approval of the amount of financial assistance determined below.

Amount of Financial Assistance Recommended

The financial assistance guidelines apply to this case in the following manner:

Applicant: Two-person household most recently in Clackamas County.

HUD income threshold: $23,150

1988 Annual gross household income: $11,597

Estimated cost of tire cleanup: $150,000

Required applicant contribution to reach "financial hardship":

Income:	$11,597	-	$23,150 (80% of median)	= 0
Assets:	0	-	$20,000	= 0

Cost eligible for DEQ assistance: $150,000 - 0 = $150,000

DEQ contribution: to base of $150,000

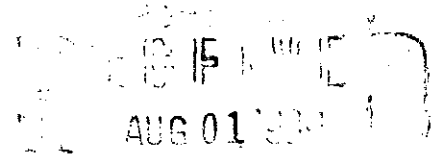
a. Financial hardship:	70%	= $105,000
b. Cooperative:	10%	= $ 15,000
	80%	$120,000

Summary

Total est. cleanup cost:	$150,000
DEQ contribution:	120,000
Applicant contribution:	30,000

AC:k
WT\SK2280

Attachment E



(Revised 4/28/89)

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
Application for
WASTE TIRE CLEANUP FUNDS/REDUCTION OF ABATEMENT COST RECOVERY
Authority: Oregon Revised Statutes 459.780

Please fill out the application completely. Place n/a for those answers that are not applicable.

I. CHECK ONE:

__X__ I hold a Stage II Waste Tire Storage Site Permit. I hereby apply for waste tire cleanup funds from the Waste Tire Recycling Account to partially pay to remove or process waste tires stored under my permit.

I am submitting a plan to remove or process the waste tires on my site, including a proposed time schedule and estimated net cost of removal or processing.

____ The Department of Environmental Quality (DEQ) has notified me of its intent to abate, or I believe that DEQ may wish to abate, the danger or nuisance caused by waste tires of which I have the care, custody or control, and/or which are stored on property which I own. I hereby request that DEQ reduce the amount of abatement costs which it could otherwise bring an action to recover.

II. TIRE SITE INFORMATION

1. Site name (if any) _____
2. Site Location 2275 S Bus Rt 18 Willamina Or 97396
   Street, Road, or Junction
3. Legal Description 6S 7 12 1900
   TWP Range Section Tax Lot# Tax Acct#
   County Polk
4. Site operator (if any) _____
   Address _____
   Street City ZIP
   Telephone _____
5. Property owner's name _____
   Address _____
   Street City ZIP
   Telephone _____
6. Description of WASTE TIRES to be removed:
   a. Approximate number of -
      Car tires (off-rim): 140,000 on + off Rim
      " (on rim): _____
      Truck tires (off-rim): 10000 on + off Rim
      150 Thousand Total

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: October 20,1989
Agenda Item: O-1
Division: HSW
Section: Solid Waste

SUBJECT:

Request for variance from solid waste composting rules for Riedel Environmental Technologies Compost Facility.

PURPOSE:

To allow storage of finished compost product for up to five years during the first five years of facility operation, enabling Riedel to demonstrate product quality and establish permanent markets for the finished compost product.

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 ___

_X_ Approve Department Recommendation
_X_ Variance Request — Attachment A
___ Exception to Rule — Attachment ___
___ Informational Report — Attachment ___
___ Other: (specify) — Attachment ___

___ Other: (specify) Attachment ___

DESCRIPTION OF REQUESTED ACTION:

The Department has issued a solid waste disposal permit to Riedel Environmental Technologies, Inc. for a solid waste composting facility at 5437 NE Columbia Boulevard in Portland.

The compost facility is a significant part of the Metro waste reduction program, and was selected from five proposals for alternative technology that were received by Metro in January 1987. Metro negotiated and signed a detailed service agreement with Riedel Environmental Technologies, Inc. in July 1989.

The facility is designed to receive 185,000 tons of municipal solid waste per year. Material will be mechanically and hand separated to annually recover 8,000 tons of recyclable material, produce marketable compost from 96,000 tons of waste, and dispose of 48,000 tons of non-compostable material. The compost product will be suitable for land application as a soil amendment, and will be required to meet product specifications listed in the DEQ disposal permit and the service agreement with Metro.

During both the DEQ permitting process and the service agreement negotiations with Metro, marketing of the compost product has been a significant issue. For the Department, the issue is environmental protection; ensuring that the compost material not simply be stockpiled and create a leachate problem for surface or groundwaters. For Metro, marketing is an issue of cost and compatibility with other components of its waste reduction program, notably the marketing of yard debris compost. The Metro agreement requires that Riedel Environmental secure markets for 100 percent of the first year's compost production, and that the markets be outside the tri-county area so as to not impinge upon local yard debris or sewage sludge compost markets.

The DEQ solid waste permit covers both the composting facility itself and any offsite storage areas. The Department's administrative rules for composting (OAR 340-61-050) require plans to be approved for the compost plant and related storage areas to ensure environmental protection. These plans must include odor controls, drainage control, public access control, and fire protection. The rules also require that storage of finished compost material be limited

to no more than one year after treatment is completed (OAR 340-61-050(3)(b)).

The compost facility will be financed through the sale of bonds issued by Metro, conditional upon Riedel Environmental securing a Letter of Credit from Credit Suisse to enable a AAA bond rating. In order to achieve that bond rating, Riedel Environmental has been required to demonstrate that it has initial storage capacity of up to five years worth of compost product, in case marketing of the product is slow to develop.

Because this storage capacity required for the bond sale exceeds the one-year limitation included in the Department's administrative rules for composting plants, Riedel Environmental Technologies, Inc. has requested a variance from this limitation for the first five years of plant operation.

The Department supports the request for a variance from our administrative rule for the following reasons:

- The composting plant is a significant part of the Metro waste reduction plan required by state law and approved by the Department. Denying the request may jeopardize the project.

- Compost made from municipal solid waste is a new product without a proven track record. It will take some time to demonstrate the quality of the product and its reliability. Five years should certainly be enough time to demonstrate the quality of the product and establish stable markets.

- Storage of the compost product is not likely to present an environmental problem, given the storage requirements to control odor, drainage, access, and fire.

- The five-year storage capacity is a requirement for the financing of the composting plan and Riedel Environmental does not anticipate requiring more than the one year allowed by the Department's present administrative rules. Riedel has already secured marketing agreements for the first year's production of compost.

- The variance, if granted, should be conditioned upon provision of a performance bond or some other

form of financial assurance for removal of excess compost at the end of year five. The financial assurance requirement should be triggered at any point that the amount of stored compost exceeds one year's accumulation.

AUTHORITY/NEED FOR ACTION:

___	Required by Statute: _____ Enactment Date: _____	Attachment ___
_X_	Statutory Authority: ORS 459.225	Attachment B
_X_	Pursuant to Rule: OAR 340-61-080	Attachment C
___	Pursuant to Federal Law/Rule: _____	Attachment ___
___	Other:	Attachment ___
_X_	Time Constraints: (explain)	

Financing of the project involves the sale of bonds, which is scheduled in November. A decision is needed on the variance request prior to the bond sale.

DEVELOPMENTAL BACKGROUND:

___	Advisory Committee Report/Recommendation	Attachment ___
___	Hearing Officer's Report/Recommendations	Attachment ___
___	Response to Testimony/Comments	Attachment ___
___	Prior EQC Agenda Items: (list)	Attachment ___
_X_	Other Related Reports/Rules/Statutes: OAR 340-61-050	Attachment D
_X_	Supplemental Background Information	Attachment E

Permit Review Report

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

This facility is a significant part of the waste reduction plan that DEQ has required Metro to implement. If a variance is not granted, other financing would have to be arranged, and the entire project could be jeopardized.

The service agreement with Metro has placed significant constraints on the marketing of the compost product, by requiring the markets to be outside the metropolitan area, in order to protect existing markets for yard debris and other compost materials.

PROGRAM CONSIDERATIONS:

The major consideration for the Department is ensuring that the storage of compost does not become an environmental problem. This has been addressed by the permit conditions that require an approved plan for any off-site storage of compost material, to include controls for drainage, odor, public access, and fire prevention.

A second consideration for the Department is waste reduction; ensuring that the compost material is actually used. Granting a variance which would allow initial storage of up to five years' production of compost material provides a sufficient time period for a market to be established, and will allow the facility to be financed and constructed. If the facility were not to be constructed, at least an additional 100,000 tons per year of solid waste will require disposal in a solid waste landfill.

A third program consideration is ensuring that compost being stored at the end of the initial five-year period be removed, either to a site where it will be utilized or to a landfill.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Grant a variance to Riedel Environmental Technologies, Inc. from the Department's special rules for composting plants, under the condition that financial assurance would be provided for disposal of excess compost material stored at the end of five years. This variance would only apply during the initial five years of plant operation. By year six, the compost would have to be removed from all storage sites within one year, as per OAR 340-61-050 (3) (b).

2. Do not grant a variance.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends granting a variance from the composting rule requiring the removal of all compost product from storage areas within one year, conditioned upon the acceptable demonstration of financial assurance for removal of excess compost at the end of year five. Financial assurance would be triggered at any point that the amount of stored compost exceeded one year's accumulation, and would be adjusted annually.

By granting the variance, the Commission recognizes that special conditions exist that are beyond the control of the applicant, and that strict compliance with the rule may result in the composting plant not being built.

The five-year storage allowance is a requirement for the financing of the facility, and the applicant does not anticipate needing this much storage. To the contrary, the service agreement with Metro requires that markets be secured for the first year of production (they have been) and it includes significant financial incentives for the applicant to sell rather than store or dispose of the compost product.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

Granting the variance would likely result in greater waste reduction, and in the implementation of the Metro waste reduction plan approved by the Department.

The variance can be granted without creating significant environmental risks, since all storage areas will be required to have approved plans for control of odors, drainage, access, and fires.

ISSUES FOR COMMISSION TO RESOLVE:

1. Is the Riedel Environmental Technologies, Inc. composting

plant likely to be financed and constructed without granting a variance from the compost storage rule?

2. Will the purpose and intent of the solid waste composting rules be achieved without strict adherence to the one-year limitation on storage of compost during the initial five years of operation?

3. Will storage of compost material for up to five years result in significant environmental degradation?

INTENDED FOLLOWUP ACTIONS:

Amend the permit for the Riedel Environmental Technologies, Inc. composting plant.

Approved:

Section: Steve Greenwood

Division: David Kozel

Director: Fred Hansen

Report Prepared By: Steve Greenwood

Phone: 229-5782

Date Prepared: 10/5/89

"IMAGINEERING A CLEANER WORLD"

RIEDEL WASTE
DISPOSAL SYSTEMS, INC.

Corporate:
P.O. Box 5007
Portland, Oregon 97208-5007
(503) 286-4656
FAX (503) 283-2602

October 4, 1989

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

Subject: Request for Variance to OAR 340-61-050(3)(B)(b)
Riedel Portland Compost Facility - Permit Number 404

Dear Mr. Hansen:

Please accept this letter as a formal request for variance to OAR 340-61-050(3)(B)(b) "Removal of Compost. Compost shall be removed from the composting plant site as frequently as possible, but not later than one year after treatment is completed."

We request that for purposes of this facility only, that the rule be varied to allow for up to five years' storage on or off site after treatment is completed. This variation would be applied as an administrative change to Permit Number 404, Schedule A-6.

Due to the timetable of financing and construction for this facility, we request your support in bringing this before the Environmental Quality Commission (if required) at its scheduled October 20, 1989 meeting.

Sincerely yours,

W. Alex Cross
President

WAC:jak

ties operated under a permit issued under ORS 468.740 are not required to obtain a permit from the department pursuant to ORS 459.205. However, exclusion from the permit requirements of ORS 459.205 does not relieve any person from compliance with other requirements of ORS 459.005 to 459.105, 459.205 to 459.245 and 459.255 to 459.285 and the rules and regulations adopted pursuant thereto.

(2) By rule and after public hearing, the commission may delay the date after that prescribed by ORS 459.205 on which permits shall be required for a class or classes of disposal sites. However, a date after which a permit shall be required shall not be delayed later than July 1, 1975. In making its determination, the commission shall consider the nature, type and volume of solid waste handled at such sites, the threat of air or water pollution, the potential for creation of a public or private nuisance or health hazard, and the cost and funding of the program for carrying out this section.

(3) By rule and after public hearing the commission may establish classes of disposal sites that qualify for exclusion or for time extensions under this section. [1971 c.648 §7; 1973 c.835 §140]

459.220 [1969 c.90 §1; repealed by 1971 c.648 §33]

459.225 Variances or conditional permits authorized. (1) If the commission finds that a disposal site cannot meet one or more of the requirements of ORS 459.005 to 459.105, 459.205 to 459.245 and 459.255 to 459.285 or any rule or regulation adopted pursuant thereto, it may issue a variance from such requirement either for a limited or unlimited time or it may issue a conditional permit containing a schedule of compliance specifying the time or times permitted to bring the disposal site into compliance with such requirements, or it may do both.

(2) In carrying out the provisions of subsection (1) of this section, the commission may grant specific variances from particular requirements or may grant a conditional permit to an applicant or to a class of applicants or to a specific disposal site, and specify conditions it considers necessary to protect the public health.

(3) The commission shall grant a variance or conditional permit only if:

(a) Conditions exist that are beyond the control of the applicant.

(b) Special conditions exist that render strict compliance unreasonable, burdensome or impractical.

(c) Strict compliance would result in substantial curtailment or closing of a disposal site and no alternative facility or alternative method of solid waste management is available.

(4) A variance or conditional permit may be revoked or modified by the commission after a public hearing held upon not less than 10 days' notice. Such notice shall be served upon all persons who the commission knows will be subjected to greater restrictions if such variance or conditional permit is revoked or modified, or who are likely to be affected or who have filed with the commission a written request for such notification.

(5) The establishment, operation, maintenance, expansion, alteration, improvement or other change of a disposal site in accordance with a variance or a conditional permit is not a violation of ORS 459.005 to 459.105, 459.205 to 459.245 and 459.255 to 459.285 or any rule or regulation adopted pursuant thereto. [1971 c.648 §8; 1973 c.835 §141]

459.230 [1969 c.90 §3; repealed by 1971 c.648 §33]

459.235 Applications for permits; fees; bond. (1) Applications for permits shall be on forms prescribed by the department. An application shall contain a description of the existing and proposed operation and the existing and proposed facilities at the site, with detailed plans and specifications for any facilities to be constructed. The application shall include a recommendation by the local government unit or units having jurisdiction and such other information the department deems necessary in order to determine whether the site and solid waste disposal facilities located thereon and the operation will comply with applicable requirements.

(2) Subject to the review of the Executive Department and the prior approval of the appropriate legislative review agency, permit fees may be charged in accordance with ORS 468.065 (2).

(3) If the application is for a regional disposal facility, the applicant shall file with the department a surety bond in the form and amount established by rule by the commission. The bond or financial assurance shall be executed in favor of the State of Oregon and shall be in an amount as determined by the department to be reasonably necessary to protect the environment, and the health, safety and welfare of the people of the state. The commission may allow the applicant to substitute other financial assurance for the bond, in the form and amount the commission considers satisfactory. [1971 c.648 §9; 1977 c.37 §1; 1983 c.144 §1; 1987 c.876 §18]

459.240 [1969 c.90 §4; repealed by 1971 c.648 §33]

459.245 Issuance of permits; terms. (1) If the disposal site meets the requirements of

(B) Containers, storage bins or storage vehicles shall be readily washable or have liners of paper, plastic or similar materials, or both.

(c) Storage Area:

(A) Storage houses, rooms or areas shall be of rodent proof construction which is readily cleanable with proper drainage,

(B) Storage rooms or buildings, if not refrigerated, shall be adequately vented and all openings shall be screened.

(d) Unconfined Waste. Unless special service or special equipment is provided by the collector for handling unconfined waste, materials such as rubbish and refuse, brush, leaves, tree cuttings, and other debris for manual pickup and collection shall be in securely tied bundles or in boxes, sacks, or other receptacles and solid waste so bundled shall not exceed 60 pounds in weight.

(3) Removal Frequency. Putrescible solid waste shall be removed from the premises at regular intervals not to exceed seven days. All solid waste shall be removed at regular intervals so as not to create the conditions cited in section (1) of this rule.

(4) Cleaning of Storage Area. Areas around storage containers shall be cleaned regularly so as not to create the conditions cited in section (1) of this rule.

(5) Storage of Specified Wastes:

(a) Industrial Solid Wastes. Storage of industrial solid wastes shall be in accordance with these rules. Open storage areas shall not be closer than 100 feet horizontal distance from the normal highwater mark of any public waters unless special provision is made which prevents wastes, or drainage therefrom, from entering public waters;

(b) Agriculture Wastes. Storage of agricultural wastes shall not create vector production or sustenance, conditions for transmission of diseases to man or animals, water or air pollution and shall be in a manner to reduce and minimize objectionable odors, unsightliness, aesthetically objectionable and other nuisance conditions;

(c) Hazardous Wastes. Containers for hazardous wastes shall be marked to designate the content as toxic, explosive, or otherwise hazardous in a manner designed to give adequate protection to the collector and storage site operator.

Stat. Auth.: ORS Ch. 459
Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72

Transportation

340-61-075 (1) Collection and Transfer Vehicles Construction and Operation:

(a) Solid waste collection and transfer vehicles and devices shall be constructed, loaded and operated so as to prevent dropping, leaking, sifting, or blowing or other escapement of solid waste from the vehicle;

(b) Collection and transfer vehicles and devices carrying loads which are likely to blow or fall shall have a cover which is either an integral part of the vehicle or device or which is a separate cover of suitable materials with fasteners designed to secure all sides of the cover to the vehicle or device and shall be used while in transit.

(2) Cleaning Collection Vehicles. Collection and transfer vehicles or other devices used in transporting solid waste shall be cleanable and shall be cleaned at weekly intervals or more often as necessary, to prevent odors, insects, rodents, or other nuisance conditions.

(3) Waste Water. Waste water from the cleaning process of containers of non-hazardous waste shall be disposed of in a manner approved by the Department or state or local health department having jurisdiction.

Stat. Auth.: ORS Ch. 459
Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72

Variances

340-61-080 The Commission may by specific written variance or conditional permit waive certain requirements of these rules when circumstances of the solid waste disposal site location, operating procedures, and/or other conditions indicate that the purpose and intent of these rules can be achieved without strict adherence to all of the requirements.

Stat. Auth.: ORS Ch. 459
Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72

Violations

340-61-085 Violations of these rules shall be punishable upon conviction as provided in ORS Chapter 459.

Stat. Auth.: ORS Ch. 459
Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72

Purpose

340-61-100 (1) It is the intent of the Commission that where a local government requests funding, technical or landfill assistance under ORS 459.047 through 459.057 or 468.220, that the local government shall make a good faith effort toward development, implementation and evaluation of waste reduction programs.

(2) These rules define the criteria set out in ORS 459.055(2). The Commission intends that these same criteria and rules apply to solid waste reduction under ORS 468.220. A waste reduction plan acceptable to the Department will be required before issuance of a permit for a landfill under this act or before the issuance of Pollution Control Bond Fund monies to local government.

(3) These rules are meant to be used to:

(a) Assist local government and other persons in development, implementation and evaluation of waste reduction programs;

(b) Assist the Department and Commission in evaluation of local government waste reduction programs;

(c) Serve as a basis for the Department's report to the Legislature on:

(A) The level of compliance with waste reduction programs,

(B) The number of programs accepted and rejected and why, and

(C) The recommendations for further legislation.

(4) These rules are developed on the premise that the Department's shall base acceptance or nonacceptance of a waste reduction program on criteria (a) through (e) of ORS 459.055(2) as further defined by these rules.

Stat. Auth.: ORS Ch. 459
Hist.: DEQ 25-1980, f. & ef. 10-2-80; DEQ 30-1980, f. & ef. 11-10-80

Submittals

340-61-110 Each criteria shall be addressed with a written submittal to the Department with the following materials included in or attached thereto. The following rules

(d) Drainage. An incinerator site shall be designed such that surface drainage will be diverted around or away from the operational area of the site;

(e) Fire Protection. Fire protection shall be provided in accordance with plans approved in writing by the Department and in compliance with pertinent state and local fire regulations;

(f) Fences. Access to the incinerator site shall be controlled by means of a complete perimeter fence and gates which may be locked;

(g) Sewage Disposal. Sanitary waste disposal shall be accomplished in a manner approved by the Department or state or local health agency having jurisdiction;

(h) Truck Washing Facilities. Truck washing areas, if provided, shall be hard surfaced and all wash waters shall be conveyed to a catch basin, drainage and disposal system approved by the Department or state or local health agency having jurisdiction.

(3) Incinerator Operations:

(a) Storage:

(A) All solid waste deposited at the site shall be confined to the designated dumping area,

(B) Accumulation of solid wastes and undisposed ash residues shall be kept to minimum practical quantities.

(b) Salvage:

(A) Salvaging shall be controlled so as to not interfere with optimum disposal operation and to not create unsightly conditions or vector harborage,

(B) All salvaged material shall be stored in a building or enclosure until it is removed from the disposal site in accordance with a recycling program authorized in the operational plan approved in writing by the Department,

(C) Food products, hazardous materials, containers used for hazardous materials, or furniture and bedding with concealed filling shall not be salvaged from a disposal site.

(c) Nuisance Conditions:

(A) Blowing debris shall be controlled such that the entire disposal site is maintained free of litter,

(B) Dust, malodors and noise shall be controlled to prevent air pollution or excessive noise as defined by ORS Chapters 467 and 468 and rules and regulations adopted pursuant thereto.

(d) Health Hazards. Rodent and insect control measures shall be provided, sufficient to prevent vector production and sustenance. Any other conditions which may result in transmission of disease to man and animals shall be controlled;

(e) Records. The Department may require such records and report as it considers are reasonably necessary to ensure compliance with conditions of a permit or these rules.

Stat. Auth.: ORS Ch. 459
Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72

Special Rules Pertaining to Composting Plants

340-61-050 (1) Detailed Plans and Specifications shall include but not be limited to:

(a) Location and design of the physical features of the site and composting plant, surface drainage control, waste water facilities, fences, residue disposal, odor control and design and performance specifications of the composting equipment and detailed description of methods to be used;

(b) A proposed plan for utilization of the processed compost including copies of signed contracts for utilization or other evidence of assured utilization of composted solid waste.

(2) Compost Plan Design and Construction:

(a) Non-compostable Wastes. Facilities and procedures shall be provided for handling, recycling or disposing of solid waste that is non-biodegradable by composting;

(b) Odors. The design and operational plan shall give consideration to keeping odors to lowest practicable levels. Composting operations, generally, shall not be located in odor sensitive areas;

(c) Drainage Control. Provisions shall be made to effectively collect, treat, and dispose of leachate or drainage from stored compost and the composting operation;

(d) Waste Water Discharges. There shall be no discharge of waste water to public waters, except in accordance with a permit from the Department, issued under ORS 468.740;

(e) Access Roads. All-weather roads shall be provided from the public highway or roads to and within the disposal site and shall be designed and maintained to prevent traffic congestion, traffic hazards and dust and noise pollution;

(f) Drainage. A composting site shall be designed such that surface drainage will be diverted around or away from the operational area of the site;

(g) Fire Protection. Fire protection shall be provided in accordance with plans approved in writing by the Department in compliance with pertinent state and local fire regulations;

(h) Fences. Access to the composting site shall be controlled by means of a complete perimeter fence and gates which may be locked;

(i) Sewage Disposal. Sanitary waste disposal shall be accomplished in a manner approved by the Department or state or local health agency having jurisdiction;

(j) Truck Washing Facilities. Truck washing areas, if provided, shall be hard surfaced and all wash waters shall be conveyed to a catch basin, drainage and disposal system approved by the Department or state or local health agency having jurisdiction.

(3) Composting Plant Operation:

(a) Supervision of Operation:

(A) A composting plan shall be operated under the supervision of a responsible individual who is thoroughly familiar with the operating procedures established by the designer,

(B) All compostable waste shall be subjected to complete processing in accordance with the equipment manufacturer's operating instructions or patented process being utilized.

(b) Removal of Compost. Compost shall be removed from the composting plan site as frequently as possible, but not later than one year after treatment is completed;

(c) Use of Composted Solid Waste. Composted solid waste offered for use by the general public shall contain no pathogenic organisms, shall be relatively odor free and shall not endanger the public health or safety;

(d) Storage:

(A) All solid waste deposited at the site shall be confined to the designated dumping area,

(B) Accumulation of solid wastes and undisposed residues shall be kept to minimum practical quantities.

(e) Salvage:

(A) Salvaging shall be controlled so as to not interfere with optimum disposal operation and not create unsightly conditions or vector harborage,

(B) All salvaged material shall be stored in a building or enclosure until it is removed from the disposal site in accordance with a recycling program authorized in the operational plan approved in writing by the Department.

Stat. Auth.: ORS Ch. 459
Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72

Special Rules Pertaining to Sludge Disposal Sites

340-61-055 (1) Permit Required:

(a) Land used for the spreading, deposit, lagooning or disposal of sewage sludge, septic tank pumpings and other sludges is defined as a disposal site by ORS Chapter 459 and is subject to the requirements of these rules, including the requirements for obtaining a permit from the Department in accordance with rules 340-61-020 and 340-61-025;

(b) Disposal of sewage sludges resulting from a sewage treatment facility that is operating under a current and valid Waste Discharge Permit, issued under ORS 468.740, is exempted from obtaining a solid waste disposal permit, provided that said sewage sludge disposal is adequately covered by specific conditions of the Waste Discharge Permit. Such sewage sludge disposal operations and sites shall comply with all other provisions of these rules and other laws, rules and regulations pertaining to solid waste disposal.

(2) Plans and Specifications for Sludge Disposal Sites:

(a) Detailed plans and specifications for sludge disposal lagoons shall include, but not be limited to, location and design of the physical features of the site, such as berms, dikes, surface drainage control, access and on-site roads, waste water facilities, inlet and emergency overflow structures, fences, utilities and truck washing facilities, topography with contours not to exceed 5-foot contour intervals, elevations, legal boundaries and property lines, and land use;

(b) Plans and specifications for land spreading of sludge shall include, but not be limited to, physical features of the site, such as, surface drainage, access and on-site roads, fences, truck washing facilities, topography with contours not to exceed 5-foot contour intervals, rates and frequency of sludge application, legal boundaries and property lines and land use.

(3) Prohibited Methods of Sludge Disposal:

(a) Septic tank pumpings and raw sewage sludge shall not be permitted to be disposed of by land spreading, unless it is specifically determined and approved in writing by the Department or state or local health agency having jurisdiction, that such disposal can be conducted with assured, adequate protection of public health and safety and the environment;

(b) Except for "heat-treated" sewage sludges, sewage sludges including septic tank pumpings, raw, non-digested and digested sewage sludges, shall not be:

(A) Used as fertilizer on root crops, vegetables, low growing berries or fruits that may be eaten raw,

(B) Applied to land later than one year prior to planting where vegetables are to be grown,

(C) Used on grass in public parks or other areas at a time or in such a way that persons could unknowingly come in contact with it,

(D) Given or sold to the public without their knowledge as to its origin.

(c) Sludges shall not be deposited in landfills except in accordance with operational plans that have been submitted to and approved by the Department in accordance with rule 340-61-040(1)(d).

(4) Sludge Lagoon and Sludge Spreading Area Design, Construction and Operation:

(a) Location:

(A) Sludge lagoons shall be located a minimum of 1/4 mile from the nearest residence other than that of the lagoon operator or attendant,

(B) Sludge shall not be spread on land where natural runoff could carry a residue into public waters,

(C) If non-digested sludge is spread on land within 1/4 mile of a residence, community or public use area, it shall be plowed under the ground, buried or otherwise incorporated into the soil within five (5) days after application.

(b) Fences:

(A) Public access to a lagoon site shall be controlled by man-proof fencing and gates which shall be locked at all times that an attendant is not on duty,

(B) Public access to sludge spreading areas shall be controlled by complete perimeter fencing and gates capable of being locked as necessary.

(c) Signs. Signs shall be posted at a sludge spreading area as required. Signs which are clearly legible and visible shall be posted on all sides of a sludge lagoon, stating the contents of the lagoon and warning of potential hazard to health;

(d) Drainage. A sludge disposal site shall be so located, sloped or protected such that surface drainage will be diverted around or away from the operational area of the site;

(e) Type of Sludge Lagoon. Lagoons shall be designed and constructed to be nonoverflow and watertight;

(f) Lagoon Freeboard. A minimum of 3.0 feet of dike freeboard shall be maintained above the maximum water level within a sludge lagoon unless some other minimum freeboard is specifically approved by the Department;

(g) Lagoon Emergency Spillway. A sludge lagoon shall be provided with an emergency spillway adequate to prevent cutting-out of the dike, should the water elevation overtop the dike for any reason;

(h) Sludge Removal from Lagoon. Water or sludge shall not be pumped or otherwise removed from a lagoon, except in accordance with a plan approved in writing by the Department;

(i) Monitoring Wells. Lagoon sites located in areas having high groundwater tables or potential for contaminating usable groundwater resources may be required to provide groundwater monitoring wells in accordance with plans approved in writing by the Department. Said monitoring wells shall be sufficient to detect the movement of groundwater and easily capable of being pumped to obtain water samples;

(j) Truck Washing. Truck washing areas, if provided, shall be hard surfaced and all wash waters shall be conveyed to a catch basin, drainage and disposal system approved by the Department or state or local health agency having jurisdiction;

(k) Records. The Department may require such records and reports as it considers are reasonably necessary to ensure compliance with conditions of a permit or these rules.

PERMIT REVIEW REPORT

Facility Name:	**Riedel Environmental Technologies Compost Facility**
Owner:	**Riedel Environmental Technologies, Inc.**
Operator:	**Riedel Waste Disposal Systems, Inc.**
County:	**Multnomah**
Solid Waste Permit No.:	**404**

Background

In response to the requirements imposed upon the Metropolitan Service District (Metro) by Senate Bill 662, Metro developed a waste reduction program. This program, which was adopted by the Metro Council in April, 1986, resulted in the issuance of request for proposal (RFP) on October 24, 1986 for a waste-to-energy facility and for a mass compost facility. Five proposals (for mass burning energy recovery facilities (ERF), for refuse derived fuel and for mixed waste composting) were received on January 30, 1987. Metro staff evaluated the five proposals and submitted a recommendation to the council that Metro negotiate a Memorandum of Understanding (MOU) with Riedel/DANO for a mass composting facility capable of processing 160,000 tons of solid waste per year. The MOU was completed and approved by the Metro Council on June 23, 1988. The Metro Council also adopted the Solid Waste Management Plan, which included the Waste Reduction Program in October, 1988.

On April 26, 1988, Riedel Environmental Technologies, Inc. submitted an application for a solid waste disposal permit to the Department of Environmental Quality (Department) to construct and operate a solid waste compost facility in northeast Portland. The Department reviewed the application and notified Riedel in a letter dated June 1, 1988 that the application was incomplete.

On August 17, 1988, Riedel Waste Disposal Systems, Inc. submitted a letter responding to the Department's June 1 letter. The response letter included answers to the specific questions that the Department had raised, as well as detailed engineering plans and specifications for the compost facility. The compost facility is designed to process a minimum of 160,000 tons of solid waste per year. The plant will process the solid waste to recover a minimum of 8,000 tons per year of recyclable materials, convert a minimum of 96,000 tons per year of solid waste into a compost product and dispose of a maximum of 48,000 tons of solid waste into the region's solid waste landfill. The recyclable materials will be sold to local secondary materials markets. The compost product will be suitable for land application as a soil amendment.

Location

The compost facility is located at 5437 N.E. Columbia Boulevard in the city of Portland, Oregon. The legal description of the property is Tax Lots 24, 49, 82, 104, 249 and 289, Section 18, Township 1 North, Range 2 East,

Willamette Meridian, Multnomah County, Oregon. The property is located on the north side of Columbia Boulevard between the boulevard and the Columbia Slough which forms the north boundary of the site. The property consists of approximately 20 acres of land.

This property was annexed into the city of Portland in July, 1985. The property is zoned GM (general manufacturing).

In response to an application from Riedel Environmental Technologies, Inc. for a conditional use permit to develop the site with a solid waste resource recovery facility, a public hearing was held in the city of Portland on June 23, 1987. The hearings officer rendered a decision on June 23, 1987 to approve a community service designation for a recycling center, subject to a number of conditions.

Topography

Site elevations vary from an elevation of 50 feet above mean sea level at the southwest corner of the L-shaped piece of property to an elevation of 16 feet above mean sea level at the southwest corner on Columbia Slough. A small hill with a maximum elevation of approximately 40 feet above mean sea level is located in the northwest corner of the property. This hillside slopes downward to the south at about 33% and to the east at about 8%. The overall slope of the property is approximately 4.6% from the south side down to the north side along a distance of about 730 feet.

A slough about 100 feet wide is located just to the north of this hill and extends eastward from the western boundary of the property to just past the middle of the property.

Access

Access to the compost facility from northeast Columbia Boulevard will be provided by one entrance along the east side of the property line.

Access Control and Site Security

Control of access to the property is provided by a fence around the perimeter of the property and by a locking gate across the entrance road.

Sight Screening

The site is located in a heavy industrial area along the Columbia corridor. Some residential and commercial or service uses still remain in the area. Nearby businesses include tool and heavy equipment sales services and rental agencies, such as Anderson Oregon Rental, Trail Equipment Company, and Perkins Power West.

The city of Portland has required a 20 foot wide landscaped buffer zone along Columbia Boulevard street frontage and a 25 foot wide landscaped buffer zone along the Columbia Slough.

The proposed development will confine all activities inside structures. All vehicles delivering waste to the facility and transporting finished compost or reject materials will be loaded and unloaded inside a building. The Department has concluded that no further sight screening is required for this facility.

Facility Description

The compost facility consists of a scale house with two scales, a waste receiving and processing building, composting buildings, a public recycling center, a truck wash rack and an office and reception building. The facility is designed to receive 185,000 tons of municipal solid waste per year. The facility will operate 6 days per week and 52 weeks per year. The allowable waste storage depth within the receiving building is 12 feet. The surface area required for each day's waste reception is 7,059 square feet. Storage capacity in the building for solid waste is approximately four days. The facility is described as follows:

1. **Waste Receiving**

   The waste receiving facility will receive municipal solid waste delivered to the site in waste compaction trucks, drop-box trucks and pickups. All operations are conducted under cover in a clean environment. The average vehicle stay inside the facility property will be less then ten minutes. There is space for vehicle queuing for 15 vehicles before the entry scale, an additional 25 vehicles between the scale and the unloading area, and a capacity for simultaneous unloading of 17 vehicles. The facility will be open for incoming vehicles from 6:00 a.m. to 6:00 p.m., Monday through Sunday except for Thanksgiving, Christmas and New Years.

   An automatic scale with a minimum capacity of 60 tons will weigh all incoming vehicles. The recorded weights will be the basis for the service fees.

2. **Facility Lay-out**

   One building contains all the processing equipment including an enclosed receiving area, tipping floor, materials processing area and picking lines. The scale house and office are in another building. All access roads and traffic areas will be paved either with asphalt or concrete depending on the wear anticipated, with adequate provisions for drainage.

Storage facilities for all source separated and facility sorted recyclable materials and compost have an on-site capacity for at least 10 days of accumulated materials. The storage area for residues will accommodate over four days of material. The areas will be screened from all surrounding properties.

The facility also contains a separate enclosed area for each of the two stages of compost curing. Dedicated dust and odor control systems will not be needed since the DANO system of aeration and moisture control provides odor and particulate control. Ventilation will provide sufficient air circulation to minimize condensation and high room temperatures.

The building design and material type are compatible with surrounding uses. All buildings will be painted in neutral or earth tones, and the facility will utilize landscaping to provide perimeter screening around the property and to enhance the attractiveness of the facility.

Ample parking will be provided for buses for visitors and for personnel. A separate area will accommodate parking for haulers.

In the materials-recovery area, manual labor on a picking belt will be used instead of mechanized equipment. It is expected that a significantly higher percentage of the wastestream can be recovered using manual labor than by using mechanized equipment. Materials from the tipping floor will be moved by a loader onto elevated conveyors which move it toward the tipping conveyors which move it to the DANO drums. The receiving or unloading area is totally enclosed, except for doors which are raised to allow vehicles to enter and to depart. Negative air pressure is maintained inside the building to prevent odors from escaping. Fans in the interior of the buildings remove air, thereby inducing fresh outside air into the pit. Removed air is then pumped under the compost area as its air supply.

The floors of the unloading area, the tipping floor and the materials recovery area are constructed of reinforced concrete. Drains are provided in the loading area and in the tipping floor for periodic cleaning with water. This water will be pumped into the compost area to help mature the compost.

3. **Design of the Compost System**

Since composting occurs on a 24-hour per day basis, and the DANO drums can efficiently operate at 16 hours per day or more, it is necessary to charge the two drums for 16 hours per day. The facility provides adequate space and volume to handle the 593 tons of waste received each day. The DANO drums will be loaded with 18.75 tons of waste per drum per hour. This will require operation of the picking belt and tipping floor for 16 hours.

The elevating conveyors and the picking conveyors have capacities of 40 tons per hour each to handle surge loading and to prevent overloading of the conveyors.

The rate of loading of the DANO drums are automatically controlled by the operating cycle of the charging rams. Recovery of all recyclable materials, except for ferrous metals, will be accomplished by manual picking from a moving belt. Eight picking stations will be provided. Each picking station will pick a specific material which will be dropped into containers located below the picking stations. Human needs will be carefully considered in the design of the picking line to assure safe and efficient operation. The proposal guarantees a recyclable material recovery rate of 5 percent. The proposed system is flexible enough to assure the maximum practicable amount of recyclable materials to be recovered.

The picking conveyors discharge the acceptable waste to the charging hoppers for the DANO bio-stabilizer drums. A sensor will signal the filling of the hopper, and the charging ram of the drum will force the material from its hopper into the DANO drum at the same time it closes the bottom of the hopper. This will allow a metered volume of acceptable waste being loaded into each drum with each stroke. The rate of admission of waste to the drum can be controlled to the rate at which the drum can satisfactorily operate. In the event that the picking conveyors load the charging hoppers more rapidly than the charging rams can move the acceptable waste into the drum, an automatic control will stop the picking conveyor. The other in-feed conveyors will also be stopped until the charging hoppers and the drums are ready to receive additional waste. The design of the charging mechanism precludes spillage from the hoppers in normal operations. Water is added into the drum to ensure that the moisture content of acceptable waste is high enough to promote efficient composting.

4. Mechanical Processing Systems

All equipment is designed to permit rapid and economic maintenance. In addition, conveyor systems are designed to allow higher than the expected waste volumes to be handled. The raw compost conveyors will have a capacity of twice the through-put capacity of the DANO drums which discharge on them. Reject conveyors will also have a capacity of twice the probable course fraction of the acceptable waste. The vibrating screens which separate the finished compost into the market specification size will be built with a continuous rating of 50 tons per hour. This is substantially in excess of the anticipated steady rate of 30.6 tons per hour.

5. **DANO Drums**

The DANO drums provide the primary function of maceration of the acceptable wastes, thoroughly mixing the added water and homogenizing the finer components in the acceptable waste. Minor bacteriological digestion occurs in the drums, though the process does get started within the drums.

The discharge of each drum is provided with a hydraulic-operated gate which opens and closes to permit or prevent the discharge of materials from the drum. This is useful in start-up operations where minimum content in the drum is necessary to properly initiate the process. The gate is also closed during periods when the drum is rotating and transfer of raw compost to the aeration beds is stopped as during nonoperating shifts. The drum will continue to be rotating and air added during nonoperating shifts to maintain aerobic conditions within the drums. This is designed to prevent odors. Operators will be able to control how much material is charged and how much is removed from the drums. The normal rate for charging a drum with acceptable waste is 18.75 tons per hour. The average retention time is 6 to 8 hours.

It is anticipated that the coarser fraction from the drum discharge screens will be as high as 30% and as low as 5%, and that the finer fraction will be as low as 70% and as high as 95% of the waste weight charged into the drum. The conveyors which conduct the material away from the drum are thus necessarily oversized.

Material is moved onto the aeration (primary maturation) area by conveyor and deposited in an orderly fashion by overhead conveyors within the building. Materials are moved from the aeration area into the secondary maturation area by front loaders. These materials will be moved into specific areas enabling the operator to identify and track each batch of compost. Air is forced into the building through the underground air ducts and through the compost, which acts as a filter. Riedel does not believe that the exhaust air will require collection or treatment before being vented to ambient air.

<u>Process Flow</u>

All incoming waste is received at the entry scale. Vehicles with source separated, recyclable materials are directed to the recycling area. Recyclable materials are placed in drop boxes for temporary storage. Vehicles without source separated recyclable materials will proceed directly to the receiving area and unload the municipal waste onto the lower level tipping floor.

A rubber-tire loader on the tipping floor is used to remove large objects. Large recyclable items are segregated (if possible) and transported by the loader to the recycling materials storage area. Reject materials too big or

impractical to process through the DANO system also are segregated if possible and transported to the reject material storage area. The balance of the material is pushed by the loader onto the floor in the adjacent material recovery area. While the material is on the floor, additional large recyclable or other reject materials are removed by operating personnel with the assistance of rubber-tire loaders. These items are periodically moved to the appropriate recycle or reject areas. Remaining materials on the tipping floor is loading on an elevating conveyor which conveys the material to the level of the recyclable material picking line. The remaining material moves on belt conveyors past manual picking stations, where glass,.plastics, paper, cardboard, aluminum, and nonferrous metals are removed. These materials are dropped into the appropriate drop boxes below the picking conveyors. Full boxes are exchanged as needed and delivered to the appropriate material purchaser. All belts are designed for movement of 40 tons per hour.

The picking belt discharges to the charging chamber of each of the three DANO bio-stabilizer drums. Redundancy is provided in charging the drums since the charging conveyors for each drum are independent. Each drum can process 80,000 tons per year, based on operating 80 hours per week. Water is added to bring the moisture content up to the 40 to 60% required for fermentation. Convection air to the bio-stabilizers ensures that aerobic conditions prevail.

The drums discharge through a screen which separates coarser material unsuitable for composting. The coarse material is transferred by conveyors through magnetic separators which separate ferrous materials from the other oversize materials.

The raw compost or finer materials discharged from the drums are conveyed through a magnetic separator (which extracts ferrous material) and then to distributor bridges which pile the material to a height of approximately six feet. Air is drawn from the unloading and recycling areas and forced upward through the aeration beds to maintain aerobic conditions within the compost. Temperature and moisture content of the fermenting raw compost is monitored and water added as needed to maintain the desired moisture content. The chemistry of the raw compost moving to the aeration beds is monitored periodically and the materials deposited on the aeration and maturation beds is identified by day or by week of deposit. Compost that does not meet standards will be transferred to a landfill for disposal.

After three weeks a front-end loader moves the fermented compost from the aeration beds to static maturation piles up to ten feet high where it will continue to mature for additional three weeks. Moisture content and the temperature of the maturing compost is also monitored and water added as needed.

Mature compost is moved from the static piles by front-end loader to hoppers on conveyors which transfer the mature compost through another magnetic separator. The ferrous material is removed and recycled. Mature compost undergoes a final screening where excessively coarse material is rejected. Any rejected material is loaded into transfer trucks for disposal at a landfill.

The finished compost is loaded by front-end loader into trucks for transfer to users. During periods when compost cannot be applied to the soil (when the soil is excessively wet), finished compost may be stored on farm land prior to being spread on the fields.

Environmental Protection Features

The facility is designed to be operated such that odors will not be released to the environment. Air used in the composting process will be drawn from the waste unloading area to prevent odors from the waste unloading and storage area from being released. In addition, waste receiving, storage and processing operations occur in an enclosed building, with the doors opened only for vehicle entry and exit.

Sewage will be disposed of in an on-site subsurface sanitary sewage system.

Fugitive emissions of fine particulate material will be controlled by having waste unloading and storage and material processing operations occurring in enclosed buildings.

The fire protection system will consist of an underground pipe connected to the city of Portland's water main along Columbia Boulevard. Fire hydrants will be provided on-site and automatic sprinkling systems, manual hose stations and portable fire extinguishers will be installed throughout all important structures.

Wastewater will be collected from various areas of the facility and stored in a reservoir on-site. This water, supplemented by water from the adjacent pond, will be used to maintain the required moisture content in the compost process.

Vehicles bringing acceptable waste to the compost plant do represent a potential source of litter that blow off the vehicles. Manual removal of wind blown or spilled material on the facility property and on nearby property and roads will be done when necessary to avoid creating nuisance conditions.

Uncontaminated water will be routed away from areas used for storage of waste or of compost.

Conclusions

The design and proposed operation of the facility appear capable of complying with environmental statutes and rules. The proposed solid waste disposal facility permit includes conditions which are designed to ensure that the facility will be operated at all times to prevent creating adverse impacts upon public health and safety and upon the environment.

Recommendations

The Department should issue the draft solid waste disposal permit for review by the public. The Department should also schedule a public hearing to allow members of the public to offer their comments and suggestions for changes to the permit. The public hearing should be scheduled in an area adjacent to the proposed compost facility site.

E.T. Davison
Solid Waste Section
Hazardous and Solid Waste Division
June 30, 1989

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: October 20, 1989
Agenda Item: O-2
Division: Air Quality
Section: Planning & Development

SUBJECT:

Adoption of New Federal Rules - New Source Performance Standards (NSPS) and New National Emission Standards for Hazardous Air Pollutants (NESHAPS)

PURPOSE:

To adopt, by reference, new and pertinent federal air regulations regarding New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) in order to maintain delegation of authority to administer these rules in Oregon.

ACTION REQUESTED:

___ Work Session Discussion
___ General Program Background
___ Potential Strategy, Policy, or Rules
___ Agenda Item ___ for Current Meeting
___ Other: (specify)
___ Authorize Rulemaking Hearing

_X_ Adopt Rules

Proposed Rules	Attachment D
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: (specify)	Attachment ___

DESCRIPTION OF REQUESTED ACTION:

The Environmental Protection Agency regularly adopts and amends NSPS and NESHAPS rules. The Department of Environmental Quality (DEQ, Department) has historically committed to seek delegation to enforce each of these new rules in Oregon by bringing its rules up to date with EPA rules, when the Department believes those rules are applicable and appropriate in Oregon. "Applicable" means the existence of affected sources located in the state, or likely to move into the state. "Appropriate" means the federal rules are reasonable and enforceable within DEQ resources and enforcement policies. By retaining delegation to administer these federal rules in Oregon, the Department believes it can provide a more efficient implementation of the rules and reduce the confusion of industry having to deal with two agencies (DEQ and EPA).

AUTHORITY/NEED FOR ACTION:

___	Required by Statute: _____ Enactment Date: _____	Attachment ___
X	Statutory Authority: ORS 468.020/468.295(3)	Attachment ___
X	Pursuant to Rule: OAR 340-25-450 to -805	Attachment ___
X	Pursuant to Federal Law/Rule: 40 CFR Parts 60 and 61	Attachment ___
___	Other:	Attachment ___
___	Time Constraints: (explain)	

DEVELOPMENTAL BACKGROUND:

___	Advisory Committee Report/Recommendation	Attachment ___
___	Hearing Officer's Report/Recommendations	Attachment ___
___	Response to Testimony/Comments	Attachment ___
X	Prior EQC Agenda Items:	Attachment E

Attached is the EQC report (agenda item F) for the July 21, 1989 meeting only. Attachments to agenda item F are exactly the same as in this current report.

___ Other Related Reports/Rules/Statutes: Attachment ___

_X_ Supplemental Background Information Attachment _A_

The Environmental Quality Commission (EQC, Commission) authorized a public hearing for these rule amendments at its July 21, 1989 meeting. Legal public notice requirements were met by publication of the hearing notice in the Secretary of State's Bulletin and in the Oregonian. Hearing notices were sent out to the Department's mailing lists, and to those who called in response to the hearing advertisements.

No one attended the August 25, 1989 public hearing in Portland. The Department received no written comments regarding the adoption of these proposed rule amendments. Hence, there is no Hearing Officer's Report attachment.

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

These federal rules are already promulgated by EPA, and therefore the sources affected are already subject to the costs of control and compliance. Adoption by and delegation to DEQ simplifies environmental administration, and may save industry time and cost in dealing with just one agency.

Since the last time Oregon's NSPS and NESHAP rules were updated, USEPA has adopted five new NSPS rules and twenty-six amendments to existing federal NSPS and NESHAP rules. After reviewing these federal adoptions for applicability and appropriateness in Oregon, the department has concluded that two new NSPS and twenty amendments to existing state NSPS and NESHAP requirements should be adopted by reference. These rules/rule amendments are applicable to new or substantially modified industrial/commercial sources. A brief description of the rules and amendments recommended for adoption follows:

40 CFR Subpart (register date)	Title	Description
Ka, 60.111a to 60.1114a (4/08/87)	Volatile Liquid Storage Vessels	New NSPS establishing record keeping and emission control requirements for Volatile Liquid (VOL) storage vessels based upon vessel capacity and VOL true vapor pressure.

TTT,60.720 to 60.726 (1/29/88)	Industrial Surface Coating: Plastic Parts for Business Machines	New NSPS which requires facilities which surface coat plastic parts for business machines to control solvent emissions.
HH,60.343 (b) and 60.344 (c) (2/17/87)	Amendment	Amends NSPS for lime manufacturing plants to allow Method 9 opacity observations in lieu of continuous emission monitoring (CEM).
Appendix A, Method 18 (2/19/87)	Amendment	Amends current gas chromatography Test Method 18.
A, 60.8 (3/26/87)	Amendment	Amends current opacity provisions to allow continuous opacity monitoring (COM) in lieu of Method 9 during compliance determinations.
Kb, 60.110b to 60.117b (4/08/87)	Amendment	Amends current performance standards for VOL storage vessels by requiring use of the best demonstrated system of continuous emission reduction.
Appendix A, Method 15A (6/01/87)	Amendment	Amends Appendix A to allow sulfur recovery plants to use Method 15A as an alternative to Method 15, to determine total reduced sulfur emissions.
Appendix F Procedure 1 (6/04/87)	Amendment	Establishes quality control and quality assurance requirements for gaseous continuous emission monitors.
Appendix A, Method 10A (8/17/87)	Amendment	Allows Method 10A to be used to evaluate carbon monoxide continuous emissions monitors at petroleum refineries.

Appendix A, Methods 16A and 16B (9/29/87)	Amendment	Amends procedure for certifying recovery gas used in Method 16A, and adds Method 16B as an alternative method to determine total reduced sulfur emissions from Kraft pulp mills.
Appendix A Method 6 (10/28/87)	Amendment	Adds procedure using critical orifices for volume and flow rate measurements.
DD, 60.300 GG, 60.330 (11/05/87)	Amendment	Clarifies applicability dates for standards of performance for grain elevators and stationary gas turbines.
Db,60.42b,60.45b 60.47b Appendix A Method 19 (12/16/87)	Amendment	Adds standards limiting emissions of sulfur dioxide and particulate matter from industrial-commercial-institutional steam-generating units, and revises emissions testing procedures under Method 19.
Appendix A Method 25 (2/12/88)	Amendment	Amends Method 25 to improve the reliability of determining total gaseous nonmethane organic emissions.
Appendix A Method 5F (8/08/88)	Amendment	Allows the use of lower cost alternative to current ion chromatograph analysis procedure related to Method 5F.
O,60.153 & 60.154 (10/06/88)	Amendment	Adds performance test measurements and revises the monitoring, recording, and reporting requirements associated with performance standards for sewage treatment plants.

Appendix A, Methods 10 and 10B Appendix B, PS 4 (10/21/88)	Amendment	Amends Method 10 and adds Method 10B, for determining carbon monoxide emissions from stationary sources.
F,60.63 to 60.64 (12/14/88)	Amendment	Requires monitoring of visible emissions from all kilns and clinker coolers at portland cement plants.
Appendix A Methods 1A, 2C, and 2D (3/28/89)	Amendment	Adds 3 test methods for sampling small stacks and ducts to determine leaks of volatile organic compounds in the manufacturing of synthetic organic chemicals.
E,61.53 to 61.56 (3/19/87)	Amendment	Adds monitoring, reporting and testing requirements to the standards for mercury-cell chlor-alkali plants.
A, 61.01 (10/08/87)	Amendment	Amends the list of hazardous substances which EPA has indicated may cause serious health effects from ambient air exposure.
61.54, 61.60, 61.64, 61.65, 61.70, 61.153, 61.245, Appendix B (9/23/88)	Amendment	Corrections to errors made in various subparts and test methods, related to reporting and recordkeeping requirements.

PROGRAM CONSIDERATIONS:

In acquiring the delegation to administer these federal rules in Oregon, the Department assumes responsibility of enforcing these rules. Currently the Department oversees 42 NSPS performance standards and 5 NESHAPS emissions standards. This proposed action adds only two new NSPS performance standards, with the remainder being amendments to current standards and test methods. The adoption of these rules is not expected to add significantly to the resource burden. The Department believes it can effectively administer and enforce these rules.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Recommend to the commission not to adopt any of the new and amended federal standards. The Department would lose its delegation of authority to administer these rules in Oregon, leaving administration and enforcement to EPA.

2. Recommend to the Commission adoption of all new and amended federal standards (in Oregon rule form), as listed in Attachment A - Supplemental Background Information.

3. Recommend to the Commission adoption of only those standards applicable to existing sources in Oregon, or to sources which could likely locate in Oregon in the future. This follows past practices and is acceptable to EPA. Following this course of action would mean that the following NSPS and NESHAPS standards listed in Attachment A - Supplemental Background Information, would not be added:

   a. Item 8, Fossil Fuel-Fired Steam Generators. Not applicable. This applies only to two boilers at a plant in Illinois.

   b. Item 10, Rubber Tire Manufacturing. Not applicable. There are currently no such plants in Oregon, nor any reasonable expectation of such facilities being located in Oregon.

   c. Item 17, Residential Wood Heaters. This rule will be addressed separately, at a later date, as part of an overall update of DEQ's Woodstove Certification rules. The aim of the Department is to align them as much as possible with EPA's rules. DEQ will need to maintain its efficiency labelling program per statutory and EQC requirements, at least until EPA develops an equivalent program. DEQ should be able to defer to EPA the manufacturer's emission certification and labelling program to provide for more efficient administration on a national basis. At the same time DEQ will be retaining the authority to enforce at retail outlets, since EPA resources will not be able to adequately address this. The issue of improving the durability of stoves to insure maintaining peak in-home emission control will also need to be addressed by the EQC.

d. Item 18, PS 6 for Continuous Emission Rate Monitoring Systems (CERMS). Not applicable. After review with EPA, this was seen as not applicable to existing Oregon sources.

e. Item 19, Extension to Kraft Pulp Mill. Not applicable. This applies only to a specific plant in Georgia.

f. Item 21, Magnetic Tape Manufacturing. Not applicable. No current or expected manufacturing in Oregon.

g. Item 24, Petroleum Refinery Wastewater Systems. Not applicable. No current or expected petroleum refineries in Oregon.

h. Item 25, Magnetic Tape Manufacturing. Same as above f., Item 21.

i. Item 29, Radionuclides. After review with EPA, seen as not applicable to Oregon. An emission primarily from elemental phosphorus plants; none currently located, nor any expected to locate in Oregon.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department prefers Alternative 3 because it would avoid adding unnecessary standards for sources which do not exist or are likely to exist in Oregon. If at some time in the future, a new source locates in Oregon for which there are no applicable state standards, the new source could be issued a permit by the Department, but would be covered under the applicable federal rules until which time state rules are adopted. Therefore, the Department recommends adoption of the rule amendments as proposed.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The proposed action is consistent with the Fiscal Year 1989 State and EPA Agreement to bring its rules up to date with federal NSPS and NESHAPS rules changes. The Department is not aware of any conflicts involving these federal rules and agency or legislative policies.

ISSUES FOR COMMISSION TO RESOLVE:

No major issues. This is relatively straightforward updating of administrative rules.

INTENDED FOLLOWUP ACTIONS:

- File adopted rules with the Secretary of State

Approved:

Section: John F. Kowalczyk

Division: Dick Dobbs

Director: Jim Ham

Report Prepared By: Brian R. Finneran

Phone: 229-6278

Date Prepared: September 20, 1989

BRF:r
PLAN\AR1339 (9/89)

ATTACHMENT A

SUPPLEMENTAL BACKGROUND INFORMATION

During 1987 and 1988, 5 new and 26 amended rules were published in the Federal Register by EPA. These federal rules covered the following source categories.

NATIONAL SOURCE PERFORMANCE STANDARDS

	40 CFR Subpart	New (N) or (A) Amended Rule	Subject of Rule Change	Register Date
1.	HH, 60.343 (b) and 60.344 (c)	A	Rule Revisions, Lime Manufacturing Plants	2/17/87
2.	Appendix A, Method 18	A	Changes Gas Chromatography Test Method	2/19/87
3.	A, 60.8	A	Amendments to Opacity Provisions	3/26/87
4.	Ka, 60.111a to 60.114a	N	Standards For VOL Storage Vessels	4/08/87
5.	Kb, 60.110b to 60.117b	A	Rule Revisions-Petroleum Liquid Storage Vessels	4/08/87
6.	Appendix A, Method 15A	A	Add Test Method for Petroleum Refineries	6/01/87
7.	Appendix F Procedure 1	A	QA Requirements for Gaseous CEM's	6/04/87
*8.	D,60.43a	A	Rule Revisions, Fossil-Fuel-Fired Steam Generators	8/04/87
9.	Appendix A Method 10A	A	Add Test Method for Petroleum Refineries	8/17/87
*10.	BBB, 60.540 to 548	N	Add Standard for Rubber Tire Manufacturing Industry	9/15/87
11.	Appendix A Methods 16A and 16B	A	Add Test Method, Sulfur Emissions	9/29/87
12.	Appendix A Method 6	A	Changes SO_2 Test Method	10/28/87

13.	DD, 60.300 GG, 60.330	A	Applicability dates for Grain Elevators, Stationary Gas Turbines	11/05/87
14.	Db, 60.42b, 60.45b 60.47b Appendix A Method 19	A	Add SO_2 Standard for Industrial-Commercial-Institutional Steam Generating Units	12/16/87
15.	TTT, 60.720 to 60.726	N	Add Standard for Industrial Surface Coating-Plastic Parts for Business Machines	1/29/88
16.	Appendix A Method 25	A	Changes Flame Ionization Test Method	2/12/88
*17.	AAA, 60.530 to 539b	N	Standards for New Residential Wood Heaters	2/26/88
*18.	Appendix B, PS 6	A	Add Performance Standard for CERMS	3/09/88
*19.	BB, 60.286	A	Extension to IT Waiver for Kraft Pulp Mills	4/12/88
20.	Appendix A Method 5F	A	Add Alternative Procedure to Test Method	8/08/88
*21.	SSS, 60.710 to 718	N	Standards for Magnetic Tape Manufacturing Industry	10/03/88
22.	O, 60.153 & 60.154	A	Rule Revisions, Sewage Treatment Plants	10/06/88
23.	Appendix A, Methods 10 and 10B Appendix B, PS 4	A	Changes Test Method and CEMS's for CO	10/21/88
*24.	J, 60.106b	A	VOC Emissions from Petroleum Refinery Wastewater Systems	11/23/88
*25.	SSS, 60.711 to 718	A	Corrections, Magnetic Tape Industry	11/29/88
26.	F, 60.63 & 60.64	A	Rule Revisions, Portland Cement Plants	12/14/88
27.	Appendix A Methods 1A, 2C, and 2D	A	Adds New Test Methods	3/28/89

NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

28.	E, 61.53 to 61.56	A	Rule Revisions to Mercury Standards	3/19/87
*29.	K, 61.123 to 126 61.07 to 13	A	Technical Amendments, Radionuclides	7/28/87
30.	A, 61.01	A	Rule Revisions, General Provisions	10/08/87
31.	61.54, 61.60, 61.64, 61.65, 61.70, 61.153, 61.245, Appendix B	A	Rule Revisions, General Provisions and Test Methods	9/23/88

* Items not being considered for adoption in Oregon because of non-applicability or appropriateness at this time.

PLAN\AR455

STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS 183.335(2), this statement provides information on the intended action to amend rules.

1. Legal Authority

This proposal amends Oregon Administrative Rules 340-25-450 to 340-25-805. It is proposed under authority of Oregon Revised Statutes 468.020(1) and 468.295(3) where the Environmental Quality Commission is authorized to establish different rules for different sources of air pollution.

2. Need for the Rule

The proposed changes bring the Oregon rules up-to-date with changes and additions to the federal "Standards of Performance for New Stationary Sources", 40 CFR 60, and "National Emission Standards for Hazardous Air Pollutants", 40 CFR 61. As Oregon rules are kept up-to-date with the federal rules, then the federal Environmental Protection Agency (EPA) delegates authority to enforce their rules to the Department, allowing Oregon industry and commerce to be regulated by only one environmental agency.

3. Principal Documents Relied Upon in this Rulemaking

Title 40 Code of Federal Regulations, as amended in recent Federal Registers.

	40 CFR Subpart	New (N) or (A) Amended Rule	Subject of Rule Change	Register Date
1.	HH, 60.343 (b) and 60.344 (c)	A	Rule Revisions, Lime Manufacturing Plants	2/17/87
2.	Appendix A, Method 18	A	Changes Gas Chromatography Test Method	2/19/87
3.	A, 60.8	A	Amendments to Opacity Provisions	3/26/87
4.	Ka, 60.111a to 60.114a	N	Standards For VOL Storage Vessels	4/08/87

5.	Kb, 60.110b to 60.117b	A	Rule Revisions-Petroleum Liquid Storage Vessels	4/08/87
6.	Appendix A, Method 15A	A	Add Test Method for Petroleum Refineries	6/01/87
7.	Appendix F Procedure 1	A	QA Requirements for Gaseous CEM's	6/04/87
8.	Appendix A, Method 10A	A	Add Test Method for Petroleum Refineries	8/17/87
9.	Appendix A Methods 16A and 16B	A	Add Test Method, Sulfur Emissions	9/29/87
10.	Appendix A Method 6	A	Changes SO_2 Test Method	10/28/87
11.	DD, 60.300 GG, 60.330	A	Applicability dates for Grain Elevators, Stationary Gas Turbines	11/05/87
12.	Db,60.42b,60.45b 60.47b Appendix A Method 19	A	Add SO_2 Standard for Industrial-Commercial-Institutional Steam Generating Units	12/16/87
13.	TTT,60.720 to 60.726	N	Add Standard for Industrial Surface Coating-Plastic Parts for Business Machines	1/29/88
14.	Appendix A Method 25	A	Changes Flame Ionization Test Method	2/12/88
15.	Appendix A Method 5F	A	Add Alternative Procedure to Test Method	8/08/88
16.	O,60.153 & 60.154	A	Rule Revisions, Sewage Treatment Plants	10/06/88
17.	Appendix A, Methods 10 and 10B Appendix B, PS 4	A	Changes Test Method and CEMS's for CO	10/21/88
18.	F,60.63 & 60.64	A	Rule Revisions, Portland Cement Plants	12/14/88
19.	Appendix A Methods 1A, 2C, and 2D	A	Adds New Test Methods	3/28/89

20.	E,61.53 to 61.56	A	Rule Revisions to Mercury Standards	3/19/87
21.	A, 61.01	A	Rule Revisions, General Provisions	10/08/87
22.	61.54, 61.60, 61.64, 61.65, 61.70, 61.153, 61.245, Appendix B	A	Rule Revisions, General Provisions and Test Methods	9/23/88

LAND USE COMPATIBILITY STATEMENT

The Department has concluded that the proposed rules appear to affect land use and will be consistent with Statewide Planning Goals and Guidelines.

Goal 6: (Air, Water and Land Resources Quality): The proposal is designed to improve and maintain air quality in the affected area and is therefore consistent with the goal.

Goal 11: (Public Facilities and Services): The proposal is deemed unaffected by the rules.

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

FISCAL AND ECONOMIC IMPACT

These federal rules are already promulgated by EPA, therefore sources affected are already subject to the costs of control and compliance. Adoption by and delegation to DEQ simplifies environmental administration generally at less cost.

Small businesses will incur less cost and processing time if these rules are administered by only one agency.

PLAN\AR437

Oregon Department of Environmental Quality

ATTACHMENT C

A CHANCE TO COMMENT ON...

New Federal Air Quality Rules To Be Adopted as State Standards

NOTICE OF PUBLIC HEARING

Hearing Date: August 25, 1989
Comments Due: August 30, 1989

WHO IS AFFECTED: Industry which may build new, reconstruct, or modify air pollution sources in the categories listed below.

WHAT IS PROPOSED: The Department of Environmental Quality (DEQ) is proposing to amend OAR 340-25-450 to 340-25-805 to add two new and 20 modified rules already in force under the federal Environmental Protection Agency (EPA):

Item	40 CFR Subpart	Industry Affected
1.	HH, 60.343 (b) and 60.344 (c)	Rule Revisions, Lime Manufacturing Plants
2.	Appendix A, Method 18	Changes Gas Chromatography Test Method
3.	A, 60.8	Amendments to Opacity Provisions
4.	Ka, 60.111a to 60.114a	Standards For VOL Storage Vessels
5.	Kb, 60.110b to 60.117b	Rule Revisions-Petroleum Liquid Storage Vessels
6.	Appendix A, Method 15A	Add Test Method for Petroleum Refineries
7.	D,60.43a	Rule Revisions, Fossil-Fuel-Fired Steam Generators
8.	Appendix A Method 10A	Add Test Method for Petroleum Refineries
9.	Appendix A Methods 16A and 16B	Add Test Method, Sulfur Emissions
10.	Appendix A Method 6	Changes SO_2 Test Method

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.

11.	DD, 60.300A GG, 60.330	Applicability dates for Grain Elevators, Stationary Gas Turbines
12.	Db, 60.42b, 60.45b 60.47b Appendix A Method 19	Add SO_2 Standard for Industrial-Commercial-Institutional Steam Generating Units
13.	TTT, 60.720 to 60.726	Add Standard for Industrial Surface Coating-Plastic Parts for Business Machines
14.	Appendix A Method 25	Changes Flame Ionization Test Method
15.	Appendix A Method 5F	Add Alternative Procedure to Test Method
16.	O, 60.153 & 60.154	Rule Revisions, Sewage Treatment Plants
17.	Appendix A, Methods 10 and 10B Appendix B, PS 4	Changes Test Methods and CEMS's for CO
18.	F, 60.63 & 60.64	Rule Revisions, Portland Cement Plants
19.	Appendix A Methods 1A, 2C, and 2D	Adds New Test Methods
20.	E, 61.53 to 61.56	Rule Revisions to Mercury Standards
21.	A, 61.01	Rule Revisions, General Provisions
22.	61.54, 61.60, 61.64, 61.65, 61.70, 61.153, 61.245, Appendix B	Rule Revisions, General Provisions and Test Methods

WHAT ARE THE HIGHLIGHTS: The Department proposes to adopt these federal rules and to request EPA to delegate authority to enforce over those sources in Oregon to DEQ. This is considered a routine rulemaking action, since the sources must abide by an identical federal rule, already in force.

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 Brian Finneran at (503) 229-6278.

A public hearing will be held before a hearings officer at:

10 A.M.
Friday, August 25, 1989
Room 4a, 4th floor, Executive Building
811 S.W. 6th, Portland, OR 97204

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 August 30, 1989.

WHAT IS THE NEXT STEP: After public hearing, the Environmental Quality Commission may adopt rule amendments identical to the proposed amendments, adopt modified rule amendments on the same subject matter, or decline to act. The adopted rules will be submitted to the U.S. Environmental Protection Agency for delegation. The Commission's deliberation should come on September 8, 1989, 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.

PLAN\AR438

PROPOSED RULE REVISIONS

Emission Standards and Procedural Requirements for Hazardous Air Contaminants

General Provisions
OAR 340-25-460

(1) Applicability. The provisions of these rules shall apply to any source which emits air contaminants for which a hazardous air contaminant standard is prescribed. Compliance with the provisions of these rules shall not relieve the source from compliance with other applicable rules of the Oregon Administrative Rules, Chapter 340, or with applicable provisions of the Oregon Clean Air Act Implementation Plan.

(2) Prohibited activities:

(a) No person shall operate any source of emissions subject to these rules without first registering such source with the Department following procedures established by ORS 468.320 and OAR 340-20-005 through 340-20-015. Such registration shall be accomplished within ninety (90) days following the effective date of these rules.

(b) After the effective date of these rules, no person shall construct a new source or modify any existing source so as to cause or increase emissions of contaminants subject to these rules without first obtaining written approval from the Department.

(c) No person subject to the provisions of these emission standards shall fail to provide reports or report revisions as required in these rules.

(3) Application for approval of construction or modification. All applications for construction or modification shall comply with the requirements of rules 340-20-020 through 340-20-030 and the requirements of the standards set forth in these rules.

(4) Notification of startup. Notwithstanding the requirements of rules 340-20-020 through 340-20-030, any person owning or operating a new source of emissions subject to these emission standards shall furnish the Department written notification as follows:

(a) Notification of the anticipated date of startup of the source not more than sixty (60) days nor less than thirty (30) days prior to the anticipated date.

(b) Notification of the actual startup date of the source within fifteen (15) days after the actual date.

(5) Source reporting and approval request. Any person operating any existing source, or any new source for which a standard is prescribed in these rules which had an initial startup which preceded the effective date of these rules shall provide the following information to the Department within ninety (90) days of the effective date of these rules:

(a) Name and address of the owner or operator.

(b) Location of the source.

(c) A brief description of the source, including nature, size, design, method of operations, design capacity, and identification of emission points of hazardous contaminants.

(d) The average weight per month of materials being processed by the source and percentage by weight of hazardous contaminants contained in the processed materials, including yearly information as available.

(e) A description of existing control equipment for each emission point, including primary and secondary control devices and estimated control efficiency of each control device.

(6) Source emission tests and ambient air monitoring.

(a) Emission tests and monitoring shall be conducted using methods set forth in 40 CFR, Part 61, Appendix B, as published in the Code of Federal Regulations last amended by the Federal Register, [November 7, 1985, pages 46290 to 46295] <u>November 21, 1988, page 46976.</u> **The methods described in 40 CFR, Part 61, Appendix B, are adopted by reference and made a part of these rules. Copies of these methods are on file at the Department of Environmental Quality.**

(b) At the request of the Department, any source subject to standards set forth in these rules may be required to provide emission testing facilities as follows:

(A) Sampling ports, safe sampling platforms, and access to sampling platforms adequate for test methods applicable to such source.

(B) Utilities for sampling and testing equipment.

(c) Emission tests may be deferred if the Department determines that the source is meeting the standard as proposed in these rules. If such a deferral of emission tests is requested, information supporting the request shall be submitted with the request for written approval of operation. Approval of deferral of emission tests shall not in any way prohibit the Department from canceling the deferral if further information indicates that such testing may be necessary to insure compliance with these rules.

(7) Delegation of authority. The commission may, when any regional authority requests and provides evidence demonstrating its capability to carry out the provisions of these rules relating to hazardous contaminants, authorize and confer jurisdiction within its boundary until such authority and jurisdiction shall be withdrawn for cause by the Commission.

Emission Standard For Mercury

OAR 340-25-480

(1) Applicability. The provisions of this rule are applicable to sources which process mercury ore to recover mercury, sources using mercury chlor-alkali cells to produce chlorine gas and alkali metal hydroxide, and to any other source, the operation of which results or may result in the emission of mercury to the ambient air.

(2) Emission Standard. No person shall cause to be discharged into the atmosphere emissions from any source exceeding 2,300 grams of mercury during any 24 hour period, except that mercury emissions to the atmosphere from sludge incineration plants, sludge drying plants, or a combination of these that process wastewater treatment plant sludges shall not exceed 3200 grams of mercury per 24 hour period.

(3) Stack sampling:

(a) Mercury ore processing facility:

(A) Unless a deferral of emission testing is obtained under subsection 340-25-460(6)(c) of these rules, each person operating source processing mercury ore shall test emissions from his source, subject to the following:

(i) Within ninety (90) days of the effective date of these rules for existing sources or for new sources having startup dates prior to the effective date of this standard.

(ii) Within ninety (90) days of startup in the case of a new source having a startup date after the effective date of this standard.

(B) The Department shall be notified at least thirty (30) days prior to an emission test so that they may, at their option, observe the test.

(C) Samples shall be taken over such periods and frequencies as necessary to determine the maximum emissions occurring during any 24 hour period. Calculations of maximum 24 hour emissions shall be based on that combination of process operating hours and any variation in capacities or processes that will result in maximum emissions. No changes in operation which may be expected to increase total emissions over those determined by the most recent stack test shall be made until estimates of the increased emissions have been calculated, and have been reported to and approved in writing by the Department.

(D) All samples shall be analyzed and mercury emissions shall be determined and reported to the Department within thirty (30) days following the stack test. Records of emission test results and other data needed to determine mercury emissions shall be retained at the source and made available for inspection by the Department for a minimum of two (2) years following such determination.

(b) Mercury Chlor-alkali plant:

(A) Hydrogen and end-box ventilation gas streams. Unless a deferral of emission testing is obtained under subsection 340-25-460(6)(c), each person operating a source of this type shall test emissions from his source following the provisions of subsection (3)(a) of this rule.

(B) Room ventilation system:

(i) Unless a deferral of emission testing is obtained under subsection 340-25-460(6)(c), all persons operating mercury chlor-alkali plants shall pass all cell room air in forced gas streams through stacks suitable for testing.

(ii) emissions from cell rooms may be tested in accordance with provisions of paragraph (3)(b)(a) of this rule or may demonstrate compliance with paragraph (3)(b)(B)(iii) of this rule and assume ventilation emissions of 1,300 grams/day of mercury.

(iii) If no deferral of emission testing is requested, each person testing emissions shall follow the provisions of subsection (3)(a) of this rule.

(c) Any person operating a mercury chlor-alkali plant may elect to comply with room ventilation sampling requirements by carrying out approved design, maintenance, and housekeeping practices. A summary of these approved practices shall be available from the Department.

(d) Stack sampling and sludge sampling at wastewater treatment plants shall be performed in accordance with 40 CFR 61.53(d) or 40 CFR 61.54, last amended by Federal Register [November 7, 1985, pages 46290 to 46295] on March 19, 1987, pages 8724 to 8728.

Standards of Performance for New Stationary Sources

Definitions
OAR 340-25-510

(1) "Administrator" herein and in Title 40, Code of Federal Regulations, Part 60, means the Director of the Department or appropriate regional authority.

(2) "Federal Regulation" means Title 40, Code of Federal Regulations, Part 60, as promulgated prior to [January 15, 1987] March 29, 1989.

(3) "CFR" means Code of Federal Regulations.

(4) "Regional authority" means a regional air quality control authority established under provisions of ORS 468.505.

General Provisions
OAR 340-25-530

Title 40, CFR, Part 60, Subpart A, as promulgated prior to [January 15, 1987] March 29, 1989, is by this reference adopted and incorporated herein. Subpart A includes paragraphs 60.1 to 60.18 which address, among other things, definitions, performance tests, monitoring requirements, and modifications.

Performance Standards

Federal Regulations Adopted by Reference
OAR 340-25-535

Title 40, CFR, Parts 60.40 through 60.154, and 60.250 through 60.648, and 60.680 through 60.685, as established as final rules prior to [January 15, 1987] March 29, 1989, is by this reference adopted and incorporated herein, with the exception of the December 27, 1985 federal register revision to 40 CFR 60.11(b). As of [January 15, 1987] March 29, 1989, the Federal Regulations adopted by reference set the emission standards for the new stationary source categories set out in rules 340-25-550 through [340-25-715] 340-25-725 (these are summarized for easy screening, but testing conditions, the actual standards, and other details will be found in the Code of Federal Regulations).

Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units
OAR 340-25-553

The pertinent federal rules are **40 CFR 60.40b to 60.49b**, also known as **Subpart Db**. The following emission standards, summarizing the federal standard set forth in **Subpart Db**, apply to each steam generating unit of more than 29 MW (100 million BTU/hr) heat input capacity, which commenced construction, modification, or reconstruction after June 19, 1984:

(1) Standards for Particulate Matter. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere from any affected facility any gases which:

(a) Contain particulate matter in excess of 22 to 86 nanograms per joule (0.05 to 0.20 lb/million BTU) heat input from firing the fuels as specified in **40 CFR 60.43b**.

(b) Exhibit opacity greater than 20 percent (6-minute average), except for one 6-minute period per hour of not more than 27 percent opacity.

(2) Standards for Nitrogen Oxides. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere from any affected facility any gases which contain nitrogen oxides in excess of 43 to 340 nanograms per joule (0.10 to 0.80 lb/million BTU) heat input, as specified in table in **40 CFR 60.44b(a)**.

(3) Standards for Sulfur Dioxide. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere from any affected facility any gases which contain sulfur dioxide in excess of the amounts specified in 40 CFR 60.42b:

(a) 10 to 50 percent of the potential sulfur dioxide emission rate;
(b) 520 nanograms per joule (1.2 lb/million BTU) of heat input;
(c) amount determined according to the formula in 40 CFR 60.42b.

Standards of Performance for Portland Cement Plants
OAR 340-25-560

The pertinent federal rules are 40 CFR 60.60 to [60.64] 60.65, also known as Subpart F. The following emission standards, summarizing the federal standards set forth in **Subpart F**, shall apply to each Portland cement plant:

(1) Standards for Particulate Matter from Kiln. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere from any kiln any gases which:

(a) Contain particulate matter in excess of 0.15 Kg. per metric ton (0.30 lb. per ton) of feed (dry basis) to the kiln.

(b) Exhibit greater than 20 percent opacity.

(2) Standards for Particulate Matter from Clinker Cooler. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere from any clinker cooler any gasses which:

(a) Contain particulate matter in excess of 0.050 Kg. per metric ton (0.10 lb. per ton) of feed (dry basis) to the kiln.

(b) Exhibit 10 percent opacity or greater.

(3) Standards for Particulate Matter for Other Facilities. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere from any affected facility other than the kiln and clinker cooler any gases which exhibit 10 percent opacity or greater.

Standards of Performance for Volatile Organic Liquid Storage Vessels
OAR 340-25-587

The pertinent federal rules are 40 CFR 60.110b to 60.116b, also known as Subpart Kb. The following requirements, summarizing the federal requirements set forth in Subpart Kb, apply to each storage vessel for volatile organic liquids (VOL's) which has a storage capacity greater than or equal to 40 cubic meters (m^3), for which construction, reconstruction, or modification is commenced after July 23, 1984. "Volatile organic liquid" (VOL) means any organic liquid which can emit volatile organic compounds into the atmosphere. These compounds are identified in EPA statements on ozone abatement policy for SIP revisions (42 FR 35314, 44 FR 32042, 45 FR 32424, and 45 FR 48941). Each storage vessel with a design capacity greater than or equal to 40 m^3 and less than 75 m^3 shall have readily accessible records showing the dimension of the vessel and an analysis showing the capacity of the vessel. The owner or operator of any storage vessel to which this section applies shall store a VOL as follows:

(1) If the storage capacity is greater than or equal to 151 m^3 and the true vapor pressure of the VOL as stored is equal to or greater than 5.2 kPa but less than 76.6 kPa, or the storage capacity is greater than or equal to 75 m^3 but less than 151 m^3 and the true vapor pressure is equal to or greater than 27.6 kPa but less than 76.6 kPa, the storage vessel shall be equipped with either a fixed-internal roof combination, an external floating roof, closed vent system and control devise, or an equivalent.

(2) If the storage capacity is greater than or equal to 75 m^3 and the true vapor pressure of the VOL as stored is greater than or equal to 76.6 kPa, the storage vessel shall be equipped with either a closed vent system and control devise, or an equivalent.

Standards of Performance for Gas Turbines
OAR 340-25-645

The pertinent federal rules are 40 CFR 60.330 to 60.335, also known as Subpart GG. The following emission standards, summarizing the federal standards set forth in Subpart GG, apply to any stationary gas turbine with a heat input at peak load equal to or greater than 10.7 gigajoules per hour (1,000 HP) for which construction, modification, or reconstruction was commenced after October 3, 1977:

(1) Standard for Nitrogen Oxides. No owner or operator subject to the provisions of this rule shall cause to by discharged into the atmosphere

from any stationary gas turbine, nitrogen oxides in excess of the rates specified in 40 CFR 60.332.

(2) Standard for Sulfur Dioxide. Owners or operators shall:

(a) Not cause to be discharged into the atmosphere form any gas turbine any gases which contain sulfur dioxide in excess of 150 ppm by volume at 15 percent oxygen, on a dry basis; or

(b) Not burn in any gas turbine any fuel which contains sulfur in excess of 0.80 percent by weight.

Standards of Performance for Surface Coating of Plastic Parts for Business Machines

OAR 340-25-725

The pertinent federal rules are 40 CFR 60.720 to 60.725, also known as Subpart TTT. The following emission standard, summarizing the federal standard set forth in Subpart TTT, applies to each spray booth in which plastic parts for use in the manufacture of business machines receive prime coats, color coats, texture coats, or touch-up coats. The standard applies to any affected facility which commenced construction, modification, or reconstruction after January 8, 1986.

Standards for Volatile Organic Compounds: No owner or operator shall cause to be discharged into the atmosphere Volatile Organic Compounds (VOC) that exceed the following:

(1) 1.5 kilograms of VOC per liter of coating solids applied from prime coating and color coating;

(2) 2.3 kilograms of VOC per liter of coating solids applied from texture coating and touch-up coating.

PLAN\AR470

VICTOR ATIYEH
GOVERNOR

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: July 21, 1989
Agenda Item: F
Division: Air Quality
Section: Planning & Development

SUBJECT:

Request for authorization to conduct a public hearing to amend Standards of Performance for New Stationary Sources (OAR 340-25-505 to -805), and to amend Emission Standards and Procedural Requirements for Hazardous Air Contaminants (OAR 340-25-450 to -485).

PURPOSE:

To keep Department rules current with federal air regulations regarding New Source Performance Standards (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAPS), so as to maintain delegation of authority to administer all appropriate aspects of these rules in Oregon.

ACTION REQUESTED:

___ Work Session Discussion
___ General Program Background
___ Potential Strategy, Policy, or Rules
___ Agenda Item ___ for Current Meeting
___ Other: (specify)
_X_ Authorize Rulemaking Hearing
___ Adopt Rules

Proposed Rules	Attachment D
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: (specify)	Attachment ___

DESCRIPTION OF REQUESTED ACTION:

EPA regularly adopts and amends New Source Performance Standards (Part 60 of federal protection of environment rules) and emission standards for hazardous air pollutants (Part 61 of federal protection of environment rules). The Department of Environmental Quality has historically committed to seek delegation to enforce each of these new rules in Oregon by bringing its rules up to date with EPA rules, when the Department believes those rules are applicable and appropriate in Oregon. "Applicable" means the existence of affected sources located in the state, or likely to move into the state. "Appropriate" means the federal rules are reasonable and enforceable within DEQ resources and enforcement policies. By maintaining delegation to administer these federal rules in Oregon, the Department believes it can provide a more efficient implementation of the rules and reduce the confusion of industry having to deal with two agencies (DEQ and EPA).

AUTHORITY/NEED FOR ACTION:

___	Required by Statute: _____ Enactment Date: _____	Attachment ___
X	Statutory Authority: ORS 468.020/468.295(3)	Attachment ___
X	Pursuant to Rule: OAR 340-25-450 to -805	Attachment ___
X	Pursuant to Federal Law/Rule: 40 CFR Parts 60 and 61	Attachment ___
___	Other:	Attachment ___
___	Time Constraints: (explain)	

DEVELOPMENTAL BACKGROUND:

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

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The Department proposes to amend its administrative rules to adopt two new standards, modify 4 existing standards, and adopt by reference 16 other changes to standards and test methods, in order bring the State rules up to date with EPA's NSPS and NESHAPS rule changes, where appropriate and applicable.

These proposed rules affect only industry which may build new, reconstruct, or modify air pollution sources. Of the two new standards, one may affect approximately 5 to 10 existing facilities in Oregon where volatile organic liquid storage vessels are in use, while the other may affect approximately the same number of facilities which operate relatively small-scale paint spray booths for plastic parts for business machines.

These federal rules are already promulgated by EPA, and therefore the sources affected are already subject to the costs of control and compliance. Adoption by and delegation to DEQ simplifies environmental administration, and may save industry time and cost in dealing with just one agency.

PROGRAM CONSIDERATIONS:

In acquiring the delegation to administer these federal rules in Oregon, the Department assumes responsibility of enforcing these rules. Currently the Department oversees 42 NSPS performance standards and 5 NESHAPS emissions standards. This proposed action adds only two new NSPS performance standards, with the remainder being amendments to current standards and test methods. The adoption of these rules is not expected to add significantly to the resource burden. The Department believes it can effectively administer and enforce these rules.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

The Department has considered two alternatives:

1. Recommend to the Commission adoption of all new and amended federal standards (in Oregon rule form), as listed in Attachment A - Supplemental Background Information.

2. Recommend to the Commission adoption of only those standards applicable to existing sources in Oregon, or to sources which could likely locate in Oregon in the future. This follows past practices and is acceptable to EPA. This would mean that the following NSPS and NESHAPS standards listed in Attachment A - Supplemental Background Information, would not be added:

    a. Item 8, Fossil Fuel-Fired Steam Generators. This applies only to two boilers at a plant in Illinois.

    b. Item 10, Rubber Tire Manufacturing. Not applicable. There are currently no such plants in Oregon.

c. Item 17, Residential Wood Heaters. This rule will be addressed separately later as part of an overall update of DEQ's Woodstove Certification rules, to align them as much as possible with EPA's rules. DEQ will need to maintain its efficiency labelling program per statutory requirements, at least until EPA develops an equivalent program. DEQ should be able to defer to EPA the manufacturer's emission certification and labelling program, to provide for more efficient administration on a national basis, while retaining the authority to enforce at retail outlets, since EPA resources will not be able to adequately address this. The issue of improving the durability of stoves to insure maintaining peak inhome emission control may also need to be addressed, as results of EPA/DEQ inhome studies become available later this year.

d. Item 18, PS 6 for Continuous Emission Rate Monitoring Systems (CERMS). After review with EPA, this was seen as not applicable to existing Oregon sources.

e. Item 19, Extension to Kraft Pulp Mill. This applies only to a specific plant in Georgia.

f. Item 21, Magnetic Tape Manufacturing. Not applicable. No current manufacturing in Oregon.

g. Item 24, Petroleum Refinery Wastewater Systems. No current wastewater systems in Oregon (no petroleum refineries).

h. Item 25, Magnetic Tape Manufacturing. Same as above f., Item 21.

i. Item 29, Radionuclides. After review with EPA, seen as not applicable to Oregon. An emission primarily from elemental phosphorus plants; none currently in Oregon.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department prefers Alternative 2 because it would avoid adding unnecessary standards for sources which do not exist or are likely to exist in Oregon. If, at some time in the future, a new source locates in Oregon for which there are no applicable standards, the Department could then recommend adoption of new rules on a case-by-case basis. The Department recommends that the Commission authorize public hearings to take place concerning only the adoption of applicable standards.

hearings to take place concerning only the adoption of applicable standards.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The proposed action is consistent with the Fiscal Year 1989 State and EPA Agreement to bring its rules up to date with federal NSPS and NESHAPS rules changes. The Department is not aware of any conflicts involving these federal rules and agency or legislative policies.

ISSUES FOR COMMISSION TO RESOLVE:

No major issues. This is relatively straightforward updating of administrative rules.

INTENDED FOLLOWUP ACTIONS:

- o File hearing notice with the Secretary of State
- o Hold public hearing
- o Review oral and written testimony and revise proposed rules and amendments as appropriate
- o Return to Commission for final rule adoption

Approved:

Section: John F. Kowalczyk

Division: Dale Kibbe

Director: Lydia R. Taylor

Report Prepared By: Brian Finneran

Phone: 229-6278

Date Prepared: July 6, 1989

BR:r
PLAN\AR453
(7/6/89)

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: October 20, 1989
Agenda Item: P
Division: HSW
Section: SW/WTP

SUBJECT:

Adoption of Waste Tire Rules -- Addition of Provisions Relating to Denial of Waste Tire Carrier Permits

PURPOSE:

Establish criteria to be applied by the Department of Environmental Quality (DEQ or Department) when denying an application for a waste tire carrier permit; establish criteria for suspension, revocation or refusal to renew a waste tire storage site permit or waste tire carrier permit; add criteria for denial of waste tire storage site permits.

ACTION REQUESTED:

___ Work Session Discussion
- ___ General Program Background
- ___ Potential Strategy, Policy, or Rules
- ___ Agenda Item ___ for Current Meeting
- ___ Other: (specify)

___ Authorize Rulemaking Hearing
_X_ 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 Commission is requested to adopt proposed rule revisions incorporating criteria for waste tire carrier permit denial, revocation of permits under the Waste Tire Program, and additional criteria for denial of waste tire storage permits.

AUTHORITY/NEED FOR ACTION:

_X_ Required by Statute: ORS 459.785 — Attachment ___
Enactment Date: 1987 (HB 2022)
_X_ Statutory Authority: ORS 459.745 — Attachment ___
___ Pursuant to Rule: _____ — Attachment ___
___ Pursuant to Federal Law/Rule: _____ — Attachment ___

___ Other: — Attachment ___

_X_ Time Constraints: (explain)

No permit denials or revocations are pending; but the rule should be in place as soon as possible, as the need to deny or revoke a permit could arise at any time.

DEVELOPMENTAL BACKGROUND:

___ Advisory Committee Report/Recommendation — Attachment ___
_X_ Hearing Officer's Report/Recommendations — Attachment E
___ Response to Testimony/Comments — Attachment ___
___ Prior EQC Agenda Items:
Agenda Item G, 7/21/89 EQC Meeting - Authorization to hold public hearing
Agenda Item K, 4/14/89 EQC Meeting - Amendments to Permitting Requirements for Waste Tire Storage Sites and Waste Tire Carriers
Agenda Item G, 7/8/88 EQC Meeting - Waste Tire Program Permitting Requirements
Attachment ___
___ Other Related Reports/Rules/Statutes:
Attachment ___
___ Supplemental Background Information — Attachment ___

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

Applications for waste tire carrier permits may be denied if applicants do not comply with Department rules. Thus, an applicant who is or was storing waste tire illegally could be denied a waste tire carrier permit.

A permittee's site or carrier permit may be revoked if the permittee does not maintain financial assurance. Maintaining financial assurance is a statutory requirement.

On June 2, 1989, the Waste Tire Advisory Committee reviewed a preliminary draft of the rule revisions and made some suggestions. They were not asked to make a formal recommendation.

At its July 21, 1989 meeting, the Commission authorized a public hearing to take comments on the proposed rule changes. A hearing was held on August 31, 1989. One person gave general testimony on the waste tire program, but no comments were received on the proposed rule.

PROGRAM CONSIDERATIONS:

The Department Hearings Officer recently supported a denial of a waste tire carrier permit, in the absence of specific denial criteria in the rule. While the Hearings Officer ruled that the Department had sufficient grounds to deny the permit in question based on general statutory authority, she indicated that a rule needs to be adopted to clarify grounds on which denial of a carrier permit may be based.

The present rule also lacks criteria for revoking waste tire storage site permits and carrier permits. These criteria need to be established.

Similar rules exist for permit denials and revocations in most programs. Criteria for storage permit denial are included in the waste tire storage site permit rules, but one additional criterion is being added for consistency with the proposed carrier permit denial criteria.

These rule additions are needed in order to properly administer the waste tire permitting program, providing the rationale for the Department to deny or revoke permits when warranted.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Adopt the proposed rule revisions.

2. Change the law.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends approval of Alternative 1.

Changing the law is not practical. Rule adoption is the appropriate way to handle the need.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The proposed rule is consistent with similar rules in other programs, and will carry out legislative intent to regulate the transportation and storage of waste tires.

ISSUES FOR COMMISSION TO RESOLVE:

None.

INTENDED FOLLOWUP ACTIONS:

File Final Revised Rule with Secretary of State (October 25 or 26, 1989).

Within three weeks notify waste tire storage permittees and waste tire carriers of the rule revisions. Notify other interested parties of rule changes.

Approved:

Section: Steve Greenwood

Division: SKC for Stephanie Hallock

Director: Fred Hansen

Report Prepared By: Deanna Mueller-Crispin

Phone: 229-5808

Date Prepared: September 29, 1989

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Attachment A

Proposed Revisions

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
ADMINISTRATIVE RULES
DIVISION 62 - WASTE TIRES

WASTE TIRE PERMITS
9/29/89

Proposed additions to rule are underlined.
Proposed deletions are in brackets [].

Department Review of Applications for Waste Tire Storage Sites

340-62-030 (1) Applications for waste tire storage permits shall be processed in accordance with the Procedures for Issuance, Denial, Modification and Revocation of Permits as set forth in OAR Chapter 340, Division 14, except as otherwise provided in OAR Chapter 340, Division 62.

(2) Applications for permits shall be complete only if they:

(a) Are submitted on forms provided by the Department, accompanied by all required exhibits, and the forms are completed in full and are signed by the applicant and the property owner or person in control of the premises;

(b) Include plans and specifications as required by OAR 340-62-018 and 340-62-020;

(c) Include the appropriate application fee pursuant to OAR 340-62-020(1)(c).

(3) An application may be accepted as complete for processing if all required materials have been received with the exception of the financial assurance required under OAR 340-62-020(1)(b) and 340-62-022, and the written statement of compatibility of the proposed site with the acknowledged local comprehensive plan and zoning requirements from the local government unit(s) having jurisdiction. However, the Department shall not issue a "second-stage" waste tire storage permit unless required financial assurance and land use compatibility have been received.

(4) Following the submittal of a complete waste tire storage permit application, the director shall cause notice to be given in the county where the proposed site is located in a manner reasonably calculated to notify interested and affected persons of the permit application.

(5) The notice shall contain information regarding the location of the site and the type and amount of waste tires intended for storage at the site. In addition, the notice shall give any person substantially affected by the proposed site an opportunity to comment on the permit application.

(6) The Department may conduct a public hearing in the county where a proposed waste tire storage site is located.

(7) Upon receipt of a completed application, the Department may deny the permit if:

(a) The application contains a material misrepresentation or false information[.] or fails to disclose fully all relevant facts; or

(b) The application was wrongfully accepted by the Department[.]; or

(c) The proposed waste tire storage site would not comply with these rules or the waste tire statutes or any other applicable rules or statutes of the Department[.]; or

(d) The applicant has not complied with these rules or other applicable rules of the Department or rules of other governmental agencies which relate to waste tires; or

[(d)] (e) There is no clearly demonstrated need for the proposed new, modified or expanded waste tire storage site.

(8) Based on the Department's review of the waste tire storage [site] application, and any public comments received by the Department, the director shall issue or deny the permit. The director's decision shall be subject to appeal to the Commission and judicial review under ORS 183.310 to 183.550.

Department Review of Waste Tire Carrier Permit Applications

340-62-070 (1) Applications for waste tire carrier permits shall be processed in accordance with the Procedures for Issuance, Denial, Modification and Revocation of Permits as set forth in OAR Chapter 340, Division 14, except as otherwise provided in OAR Chapter 340, Division 62.

(2) Applications for waste tire carrier permits shall be complete only if they:

(a) Are submitted on forms provided by the Department, accompanied by all required exhibits, and the forms are completed in full and are signed by the applicant(s);

(b) Include the appropriate application fee pursuant to OAR 340-62-055 and 340-62-063; and

(c) Include acceptable financial assurance pursuant to OAR 340-62-055.

(3) Upon receipt of a completed application, the Department may deny the permit if:

(a) The application contains a material misrepresentation or false information or fails to disclose fully all relevant facts; or

(b) The application was wrongfully accepted by the Department; or

(c) The applicant has not complied with these rules or other applicable rules of the Department or rules of other governmental agencies which relate to waste tires.

(4) Based on the Department's review of the waste tire carrier application, the director shall issue or deny the permit. The director's decision shall be subject to appeal to the Commission and judicial review under ORS 183.310 to 183.550.

Permit Suspension or Revocation

340-62-075 (1) The Department may suspend, revoke or refuse to renew any permit issued under OAR 340-62-005 through 340-62-070 if it finds:

(a) Failure to comply with any conditions of the permit, provisions of ORS 459.710 through 459.780, the rules of the Commission or an order of the Commission or Department; or

(b) Failure to maintain in effect at all times the required bond or other approved equivalent financial assurance in the amount specified in ORS 459.720 and ORS 459.730 or in the permit;

(c) The permit was obtained by misrepresentation or failure to disclose fully all relevant facts;

(d) A significant change in the quantity or character of waste tires received or in the method of waste tire storage site operation; or

(e) Failure to timely remit the annual compliance fee, or nonpayment by drawee of any instrument tendered by applicant as payment of the permit fee.

(2) Suspension or revocation of a permit shall be processed in accordance with the Procedures for Issuance, Denial, Modification and Revocation of Permits as set forth in OAR 340-14-045, except as otherwise provided in OAR Chapter 340, Division 62.

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Attachment B

RULEMAKING STATEMENTS
for
Proposed New Rule and Revisions to Existing Rule
Pertaining to Storage and Hauling of Waste Tires

OAR Chapter 340, Division 62

Pursuant to ORS 183.335, these statements provide information on the intended action to adopt a rule.

STATEMENT OF NEED:

Legal Authority

The 1987 Oregon Legislature passed the Waste Tire Act regulating the disposal, storage and transportation of waste tires. ORS 459.785 requires the Commission to adopt rules and regulations necessary to carry out the provisions of ORS 459.705 to 459.790. The Commission is adopting a new rule and revisions to an existing rule which are necessary to carry out the provisions of the Waste Tire Act.

Need for the Rule

Improper storage, disposal and hauling of waste tires represents a significant problem throughout the State. The Waste Tire Act establishes a comprehensive program to regulate the disposal, storage and transportation of waste tires. The new rule and the rule revision are needed to adopt criteria needed in administering the permitting parts of the program.

Principal Documents Relied Upon

a. Oregon Revised Statutes, Chapter 459.
b. Oregon Administrative Rules, Chapter 340, Division 62.

LAND USE CONSISTENCY STATEMENT:

The proposed rules appear to affect land use to a minimum extent, and appear to be consistent with Statewide Planning Goals and Guidelines.

With regard to Goal 6 (Air, Water and Land Resources Quality), the rules pertain to issuing permits for proper storage and transportation of waste tires. The rules establish criteria for denial of an application for a waste tire carrier or storage site permit, and for revocation of a waste tire storage site permit or waste tire carrier permit. One of the grounds for denial or revocation is non-compliance with the Department's waste tire

storage site rules. This is another tool for the Department to use in promoting proper storage of waste tires.

The rules do not appear to conflict with other Goals.

Public comment on any land use issue involved is welcome and may be submitted in the manner described in the accompanying NOTICE OF PUBLIC HEARING.

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

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

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The rules do not appear to conflict with other Goals.

Public comment on any land use issue involved is welcome and may be submitted in the manner described in the accompanying NOTICE OF PUBLIC HEARING.

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

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

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Attachment B

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Pertaining to Storage and Hauling of Waste Tires

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Improper storage, disposal and hauling of waste tires represents a significant problem throughout the State. The Waste Tire Act establishes a comprehensive program to regulate the disposal, storage and transportation of waste tires. The new rule and the rule revision are needed to adopt criteria needed in administering the permitting parts of the program.

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a. Oregon Revised Statutes, Chapter 459.
b. Oregon Administrative Rules, Chapter 340, Division 62.

LAND USE CONSISTENCY STATEMENT:

The proposed rules appear to affect land use to a minimum extent, and appear to be consistent with Statewide Planning Goals and Guidelines.

With regard to Goal 6 (Air, Water and Land Resources Quality), the rules pertain to issuing permits for proper storage and transportation of waste tires. The rules establish criteria for denial of an application for a waste tire carrier or storage site permit, and for revocation of a waste tire storage site permit or waste tire carrier permit. One of the grounds for denial or revocation is non-compliance with the Department's waste tire

FISCAL AND ECONOMIC IMPACT STATEMENT

I. Introduction

The statute (ORS 459.745) requires the Director to issue or deny an application for a waste tire carrier permit or a waste tire storage permit based on the Department's review of the application. The new rule and the rule revisions establish criteria for denial of waste tire carrier permit applications, and for revocation of storage and carrier permits. The existing rule already has criteria for denial of a waste tire storage site application, but one criterion is added for consistency with the proposed new rule. The criteria mainly require that a permittee or applicant comply with existing waste tire statutes and rules.

II. General Public

The general public may use waste tire carriers to remove their waste tires for proper disposal. The public may also deliver their own waste tires to permitted waste tire storage sites. A permitted waste tire carrier will likely charge between $.75 and $1.00 to pick up and properly dispose of waste passenger tires. In the past, "tire jockeys" have been willing to accept tires for less, perhaps $.25 each, but proper disposal was not assured. A waste tire storage site permitted by DEQ will likely charge around $.65 per passenger tire for proper disposal. The public may have been able in the past to dispose of tires in illegal tire piles for half that amount.

However, these changes in waste tire disposal costs are not brought about by the present rule, but rather by the Waste Tire Act of 1987 which attempts to eliminate illegal disposal. The present rule has no financial impact on the general public beyond the impact of the waste tire statute itself; the rule is another tool for the Department to enforce the statute.

III. Small Business

Many small businesses, such as retail tire dealers, must arrange for disposal of waste tires generated by their business. The same comments apply to them as to the general public under II above.

Many, if not most, waste tire carriers are small businesses. This proposed rule revision does not impose any additional financial burden on them beyond the statute and existing rule. It simply clarifies that they must operate within the statute and program

rules in order to be issued and retain a waste tire carrier permit.

IV. Large Business

Some large businesses must dispose of waste tires. This rule would have the same impact on them as on small businesses with tires to dispose of.

V. Local Governments

Some local governments generate waste tires which they have to dispose of. The rule would have the same impact on them as on the general public.

VI. State Agencies

A few state agencies may need to dispose of waste tires. This rule would have the same impact on them as on the general public. Otherwise, the Department is the only agency impacted. Permit review processes are handled by existing Department staff. The Proposed rule will have no appreciable fiscal impact on the Department.

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ATTACHMENT D

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Proposed Rules Related to Denying and Revoking Waste Tire Carrier and Storage Site Permits

Hearing Date: 8/31/89
Comments Due: 9/6/89

WHO IS AFFECTED: Applicants for waste tire carrier permits. Permitted waste tire carriers and waste tire storage site operators. The public who dispose of waste tires.

WHAT IS PROPOSED: The Department proposes to revise existing administrative rule OAR 340-62-070 governing review of waste tire carrier permit applications, and OAR 340-62-030, regulating review of waste tire storage applications. The Department also proposes to adopt a new administrative rule, OAR 340-62-075, governing revocation of waste tire carrier and waste tire storage site permits.

WHAT ARE THE HIGHLIGHTS: The rule revision would add criteria for denial of applications for waste tire carrier permits and one additional criterion for denial of waste tire storage site applications. The new rule would establish criteria for revocation and suspension of waste tire carrier and waste tire storage site permits. In general, failure to comply with applicable Department statutes or rules would be grounds for denial or revocation of a permit.

HOW TO COMMENT: A public hearing will be held before a hearings officer at:

7:00 - 8:30 p.m.
Thursday, August 31, 1989
Old Shriners Hospital Building
Board Room
8200 N.E. Sandy Boulevard
Portland, OR

Written or oral comments may be presented at the hearing. Written comments may also be sent to the Department of environmental Quality, Waste Tire Program, Hazardous and Solid Waste Division, 811 S.W. 6th Avenue, Portland, OR 97204, and must be received no later than 5:00 p.m., Wednesday, September 6, 1989.

(over)

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

11/1/86

FOR FURTHER INFORMATION:

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

Copies of the complete proposed rule package may be obtained from the DEQ Hazardous and Solid Waste Division. For further information, contact Deanna Mueller-Crispin at 229-5808, or toll-free at 1-800-452-4011.

WHAT IS THE NEXT STEP:

The Environmental Quality Commission may adopt new rules identical to the ones proposed, adopt modified rules as a result of testimony received, or may decline to adopt rules. The Commission will consider the proposed new rule and rule revisions at its meeting on October 20, 1989.

SB8635

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ATTACHMENT 1

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY **INTEROFFICE MEMORANDUM**

DATE: September 13, 1989

TO: Environmental Quality Commission

FROM: Deanna Mueller-Crispin, Hearing Officer

SUBJECT: Public Hearing, Proposed Amendments to Waste Tire Program Rules, Portland, 7:00 p.m., 8/31/89

On August 31, 1989 a Public Hearing regarding proposed addition of provisions relating to denial of waste tire carrier permits and for suspension, revocation or refusal to renew carrier and waste tire storage permits was held in Portland, Oregon. One person attended and testified.

The testimony was from Franz Rotter, a tire processor, and concerned the waste tire program in general and the need to process rather than landfill tires; no comments were made on the proposed rule revisions.

No written comments were received on the proposed rule revisions.

hrpt.pdx

ATTACHMENT L

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DEPARTMENT OF ENVIRONMENTAL QUALITY **INTEROFFICE MEMORANDUM**

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hrpt.pdx

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: October 20, 1989
Agenda Item: Q
Division: Air Quality
Section: Asbestos Program

SUBJECT:

Public Hearing Authorization: Asbestos Abatement Program - Rule Amendments

PURPOSE:

The Asbestos Control Program is submitting draft rules previously announced at the Environmental Quality Commission (EQC, Commission) meeting on June 2, 1989, and requests Commission authorization to hold rulemaking hearings. The purpose of the rulemaking hearing authorization is to move forward an eight month effort to fine tune the asbestos rules after almost two years of experience under the present rules.

The Section is also reporting on the June 2, 1989, Variance for Workers Who Disturb or Remove Asbestos in Residential Facilities, as well as the impact of the temporary rule authorized at the same meeting allowing certain additional experience requirements to qualify for supervisor's training.

ACTION REQUESTED:

___ Work Session Discussion
- ___ General Program Background
- ___ Potential Strategy, Policy, or Rules
- ___ Agenda Item ___ for Current Meeting
- ___ Other: (specify)

_X_ 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 ___
_X_ Informational Report — Attachment ___
___ Other: (specify) — Attachment ___

Asbestos program and Residential Advisory Committee will give an oral informational report concerning progress toward resolving asbestos abatement problems in the residential industry.

DESCRIPTION OF REQUESTED ACTION:

A public hearing is proposed to receive comments on amendments to the asbestos rules. These amendments would:

- Create a definition of interim storage of asbestos-containing material
- Apply work practices to potentially friable asbestos-containing material
- Provide practical adjustments to asbestos abatement project notification and filing rules
- Require air clearance monitoring upon completion of abatement projects
- Provide practical adjustments to training and certification rules
- Make permanent the temporary rules concerning prerequisites for Supervisor Training

AUTHORITY/NEED FOR ACTION:

___ Required by Statute: _____ — Attachment ___
Enactment Date: _____
_X_ Statutory Authority: ORS 468.893, 468.020 — Attachment ___
___ Pursuant to Rule: _____ — Attachment ___
___ Pursuant to Federal Law/Rule: _____ — Attachment ___
___ Other: — Attachment ___

___ Time Constraints:

As the full-scale supervisor's temporary rules expire December 5, 1989, the permanent rules should be adopted as soon as possible.

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 ___
_X_	Supplemental Background Information	Attachment _E_

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

1. The general public probably will not react to these draft rules. However, there is a growing awareness among home owners and potential buyers who are concerned about the presence of asbestos in residences. These people have a vital interest in the outcome of the residential rule revisions contemplated by the Asbestos Advisory Committee and its Residential Subcommittee.

2. There is a mixed reaction to the Variance allowing unlicensed contractors and uncertified workers to remove residential asbestos. The industry believes the Variance is necessary until the problems of asbestos removal size limitations and work practices are resolved. However, at least two environmental consultants have stated that the Variance represents a dereliction of the Department of Environmental Quality's (DEQ, Department) duty to protect public health and the environment.

3. The asbestos training providers have discussed a number of the amendments in Division 33 including the proposal to change the course scheduling requirements giving consideration to emergency situations. The training providers support the proposed licensing and accreditation rule changes.

4. When consulted about air clearance monitoring, 80 percent of Oregon-based abatement contractors favored state specified air clearance monitoring. In fact, most of these contractors were already conducting some form of post abatement sampling.

5. The Oregon Asbestos Advisory Board, the DEQ Advisory Panel created by statute with state agency and public representatives, has undertaken careful review, evaluation and final acceptance of the rules contained in Attachment A. These rules represent the total effort of the Board's five most recent meetings beginning February 17, 1989. The Board recommends that the Environmental Quality Commission authorize public hearings to receive comments on the amendments.

PROGRAM CONSIDERATIONS:

The proposed rules will not have significant effect on the program's resources or personnel. The rules, in general, will reduce paperwork, increase protection of the environment and increase program flexibility. The proposed new requirements for air clearance monitoring will generate some additional paperwork such as written air quality test results. This additional work will be handled by the section's new clerical specialist. The Department expects to have improved confidence in the results of asbestos abatement projects.

DESCRIPTION OF PROPOSED CHANGES AND ALTERNATIVES CONSIDERED:

Interim Storage Definition

OAR 340-25-455(20): The Department has witnessed improper storage of asbestos-containing waste materials outside containment areas. A new rule (OAR 340-25-465(13)(b)) was created establishing an interim storage definition to protect public health and the environment from asbestos spread by improper storage after removal. The rule allows for flexibility by specifying performance requirements.

Clarification of Friable Materials

OAR 340-25-465(4)(b) and (6): The asbestos industry in Oregon and throughout the country has misunderstood the term "friable". The term generally means a solid material which

can be reduced to dust by hand pressure. Some abatement contractors have utilized work practices which transform nonfriable materials to dust creating the same hazardous condition as with friable materials. Allowing such work practices would cause public exposure to a known carcinogen. The proposed rule will prevent unnecessary human exposure by requiring protective practices when contractors create friable asbestos from originally nonfriable materials.

Non-Refundable $75.00 Notification Fee

OAR 340-25-465(5): This proposed rule is intended to recover costs associated with processing Notifications for Asbestos Removal. Instituting this fee would not affect the current fee schedule, but would cause the first $75 of any notification fee to be non-refundable. The asbestos industry is very active with numerous project cancellations, re-starts and change orders. Although the current rules do not specify a refund policy, the Department has been allowing for refunds. This constitutes significant cost to the Department without the possibility of monetary recovery for servicing these changes. Without a non-refundable application fee, the industry will continue to drain economic resources intended to support the program. The $75 fee would be equivalent to the non-refundable portion of the Air Contaminant Discharge Permit fees. The Department may need to appear before the legislative Emergency Board to gain authorization for this fee. Emergency Board approval would be sought after hearing authorization and before final rule adoption.

No Prior Notification Exception

OAR 340-25-465(5)(a)(C): Industry has complained to the Department that it is unable to utilize advantageous asbestos abatement situations due to the ten day notification period prior to commencement. The Department presently allows emergency abatement work to protect life and property. The proposed rule will also allow abatement work to begin whenever unexpected events create an opportunity to remove asbestos (i.e when steam plants go down allowing work on hot pipes, or when ships arrive unexpectedly and need abatement).

Air Cleaning Monitoring

OAR 340-25-465(6)(i): In considering whether to require air clearance sampling, staff members conducted a survey of full-scale contractors to learn about their usual post abatement air sampling practices. In almost every case, air clearance sampling was required by either contract specifications, insurance requirements, or as quality control. These same contractors indicated they would accept, if not welcome, state air clearance requirements.

In considering alternatives the staff examined various acceptable asbestos levels, what size jobs should be sampled, and whether these regulations should be passively administered (only requiring copies of test results), or actively administered (conducting side-by-side air clearance sampling to ensure compliance with sampling and analytic methods).

Repeal of Time Limited Rules and Redundant Rules

OAR 340-33-030(9), & (12) Created special provisions in the rules which expired January 1, 1989. Such time bounded rules become irrelevant upon expiration and should be repealed. OAR 340-33-030(12) reiterates OAR 468.345, this is redundant, adds nothing to the rules that does not already exist and should be repealed.

Permanent Supervisor Training Rules

OAR 340-33-050(3)(b): It was a clear recommendation of the Asbestos Advisory Board that there should be more avenues by which qualified persons could become supervisors. A temporary rule was authorized June 2, 1989, allowing persons with six months of maintenance or construction experience and a worker's card to qualify for the supervisor's course. Many people, including numerous school personnel, have availed themselves of this opportunity. Others could be expected to do so in the future with the adoption of this rule.

Limitation on Transferable Prior Training

OAR 340-33-080(2): The existing rule allows training completed before January 1, 1987 to be accepted as prior training, provided the applicant has maintained proficiency. When accepted, the applicant is eligible to take refresher

training and be certified in Oregon. As such, this provision allows anyone who was trained before the date to apply for refresher training any time in the future, which when exercised will cause administrative difficulties verifying the necessary information and could allow for certification of workers based on obsolete training. In its place staff have created new provisions which limit prior training consideration to the two years prior to application. Other state and federal Asbestos Hazard Emergency Response Act (regarding schools) certifications are either one or two years. The Department believes this is a reasonable time frame during which prior training could be accepted.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

After due consideration of the rules approved by the Asbestos Advisory Board (and Residential Subcommittee), the Department joins the Advisory Board in recommending public hearing authorization.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The Advisory Board also recommended the size limitations for small-scale abatement projects be expanded so that a greater number of residential projects would be classified as "small scale" and subject to less rigorous containment requirements. The Department is not supporting this recommendation in order to be consistent with both agency policy and state statute which require asbestos regulations to be compatible with the Accident Prevention Division standards.

ISSUES FOR COMMISSION TO RESOLVE:

None

INTENDED FOLLOWUP ACTIONS:

10/29/89 Provide hearing notice to Secretary of State

11/01/89 Secretary of State bulletin publishes notice

11/16/89 Portland hearing

11/17/89 Eugene hearing

12/11/89 Prepare final staff report and Hearing Officer's report

01/12/90 Submit final rules to EQC for adoption

Approved:

Section: Sarah V. Armitage

Division: Nick Nikkila

Director: Fred Hansen

Report Prepared By: Bruce E. Arnold

Phone: 229-5506

Date Prepared: September 20, 1989

BEA:r
ASB\AR1334 (9/89)

OREGON ADMINISTRATIVE RULES
DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 340 DIVISION 25
ASBESTOS ABATEMENT REQUIREMENTS

POLICY

340-25-450

The Commission finds and declares that certain air contaminants for which there is no ambient air standard may cause or contribute to an identifiable and significant increase in mortality or to an increase in serious irreversible or incapacitating reversible illness, and are therefore considered to be hazardous air contaminants. Air contaminants currently considered to be in this category are asbestos, beryllium, and mercury. Additional air contaminants may be added to this category provided that no ambient air standard exists for the contaminant, and evidence is presented which demonstrates that the particular contaminant may be considered as hazardous. It is hereby declared the policy of the Department that the standards contained herein and applicable to operators are to be minimum standards, and as technology advances, conditions warrant, and Department or regional authority rules require or permit, more stringent standards shall be applied.

DEFINITIONS

340-25-455

As used in this rule, and unless otherwise required by context:

(1) **"Asbestos"** means...the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, actinolite and tremolite."

(2) **"Asbestos-containing waste material"** means any waste which contains commercial asbestos and is generated by a source subject to the provisions of this subpart, or friable asbestos material including, but not limited to, asbestos mill tailings, control device asbestos waste, friable asbestos waste material, asbestos abatement project waste, and bags or containers that previously contained commercial asbestos.

(3) **"Asbestos abatement project"** means any demolition, renovation, repair, construction or maintenance activity of any public or private facility that involves the repair, enclosure, encapsulation, removal, salvage, handling or disposal of any material with the potential of releasing asbestos fibers from asbestos-containing material into the air."

NOTE: An asbestos abatement project is not considered to be a source under OAR 340-25-460(2) through (6). Emergency fire fighting is not an asbestos abatement project.

(5) **"Asbestos-containing material"** means asbestos or any material containing at least 1% asbestos by weight, including particulate asbestos material.

(12) **"Commercial asbestos"** means any variety of asbestos which is produced by extracting asbestos from asbestos ore.

(13) **"Commission"** means the Environmental Quality Commission.

(14) **"Demolition"** means the wrecking or removal of any structural member of a facility together with related handling operations.

(15) **"Department"** means the Department of Environmental Quality.

(16) **"Director"** means the Director of the Department or regional authority and authorized deputies or officers.

(17) **"Facility"** means all or part of any public or private building, structure, installation, equipment, or vehicle or vessel, including but not limited to ships.

(18) **"Friable asbestos material"** means any asbestos-containing material that hand pressure can crumble, pulverize or reduce to powder when dry."

(19) **"HEPA filter"** means a high efficiency particulate air filter capable of filtering 0.3 micron particles with 99.97 percent efficiency.

(20) **"Interim storage of asbestos containing waste material" means the storage of asbestos containing waste material which has been placed in a container outside a regulated area until transported to an authorized landfill.**

(21) **"Hazardous air contaminant"** means any air contaminant considered by the Department or Commission to cause or contribute to an identifiable and significant increase in mortality or to an increase in serious irreversible or incapacitating reversible illness and for which no ambient air standard exists.

(25) **"Particulate asbestos material"** means any finely divided particles of asbestos material.

(26) **"Person"** means any individual, corporation, association, firm, partnership, joint stock company, public and municipal corporation, political sub-division, the state and agency thereof, and the federal government and any agency thereof.

(29) **"Regional authority"** means any regional air quality control authority established under the provisions of ORS 468.505.

(30) **"Renovation"** means altering in any way one or more facility components. Operations in which load-supporting structural members are wrecked or removed are excluded.

(31) **"Small-scale asbestos abatement project"** means any asbestos abatement project which meets the definition given in OAR 340-33-020(17).

(33) **"Structural member"** means any load-supporting member of a facility, such as beams and load-supporting walls; or any non-supporting member, such as ceilings and non-load-supporting walls.

GENERAL PROVISIONS

340-25-460

(1) **Applicability.** The provisions of these rules shall apply to any source which emits air contaminants for which a hazardous air contaminant standard is prescribed. Compliance with the provisions of these rules shall not relieve the source from compliance with other applicable rules of the Oregon Administrative Rules, Chapter 340, or with applicable provisions of the Oregon Clean Air Implementation Plan.

(7) **Delegation of authority.** The Commission may, when any regional authority requests and provides evidence demonstrating its capability to carry out the provisions of these rules relating to hazardous contaminants, authorize and confer jurisdiction within its boundary until such authority and jurisdiction shall be withdrawn for cause by the Commission.

EMISSION STANDARDS AND PROCEDURAL REQUIREMENTS FOR ASBESTOS

340-25-465

(4) **Asbestos abatement projects.** ~~[All persons intending to conduct or provide for the conduct of]~~ Any person who conducts an asbestos abatement project shall comply with ~~[the requirements set forth in]~~ OAR 340-25-465(5), (6), and (7). The following asbestos abatement projects are exempt from these requirements:

(a) Asbestos abatement conducted in a private residence which is occupied by the owner and the owner-occupant performs the asbestos abatement.

(b) ~~[Removal of vinyl asbestos floor tile that is not attached by asbestos containing cement, exterior asbestos roofing shingles, exterior asbestos siding, asbestos containing cement pipes and sheets, and other materials approved by the Department provided that the materials are not caused to become friable or to release asbestos fibers. Precautions taken to ensure that this exemption is maintained may include but are not limited to:]~~

Removal of nonfriable asbestos-containing materials that are not broken, crumbled, pulverized or reduced to dust until disposed of in an authorized disposal site. This exemption shall end whenever the asbestos containing material becomes friable or releases asbestos fibers into the environment.

~~[(A) Asbestos-containing materials are not sanded, or power sawn or drilled;~~

~~(B) Asbestos-containing materials are removed in the largest sections practicable and carefully lowered to the ground;~~

~~(C) Asbestos-containing materials are handled carefully to minimize breakage throughout removal, handling, and transport to an authorized disposal site;~~

~~(D) Asbestos-containing materials are wetted prior to removal and during subsequent handling, to the extent practicable.]~~

(c) Removal of less than ~~[0.5]~~ three square feet or three linear feet of friable asbestos-containing material provided that the removal of asbestos is not the primary objective and ~~[the following conditions are met:]~~ Methods of removal are in compliance with OAR 437 Division 3 Construction 29/CFR 1926 Appendix G to 1926.58. An asbestos abatement project shall not be subdivided into smaller sized units in order to qualify for this exemption.

~~[(A) The generation of particulate asbestos material is minimized;~~

~~(B) No vacuuming or local exhaust ventilation and collection is conducted with equipment having a collection efficiency lower than that of a HEPA filter;~~

~~(C) All asbestos-containing waste materials shall be cleaned up using HEPA filters or wet methods;~~

~~(D) Asbestos-containing materials is wetted prior to removal and during subsequent handling, to the extent practicable.]~~

(d) Removal of asbestos-containing materials which are sealed from the atmosphere by a rigid casing, provided that the casing is not broken or otherwise altered such that asbestos fibers could be released during removal, handling, and transport to an authorized disposal site.

NOTE: The requirements and jurisdiction of the Department of Insurance and Finance, Accident Prevention Division and any other state agency are not affected by these rules.

(5) **Notification Requirements.** Written notification of any asbestos abatement project shall be provided to the Department on a Department form. The notification must be submitted by the facility owner or operator or by the contractor in accordance with one of the procedures specified in subsection (a) or (b), [~~or (e)~~] below except as provided in subsections [~~(e)~~] (c) [~~(f)~~] (d) and [~~(g)~~] (f) below.

The fees listed below include a $75 nonrefundable filing fee. If an asbestos abatement project is cancelled during the ten day notification period the filing fee is forfeit and if the notification fee was less than $75, the entire fee is forfeit.

(a) Submit the notifications as specified in subsection (d) below and the project notification fee to the Department at least ten days before beginning any asbestos abatement project.

(A) The project notification fee shall be:

(i) Twenty-five dollars ($25) for each small-scale asbestos abatement project **except for small-scale projects in residential buildings described in OAR 340-25-465(5)(d)**.

(ii) Fifty dollars ($50) for each project greater than a small-scale asbestos abatement project and less than 260 linear feet or 160 square feet.

(iii) Two-hundred dollars ($200) for each project greater than 260 linear feet or 160 square feet, and less than 2600 linear feet or 1600 square feet.

(iv) Five hundred dollars ($500) for each project greater than 2600 linear feet or 1600 square feet.

(B) Project notification fees shall be payable with the completed project notification form. No notification will be considered to have occurred until the notification fee is submitted.

(C) Notification of less than ten days is permitted in case of an emergency involving protection of life, health or property **or where an unscheduled or unexpected event creates the opportunity to conduct an asbestos abatement project.** Notification shall include the information contained in subsection (d) below, and the date of the contract if applicable. If original notification is provided by phone, written notification and the project notification fee shall be submitted within three (3) days after the start of the emergency abatement.

(D) The Department must be notified prior to any changes in the scheduled starting or completion dates or other substantial changes or the notification will be void.

(b) For small-scale asbestos abatement projects conducted ~~[at one facility,]~~ **by a single contractor or a single facility owner with centrally controlled asbestos operations and maintenance** the notification may be submitted as follows:

(A) Establish eligibility for use of this notification procedure with the Department prior to use;

(B) Maintain on file with the Department a general asbestos abatement plan. The plan shall contain the information specified in subsections (d)(A) through (d)(I) below, to the extent possible;

(C) Provide to the Department a summary report of all small-scale asbestos abatement projects conducted at the facility in the previous three months by the 15th day of the month following the end of the calendar quarter. The summary report shall include the information specified in subsections (d)(J) through (d)(M) below for each project, a description of any significant variations from the general asbestos abatement plan; and a description of asbestos abatement projects anticipated for the next quarter;

(D) Provide to the Department, upon request, a list of asbestos abatement projects which are scheduled or are being conducted at the time of the request.

~~[(D)]~~**(E)** Submit a project notification fee of two-hundred dollars per year ($200/year) prior to use of this notification procedure and annually thereafter while this procedure is in use.

~~[(E)]~~**(F)** Failure to provide payment for use of this notification procedure shall void the general asbestos abatement plan and each subsequent abatement project shall be individually assessed a project notification fee.

~~[(c) For small-scale asbestos abatement projects conducted by a contractor at one or more facilities], [notification may be submitted as follows:]~~

~~(A) Establish eligibility for use of this procedure with the Department prior to use;~~

~~(B) Maintain on file with the Department a general asbestos abatement plan containing the information specified in subsections (d)(A) through (d)(G), to the extent possible;~~

~~(G) Provide to the Department a monthly summary of all small-scale projects performed by the 15th day of the following month including the information specified in subsections (d)(H) through (d)(M) below and a description of any significant variations from the general asbestos abatement plan for each project;~~

~~(D) Provide to the Department, upon request, a list of asbestos abatement projects which are scheduled or are being conducted at the time of the request; and~~

~~(E) Submit a notification fee of $25 per monthly summary prior to the use of this notification procedure.~~

~~(F) Failure to provide payment for use of this notification procedure shall void the general asbestos abatement plan and each subsequent abatement project shall be individually assessed a project notification fee.~~]

[~~(d)~~](c) The following information shall be provided for each notification:

(A) Name and address of person [~~intending to engage in~~] conducting asbestos abatement.

(B) Contractor's Oregon asbestos abatement license number, if applicable, and certification number of the supervisor for full-scale asbestos abatement or certification number of the trained worker for a project which does not have a certified supervisor.

(C) Method of asbestos abatement to be employed.

(D) Procedures to be employed to insure compliance with OAR 340-25-465.

(E) Names, addresses, and phone numbers of waste transporters.

(F) Name and address or location of the waste disposal site where the asbestos-containing waste material will be deposited.

(G) Description of asbestos disposal procedure.

(H) Description of building, structure, facility, installation, vehicle, or vessel to be demolished or renovated, including address or location where the asbestos abatement project is to be accomplished.

(I) Facility owner's or operator's name, address and phone number.

(J) Scheduled starting and completion dates of asbestos abatement work.

(K) Description of the asbestos type, approximate asbestos content (percent), and location of the asbestos-containing material.

(L) Amount of asbestos to be abated: linear feet, square feet, thickness.

(M) Any other information requested on the Department form.

~~(e)~~ (d) No project notification fee shall be assessed for asbestos abatement projects conducted in the following residential buildings: site-built homes, modular homes constructed off site, condominium units, mobile homes, and duplexes or other multi-unit residential buildings consisting of four units or less. Project notification for a full-scale asbestos abatement project, as defined in OAR 340-33-020(14), in any of these residential buildings shall otherwise be in accordance with subsection (5)(a) of this section. Project notification for a small-scale asbestos abatement project, as defined in OAR 340-33-020(17), in any of these residential buildings is not required.

~~(f)~~ (e) The project notification fees specified in this section shall be increased by 50% when an asbestos abatement project is commenced without filing of a project notification and/or submittal of a notification fee and when notification of less than ten days is provided under subsection (5)(a) (C) of this section.

~~(g)~~ (f) The Director may waive part or all of a project notification fee. Requests for waiver of fees shall be made in writing to the Director, on a case-by-case basis, and be based upon financial hardship. Applicants for waivers must describe the reason for the request and certify financial hardship.

~~(h)~~ (g) Pursuant to ORS 468.535, a regional authority may adopt project notification fees for asbestos abatement projects in different amounts than are set forth in this rule. The fees shall be based upon the costs of the regional authority in carrying out the delegated asbestos program. The regional authority may collect, retain, and expend such project notification fees for asbestos abatement projects within its jurisdiction.

(6) Work practices and procedures. For purposes of this section, "asbestos-containing material" means friable asbestos materials and nonfriable asbestos materials that are broken, crumbled, pulverized, or reduced to dust in the course of work practices and procedures regulated by this section. The following procedures shall be employed during an asbestos abatement project to prevent emissions of particulate asbestos material into the ambient air:

(a) Remove [~~friable~~] asbestos-**containing** materials before any wrecking or dismantling that would break up the materials or preclude access to the materials for subsequent removal. However, [~~friable~~] asbestos-**containing** materials need not be removed before demolition if:

(A) They are on a facility component that is encased in concrete or other similar material; and

(B) These materials are adequately wetted whenever exposed during demolition.

(b) Adequately wet [~~friable~~] asbestos-**containing** materials when they are being removed. In renovation, maintenance, repair, and construction operations, wetting that would unavoidably damage equipment is not required if the owner or operator:

(A) Demonstrates to the Department that wetting would unavoidably damage equipment, and

(B) Adequately wraps or encloses any asbestos-containing material during handling to avoid releasing fibers.

(C) [~~(B)~~] Uses a local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the asbestos abatement project.

(c) When a facility component covered or coated with [~~friable~~] asbestos-**containing** materials is being taken out of the facility as units or in sections:

(A) Adequately wet any [~~friable~~] asbestos-**containing** materials exposed during cutting or disjointing operation; and

(B) Carefully lower the units or sections to ground level, not dropping them or throwing them.

(d) For [~~friable~~] asbestos-**containing** materials being removed or stripped:

(A) Adequately wet the materials to ensure that they remain wet until they are disposed of in accordance with OAR 340-25-465(13); and

(B) Carefully lower the materials to the floor, not dropping or throwing them; and

(C) Transport the materials to the ground via dust-tight chutes or containers if they have been removed or stripped above ground level and were not removed as units or in sections.

(e) If a facility is being demolished under an order of the State or a local governmental agency, issued because the facility is structurally unsound and in danger of imminent collapse, the requirements of subsections (a), (b), (c), (d), and (f) of this section shall not apply, provided that the portion of the facility that contains ~~[friable]~~ asbestos-containing materials is adequately wetted during the wrecking operation.

(f) None of the operations in subsections (a) through (d) of this section shall cause any visible emissions. Any local exhaust ventilation and collection system or other vacuuming equipment used during an asbestos abatement project, shall be equipped with a HEPA filter or other filter of equal or greater collection efficiency.

(g) Contractors licensed and workers certified to conduct only small-scale asbestos abatement projects under OAR 340-33 may use only those work practices and engineering controls specified by OAR 437 ~~[Appendix-83-G-(Asbestos)-(9/17/87)]~~ Division 3 Construction 29/CFR 1926 Appendix G to 1926.58 unless the Department authorizes other methods on a case-by-case basis.

(h) The Director may approve, on a case-by-case basis, requests to use an alternative to a specific worker or public health protection requirement as provided by these rules for an asbestos abatement project. The contractor or facility owner or operator must submit in advance a written description of the alternative procedure which demonstrates to the Director's satisfaction that the proposed alternative procedure provides worker and public health protection equivalent to the protection that would be provided by the specific provision, or that such level of protection cannot be obtained for the asbestos abatement project.

(i) Final Air Clearance Sampling Requirements apply to negative air containments of 1000 cubic feet or more. Before such an area is dismantled, the contractor must document that the air inside the containment has no more than 0.01 fibers per cubic centimeter of air. The Department may grant an exception to this requirement upon written request when all practicable measures have been taken to reach the standard of 0.01 fibers per cubic centimeter inside the containment.

A. Before final air clearance sampling is performed the following shall be completed:

(i) All visible asbestos-containing debris shall be removed according to the requirements of this section.

(ii) The air and surfaces within the containment shall be sprayed with an EPA approved encapsulant.

(iii) Air sampling may commence thirty minutes after spraying encapsulant or when surfaces are dry inside containment.

B. Air clearance sampling inside containment areas shall be aggressive and comply with the following procedures:

(i) Immediately prior to starting the sampling pumps, direct exhaust from forced air equipment against all walls, ceilings, floors, ledges, and other surfaces in the containment, at the rate of approximately five minutes per 1,000 square feet of floor area.

(ii) Then a 20 inch fan operating on low speed is placed in the center of the containment area and pointed toward the ceiling. Use one fan per 10,000 cubic feet of room space.

(iii) Start sampling pumps and sample an adequate volume of air to detect concentrations of 0.01 fibers of asbestos per cubic centimeter according to the U.S. National Institute of Occupational Safety and Health, (NIOSH) 7400 method.

(iv) When sampling is completed turn off the pump and then the fan(s).

(v) As an alternative to meeting the requirements of (i) through (iv) of this section, air clearance sample analysis may be performed according to Transmission Electron Microscopy Analytical Methods prescribed by 40 CFRS 763.99, Appendix A to Subpart E.

(7) Related Work Practices and Controls Work practices and engineering controls employed for asbestos abatement projects by contractors and/or workers who are not otherwise subject to the requirements of the Oregon Department of Insurance and Finance, Accident Prevention Division shall comply with the subsections of OAR Chapter 437 [~~Division~~-83] which limit the release of asbestos-containing material or exposure of other persons. As used in this subsection the term employer shall mean the operator of the asbestos abatement project and the term employee shall mean any other person.

(13) Work Practices for storage, transport, and disposal of asbestos-containing waste material: The owner or operator of any source covered under the provisions of sections (3), (4), (8) or (11) of this rule or any other source of friable asbestos-containing waste material shall meet the following standards.

(a) There shall be no visible emissions to the outside air, except as provided in subsection (13)(c) of this section, during the collection; processing, including incineration;

packaging; transporting; or deposition of any asbestos-containing waste material which is generated by such source.

(b) **The interim storage of asbestos-containing waste material shall protect the waste from dispersal into the environment and provide physical security from tampering by unauthorized persons. The interim storage of asbestos-containing waste material is the sole responsibility of the person or persons responsible for the asbestos abatement project.**

(c) [~~(B)~~] All asbestos-containing waste material shall be wetted and stored and transported to [~~the~~] **an** authorized disposal site in leak-tight containers such as two plastic bags each with a minimum of a thickness of 6 mil., or fiber or metal drums.

[~~(b)~~](d) All asbestos-containing waste material shall be disposed of at a disposal site authorized by the Department. (F) Records of disposal at an authorized landfill shall be maintained by the source for a minimum of three years and shall be made available upon request to the Department. For an asbestos abatement project conducted by a contractor licensed under OAR 340-33-040, the records shall be retained by the licensed contractor. For any other asbestos abatement project, the records shall be retained by the facility owner.

(A) Persons intending to dispose of asbestos-containing waste material shall notify the landfill operator of the type and volume of the waste material and obtain the approval of the landfill operator prior to bringing the waste to the disposal site.

(B) [~~(G)~~] The waste transporter shall immediately notify the landfill operator upon arrival of the waste at the disposal site. Off-loading of asbestos-containing waste material shall be done under the direction and supervision of the landfill operator.

(C) [~~(D)~~] Off-loading of asbestos-containing waste material shall occur at the immediate location where the waste is to be buried. The waste burial site shall be selected in an area of minimal work activity that is not subject to future excavation.

(D) [~~(E)~~] Off-loading of asbestos-containing waste material shall be accomplished in a manner that prevents the leak-tight transfer containers from rupturing and prevents visible emissions to the air.

(E) [~~(F)~~] Asbestos-containing waste material deposited at a disposal site shall be covered with at least 2 feet of soil or 1 foot of soil plus 1 foot of other waste before compacting equipment runs over it but not later than the end of the operating day.

(e)[(A)] All asbestos-containing waste material shall be sealed into containers labeled with a warning label that states:

DANGER

Contains Asbestos Fibers
Avoid Creating Dust
Cancer and Lung Disease Hazard
Avoid Breathing Airborne
Asbestos Fibers

[(B)] Alternatively, warning labels specified by the U.S. Environmental Protection Agency under 40 CFR 61.152(b)(1)(iv) (3/10/86) may be used.

[(c)](f) Rather than meet the requirements of this section, an owner or operator may elect to use an alternative storage, transport, or disposal method which has received prior written approval by the Department [~~in writing~~].

(14) Any waste which contains nonfriable asbestos-containing material and which is not subject to subsection (13) of this rule shall be handled and disposed of using methods that will prevent the release of airborne asbestos-containing material.

(15) Open storage or accumulation of friable asbestos material or asbestos-containing waste material is prohibited.

Editor's Note - This is a reprint of all sections and subsections of Oregon Administrative Rules Chapter 340, Division 25, which pertain to asbestos abatement. Deleted sections pertain to other asbestos and hazardous air pollutant sources.

OREGON ADMINISTRATIVE RULES
DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 340 DIVISION 33
ASBESTOS CERTIFICATION REQUIREMENTS

ASBESTOS REQUIREMENTS

340-33-010 AUTHORITY, PURPOSE, & SCOPE

(1) Authority. These rules are promulgated in accordance with and under the authority of ORS 468.893.

(2) Purpose. The purpose of these rules is to provide reasonable standards for:

(a) training and licensing of asbestos abatement project contractors,

(b) training and certification of asbestos abatement project supervisors and workers,

(c) accreditation of providers of training of asbestos contractors, supervisors, and workers,

(d) administration and enforcement of these rules by the Department.

(3) Scope

(a) OAR 340-33-000 through -100 is applicable to all work, including demolition, renovation, repair, construction, or maintenance activity of any public or private facility that involves the repair, enclosure, encapsulation, removal, salvage, handling, or disposal of any material which could potentially release asbestos fibers into the air; except as provided in (b) and (c) below.

(b) OAR 340-33-000 through -100 do not apply to an asbestos abatement project which is exempt from OAR 340-25-465(4).

(c) OAR 340-33-010 through -100 do not apply to persons performing vehicle brake and clutch maintenance or repair.

(d) Full-scale asbestos abatement projects are differentiated from smaller projects. Small-scale asbestos abatement projects as defined by OAR 340-33-020(17)

(A) where the primary intent is to disturb the asbestos-containing material and prescribed work practices are used, and

(B) where the primary intent is not to disturb the asbestos-containing material.

(e) OAR 340-33-000 through -100 provide training, licensing, and certification standards for implementation of OAR 340-25-465, Emission Standards and Procedural Requirements for Asbestos.

340-33-020 DEFINITIONS

As used in these rules,

(1) "Accredited" means a provider of asbestos abatement training courses is authorized by the Department to offer training courses that satisfy requirements for contractor licensing and worker training.

(2) "Agent" means an individual who works on an asbestos abatement project for a contractor but is not an employe of the contractor.

(3) "Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, actinolite and tremolite.

(4) "Asbestos abatement project" means any demolition, renovation, repair, construction or maintenance activity of any public or private facility that involves the repair, enclosure, encapsulation, removal, salvage, handling or disposal of any asbestos-containing material with the potential of releasing asbestos fibers from asbestos containing material into the air.

Note: Emergency fire fighting is not an asbestos abatement project.

(5) "Asbestos-containing material" means any material containing more than one percent asbestos by weight, including particulate asbestos material.

(6) "Certified" means a worker has met the Department's training, experience, and/or quality control requirements and has a current certification card.

(7) "Contractor" means a person that undertakes for compensation an asbestos abatement project for another person. As used in this subsection, "compensation" means wages, salaries, commissions and any other form of remuneration paid to a person for personal services.

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

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

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

(11) "EPA" means the United States Environmental Protection Agency.

(12) "Facility" means all or part of any public or private building, structure, installation, equipment, or vehicle or vessel, including but not limited to ships.

(13) "Friable asbestos material" means any asbestos-containing material that hand pressure can crumble, pulverize or reduce to powder when dry.

(14) "Full-scale asbestos abatement project" means any removal, renovation, encapsulation, repair or maintenance of any asbestos-containing material which could potentially release asbestos fibers into the air, and which is not classified as a small-scale project as defined by (17) below.

(15) "Licensed" means a contracting entity has met the Department's training, experience, and/or quality control requirements to offer and perform asbestos abatement projects and has a current asbestos abatement contractor license.

(16) "Persons" means an individual, public or private corporation, nonprofit corporation, association, firm, partnership, joint venture, business trust, joint stock company, municipal corporation, political subdivision, the state and any agency of the state or any other entity, public or private, however organized.

(17) "Small-scale asbestos abatement project" means small-scale, short-duration projects as defined by (18) below, and/or removal, renovation, encapsulation, repair, or maintenance procedures intended to prevent asbestos containing material from releasing fibers into the air and which:

(a) Remove, encapsulate, repair or maintain less than 40 linear feet or 80 square feet of asbestos-containing material;

(b) Do not subdivide an otherwise full-scale asbestos abatement project into smaller sized units in order to avoid the requirements of these rules;

(c) Utilize all practical worker isolation techniques and other control measures; and

(d) Do not result in worker exposure to an airborne concentration of asbestos in excess of 0.1 fibers per cubic centimeter of air calculated as an eight (8) hour time weighted average.

(18) "Small-scale, short-duration renovating and maintenance activity" means a task for which the removal of asbestos is not the primary objective of the job, including, but not limited to:

(a) Removal of quantities of asbestos-containing insulation on pipes;

(b) Removal of small quantities of asbestos-containing insulation on beams or above ceilings;

(c) Replacement of an asbestos-containing gasket on a valve;

(d) Installation or removal of a small section of drywall; or

(e) Installation of electrical conduits through or proximate to asbestos
-containing materials.

Small-scale, short duration activities shall be limited to no more than 40 linear feet or 80 square feet of asbestos containing material. An asbestos abatement activity that would otherwise qualify as a full-scale abatement project shall not be subdivided into smaller units in order to avoid the requirements of these rules.]

(19) "Trained worker" means a person who has successfully completed specified training and can demonstrate knowledge of the health and safety aspects of working with asbestos.

(20) "Worker" means an employe or agent of a contractor or facility owner or operator.

[~~340-33-010(3)~~] 340-33-030 GENERAL PROVISIONS

(1) Persons engaged in the removal, encapsulation, repair, or enclosure of any asbestos-containing material which has the potential of releasing asbestos fibers into the air must be licensed or certified, unless exempted by OAR 340-33-010(3).

(2) An owner or operator of a facility shall not allow any persons other than those employees of the facility owner or operator who are appropriately certified or a licensed asbestos abatement contractor to perform an asbestos abatement project in or on that facility. Facility owners and operators are not required to be licensed to perform asbestos abatement projects in or on their own facilities.

(3) Any contractor engaged in a full-scale asbestos abatement project must be licensed by the Department under the provisions of OAR 340-33-040.

(4) Any person acting as the supervisor of any full-scale asbestos abatement project must be certified by the Department as a Supervisor for Full-Scale Asbestos Abatement under the provisions of OAR 340-33-050.

(5) Any worker engaged in or working on any full-scale asbestos abatement project must be certified by the Department as a Worker for Full-Scale Asbestos Abatement under the provisions of OAR 340-33-050, or as a Supervisor for Full-Scale Asbestos Abatement.

(6) Any contractor or worker engaged in any small-scale asbestos abatement project but not licensed or certified to perform full-scale asbestos abatement projects, must be licensed or certified by the Department as a Small-Scale Asbestos Abatement

Contractor or a Worker for Small-Scale Asbestos Abatement, respectively under the provisions of OAR 340-33-040 and -050.

(7) Any provider of training which is intended to satisfy the licensing and certification training requirements of these rules must be accredited by the Department under the provisions of OAR 340-33-060.

(8) Any person licensed, certified, or accredited by the Department under the provisions of these rules shall comply with the appropriate provisions of OAR 340-25-465 and OAR 340-33-000 through -100 and maintain a current address on file with the Department, or be subject to suspension or revocation of license, or certification, or accreditation.

~~[(9) Asbestos abatement contractors and workers may perform asbestos abatement projects without a license or certificate until January 1, 1989. Thereafter, any contractor or worker engaged in an asbestos abatement project must be licensed or certified by the Department.]~~

(9)~~[(10)]~~ The Department may accept evidence of violations of these rules from representatives of other federal, state, or local agencies.

(10)~~[(11)]~~ A regional air pollution authority which has been delegated authority under OAR 340-25-460(7) may inspect for and enforce against violations of licensing and certification regulations. A regional air pollution authority may not approve, deny, suspend or revoke a training provider accreditation, contractor license, or worker certification, but may refer violations to the Department and recommend denials, suspensions, or revocations.

~~[(12) An extension of time beyond January 1, 1989, for mandatory contractor licensing, supervisor certification or worker certification may be approved by the Commission if:]~~

~~[(a) Adequate accredited training as required for any of the categories of licensing or certification is not available in the State, and]~~

~~[(b) There is a public health or worker danger created due to inadequate numbers of appropriately licensed or certified persons to properly perform asbestos abatement activities.]~~

~~[(13) Variances from these rules may be granted by the Commission under ORS 468.345.]~~

340-33-040 CONTRACTOR LICENSING

(1) Contractors may be licensed to perform either of the following categories of asbestos abatement projects:

(a) Full-Scale Asbestos Abatement Contractors: All asbestos abatement projects, regardless of project size or duration, or

(b) Small-Scale Asbestos Abatement Contractor: Small-scale asbestos abatement projects.

(2) Application for licenses shall be submitted on forms prescribed by the Department and shall be accompanied by:

(a) Documentation that the contractor, or contractor's employee representative, is certified at the appropriate level by the Department:

(A) Full-scale Asbestos Abatement Contractor license: Certified Supervisor for Full-Scale Asbestos Abatement.

(B) Small-Scale Asbestos Abatement Contractor: Certified Worker for Small-Scale Asbestos Abatement.

(b) Certification that the contractor has read and understands the applicable Oregon and federal rules and regulations on asbestos abatement and agrees to comply with the rules and regulations.

(c) A list of all certificates or licenses, issued to the contractor by any other jurisdiction, that have been suspended or revoked during the past one (1) year, and a list of any asbestos-related enforcement actions taken against the contractor during the past one (1) year.

(d) List any additional project supervisors for full-scale projects and their certification numbers as Supervisors for Full-Scale Asbestos Abatement.

(e) Summary of asbestos abatement projects conducted by the contractor during the past 12 months.

(f) A license application fee.

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

(4) The Department shall deny, in writing, a license to a contractor who has not satisfied the license application requirements.

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

(6) The Department shall grant a license for a period of 12 months. Licenses may be extended during Department review of a renewal application.

(7) Renewals:

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

(b) For renewal, the contractor or employee representative must have completed at least the appropriate annual refresher course.

(c) The complete renewal application shall be submitted no later than 60 days prior to the expiration date.

(8) The Department may suspend or revoke a license if the licensee:

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

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

(c) Fails to meet any applicable state or federal standard relating to asbestos abatement.

(d) Permits an untrained or uncertified worker to work on an asbestos abatement project.

(e) Employs a worker who fails to comply with applicable state or federal rules or regulations relating to asbestos abatement.

(9) A contractor who has a license revoked may reapply for a license after demonstrating to the Department that the cause of the revocation has been resolved.

340-33-050 CERTIFICATION

(1) Workers on asbestos abatement projects shall be certified at one or more of the following levels:

(a) Certified Supervisor for Full-Scale Asbestos Abatement.

(b) Certified Worker for Full-Scale Asbestos Abatement.

(c) Certified Worker for Small-Scale Asbestos Abatement.

(2) Application for Certification-General Requirements.

(a) Applications shall be submitted to the provider of the accredited training course within thirty (30) days of completion of the course.

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

(3) Application to be a Certified Supervisor for Full-Scale Asbestos Abatement shall include:

(a) Documentation that the applicant has successfully completed the Supervisor for Full-Scale Asbestos Abatement level training and examination as specified in OAR 340-33-070 and the Department guidance document, and

(b) Documentation that the applicant has been certified as a Worker for Full-Scale Asbestos Abatement and has at least 3 months of full-scale asbestos abatement experience, including time on powered air purifying respirators and experience on at least five separate asbestos abatement projects; or certified as worker for Full-Scale asbestos abatement and six months of general construction, environmental or maintenance supervisory experience demonstrating skills to independently plan, organize and direct personnel in conducting an asbestos abatement project. The Department shall have the authority to determine if any applicant's experience satisfies those requirements. ~~[Applications for licenses submitted prior to January 1, 1989 shall not be required to include documentation of certification as a worker.]~~

(4) Application to be a Certified Worker for Asbestos Abatement shall include:

(a) Documentation that the applicant to be a Certified Worker for Full-Scale Asbestos Abatement has successfully completed the Worker for Full-Scale Asbestos Abatement level training and examination as specified in OAR 340-33-070 and the Department guidance document.

(b) Documentation that the applicant to be a Certified Worker for Small-Scale Asbestos Abatement has successfully completed the Worker for Small-Scale Asbestos Abatement level training and examination as specified in OAR 340-33-070 and the Department guidance document.

(5) Training course providers shall issue certification to an applicant who has fulfilled the requirements of certification.

(6) Certification at all levels is valid for a period of twenty-four (24) months after the date of issue.

(7) Renewals

(a) Certification renewals must be applied for in the same manner as application for original certification.

(b) To gain renewal of certification, a Worker for Full-Scale Asbestos Abatement and a Supervisor for Full-Scale Asbestos Abatement must complete the appropriate annual refresher course no sooner than nine (9) months and no later than twelve (12) months after the issuance date of the certificate, and again no sooner than three (3) months prior to the expiration date of the certificate. A worker may apply in writing to the Department for taking refresher training at some other time than as specified by this

paragraph for reasons of work requirements or hardship. The Department shall accept or reject the application in writing.

(c) To gain renewal of certification, a Worker for Small-Scale Asbestos Abatement must comply with the regulations on refresher training which are in effect at the time of renewal. Completion of an accredited asbestos abatement review class may be required if the Environmental Quality Commission determines that there is a need to update the workers' training in order to meet new or changed conditions.

(8) The Department may suspend or revoke a worker's certificate for failure to comply with any state or federal asbestos abatement rule or regulation.

(9) If a certification is revoked, the worker may reapply for another initial certification only after twelve (12) months from the revocation date.

(10) A current worker certification card shall be available for inspection at each asbestos abatement project site for each worker conducting asbestos abatement activities on the site.

340-33-060 TRAINING PROVIDER ACCREDITATION

(1) General

(a) Asbestos training courses required for licensing or certification under these rules may be provided by any person.

(b) Any training provider offering training in Oregon to satisfy these certification and licensing requirements must be accredited by the Department.

(c) Each of the different training courses which are to be used to fulfill training requirements shall be individually accredited by the Department.

(d) The training provider must satisfactorily demonstrate through application and submission of course agenda, faculty resumes, training manuals, examination materials, equipment inventory, and performance during on-site course audits by Department representatives that the provider meets the minimum requirements established by the Department.

(e) The training course sponsor shall limit each class to a maximum of thirty participants unless granted an exception in writing by the Department. The student to instructor ratio for hands-on training shall be equal to or less than ten to one (10:1). To apply for an exception allowing class size to exceed thirty, the course sponsor must submit the following information in writing to the Department for evaluation and approval prior to expanding the class size.

(A) The new class size limit,

(B) The teaching methods and techniques for training the proposed larger class,

(C) The protocol for conducting the written examination, and

(D) Justification for a larger class size.

(f) Course instructors must have academic credentials, demonstrated knowledge, prior training, or field experience in their respective training roles.

(g) The Department may require any accredited training provider to use examinations developed by the Department in lieu of the examinations offered by the training provider.

~~[(h) Training providers seeking accreditation for courses conducted since January 1, 1987, may apply for accreditation of those course offerings as though they were applying for initial accreditation. Contractors and workers trained by these providers since January 1, 1987 may be eligible to use this prior training as satisfaction of the initial training required by these licensing and certification rules.]~~

(h)~~[(i)]~~ The Department may require accredited training providers to pay a fee equivalent to reasonable travel expenses for one Department representative to audit any accredited course which is not offered in the State of Oregon for compliance with these regulations. This condition shall be an addition to the standard accreditation application fee.

(2) Application for Accreditation.

(a) Application for accreditation shall be submitted to the Department in writing on forms provided by the Department and attachments. Such applications shall, as a minimum, contain the following information:

(A) Name, address, telephone number of the firm, individual(s), or sponsors conducting the course, including the name under which the training provider intends to conduct the training.

(B) The type of course(s) for which approval is requested.

(C) A detailed course outline showing topics covered and the amount of time given to each topic, including the hands-on skill training.

(D) A copy of the course manual, including all printed material to be distributed in the course.

(E) A description of teaching methods to be employed, including description of audio-visual materials to be used. The Department may, at its discretion, request that copies of the materials be provided for review. Any audio-visual materials provided to the Department will be returned to the applicant.

(F) A description of the hands-on facility to be utilized including protocol for instruction, number of students to be accommodated, the number of instructors, and the amount of time for hands-on skill training.

(G) A description of the equipment that will be used during both classroom lectures and hands-on training.

(H) A list of all personnel involved in course preparation and presentation and a description of the background, special training and qualification of each, as well as the subject matter covered by each.

(I) A copy of each written examination to be given including the scoring methodology to be used in grading the examination; and a detailed statement about the development and validation of the examination.

(J) A list of the tuition or other fees required.

(K) A sample of the certificate of completion and certification card label.

(L) A description of the procedures and policies for re-examination of students who do not successfully complete the training course examination.

(M) A list of any states or accrediting systems that approve the training course.

(N) A description of student evaluation methods (other than written examination to be used) associated with the hands-on skill training, as applicable.

(O) A description of course evaluation methods used by students.

(P) Any restriction on attendance such as class size, language, affiliation, and/or target audience of class.

(Q) A description of the procedure for issuing replacement certification cards to workers who were issued a certification card or certification card label by the training provider within the previous 12 months and whose cards have been lost or destroyed.

(R) Any additional information or documentation as may be required by the Department to evaluate the adequacy of the application.

(S) Accreditation application fee.

(b) Application for initial training course accreditation and course materials shall be submitted to the Department at least 45 days prior to the requested approval date.

(c) Upon approval of an initial or refresher asbestos training course, the Department will issue a certificate of accreditation. The certificate is valid for one year from the date of issuance.

(d) Application for renewal of accreditation must follow the procedures described for the initial accreditation. In addition, course instructors must demonstrate that they have maintained proficiency in their instructional specialty and adult training methods during the twelve (12) months prior to renewal.

(3) Denial, Suspension or Revocation of Certificate of Accreditation. The Director may deny, revoke or suspend an application or current accreditation upon finding of sufficient cause. Applicants and certificate holders shall also be advised of the duration of suspension or revocation and any conditions that must be met before certificate reinstatement. Applicants shall have the right to appeal the Director's determination through an administrative hearing in accordance with the provisions of OAR Chapter 340 Division 11. The following may be considered grounds for denial, revocation or suspension:

(a) False statements in the application, omission of required documentation or the omission of information.

(b) Failure to provide or maintain the standards of training required by these regulations.

(c) Failure to provide minimum instruction required by these regulations.

(d) Failure to report to the Department any change in staff or program which substantially deviates from the information contained in the application.

(e) Failure to comply with the administrative tasks and any other requirement of these regulations.

(4) Training Provider Administrative Tasks. Accredited training providers shall perform the following as a condition of accreditation:

(a) Administer the training course examination only to those students who successfully complete the training course.

(b) Issue a numbered certificate to each students who successfully passes the training course examination. Each certificate shall include the name of the student, name of the course completed, the dates of the course and the examination, name of the training provider, a unique certificate number, and a statement that the student passed the examination.

(c) Issue a photo identification card to each student seeking initial or renewal certification who successfully completes the training course examination and meets all other requirements for certification. The photo identification card shall meet the Department specifications.

(d) Place a label on the back of the photo identification card of each student who successfully completes a refresher training course and examination as required to maintain certification. The label shall meet Department specifications.

(e) Provide to the Department within ten (10) calendar days of the conclusion of each course offering the name, address, telephone number, Social Security Number, course title and dates given, attendance record, exam scores, and course evaluation form of each student attending the course and the certification number, certification fee, and a photograph for each student certified. Record of the information shall be retained by the training provider for a period of three (3) years.

(f) Obtain advance approval from the Department for any changes in the course instructional staff, content, training aids used, facility utilized or other matters which would alter the instruction from that described in the approval application.

(g) Utilize and distribute as part of the course information or training aides furnished by the Department.

(h) ~~[Notify the Department in writing at least one week before a training course is scheduled to begin. The notification must include the date, time and address where the training will be conducted.]~~ Provide the Department with a monthly class schedule at least one week before the schedule begins. Notification shall include time and location of each course. Training providers shall promptly notify the Department within three days whenever any unscheduled class is given.

(i) Establish and maintain course records and documents relating to course accreditation application. Accredited training providers shall make records and documents available to the Department upon request. Training providers whose principle place of business is outside of the State of Oregon shall provide a copy of such records or documents within ten (10) business days of receipt of such a written request from the Department.

(h) Notify the Department prior to issuing a replacement certification card.

(i) Accredited training providers must have their current accreditation certificates at the location where they are conducting training.

340-33-070 GENERAL TRAINING STANDARDS

(1) Courses of instruction required for certification shall be specific for each of the certificate categories and shall be in accordance with Department guidelines. The topics or subjects of instruction which a person must receive to meet the training requirements must be presented through a combination of lectures, demonstrations, and hands-on practice.

(2) Courses requiring hands-on training must be presented in an environment suitable to permit participants to have actual experience performing tasks associated with asbestos abatement. Demonstrations not involving individual participation shall not substitute for hands-on training.

(3) Persons seeking certification as a Supervisor for Full-Scale Asbestos Abatement shall successfully complete an accredited training course of at least four days as outlined in the DEQ Asbestos Training Guidance Document. The training course shall include lectures, demonstrations, at least six hours of hands-on training, individual respirator fit testing, course review, and a written examination consisting of multiple choice questions. Successful completion of the training shall be demonstrated by achieving a passing score on the examination, course attendance, and full participation in the hands-on training.

(4) Any person seeking certification as a Worker for Full-Scale Asbestos Abatement shall successfully complete an accredited training course of at least three days duration as outlined in the DEQ Asbestos Training Guidance Document. The training course shall include lectures, demonstrations, at least six hours of actual hands-on training, individual respirator fit testing, course review, and an examination of multiple choice questions. Successful completion of the course shall be demonstrated by achieving a passing score on the examination, course attendance, and full participation in the hands-on training. The course shall adequately address the following topics:

(5) Any person seeking certification as a Worker for Small-Scale Asbestos Abatement shall complete at least a two day approved training course as outlined in the DEQ Asbestos Training Guidance Document. The small-scale asbestos abatement worker course shall include lectures, demonstrations, at least six hours of hands-on training, individual respirator fit testing, course review, and an examination of multiple choice questions. Successful completion of the course shall be demonstrated by achieving a passing score on the examination, course attendance, and full participation in the hands-on training.

(6) Refresher training shall be at least one day duration for Certified Supervisors and Workers for Full-Scale Asbestos Abatement and at least three hours duration for Certified Workers for Small-Scale Asbestos Abatement. The refresher courses shall include a review of key areas of initial training, updates, and an examination of multiple choice questions as outlined in the DEQ Asbestos Training Guidance Document. Successful completion of the course shall be demonstrated by achieving a passing score on the examination, course attendance, and full participation in any hands-on training.

(7) One training day shall consist of at least seven hours, of actual classroom instruction and hands-on practice.

340-33-080 PRIOR TRAINING

Successful completion of an initial training course ~~[not]~~ accredited by a governmental agency other than the Department may be used to satisfy the training and examination requirements of OAR 340-33-050 and OAR 340-33-060 provided that all of the following conditions are met.

(1) The Department determines that the course and examination requirements are equivalent to or exceed the requirements of OAR 340-33-050 and 340-33-060 and the asbestos training guidance document, for the level of certification sought. State and local requirements may vary.

(2) ~~[If the training was completed prior to January 1, 1987, the applicant must demonstrate to the Department that additional experience sufficient to maintain knowledge and skills in asbestos abatement has been obtained in the interim.]~~ For an applicant to qualify for a refresher course and certification, prior training must have occurred within two years of the application to the Department. Applicants must be in good standing in all states where they are certified.

(3) The applicant who has received recognition from the Department for alternate initial training successfully completes an Oregon accredited refresher course and refresher course examination for the level of certification sought.

340-33-090 RECIPROCITY

The Department may develop agreements with other jurisdictions for the purposes of establishing reciprocity in training, licensing, and/or certification if the Department finds that the training, licensing and/or certification standards of the other jurisdiction are at least as stringent as those required by these rules.

340-33-100 **FEES**

(1) Fees shall be assessed to provide revenues to operate the asbestos control program. Fees are assessed for the following:

(a) Contractor Licenses
(b) Worker Certifications

(c) Training Provider Accreditation

(d) Asbestos Abatement Project Notifications

(2) Contractors shall pay a non-refundable license application fee of:

(a) Three hundred dollars ($300) for a one year Full-Scale Asbestos Abatement Contractor license.

(b) Two hundred dollars ($200) for a one year Small-Scale Asbestos Abatement Contractor license.

(3) Workers shall pay a non-refundable certification fee of:

(a) One hundred dollars ($100) for a two year certification as a certified Supervisor for Full-Scale Asbestos Abatement.

(b) Eighty dollars ($80) for a two year certification as a Certified Worker for Full-Scale Asbestos Abatement.

(c) Fifty dollars ($50) for a two year certification as a Certified Worker for Small-Scale Asbestos Abatement.

(4) Training Providers shall pay a non-refundable accreditation application fee of:

(a) One thousand dollars ($1000) for a one year accreditation to provide a course for training supervisors on Full-Scale projects.

(b) Eight hundred dollars ($800) for a one year accreditation to provide a course for training workers on Full-Scale projects.

(c) Five hundred dollars ($500) for a one year accreditation to provide a course for training workers on Small-Scale projects.

(d) Two hundred and fifty dollars ($250) for a one year accreditation to provide a course for refresher training for any level of certification.

(5) Requests for waiver of fees shall be made in writing to the Director, on a case-by-case basis, and be based upon financial hardship. Applicants for waivers must describe the reason for the request and certify financial hardship. The Director may waive part or all of a fee.

Note: The requirements and jurisdiction of the Department of Insurance and Finance, Accident Prevention Division and any other state agency are not affected by these rules.

(Adopted May 17, 1987; effective January 1, 1989)

ASB\AR1356

STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS 183.335(2), this statement provides information on the intended action to amend rules.

Legal Authority

1. Oregon Revised Statute 468.020 requires the Commission to adopt rules and standards as necessary to perform its vested functions.

2. Oregon Revised Statute 468.893 allows the Commission to establish standards and procedures for asbestos training providers and abatement workers, determine procedures for abatement project notification, and to establish asbestos abatement, handling and disposal work practice standards.

Need for the Rule

The proposed amendments are the result of a long-term effort to delete outdated or irrelevant regulations, render procedures more efficient and practical, respond to current industrial practices, and generally fine-tune the Department's asbestos regulations.

Principal Documents Relied Upon

- ORS 468.020, 468.893

- Existing Oregon Administrative Rules:

  OAR 340-25-465, Hazardous Air Contaminant Rules for Asbestos

  OAR 340-33-010 et seq., Asbestos Licensing and Certification Requirements

Land Use Compatibility Statement

The Department has concluded that the proposed rules do not appear to affect land use, and will be consistent with Statewide Planning Goals and Guidelines.

FISCAL AND ECONOMIC IMPACT STATEMENT

Proposed rule amendments fall into three categories: 1) Housekeeping changes that have no fiscal impact, 2) procedural changes that economically impact the regulated community, and 3) changes in standards or requirements that economically impact the regulated community.

1) Housekeeping Amendments

The Department has projected no fiscal impact for the following rule amendments:

OAR 340-33-030(9) & (12) - Repeal of sections creating special licensing or certification provisions until January 1, 1989, a deadline that has already passed.

OAR 340-33-030(13) - Repeal of section that repeats variance authority already contained in ORS 468.345.

OAR 340-33-060(1)(h) - Repeal of accreditation grandfathering provision for asbestos training courses taught since January 1, 1987. The Department has received only one request under this provision, and no other requests are expected in the future.

2) Procedural Amendments

OAR 340-25-465(5) - Creation of $75 non-refundable fee to be retained by DEQ when asbestos notifications are withdrawn. This fee covers the Department's cost of processing paperwork associated with withdrawn asbestos notifications. It has a direct economic impact on all persons who withdraw notifications.

OAR 340-25-465(5)(a) - Allows asbestos abatement projects to commence without prior notification when unexpected event creates opportunity to work. This amendment is expected to allow an economic savings to facilities able to perform abatement projects only under certain circumstances (ie: production line down time). The Department is not able to quantify the savings.

OAR 340-25-465(5)(b) - Deletion of more costly month to month project notification option, amendment allowing single owner/operator of centrally controlled facilities to file one notice for multiple abatement projects. These amendments also represent a currently unquantifiable savings to persons performing asbestos abatement projects by decreasing the amount of notification fees to be paid.

OAR 340-33-050(3)(b) - Amendment allowing persons with six months experience as maintenance or construction supervisors and full-scale worker certification to take supervisor's training course. This amendment allows economic savings to the regulated community by allowing the previous prerequisite of hands-on training, and by also allowing supervisory experience to quality for the supervisors training course.

OAR 340-33-060(4)(h) - Amendment requiring a written monthly training schedule instead of written notice one week before each class. This amendment helps trainers plan their courses in advance and thereby reduce training course marketing costs.

OAR 340-33-080 - Limits transferability of out-of-state asbestos training to training received within two years of application with the Department. The Department projects no fiscal impact.

Amendments to Standards and Requirements

OAR 340-25-455(20) - New definition of "interim storage of asbestos-containing waste material". This amendment will economically impact the regulated community by requiring prevention of asbestos dispersal physical tampering. The costs associated with these requirements are unknown because they may be achieved in a number of ways. This amendment should also help to prevent cleanup costs associated with accidental contamination between the source and the disposal site.

OAR 340-25-465(4)(b) & (6) - Amendments clarify that normally nonfriable materials can be made friable, and as a result hazardous, by certain work practices. These amendments could increase costs to contractors removing or disturbing asbestos-containing materials in a manner that makes them friable, and subject to further regulation. Cost increases would be offset by current Accident Prevention Division regulations for worker protection.

OAR 340-25-465(6)(i) - New rule requiring air clearance monitoring by an independent third party prior to removal of negative air containment. The Department estimates the cost of air clearance monitoring by a third party to be approximately $150 per abatement project. Many contractors contacted in an informal telephone survey already voluntarily perform air clearance monitoring.

ASB\AR1355

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Amendments to Asbestos Work Practice and Training Rules
NOTICE OF PUBLIC HEARING

Hearing Date: November 16 & 17, 1989
Comments Due: December 1, 1989

WHO IS AFFECTED: All persons performing asbestos abatement projects, and asbestos training providers.

WHAT IS PROPOSED: The Department of Environmental Quality is proposing to amend OAR 340-25-455(20); -25-455(4), (5) and (6); -33-030(9), (12) and (13); -33-060(1)(h), (4)(g); and -33-080

WHAT ARE THE HIGHLIGHTS: Proposed amendments would:

- add a definition of interim storage of asbestos containing material
- apply existing work practices to potentially friable asbestos containing material
- make practical adjustments to asbestos abatement project notification and filing rules
- require air clearance monitoring upon completion of abatement projects
- make practical adjustments to training and certification rules
- make permanent existing temporary rules on prerequisites for supervisor training

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 Bruce Arnold at 229-5506.

A public hearing will be held before a hearings officer at:

Department of Environmental Quality, Conference Room 4
811 SW 6th Ave., Portland, OR
November 16, 1989
2:00 pm to 5:00 pm

Harris Hall, Lane Co. Courthouse
125 E 8th St., Eugene, OR
November 17, 1989
1:00 pm to 4:00 pm

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

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

11/1/86

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 December 1, 1989.

WHAT IS THE NEXT STEP:

After public hearing the Environmental Quality Commission may adopt rule amendments identical to the proposed amendments, adopt modified rule amendments on the same subject matter, or decline to act. The Commission's deliberation should come January 11, 1990 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.

ASB\AR1340

BACKGROUND INFORMATION ON ISSUES

In the Commission's June 1, 1989 work session the Asbestos Control Section announced that draft rule revisions would be forthcoming along with a hearing authorization request. These draft rules have been reviewed and approved by Asbestos Advisory Board and are recommended for action according to ORS 468.899(15)(a).

The most notable change in these draft rules is the omission of amendments to assist the residential industry, which previously was benefited by the June 2, 1989 Variance for workers who disturb or remove asbestos in residential facilities. The Residential subcommittee has worked diligently in the past several months in developing rules to enlarge the space limitations of asbestos removal where the risk is minimized; and developing an asbestos hazard disclosure statement and accompanying educational materials. These draft rules are not part of this hearing authorization request because recent discussions with the Accident Prevention Division of the Department of Insurance and Finance (APD) revealed conflicts with related APD regulations and interpretations based on Federal Occupational Safety and Health Administration (OSHA) requirements. The Commission is required under ORS 468.893(8) to establish asbestos abatement rules compatible statutory language with APD standards. Pursuant to advice from the Asbestos Advisory Committee, the Department will consult further with APD before proposing amendments to small-scale and residential abatement rules.

SUMMARY OF CONCEPTS FEATURED IN THE CURRENT DRAFT RULES

OAR 340 DIVISION 25

OAR 340-25-455(20): "Interim storage of asbestos-containing waste material" was created to regulate such waste from the source to the disposal site which was previously unregulated.

OAR 340-25-465(4)(b) and (6): clarifies that normally nonfriable materials can be made friable, and therefore hazardous by inappropriate work practices.

OAR 340-25-465(5) creates a $75 non-refundable fee to be retained by DEQ when asbestos notifications are withdrawn.

OAR 340-25-465(5)(a) allows asbestos abatement projects to commence without prior notification when an unexpected event creates the opportunity to conduct an asbestos abatement project.

OAR 340-25-465(5)(b) reduces the number of notification options from three to two; i.e: project by project and annual notification. This will result in less paper work and net savings to the regulated asbestos abatement industry.

OAR 340-25-465(6)(i) the proposed air clearance monitoring rules are the product of asbestos section efforts to bring Oregon into league with twenty-six other states which have similar requirements. Air clearance monitoring is done to ensure the asbestos abatement contractor has achieved a minimum acceptable levels of air quality, namely 0.01 fibers per cubic centimeter within the containment.

OAR 340-33-030(9)(12) these sections which originally created special licensing or certification provisions until January 1, 1989 are now irrelevant as the deadline has passed. These sections are to be repealed.

OAR 340-33-030(13) this section reiterates OAR 468.345 concerning Variances from air contamination rules. As such, it is redundant and should be repealed.

OAR 340-33-050(3)(b) these amendments make permanent changes that were approved by the Commission as a temporary rule June 2, 1989. The rule allows persons who have six months experience as maintenance or construction supervisors and certification as full-scale workers, to take the supervisors training course.

OAR 340-33-060(h) the current rule allows courses taught since January 1, 1987 up to the present time to apply for and receive accreditation. Students taking such courses could be certified. At least one course was accredited on this basis with extraordinary hardship on the Department, Training Provider and students. Furthermore, as the accreditation process is now fully operational and accepted by the training community this regressive rule is no longer needed and should be repealed.

OAR 340-33-060(4)(g) The scheduling requirements of the present rule create an unnecessary burden upon the training providers by impeding schedule development and prompt response to legitimate but unexpected training needs. The amendment requires a monthly training schedule, which is standard in the industry, and requires prompt notice of unscheduled courses.

OAR 340-33-080 Prior training is a unique feature in the Oregon asbestos training rules which allows persons trained elsewhere to be certified in Oregon upon completing a one day refresher course instead of taking the full three day course. The proposed amendment would limit this window of opportunity to persons who were trained no more than two years before making application with DEQ. This renders OAR 340-33-080(2) unnecessary as workers will no longer have to make a showing as to their current knowledge since training prior to January 1, 1987.

ASB\AR1336

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: October 20, 1989
Agenda Item: R
Division: Air Quality
Section: Planning & Development

SUBJECT:

Emission Exceedances - Rule Revisions on Reporting Requirements and Actions for Sources Which Experience Excess Emissions Due to Startup, Shutdown, Scheduled Maintenance and Breakdowns

PURPOSE:

Rule revisions on reporting requirements and actions for sources which experience excess emissions due to startup, shutdown, scheduled maintenance and breakdowns, to bring state rules in agreement with current federal policy on excess emissions.

ACTION REQUESTED:

___ Work Session Discussion
- ___ General Program Background
- ___ Potential Strategy, Policy, or Rules
- ___ Agenda Item ___ for Current Meeting
- ___ Other: (specify)

_X_ Authorize Rulemaking Hearing
___ Adopt Rules
- Proposed Rules — Attachment B
- Rulemaking Statements — Attachment C
- Fiscal and Economic Impact Statement — Attachment C
- Public Notice — Attachment D

___ Issue 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)

DESCRIPTION OF REQUESTED ACTION:

Authorization to conduct a public hearing to receive public comment on the Department of Environmental Quality's (DEQ, Department) proposed upset rule amendments regarding temporary excess emissions of air contaminants.

AUTHORITY/NEED FOR ACTION:

___	Required by Statute: _____	Attachment ____
	Enactment Date: _____	
_X_	Statutory Authority: ORS 468.280	Attachment ____
_X_	Amendment of Existing Rule: OAR 340-21-065 thru 075	Attachment ____
___	Implement Delegated Federal Program:	Attachment ____
___	Other:	Attachment ____
___	Time Constraints: (explain)	

DEVELOPMENTAL BACKGROUND:

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

At the September 7, 1989 Environmental Quality Commission (EQC, Commission) meeting, a work session was held on the Department's proposed revisions to its upset rules. Department staff explained how the current upset rules can excuse industries which cause emissions of excess air contaminants from enforcement action, providing the event is reported in a timely manner to the Department and the reasons are justified. Staff also explained that this is contrary to the Environmental Protection Agency's (EPA) policy on excess emissions, which considers all excess emissions to be in noncompliance. Also described was EPA's policy directing states to determine if excess emissions are "unavoidable" and to establish clear criteria for sources to follow when reporting excess emissions. The Commission indicated they agreed with EPA's approach to excess emissions and with Department staff that amendments to its current rules should be considered. Staff indicated that it would draft a request for Hearing Authorization to be submitted at the next regularly scheduled EQC meeting.

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

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

As a result of federal court actions, state implementation plan rules must consider all excess emissions as potential violations of standards. Regulation must place the burden of proof on the source to demonstrate to the appropriate control agency whether the period of excess emissions should be excused from any enforcement action as a result of an unavoidable condition. The source must demonstrate that prompt notification and remedial action occurred, that control equipment was properly maintained and operated, and that the excess emissions were not a recurring problem.

A similar approach must be taken for scheduled maintenance, in that the industry would have to show that the excess emissions could not have been avoided through better operation and maintenance practices. Justification would also be required in cases of emergency shutdown and maintenance.

PROGRAM CONSIDERATIONS:

Amending the Department's air quality excess emission rules to be consistent with federal policy and the Department's new enforcement policy could result in increased workload for staff and sources, depending on 1) the extent that written reports are required, 2) the procedure for issuance of a Notice of Noncompliance, 3) the requirements for proving that excess emissions were unavoidable, and 4) the process by which excess emissions are excused.

It is possible that the other proposed rule revisions discussed here, such as the inclusion of criteria to guide sources when reporting excess emissions, could be applicable to other DEQ programs and lead to a more uniform approach in dealing with all types of emissions.

This rule amendment would represent a revision to the State Implementation Plan (SIP).

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Provide criteria in rules which identify the necessary information to be submitted by the source on the cause of the excess emissions. This approach would aid both Department staff and sources in determining whether excess emissions are "unavoidable" and thereby excused by the Department. Such criteria would include 1) immediate notification, 2) complete description of the nature of the excess emission, 3) description of remedial action, 4) demonstration that negligence was not involved, and 5) the event was not a recurring problem.

2. Issue a Notice of Noncompliance (NON) for every reported excess emission. This approach is not reasonable due to the many releases which are of short duration and do not constitute a threat to public health, safety, or result in a nuisance.

3. Allow excess emissions to be excused upon telephone notification. Although this represents a streamlined approach in dealing with low risk or minor cases, it does not allow for the full consideration of circumstances related to excess emissions which can be documented in a written report, and is therefore not recommended.

4. Require written documentation on all excess emissions, except allow written reports for low risk or minor excess emissions to be accumulated by source and submitted with annual permit reports at the discretion of regional staff. Submittal of all excess emission written reports immediately to the Department would create significant workload increases for staff and source alike. This approach would streamline the reporting process and allow continued flexibility in dealing with the higher risk excess emissions on a more immediate basis. This approach would also provide a documented record for all excess emissions which are reported.

5. Identify by rule a limit for the frequency of low risk or minor excess emissions over which a source must install backup pollution control measures/equipment to minimize emissions, or make a rule change permitting the excess emissions to occur as part of normal operations. This approach could be addressed better by permit on a case-by-case evaluation of each excess emission rather

than by rule, due to difficulty in specifying an appropriate or reasonable technology-based excess emission limit for sources.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department agrees with EPA that the current provision which automatically excuses excess emissions should be changed to read that all excess emissions are subject to possible enforcement action, unless the source can demonstrate to the Department's satisfaction that the emissions were unavoidable. The Department supports Alternative 1, or the idea of adding criteria in the rules which would guide sources when reporting these events to the Department. Such criteria would indicate to sources information the Department would consider in determining when to issue a Notice of Noncompliance or take other enforcement action. The Department also supports Alternative 4, or the submittal of written documentation by the source for all excess emissions, with reports on minor exceedances submitted in a manner and time frame specified by regional staff.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The Department is not aware of any conflicts with any agencies or legislative policies.

ISSUES FOR COMMISSION TO RESOLVE:

The Commission needs to consider:

1. Should criteria be established in rule form that specifies what the Department will consider to be an unavoidable excess emission, to guide sources in their actions and reporting requirements, in order to avoid being assessed penalties for upsets?

2. Should sources reporting minor upsets (determined by Department staff to be of low risk to the public and environment) be allowed to submit upset logs on a deferred reporting basis?

3. How frequently do excess emissions have to occur to require backup control and should this be addressed on a case-by-case basis or by rule change?

INTENDED FOLLOWUP 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

Approved:

Section: John Kowalczyk

Division: Nick Tobey

Director: Jeff Howard

Report Prepared By: Brian R. Finneran

Phone: 229-6278

Date Prepared: September 20, 1989

BRF:r
PLAN\AR1338 (9/89)

TEMPORARY EXCESS EMISSIONS

Temporary excess emissions, frequently referred to as "upset conditions", occur when an industry's air pollution control equipment malfunctions, fails, or is bypassed, resulting in air-contaminant emissions in excess of state standards or permit limits. In 1972 the EQC adopted rules which required industries to report excess emissions or upsets. These rules stated that if the owner/operators reported the upset and took appropriate action, the Department would not consider the upset to be a violation. They also required prompt notification to the Department, taking all practical steps to correct such conditions, and the cessation of operation within 48 hours unless specific authority is given by the Department to extend this time limit. For scheduled maintenance the rule required prior notice, and for lengthy excess emissions (greater than 48 hours), prior approval of a maintenance plan could be required.

As any one air pollution source is not that large of a contributor to an air shed, temporary excess emissions generally do not have the same potential environmental/health impact associated with water pollution, such as when sewage treatment plants are bypassed. Of the 500 or so air quality complaints that are received each year by the Department, many are associated with very short term excess emissions such as plugged wooddust cyclones, and bursts of black smoke from combustion sources such as wood fired powerboilers. Of the large sources in the state, pulp and paper mills account for about 5-6 upsets per month. These sources, as do some others in the state, have been required to operate continuous emission monitors and report results to the Department. Excess emissions in these cases are very readily known to the source as well as to the Department. In cases where excess emissions are occurring frequently and/or causing adverse environmental impact, the Department can require backup control systems to reduce or eliminate such occurrences in the future. Continuous emission monitoring can be required in sensitive areas such as Medford, where continuous monitoring is proposed to be expanded to major sources of PM_{10}. Such a requirement will aid in detecting and minimizing the occurrences of excess emissions in an air shed that needs every possible means of insuring that emissions are controlled to the highest level possible.

In the early 1980's, federal lawsuits regarding excess air emissions resulted in a court ruling that all excess emissions must be considered as violations subject to possible enforcement action. In addition, the court ruled that in cases where excess emissions were truly unavoidable, the violation could be excused from any enforcement action. These rulings lead EPA to ask several states, including Oregon, to revise their rules accordingly. EPA also advised states that while enforcement action could be determined on a case-by-case basis, state upset rules should specify the criteria to be used by the state for determining when excess emissions will be considered excusable in order to guide sources when submitting information on the cause of the excess emission. Such criteria would include:

1) immediate notification; 2) complete details of the equipment involved, the type of malfunction, and the estimated time in returning to normal operation; 3) description of remedial action; 4) demonstration that no negligence was involved in the incident; and 5) a reoccurring problem does not exist. A similar approach would be taken for start-up and shut-down annual scheduled maintenance, in that the industry would have to show that the excess emissions could not have been avoided through better operation and maintenance practices and they would have to provide an approvable written procedure that insures excess emissions are minimized to the extent practical. Justification would also be required in cases of emergency maintenance.

PLAN\AR917 (8/89)

- DRAFT -

[Upset-Conditions] Temporary Excess Emissions

[Introduction]

Purpose and Applicability

340-21-065 Emissions of air contaminants in excess of applicable standards or permit conditions [as-a-result-of-scheduled-maintenance,-or equipment-breakdown-shall-not-be-considered-a-violation-of-said-standards provided-the-conditions-of-rules] are considered unauthorized and subject to enforcement action, pursuant to [340-21-070-and] 340-21-075 and 340-21-080 [are-met]. These rules apply to any source which emits contaminants in violation of applicable air quality regulation or permit conditions as a result of equipment breakdown, process upset, start up, shut down, or scheduled maintenance. The purpose of these rules is to (1) require that all excess emissions be reported to the Department immediately or as soon as possible, (2) require sources to submit information and data regarding conditions which resulted or could result in excess emissions, and (3) identify criteria to be used by the Department for determining whether enforcement action will be taken against an excess emission.

[Scheduled-Maintenance]

[340-21-070--(1)-In-the-case-of-shutdown-of-air-pollution-control equipment-for-necessary-scheduled-maintenance,-the-intent-to-shutdown-such equipment-shall-be-reported-to-the-Department-at-least-twenty-four-(24) hours-prior-to-the-planned-shutdown.--Such-prior-notice-shall-include,-but is-not-limited-to-the-following:

(a) Identification of the specific facility to be taken out of service;

(b) The expected length of time that the air pollution control equipment will be put out of service;

(c) The nature and quantity of emissions of air contaminants likely to occur during the shutdown period;

(d) Measures, such as the use of offshift labor and equipment, that will be taken to minimize the length of the shutdown period, and where practical, minimize air contaminant emissions;

(e) The reasons that it would be impractical to shut down the source operation during the maintenance period.

(2) Additionally, in the case of maintenance scheduled more frequently than one time in a 90-day period, requiring shutdown of air pollution control equipment, or for any maintenance requiring shutdown of air pollution control equipment for a time period longer than 48 hours, prior approval of the maintenance program may be required by the Department. Application for approval shall be submitted in writing within 30 days after a request by the Department and shall include, in addition to subsections (a) through (e) in section (1) of this rule, specific information as to the frequency and the necessity of the scheduled maintenance. Approval of the program by the Department shall be based upon a determination that the proposed maintenance schedule is necessary and that all reasonable precautions have been taken to minimize the extent and frequency of air contaminant emissions in excess of applicable standards.

~~(3) No scheduled maintenance resulting in the emission of air contaminants in violation of applicable standards shall be performed during any period in which Air Pollution Alert, Air Pollution Warning, or Air Pollution Emergency has been declared.~~]

Definitions

340-21-071 As used in this rule, unless otherwise required by context:

(1) "Event" means any period of excess emissions.

(2) "Excess emissions" means emissions which are in excess of an Air Contaminant Discharge Permit limit, a State rule, or any applicable air quality regulation.

(3) "Large Source" means any stationary source whose actual emissions or potential controlled emissions while operating full-time at the design capacity are equal to or exceed 100 tons per year of any regulated pollutant, or which is subject to a National Emissions Standard for Hazardous Air Pollutants. Where plant site emission limits (PSEL) have been incorporated into the Air Contaminant Discharge Permit, the PSEL shall be used to determine actual emissions.

(4) "Permittee" means the owner or operator of the facility, in whose name the operation of the source is authorized by the Air Contaminant Discharge Permit.

(5) "Process Upset" means a failure of a production process or system to operate in a normal and usual manner.

(6) "Small Source" means any stationary source with a regular Air Contaminant Discharge Permit (not a letter permit or a minimal source permit) whose actual emissions or potential controlled emissions are less than 100 tons per year of any regulated pollutant.

(7) "Startup" and" shutdown" mean that time during which an air contaminant source or emission-control equipment is brought into normal operation or normal operation is terminated, respectively.

(8) "Unavoidable" means events which are not caused entirely or in part by poor or inadequate design, operation, maintenance, or any other preventable condition in either process or control equipment. Such events must not be of a recurring nature.

(9) "Upset" or "Breakdown" mean any unforeseeable failure or malfunction of any pollution control equipment or process equipment which is not the result of (a) intent, neglect, or disregard of any applicable standard or permit condition, (b) improper maintenance, or (c) improper design or a recurring pattern of malfunction of the same equipment.

~~[Malfunction of Equipment]~~

~~[340-21-075 In the event that any emission source, air pollution control equipment or related facility malfunctions or breaks down in such a manner as to cause the emission of air contaminants in violation of applicable standards, the person responsible for such equipment shall:~~

~~(1) Notify the Department, by telephone or in person, of such failure or breakdown within one (1) hour of the occurrence, or as soon as is reasonably possible, giving all pertinent facts including the estimated duration of the breakdown;~~

~~(2) With all practicable speed, initiate and complete appropriate action to correct the conditions, and to reduce the frequency of such occurrences;~~

~~(3) Cease or discontinue operation of the equipment or facility no later than 48 hours after the beginning of the breakdown or upset period if the malfunction is not corrected within that time. The Director may, for good cause shown, which shall include but not be limited to, equipment availability, difficulty of repair or installation, and nature and amount of the emission, authorize the extension of the operation period beyond 48 hours under this section for a reasonable period of time as determined by him to be necessary to correct the malfunction or breakdown.~~

~~(4) In the event an Air Pollution Alert, Air Pollution Warning, or Air Pollution Emergency is declared, or in the event the nature or magnitude of emissions from malfunctioning equipment is deemed by the Department to present an imminent and substantial endangerment to health, immediately proceed to cease or discontinue operation of the equipment or facility.~~

~~(5) Notify the Department when the condition causing the failure or breakdown has been corrected, and upon request, submit a written statement of the causes and the action taken to prevent future similar upset or breakdown conditions.~~]

Startup, Shutdown, and Scheduled Maintenance

340-21-076 (1) In cases where startup and shutdown of a production process or system may result in excess emissions, prior Department authorization may be obtained upon approval of startup/shutdown procedures and determination that the excess emissions are unavoidable and would not endanger public health. Application for approval shall be submitted in writing, and shall include the following:

(A) The reasons why the excess emissions during startup and shutdown could not be avoided;

(B) Identification of the specific production process or system causing the excess emissions;

(C) The amount and duration of the excess emissions or a best estimate (supported by operating data and calculations if requested by the Department).

(2) Approval of the startup/shutdown procedures by the Department shall be based upon determination that the procedures will minimize emissions during such period to the extent practicable, and that no adverse health impact on the public will occur. The permittee shall record each excess emission in the upset log as specified in OAR 340-21-080(7). Approval of the startup/shutdown procedures shall not absolve the permittee from enforcement action if the approved procedures are not followed. In addition, no routine startups or shutdowns associated with the approved procedures shall occur during any period in which an Air Pollution Alert, Air Pollution Warning, or Air Pollution Emergency has been declared.

(3) In cases of an unanticipated shutdown, characterized by an emergency condition in which excess emissions are likely to occur and prior notification of the Department is not possible, the permittee shall notify the Department as soon as reasonably possible following the event, giving all pertinent facts related to the event. Based on the severity of the event, the Department will either require submittal of a written report pursuant to OAR 340-21-080(4) and (6), or a recording of the event in the upset log as required in OAR 340-21-080(7).

(4) In cases where shutdown by-pass or operation at reduced efficiency of air pollution control equipment for necessary scheduled maintenance may result in excess emissions, the intent to perform such maintenance at a regular permitted source shall be reported to the Department at least seventy-two (72) hours prior to the planned maintenance. Such prior notice shall include, but is not limited to the following:

(a) Identification of the specific production or emission-control equipment or system to be maintained;

(b) The expected length of time that air pollution control equipment will be out of service or operated at reduced efficiency;

(c) The nature and quantity of air contaminants likely to be emitted during the maintenance period;

(d) Measures, such as the use of overtime labor and contract services and equipment, that will be taken to minimize the length of the maintenance period, and where practical, to minimize air contaminant emissions;

(e) The reasons that it would be impractical to shut down the source operation during the period; and

(f) The reasons why the by-pass or reduced efficiency could not be avoided through better scheduling for maintenance or through better operation and maintenance practices.

(5) Additionally, in the case of maintenance which is scheduled more frequently than one time in any 90-day period and which requires by-pass or reduced efficiency of air pollution control equipment, or for any maintenance which requires by-pass or operation at reduced efficiency of air pollution control equipment for more than 48 hours, prior approval of the maintenance program is required by the Department. Application for approval shall be submitted in writing

(or orally if so specified by the Department) and shall include, in addition to subsections (a) through (f) in section (1) of this rule, specific information as to the frequency and the necessity of the scheduled maintenance. Approval of the program by the Department shall be based upon a determination that temporary excess emissions could not be avoided through better operation and maintenance practices, or installation of additional, practicable control equipment. Approval of the program does not absolve the permittee from enforcement action if the conditions of the approval are not followed.

(6) In cases of necessary emergency maintenance, characterized by discovery of a condition requiring corrective action within 24 hours, requiring equipment repairs and/or replacement which could cause excess emissions until the maintenance is complete and normal operation resumed, the permittee shall:

(a) Immediately notify the Department of the situation and intended correction, and confirm that no Air Pollution Alert, Warning, or Emergency is in effect or has been predicted for the period of excess emissions.

(b) Based on the severity of the event, the Department may request submittal of a written report pursuant to OAR 340-21-080(4) and (6). In all cases the event shall be recorded in the upset log as required in OAR 340-21-080(7).

(7) No startup/shutdown associated with scheduled maintenance resulting in the emission of air contaminants in violation of applicable regulations or permit conditions shall be performed during any period in which an Air Pollution Alert, Air Pollution Warning, or Air Pollution Emergency has been declared.

Upsets and Breakdowns

340-21-080 (1) For large sources, as defined by 340-21-070(3), emissions in excess of applicable standard or permit conditions must be reported to the Department immediately.

(2) Small sources, as defined by 340-21-070(6), need not report excess emissions immediately unless required to do so by the Department, or unless the excess emission is of a nature that could endanger public health. Small sources are subject to the reporting requirements in (5) and (7).

(3) During a period of excess emissions, the Department may require that a source immediately proceed to cease or discontinue operation of the equipment or facility until such time as the condition causing the excess emissions has been corrected or brought under control. Such action by the Department would be taken upon consideration of the magnitude of the emissions and risk to public health, whether any Air Pollution Alert, Warning, or Emergency exists, and whether continued excess emissions are deemed by the Department to be avoidable.

(4) The source shall submit a written report to the Department within fifteen (15) days of the date of the excess emissions, which includes complete details of the nature, magnitude, and duration of the emissions, known causes, remedial actions taken, and preventative measures to be taken to minimize or eliminate the chance of reoccurrence.

(5) Based on the severity of event, the Department may waive the 15 day reporting requirement, and specify either a shorter or longer time period for report submittal. The Department may also waive the submittal of the written report, if in the judgement of the Department, the period of excess emissions was minor. In such cases the source

shall record the event in the upset log pursuant to section (6) of this rule.

(6) In determining if a period of excess emissions is unavoidable, and whether enforcement action is warranted, the Department shall consider the following information submitted by the source:

(a) Whether notification occurred immediately or as soon as reasonably possible;

(b) Whether the event occurred during startup, shutdown, maintenance, or as a result of a breakdown or malfunction;

(c) Whether the Department was furnished with complete details of the event, i.e., the equipment involved, the duration or best estimate of the time until return to normal operation, the magnitude of emissions and the increase over normal rates or concentrations as determined by continuous monitoring or a best estimate (supported by operating data and calculations);

(d) Whether the amount and duration of the excess emission (including any bypass) were limited to the maximum extent practicable during the period of excess emissions;

(e) Whether the appropriate remedial action was taken; and

(f) Whether the event was due to negligent operation by the source. For the Department to find that an incident of excess emissions is not due to negligent operation of the source, the permittee must demonstrate, upon Department request, that all of the following conditions were met:

(A) The process or handling equipment and the air pollution control equipment were at all times maintained and operated in a manner consistent with good practice for minimizing emissions.

(B) Repairs or corrections were made in an expeditious manner when the operator(s) knew or should have known that emission limits were being or were likely to be exceeded. Expeditious manner may include such activities as use of overtime labor or contract labor and equipment that would reduce the amount and duration of excess emissions.

(C) The event was not one in a recurring pattern of incidents which indicate inadequate design, operation, or maintenance.

(7) The permittee of all sources shall keep a log of all excess emissions. The log shall include the following as a minimum:

(a) The date and time each event was reported to the Department,

(b) Information as described in (6)(b), (6)(c), (6)(d) and (6)(e) above,

(c) The final resolution of the cause of the excess emissions,

(d) The remedial action taken.

(8) At each reporting period specified in a permit, or sooner if required by the Department, the permittee shall submit a copy of the log entries for the reporting period. Upset logs shall be kept by the permittee for three (3) calendar years.

PLAN\AR1335

RULEMAKING STATEMENTS FOR TEMPORARY EXCESS EMISSIONS

STATEMENT OF NEED FOR RULEMAKING

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) 340-21-065 to 340-21-080. It is proposed under authority of Oregon Revised Statutes (ORS) Chapter 468.020, 468.280, and 468.295.

(2) Need for these rules

The proposed rule revisions are necessary to make Department's Air Quality "Upset Condition" rules consistent with federal policy related to temporary excess emissions of air contaminants. Federal guidelines place the responsibility on the source to demonstrate to the appropriate control agency that a period of excess emission was the result of an unavoidable condition, for which prompt agency notification and remedial action occurred.

(3) Principal Documents Relied Upon

OAR 340, Division 21, General Emission Standards for Particulate Matter

EPA Region 10: Guidance for the Preparation of SIP Excess Emissions Regulation

LAND USE CONSISTENCY STATEMENT

The Department has concluded that the proposed rule amendments do not appear to affect land use and will be consistent with Statewide Planning Goals and Guidelines.

With regard to Goal 6, (air, water, and land resources quality), the proposed changes are designed to enhance and preserve air quality in the state and are considered consistent with the goal. The proposed rule changes do not appear to conflict with the other goals.

Public comment on any land use issue involved is welcome and may be submitted in the same fashion as indicated for other testimony on these rules.

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

FISCAL AND ECONOMIC IMPACT STATEMENT

Sources affected by these rules are also required by OAR 340-20-140 to obtain an Air Contaminant Discharge Permit, and to comply with the permit conditions and all other applicable air quality regulations. Therefore, sources affected by these rules are already subject to the costs of control and compliance.

PLAN\AR1370

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

NOTICE OF PUBLIC HEARING

Hearing Date:
Comments Due:

WHO IS AFFECTED: Any source which emits air contaminants in excess of an Air Contaminant Discharge Permit, a State rule, or a Federal emission regulation.

WHAT IS PROPOSED: The Department of Environmental Quality is proposing to amend OAR 340-21-065 to 080 relating to the Department's Air Quality "Upset Condition" Rules.

WHAT ARE THE HIGHLIGHTS: The Department is proposing to amend its "Upset Condition" Rules by adding criteria which tightens reporting and documentation procedures for all excess emissions, and which indicated enforcement action may be taken for excess emissions which occur during startup, shutdown, maintenance and breakdown, if the Department finds such excess emission to be avoidable.

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 Brian R. Finneran at (503) 229-6278.

A public hearing will be held before a hearings officer at:

10:00 AM
Wednesday, December 6, 1989
Room 4A, 4th Floor, Executive Building
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204

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 Friday, December 8, 1989.

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.

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 January 11, 1990 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.

PLAN\AR1341

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: October 20, 1989
Agenda Item: S
Division: Air Quality
Section: Planning & Development

SUBJECT:

Incinerator Rule - Amendments to Better Address Municipal and Hospital Units

PURPOSE:

New rules for incinerators will serve to better protect the public from particulates, acid gases and toxics, by providing a uniform basis for evaluating proposed installations and comparative risks, and providing uniform performance standards for both incineration equipment and monitoring systems.

ACTION REQUESTED:

___ Work Session Discussion
___ General Program Background
___ Potential Strategy, Policy, or Rules
___ Agenda Item ___ for Current Meeting
___ Other: (specify)

_X_ 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: (specify) — Attachment ___

DESCRIPTION OF REQUESTED ACTION:

The proposed incinerator rules would:

1. Apply to all existing, new or modified solid waste, infectious waste and crematory facilities in Oregon;

2. Set uniform emission standards for particulate based on capacity (over 50 tons/day - 0.02 grains/standard cubic foot (scf), under 50 tons/day - 0.03 grains/scf)), hydrogen chloride (50 parts per million (ppm)), sulfur dioxide (50 ppm), and carbon monoxide (100 ppm);

3. Set design and operation requirements for temperature (1800°F in final combustion zone), residence time (1-2 seconds), combustion efficiency (99.9 percent), opacity (10 percent), and control equipment (BACT).

4. Require continuous emission monitoring (CEMS) and testing requirements;

5. Develop a procedure for retrofitting existing facilities, allowing up to five years for installation of new equipment.

AUTHORITY/NEED FOR ACTION:

___	Required by Statute: _____ Enactment Date: _____	Attachment ___
_X_	Statutory Authority: ORS 468.020/468.295	Attachment ___
_X_	Pursuant to Rule: OAR 340-21-025 to -027	Attachment ___
___	Pursuant to Federal Law/Rule: _____	Attachment ___
_X_	Other: OAR 340-25-055 (NSPS), OAR 340-20-220 to -275	Attachment ___
___	Time Constraints: (explain)	

DEVELOPMENTAL BACKGROUND:

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

Existing rules pertaining to incinerators are focused solely on particulate emissions from refuse burning (OAR 340-21-025), municipal waste incinerators in coastal areas (OAR 340-21-027 and OAR 340-20-220 to -275), and new or modified incinerators (Federal new source standards adopted and enforced by the Department of Environmental Quality (DEQ, Department)) of more than 50 tons per day (OAR 340-25-555). Various particulate and opacity standards exist in the current rules, along with temperature and residence time requirements. Air Contaminant Discharge Permits set other limits (CO, NO_x, SO_2, etc.) on a case-by-case basis.

Currently in the state there are two coastal municipal refuse incinerator facilities, one mass burn municipal incinerator facility, one commercial infectious waste incinerator facility, and approximately 31 hospital incinerators and 37 crematoriums.

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The growing concern about the toxicity of incinerator pollutants, given the increasing trend of waste incineration as an alternative to landfilling, has lead to numerous studies which have shown potential health risks associated with exposure to the fine particulates, acid gases, and toxics (such as dioxin) emitted from incinerators. In response to this, many states have revised their waste incinerator regulations based on state of the art pollution control equipment and high efficiency combustion technology, to establish emission standards and operational controls which better protect the public and environment.

The proposed rules will require new and existing sources to utilize particulate and gaseous pollution control equipment (scrubbers, baghouses, electrostatic precipitators, and auxiliary burners). In addition, the proposed rules will require continuous monitoring equipment systems (CEMS) in order to meet tighter particulate emission levels than current state standards, set uniform standards for hydrogen chloride (HCl), sulfur dioxide (SO_2), carbon monoxide (CO), design and operation requirements, and performance testing requirements. Existing sources will be given up to five years to retrofit with the necessary equipment. Cost estimates vary greatly depending on the needs of each facility. However, it is likely the capital investment required to build/retrofit and operate incinerators in compliance with the proposed rules will be high, perhaps as much as double the cost of the facility on an annual basis for smaller facilities. Additional costs may be incurred in providing operator training if sources are to ensure that proper startup, operation, and shutdown procedures are followed in order to minimize emissions.

PROGRAM CONSIDERATIONS:

The Department currently reviews and permits incinerators on a case-by-case basis, with respect to the contaminants emitted, and estimates public health risk and environmental effects. Current incinerator rules are fragmented and incomplete, and do not uniformly cover all existing and new facilities in the state, nor uniformly address all air contaminants emitted from incinerator facilities. The issue of health effects has prompted much study on the need for more stringent emission standards for incinerators, with many states recently adopting standards as stringent as those proposed.

These incinerator rules would serve to better protect the public from particulates, acid gases, and toxics, and in addition provide a uniform basis for evaluating proposed installations and comparative risks, and provide uniform performance standards for both incineration equipment and monitoring systems.

It is anticipated that these new operating, monitoring, and reporting requirements will place greater workload demands related to compliance and enforcement on the Department's Regional Operations, and the Air Quality and Hazardous & Solid Waste Divisions.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Do not consider new incinerator rules. The Commission can choose to continue to follow current rules and procedures. The process of review and control requirements for new installations would continue to be tailored for each permit application.

2. Develop new rules to address new or modified sources only. Many states have recently revised their incineration rules for new or modified sources only, due to the growing number of new facilities being proposed. Existing facilities could continue to operate under current rules.

3. Develop rules for new facilities and include existing incinerators, allowing such sources a reasonable period (up to five years) for retrofit.

4. Establish a cut-off level for small capacity incinerators under which certain emission standards or monitoring equipment would not apply. The smaller capacity incinerator will have greater difficulty in meeting the costs associated with the more stringent emission standards than the larger units.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends alternative 3, as it believes that more stringent and uniform limits and controls are needed for all existing and future incinerator facilities in Oregon. The Department recognizes that while smaller incinerator units will be more adversely affected by the costs associated with the proposed limits and controls, establishing less stringent requirements for these units, as proposed in alternative 4, would not be consistent with the overall goal of protecting the public from incinerator pollution. The proposed rules will limit emissions of particulate matter, HCl, SO_2, and CO to the levels achievable using best available control technology (BACT). An accompanying benefit of these stringent levels would be the toxic constituents associated with particulate and acid gas emissions. Other parts of the proposed rules, such as design and operating requirements, as well as continuous emission monitoring, are expected to improve operation and thereby limit occurrences of excess emissions.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The proposed rules are consistent with House Bill 2865 passed in the last legislative session and recently filed with the Secretary of State's Office (related to the incineration of hospital or infectious wastes). Specifically, this legislation authorizes the Environmental Quality Commission, Health Division, and Public Utility Commission to establish requirements for the collection, transportation, storage, treatment and disposal of infectious waste in a manner that protects public health, safety and welfare. The Department of has also been given responsibility to assist in coordinating rule development and implementation. The effective date of legislation is July 1, 1990.

ISSUES FOR COMMISSION TO RESOLVE:

1. Should new incinerator rules be developed which better protect the public from incineration emissions, or should the present situation, rules, and procedures continue to be followed?

2. Should rules be developed which apply only to new or modified facilities, with existing facilities unaffected? If so, should efforts be made to recommend retrofit of recently permitted incineration facilities, and to phase out and eliminate older, poor efficiency incinerators?

3. Should less stringent emission standards and monitoring requirements be developed for existing facilities than for new facilities if the costs to retrofit are higher than to build a new facility?

4. Should a cutoff level be established for small capacity incinerator facilities (2.5 tons/day), under which certain emission standards or monitoring equipment do not apply?

INTENDED FOLLOWUP ACTIONS:

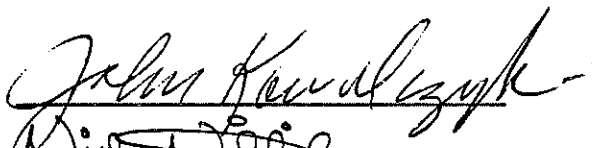
1. File public hearing notice with the Secretary of State

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

Approved:

Section: 

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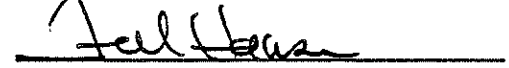
Director: 

Report Prepared By: Brian Finneran

Phone: 229-6278

Date Prepared: September 21, 1989

BRF:r
PLAN\AR1353
(9/89)

Incinerator Regulation

OAR 340-25-850 to -910

Purposes and Application

340-25-850 The purpose of these rules is to establish state of the art emission standards, design requirements, and performance standards for all waste incinerators in order to minimize air contaminant emissions and provide adequate protection of public health. The rules apply to all existing waste incinerators and to all that will be built and/or installed in the State of Oregon.

Definitions

340-25-855

(1) "Acid Gases" means any exhaust gas which includes hydrogen chloride and sulfur dioxide.

(2) "Best Available Control Technology (BACT)" means an emission limitation (including a visible emission standard) based on the maximum degree of reduction of each air contaminant subject to regulation under the Clean Air Act which would be emitted from any source, and which is achievable through application of production processes or available methods, systems, and techniques; including fuel cleaning or treatment, or innovative fuel combustion techniques for control of such air contaminant. In no event shall the application of BACT result in emissions of any air contaminant which would exceed the emissions allowed by any applicable new source performance standard or any standard for

hazardous air pollutants. If an emission limitation is not feasible, a design, equipment, work practice, or operational standard, or combination thereof, may be required. Such standard shall, to the degree possible, set forth the emission reduction achievable and shall provide for compliance by prescribing appropriate permit conditions.

(3) "Continuous Emission Monitoring" means continuously and simultaneously determining the concentration of a substance or substances, and continuously indicating and/or recording the concentration. For the purpose of these rules, withdrawing a discrete sample, analyzing it, and reporting the results at least once every five minutes shall be considered frequent enough to constitute continuous emission monitoring.

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

(5) "Dry Standard Cubic Foot" means the amount of gas that would occupy a volume of one cubic foot, if the gas were free of uncombined water at standard conditions. When applied to combustion flue gases from waste or refuse burning, "Standard Cubic Foot (scf)" implies adjustment of gas volume to that which would result at a concentration of 12% carbon dioxide or 50% excess air.

(6) "Emission" means a release into the atmosphere of air contaminants.

(7) "Fugitive Emissions" means dust, fumes, gases, mist, odorous matter, vapors or any combination thereof not easily given to measurement, collection, and treatment by conventional pollution control methods.

(8) "Hazardous Air Contaminant" means any air contaminant considered by the Department or Commission to cause or contribute to an identifiable and significant increase in mortality, or to an increase in serious irreversible or incapacitating reversible illness and for which no ambient air standard exists.

(9) "Incinerator" means a device or system in which waste material is destroyed by combustion.

(10) "Infectious Waste" means and includes the following:

(a) "Biological waste," which includes blood and blood products, excretions, exudates, secretions, suctionings and other body fluids that cannot be directly discarded into a municipal sewer system, and waste materials saturated with blood or body fluids, but does not include diapers soiled with urine or feces.

(b) "Cultures and stocks," which includes etiologic agents and associated biologicals; including specimen cultures and dishes, devices used to transfer, inoculate and mix cultures, wastes from production of biologicals, and serums and discarded live and attenuated vaccines. "Cultures" does not include throat and urine cultures.

(c) "Pathological waste," which includes biopsy materials and all human tissues, anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures and animal carcasses exposed to pathogens in research and the bedding and other waste from such animals. "Pathological wastes" does not include teeth or formaldehyde or other preservative agents.

(d) "Sharps," which includes needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes that have been removed from their original sterile containers.

(11) "Infectious Waste Facility" means an incinerator which is operated or utilized for the disposal or treatment of infectious waste, including combustion for the recovery of heat, and which utilizes high temperature thermal destruction technologies.

(12) "Opacity" means the degree to which an emission reduces transmission of light and obscures the view of an object in the background.

(13) "Particulate Matter" means any matter, except uncombined water, which exists as a liquid or solid at standard conditions.

(14) "Parts Per Million (ppm)" means parts of a contaminant per million parts of gas by volume on a dry-gas basis (1 ppm equals 0.0001% by volume).

(15) "Person" means 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.

(16) "Refuse" means all waste material, including but not limited to, garbage, rubbish, incinerator residue, street cleanings, dead animals, and offal.

(17) "Secondary Chamber" or "Final Chamber" means the discrete equipment, chamber, or space in which the products of pyrolysis are combusted in the presence of excess air such that essentially all carbon is burned to carbon dioxide.

(18) "Solid Waste" means all putrescible and nonputrescible materials or substances that are discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, refuse, industrial and commercial waste, rubbish, tires, ashes, contained gaseous material, construction and demolition debris, and discarded automobiles or parts thereof.

(19) "Solid Waste Facility" means an incinerator which is operated or utilized for the disposal or treatment of solid waste including combustion for the recovery of heat, and which utilizes high temperature thermal destruction technologies.

(20) "Standard Conditions" means temperature of 60 degrees fahrenheit (15.6 degrees Celsius) and a pressure of 14.7 pounds per square inch absolute (1.03 kilograms per square centimeter).

(21) "Startup/Shutdown" means the time during which an air contaminant source of emission control equipment is brought into normal operation and normal operation is terminated, respectively.

(22) "Transmissometer" means a device that measures opacity and conforms to EPA Specification Number 1 in Title 40 Code of Federal Regulations, Part 60, Appendix B.

Best Available Control Technology

340-25-860

(1) No waste incinerator facility shall cause or permit air contaminant emissions in excess of the limits described in OAR 340-25-865. In order to maintain the lowest possible emissions, all incinerator facilities are required to use best available control technology (BACT) as defined at the time of construction

which may be determined for some facilities to be more stringent than the emissions limitations in this rule and may include waste cleaning or separation.

(2) Whenever more than one regulation applies to the control of air contaminants from a waste incineration facility, the more stringent regulations, control, or emission limit shall apply.

Emission Standards

340-25-865

(1) No person shall cause, suffer, allow, or permit the operation of any waste incinerator in a manner which violates the following emission limits and requirements:

(a) Particulate Emissions:

(A) Incinerator facilities capable of processing up to 50 tons/day of wastes, emissions from each stack shall not exceed 0.03 grains per standard cubic foot of exhaust gases corrected to 12 percent CO_2 at standard conditions.

(B) Incinerator facilities capable of processing more than 50 tons/day of wastes, emissions from each stack shall not exceed 0.02 grains per standard cubic foot of exhaust gases corrected to 12 percent CO_2 at standard conditions.

(b) Hydrogen Chloride (HCl):

(A) Emissions of hydrogen chloride from each stack shall not exceed 50 ppm corrected to 12 percent CO_2 over any continuous three hour period, except if the permittee

demonstrates that uncontrolled emissions of hydrogen chloride are reduced by at least eighty (80) percent.

(c) Sulfur Dioxide (SO_2):

(A) Emissions of sulfur dioxide from each stack shall not exceed 50 ppm corrected to 12 percent CO_2 over any continuous three hour period, except if the permittee demonstrates that uncontrolled emissions of sulfur dioxide are reduced by at least eighty (80) percent.

(d) Carbon Monoxide (CO):

(A) Emission of carbon monoxide from each stack shall not exceed 100 ppm corrected to 12 percent CO_2 over any continuous three hour period.

(e) Opacity:

(A) The opacity as measured visually or by a transmissometer shall not exceed an average of 10 percent for more than six consecutive minutes in any one hour period.

(f) Fugitive Emissions. Municipal waste facilities shall be operated in a manner which prevents or minimizes fugitive emissions, including the paving of all normally traveled roadways within the plant boundary and enclosing all material transfer points.

(g) Odors. Any person who shall cause or allow the generation of any odor from any source which may unreasonably interfere with any other property owner's use and enjoyment of his property shall use good practices and procedures to reduce those odors.

(h) Other Contaminants. No person shall cause or permit other contaminants whose emissions are likely to be injurious to human health, plant, animal life, or property, or which unreasonably interferes with use or enjoyment of property, or may cause public safety hazard.

(2) Hazardous Air Pollutants:

(a) The Department at any time after the effective date of this rule, may conduct or require source tests and require access to information specific to the control, recovery, or release of hazardous air contaminants, as specified by the Environmental Protection Agency in Title 40 Code of Federal Regulations, Part 61. Air Contaminants currently considered to be in this category are asbestos, beryllium, mercury, vinyl chloride, benzene, radionuclides and arsenic. Additional air contaminants may be added to this category, and as technology advances and conditions warrant, more stringent standards may be applied.

Design and Operation

340-25-870

(1) Combustion Temperature: The temperature at the final combustion chamber of waste shall be 1800°F for one second or 1700°F for two seconds, or a temperature and corresponding residence time linearly interpolated between the aforementioned two points. At no time shall the temperature in the final chamber fall below 1600°F.

(2) Control Systems:

(a) Infectious waste incinerators must incorporate a lockout control system which will prevent the charging of waste if carbon monoxide levels exceed 150 ppm.

(b) For infectious waste facilities with mechanically fed incinerators, an air lock control system to prevent opening the incinerator to the room environment must be incorporated. The volume of the loading system must be designed so as to prevent overcharging to assure complete combustion of the waste.

(3) Control Equipment Outlet Temperature: Control equipment for reducing emissions of hydrogen chloride must be operated such that the flue gas temperature at the outlet from the control device does not exceed 300°F, unless it can be demonstrated that a greater collection of condensible matter can be achieved at a higher outlet temperature.

(4) Combustion efficiency: Except during periods of startup and shutdown, all waste incinerators shall achieve a combustion efficiency of 99.9 percent based on a running eight-hour average, and 99.5 percent based on a running seven-day average. Combustion efficiency shall be based on the following equation:

$$CE = \frac{CO_2 \times 100}{(CO_2 + CO)}$$

CO = Carbon monoxide in the exhaust gas, parts per million by volume (dry)

CO_2 = carbon dioxide in the exhaust gas, parts per million by volume (dry)

(5) Stack Height: All incinerator stacks shall be located and of sufficient height to assure compliance with applicable air standards, and to avoid the flow of stack pollutants into any building ventilation intake plenum.

(6) An independently trained incinerator operator shall be present at the facility in which an incinerator is located whenever waste is being burned.

Continuous Emission Monitoring

340-25-875

(1) All solid waste incinerators shall operate and maintain continuous monitoring for the following emission and operating parameters:

(a) Hydrogen chloride;

(b) Sulfur dioxide;

(c) Carbon monoxide;

(d) Opacity;

(e) Final Combustion Chamber Exit Temperature;

(f) Control Equipment Outlet Temperature; and

(g) Oxygen

(2) All infectious waste incinerators shall operate and maintain continuous monitoring for the following emission and operating parameters:

(a) Carbon monoxide;

(b) Either Hydrogen Chloride or Sulfur Dioxide;

(c) Opacity;

(d) Final Combustion Chamber Exit Temperature; and

(e) Control Equipment Outlet Temperature

(3) The monitors for hydrogen chloride, carbon monoxide, opacity and oxygen shall comply with EPA performance specifications in Title 40, Code of Federal Regulations, Part 60, Appendix B.

Reporting and Testing

340-25-880

(1) Reporting:

(a) Stack test results shall be reported to the Department within thirty (30) days of completion.

(b) All records associated with continuous monitoring data including, but not limited to, original data sheets, charts, calculations, calibration data, production records and final reports shall be maintained for a continuous period of at least 365 days and shall be furnished to the Department upon request.

(2) Emissions Testing:

(a) Each waste incinerator facility must conduct testing to demonstrate compliance with the standards in these rules. Unless otherwise specified by the Department, the facility must be tested annually thereafter for particulate, hydrogen chloride, and carbon monoxide emissions. These tests may be used to help determine acceptable operating parameters, and the presence of any hazardous or toxic emissions, such as arsenic, cadmium, lead, nickel, etc.

Compliance

340-25-885

(a) All existing waste incinerators must demonstrate compliance with the applicable provisions of these rules within five (5) years of the effective date of these rules. Existing data such as that collected in accordance with the requirements of an Air Contaminant Discharge Permit may be used to demonstrate compliance.

(b) All existing waste incinerators shall be subject to the provisions of OAR 340-21-025 and OAR 340-21-027 for a period not to exceed five (5) years from the effective date of these rules.

(c) New waste incinerators must demonstrate compliance with the emission limits and operating requirements of these rules in accordance with a schedule established by the Department before commencing regular operation.

Crematory Incinerator Regulation

Definitions

340-25-890

(1) "Acid Gases" means any exhaust gas which includes hydrogen chloride and sulfur dioxide.

(2) "Continuous Emission Monitoring" means continuously and simultaneously determining the concentration of a substance or substances, and continuously indicating and/or recording the concentration. For the purpose of these rules, withdrawing a discrete sample, analyzing it, and reporting the results at least

once every five minutes shall be considered frequent enough to constitute continuous emission monitoring.

(3) "Crematory Facility" means an incinerator used for the cremation of human and animal bodies.

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

(5) "Dry Standard Cubic Foot" means the amount of gas that would occupy a volume of one cubic foot, if the gas were free of uncombined water at standard conditions. When applied to combustion flue gases from waste or refuse burning, "Standard Cubic Foot (scf)" implies adjustment of gas volume to that which would result at a concentration of 12% carbon dioxide or 50% excess air.

(6) "Emission" means a release into the atmosphere of air contaminants.

(7) "Opacity" means the degree to which an emission reduces transmission of light and obscures the view of an object in the background.

(8) "Particulate Matter" means any matter, except uncombined water, which exists as a liquid or solid at standard conditions.

(9) "Person" means 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.

(10) "Secondary Chamber" or "Final Chamber" means the discrete equipment, chamber, or space in which the products of pyrolysis are combusted in the presence of excess air such that essentially all carbon is burned to carbon dioxide.

(11) "Standard Conditions" means temperature of 60 degrees fahrenheit (15.6 degrees Celsius) and a pressure of 14.7 pounds per square inch absolute (1.03 kilograms per square centimeter).

(12) "Startup/Shutdown" means the time during which an air contaminant source of emission control equipment is brought into normal operation and normal operation is terminated, respectively.

Emission Standards

340-25-895

(1) No person shall cause to be emitted particulate matter from any crematory incinerator in excess of 0.08 grains per standard cubic foot of exhaust gases corrected to 12 percent CO_2 at standard conditions.

(2) Opacity:

(a) The opacity as measured visually shall not exceed an average of 10 percent for more than six consecutive minutes in any one hour period.

(3) Odors. Any person who shall cause or allow the generation of any odor from any source which may unreasonably interfere with any other property owner's use and enjoyment of his property shall use good practices and procedures to reduce those odors to a reasonable minimum.

(4) Other Contaminants. No person shall cause or permit other contaminants whose emissions are likely to be injurious to human health, plant, animal life, or property, or which unreasonably interferes with use or enjoyment of property, or may cause public safety hazard.

Design and Operation

340-25-900

(1) Combustion Temperature: The temperature at the final combustion chamber of shall be 1800°F for one second or 1700°F for two seconds, or a temperature and corresponding residence time linearly interpolated between the aforementioned two points. At no time shall the temperature in the final chamber fall below 1600°F.

(2) Control System: For crematory facilities with mechanically fed incinerators, an air lock control system to prevent opening the incinerator to the room environment must be incorporated.

(3) An independently trained incinerator operator shall be present at the facility in which a crematory is being operated.

Monitoring and Reporting

340-25-905

(1) All crematory incinerators shall operate and maintain continuous monitoring for final combustion chamber exit temperature.

(2) All records associated with continuous monitoring data including, but not limited to, original data sheets, charts, calculations, calibration data, production records and final reports shall be maintained for a continuous period of at least 365 days and shall be furnished to the Department upon request.

(3) Each crematory incinerator facility must conduct testing to demonstrate compliance with these rules in accordance with a schedule specified by the Department.

Compliance

340-25-910

(a) All existing crematory incinerators must demonstrate compliance with the applicable provisions of these rules within five (5) years of the effective date of these rules. Existing data such as that collected in accordance with the requirements of an Air Contaminant Discharge Permit may be used to demonstrate compliance.

(b) All existing crematory incinerators shall be subject to the provisions of OAR 340-21-030 for a period not to exceed five (5) years from the effective date of these rules.

(c) New crematory incinerators must demonstrate compliance with the emission limits and operating requirements of these rules in accordance with a schedule established by the Department.

PLAN\AR1387

RULEMAKING STATEMENTS FOR PROPOSED INCINERATOR RULES

STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS 183.335(7), this statement provides information on the intended action to develop rules.

(1) Legal Authority

This proposal creates Oregon Administrative Rules (OAR) 340-25-850 to 340-25-910. It is proposed under authority of Oregon Revised Statutes (ORS) Chapter 468.020, 468.280, and 468.295.

(2) Need for these rules

The proposed rules are necessary to better protect the public from particulates, acid gases, and toxics emitted by incinerators, by providing a uniform basis for evaluating proposed installations and comparative risks, and providing uniform performance standards for both incineration equipment and monitoring systems.

(3) Principal Documents Relied Upon

New York Department of Environmental Conservation: Revised 6 NYCRR Part 219, Incinerators, April 1988

EPA Office of Research and Development, Municipal Waste Combustion Study: Combustion Control of Organic Emissions, May 1987

Wisconsin Department of Natural Resources: Guidelines for Infectious Waste Incinerators, April 1988

LAND USE CONSISTENCY STATEMENT

The Department has concluded that the proposed rule amendments do not appear to affect land use and will be consistent with Statewide Planning Goals and Guidelines.

With regard to Goal 6, (air, water, and land resources quality), the proposed changes are designed to enhance and preserve air quality in the state and are considered consistent with the goal. The proposed rule changes do not appear to conflict with the other goals.

Public comment on any land use issue involved is welcome and may be submitted in the same fashion as indicated for other testimony on these rules.

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

FISCAL AND ECONOMIC IMPACT STATEMENT

Sources affected by these proposed rules are waste incinerators which, as required by OAR 340-20-140, must obtain an Air Contaminant Discharge Permit and comply with the permit conditions and current applicable air quality regulations. As a result, sources are already subject to the costs of control and compliance for incinerator emissions. The proposed rules may significantly increase these costs by requiring new and existing sources to utilize additional particulate and gaseous pollution control equipment (scrubbers, baghouses, ESP's), auxiliary burners, and install continuous monitoring equipment systems (CEMS) in order to meet tighter particulate emission levels than current standards, and meet more stringent standards for HCl, SO_2, and CO, as well as operation and performance testing requirements. Existing sources will be given up to five years to retrofit with the necessary equipment. Estimates of the additional pollution control costs for new and existing incinerators vary from 50 to 500 percent, depending on the type and size of incinerator and the equipment needed to meet the proposed emission levels. Additional costs could be incurred in providing operator training if sources are to ensure that proper startup, operation and shutdown procedures are followed in order to minimize emissions.

PLAN\AR1423

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

NOTICE OF PUBLIC HEARING

Hearing Date: December 13 and 15, 1989
Comments Due: December 19, 1989

WHO IS AFFECTED: Any municipal or infectious waste incinerator facility subject to requirements and provisions of an Air Contaminant Discharge Permit in Oregon.

WHAT IS PROPOSED: The Department of Environmental Quality is proposing new waste incinerator rules OAR 340-25-850 to 885.

WHAT ARE THE HIGHLIGHTS: The Department is proposing new waste incinerator rules which will serve to better protect the public from particulates, acid gases, and toxics, provide a uniform basis for evaluating proposed installations and comparative risks, and provide uniform performance standards for both incineration equipment and monitoring systems, and allow existing installations up to five years to comply.

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 Brian R. Finneran at (503) 229-6278.

Public hearings will be held before a hearings officer at:

10:00 AM
Wednesday, December 13, 1989
Rm 4A, 4th Fl, Executive Bldg.
Dept. of Environmental Quality
811 SW 6th Ave
Portland, OR 97204

10:00 AM
Friday, December 15, 1989

Oral and written comments will be accepted at the public hearings. Written comments may be sent to the DEQ, but must be received by no later than Tuesday, December 19, 1989.

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.

WHAT IS THE NEXT STEP:

After the public hearings, 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 January 11, 1990 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.

PLAN\AR1424

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: October 20, 1989
Agenda Item: T
Division: Haz. & Solid Waste
Section: Solid Waste

SUBJECT:

Special Waste Regulation -- Request for authorization to conduct public hearing on proposed rules addressing disposal of cleanup materials contaminated by hazardous substances; amendments to fee schedule.

PURPOSE:

The proposed new regulation establishes standards for the permitting of solid waste landfills to receive cleanup materials which are contaminated by hazardous substances, and establishes a permit fee to fund the Department of Environmental Quality (Department, DEQ) implementation of the new permitting requirements.

ACTION REQUESTED:

___ Work Session Discussion
- ___ General Program Background
- ___ Potential Strategy, Policy, or Rules
- ___ Agenda Item ___ for Current Meeting
- ___ Other: (specify)

_x_ Authorize Rulemaking Hearing

Proposed Rules	Attachment A
Statement of Need for Rulemaking	Attachment B
Fiscal and Economic Impact Statement	Attachment C
Public Notice	Attachment D

___ Adopt Rules

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

___ Issue a Contested Case Order
___ Approve a Stipulated Order
___ Enter an Order
Proposed Order Attachment ___

___ Approve Department Recommendation
___ Variance Request Attachment ___
___ Exception to Rule Attachment ___
___ Informational Report Attachment ___
___ Other: (specify) Attachment ___

DESCRIPTION OF REQUESTED ACTION:

A hearing authorization is requested to receive comment on 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 standards for permitting solid waste landfills to receive cleanup materials contaminated by hazardous substances (new OAR 340-61-061(1));

2. establish a new permit fee to fund implementation of the new permitting criteria for disposal of contaminated cleanup materials (new OAR 340-61-120(i));

3. restructure OAR 340-61-060 into two sections to separately address rules for (a) wastes which require specific management controls because of their hazardous constituents (new special waste section, OAR 340-61-061) and (b) wastes which do not contain hazardous constituents but have other characteristics warranting unique rules (existing specified waste section, OAR 340-61-060).

4. update existing provisions in OAR 340, Division 61, regulating disposal of waste tires and hazardous solid wastes, to make them consistent with changes in related statutes, ORS 459.705 (Waste Tires) and ORS 466.005 (Hazardous Waste).

AUTHORITY/NEED FOR ACTION:

___ Required by Statute: _____ Attachment ___
Enactment Date: _____

_x_ Statutory Authority: ORS 459.045(1) and (3); 459.235(2); 468.065 Attachment ___

___ Pursuant to Rule: _____ Attachment ___

___ Pursuant to Federal Law/Rule: _____ Attachment ___

___ Other: Attachment ___

___ Time Constraints: (explain)

DEVELOPMENTAL BACKGROUND:

___ Advisory Committee Report/Recommendation Attachment ___

___ Hearing Officer's Report/Recommendations Attachment ___

___ Response to Testimony/Comments Attachment ___

___ Prior EQC Agenda Items: (list) Attachment ___

___ Other Related Reports/Rules/Statutes: Attachment ___

_X_ Supplemental Background Information Attachment ___

Municipal Landfills with Liners and Leachate Collection Systems Attachment E

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

Owners and operators of land disposal facilities, generators of contaminated cleanup materials, and local and state governments may be affected by the proposed regulation.

1. Fiscal and Economic Impacts are anticipated. See Fiscal and Economic Impact Statement, Attachment C.

2. Only two solid waste landfills in the state, the Oregon Waste Systems regional landfill in Gilliam County, and the Coffin Butte Landfill in Benton County, presently have liner and leachate collection systems which meet the performance standards in the proposed regulation. A few other facilities have liner and leachate collection systems either proposed or under construction that probably could be permitted for disposal of some cleanup materials under the proposed rule. Landfills with liners and leachate collection systems are identified in Attachment E. (Even if facilities are authorized to accept cleanup materials, operators may elect not to.)

New municipal solid waste landfills and expansion of existing landfills will be required to meet new design standards that approach or exceed those standards proposed for special wastes, so that capacity is expected to increase over time. The proposed special waste standards do not become effective until September of 1990, allowing time for development of new capacity and alternatives for management of cleanup materials. The Department intends to research existing information regarding these alternatives and technical guidelines for their applications during this interim.

Nevertheless, at least in the near term, disposal facilities may not be available in all geographic areas of the state for some of the cleanup materials generated in those areas. Limited availability of land disposal alternatives may be an issue for some local governments and generators, as well as landfill owners or operators denied authority to accept certain wastes.

3. Owners and operators of landfills are becoming more aware of the environmental risks and potential liabilities associated with disposal of wastes containing hazardous constituents, and are imposing their own restrictions on the types of wastes accepted for disposal. Only a limited number of landfill operators currently accept cleanup materials containing hazardous substances for disposal. Part of the intent of the proposed rule is to identify "special wastes" as a separate category of waste, enabling landfill operators to charge additional disposal fees to cover the added risk of increased liability.

The Solid Waste Advisory Committee has actively participated in the development of the proposed rule, and has discussed the issue of "special wastes" over a period of six months. Over that period, the Department has shaped and revised the proposed rules to reflect a number of recommendations from the Advisory Committee. The Advisory Committee has recommended that the Commission adopt a rule on special wastes which:

- creates a category of "special wastes" which would fall somewhere between "municipal solid waste" and "hazardous waste" with respect to environmental risk. This category should be kept separate from "specified wastes" or "select wastes," which are perceived to create less environmental risk than municipal solid waste.

- o focuses initially on criteria for disposal of cleanup materials contaminated by hazardous substances, with other wastes to be added to the list of "special wastes" as necessary.

- o defines waste categories to be included as "special wastes" by source, rather than by numerical thresholds or separate risk analysis. This definition is seen as simpler and allows the rule to be adopted without lengthy delays.

- o promotes development of treatment and waste reduction alternatives.

- o establishes minimum criteria for landfills accepting these wastes, to include composite liners and leachate collection.

- o allows the Department to grant a variance from the design criteria when total concentration of hazardous substances either does not exceed cleanup standards approved by the Department, or does not present a threat to public health at the disposal facilities.

- o establishes a fee schedule for landfills accepting special wastes that would provide enough funding to pay for a full-time staff person to implement special waste regulations state-wide.

Some owners and operators in the state may differ, however, with respect to the appropriateness of the standards proposed in the draft regulation, particularly regarding: a) stringency vis-a-vis the risks posed by the contaminated cleanup materials; (b) adaptability to the varying geographic and demographic regions of the state; and (c) effect on the availability of cost-effective disposal options for all regions of the state.

In addition, some owners or operators may object to the additional recordkeeping and reporting requirements included in the regulation.

4. The generators of cleanup materials (e.g., public and private entities responsible for Superfund, leaking underground storage tank or drug lab cleanups) would potentially pay higher costs for disposal of contaminated materials under this regulation and might

object to the stringency of the proposed standards or the fee, both of which may contribute to disposal cost increases.

On the other hand, many generators, along with the general public, which ultimately bears much of these cleanup costs, may support more stringent landfill permitting requirements as one step toward lessening their liability for future costs of cleanup at landfills.

PROGRAM CONSIDERATIONS:

1. The Department estimates that the equivalent of one full time professional technical staff person (1 FTE) will be needed during the first and subsequent fiscal years to complete required permit actions on applications to landfill contaminated cleanup materials in accordance with the new standards.

   The number of applications for disposal of cleanup wastes is expected to continue to increase over the next few years (with or without the proposed standards) as the Department's cleanup programs progress.

   The proposed fee schedule is designed to raise approximately $65,000 per year to fund the 1 FTE needed for permitting activities. The fee schedule is based on the resources required to permit various categories of waste volumes, and attempts to spread costs so that after the baseline $250/permit action, costs for disposal do not exceed 50 cents per ton of special wastes in any category.

   The proposed rule establishes standards for permitting only land disposal of cleanup materials. However, the Department also expects an increase in permit applications for solid waste facilities to treat contaminated materials prior to or in lieu of land disposal. ("Solid waste disposal facility" is defined broadly in ORS 459.005 to subject virtually all management of solid wastes to the Department's solid waste permitting requirements, except as specifically exempted.) Additional staff will also be needed to process permit applications for these treatment facilities and to develop guidelines for permitting.

2. The proposed rule addresses one category of wastes (contaminated cleanup materials) which because of their hazardous constituents require additional management standards. The Department and the Solid Waste Advisory

Committee have identified other waste streams which similarly require more stringent regulation. Examples include asbestos, municipal solid waste incinerator ash, infectious wastes, hazardous wastes generated by conditionally exempt small quantity generators, and industrial waste streams containing hazardous substances. The Department will evaluate with the Solid Waste Advisory Committee, amendment of the rule to include these additional categories of special wastes.

3. The Department does not have extensive data on the types, quantities, characteristics, or behavior of the contaminated cleanup materials that have been or will be disposed of in solid waste landfills in Oregon, or the potential risks those materials pose in these landfills. The permitting standards proposed in the draft regulation are supported by more general evidence that releases of hazardous substances from improper disposal may present a significant threat to public health and the environment. (In fact, hazardous substances have been found in leachate from municipal solid waste landfills in Oregon, and releases from these facilities have required remedial action. Nationwide, a number of landfills have been placed on EPA's National Priorities List for Superfund cleanup.)

   The limited availability of specific information on the problems associated with landfilling of contaminated cleanup materials was an important factor in the Department's determination of the type of standard to propose. Moreover, any standards adopted may need to be revised as more information is developed on the management of cleanup materials. The recordkeeping and reporting requirements in the proposed regulation will provide some of this additional information.

4. Cleanup actions undertaken pursuant to various programs within the Department will generate many, although not all, of the cleanup materials that are addressed by the proposed regulation. Standards for land disposal of these cleanup materials will help ensure that the final disposal of cleanup materials is appropriately considered during the evaluation of remedial action alternatives prior to cleanup.

5. If approved by the Commission, the Department will present proposed amendments to the permitting fee schedule to the Executive Department for review and to the Emergency Board for approval at its December meeting. Prior approval of the Emergency Board is necessary for the Commission to adopt the proposed fees. ORS 459.235(2).

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Submit for public comment the draft regulation proposing to establish minimum criteria for permitting the land disposal of cleanup materials contaminated by hazardous substances, and to create permit fees to fund Department permit actions to implement the new standards.

   The draft regulation follows the recommendation of the Solid Waste Advisory Committee and provides initial standards for permitting the disposal of contaminated cleanup materials, and funding to implement those standards. The proposed standards are consistent with information available on the environmental risks these wastes pose in landfills. The specific landfill performance standards are consistent with industry standards for new landfills. The regulation does not address criteria for permitting facilities to treat cleanup materials, nor does it require treatment to reduce volume, toxicity, or mobility of wastes prior to land disposal. However, more stringent regulation of land disposal is expected to help stimulate demand and availability of treatment alternatives.

2. Submit for public comment a regulation which establishes maximum concentration levels for specific hazardous constituents that would be allowed in solid waste landfills. This approach would be adopted in lieu of or in conjunction with minimum performance standards for landfills, Alternative 1.

   Defining allowable concentration levels for identified hazardous substances might provide more specific guidance to the regulated community and the Department in permitting landfills. However, considerable additional technical resources would be required to establish and update an appropriate list of regulated substances and corresponding concentration levels allowable in various landfills, particularly if synergistic effects were considered. Existing standards developed for other purposes (e.g., drinking water standards) might provide guidance, but could not be routinely incorporated. The resulting regulation would probably also be more complex for the regulated community.

3. Request the Department to draft for public comment a regulation which requires treatment to reduce volume, toxicity, or mobility of hazardous substances as a prerequisite to land disposal. This approach could be adopted in conjunction with Alternative 1 or Alternative 2.

Such a requirement supports the policies of the Department, as set forth in ORS 459.015, which give preference to waste reduction alternatives over land disposal. However, treatment alternatives may not be available. In addition, establishing minimum but meaningful and enforceable treatment standards for the variety of cleanup materials generated requires considerable technical support.

4. Refer the regulation proposed in Alternative 1 back to the Department for adoption as a guideline, rather than a regulation. Postpone any regulatory changes until standards are developed for the additional categories of special wastes such as incinerator ash, industrial, medical, etc.

   Delaying the adoption of standards for permitting landfills to accept contaminated cleanup materials consolidates rulemaking. However, this option also postpones clear direction to the regulated communities regarding their disposal alternatives for cleanup materials and leaves the Department without regulatory standards to support its permit actions. This Alternative does not provide resources to fund the Department's permitting activities for disposal of cleanup materials, or development of standards for the other categories of special wastes.

5. Propose Alternative 1 (or Alternatives 2-4) for public comment without the permit fees.

   The resulting regulation establishes performance standards for permitting disposal of cleanup materials in landfills, but does not fund the Department to implement these new standards or to address other categories of special wastes.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends Alternative 1. This alternative provides needed standards for permitting land disposal of contaminated cleanup materials consistent with available information regarding the risks associated with such disposal. It also provides resources to support required permit actions to implement these standards and to develop criteria for permitting treatment of cleanup materials and, more broadly, solid waste management of other categories of wastes containing hazardous constituents.

Alternatives 2 and 3 both require extensive technical resources to implement. Development of allowable concentration levels (Alternative 2) appears to be

impractical. Imposing minimum treatment requirements (Alternative 3) is premature, pending development of more treatment alternatives and guidelines for permitting treatment facilities. Alternative 4 would not provide the needed regulatory support, and neither Alternative 4 nor 5 would fund the Department's permit actions.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The proposed regulation and rule changes are consistent with Agency and legislative policy. Specifically, the proposed rules support policy goals to establish minimum performance standards necessary for environmentally sound solid waste management. They also support policy decisions supporting the hazardous waste and environmental cleanup programs that in most instances, hazardous substances pose less risk to public health or the environment if concentrated in one location for management rather than spread throughout the environment in many locations.

ISSUES FOR COMMISSION TO RESOLVE:

1. Do the permitting standards incorporated in the draft regulation proposed (Alternative 1, Department recommendation) appropriately address the risks associated with land disposal of contaminated cleanup materials?

   The Department believes the standards are necessary and are supported by available information regarding the risks associated with land disposal of materials containing hazardous substances and recommends that public comment be sought on the standards as proposed.

2. Should fees be assessed on permit applications for disposal of contaminated cleanup materials (Alternative 1, Department recommendation) or should standards be adopted without such fees (Alternative 5)?

   The Department recommends that public comment be sought on the proposal to establish permit fees as well as the proposed standards. The Department believes that permit fees are critical to the successful permitting of cleanup materials.

INTENDED FOLLOWUP ACTIONS:

Publish notice of intent to conduct a hearing in the Secretary of State's Bulletin and in newspapers of general circulation in Oregon in mid-November. Mail the notice to known interested persons.

Conduct a public hearing in Bend, Medford, and Portland on December 5, 6, and 7, respectively; accept public comment through December 15, 1989.

Submit the proposed rule to the Executive Department for review during the public comment period and submit the proposed fee schedule, as required by the 1989 Legislature, to the Emergency Board for approval at its December meeting.

Prepare a hearings officer's report for final rule adoption by the Commission at its February meeting.

Approved:

Section: Steve Greenwood

Division: Steve Greenwood for Stephanie Hallock

Director: Fred Hansen

Report Prepared By: Loretta Pickerell

Phone: 229-6790

Date Prepared: October 4, 1989

LP:b
SW\SB8951
October 4, 1989

Attachment A
Agenda Item: T
Meeting Date: October 20, 1989

Before the Environmental Quality Commission of the State of Oregon

In the Matter of Amending OAR 340, Division 61	)))	Proposed Amendments

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

1. Rule OAR 340-61-060 is proposed to be amended as follows:

General Rules Pertaining to Specified Wastes

340-61-060 (1) Agricultural Wastes. Residues from agricultural practices shall be recycled, utilized for productive purposes or disposed of in a manner not to cause vector creation or sustenance, air or water pollution, public health hazards, odors, or nuisance conditions.

[(2) Hazardous Solid Wastes. No hazardous solid waste shall be deposited at any disposal site without prior written approval of the Department or state or local health department having jurisdiction.]

Comment: Hazardous wastes addressed in new Special Waste Section OAR 340-61-061(2).

[(3)]2 Waste Vehicle Tires:

[(a) Open Dumping. Disposal of loose waste tires by open dumping into ravines, canyons, gullies, and trenches, is prohibited;

(b) Tire Landfill. Bulk quantities of tires which are disposed by landfilling and which are not incorporated with other wastes in a general landfill, must be baled, chipped, split, stacked by hand ricking or otherwise handled in a manner provided for by an operational plan submitted to and approved by the Department;

(c) General Landfill. Bulk quantities of tires if incorporated in a general landfill with other wastes, shall be placed on the ground surface on the bottom of the fill and covered with earth before other wastes are placed over them.]

Waste tires shall be managed in accordance with ORS 459.705 through 459.790, and applicable regulations.

Comment: Provision updated to be consistent with new Waste Tires statute.

[(4) Waste Oils. Large quantities of waste oils, greases, oil sludges, or oil soaked wastes shall not be placed in any disposal site

unless special provisions for handling and other special precautions are included in the approved plans and specifications and operational plan to prevent fires and pollution of surface or groundwaters.]

Comment: Moved to new Special Waste section OAR 340-61-061(4).

[(5)]3 Demolition Materials. Due to the unusually combustible nature of demolition materials, demolition landfills or landfills incorporating large quantities of combustible materials shall be cross-sectioned into cells by earth dikes sufficient to prevent the spread of fire between cells, in accordance with engineering plans required by these rules. Equipment shall be provided of sufficient size and design to densely compact the material to be included in the landfill.

[(6) Hazardous Wastes from Other States. Wastes which are hazardous under the law of the state of origin shall not be managed at a solid waste disposal site when transported to Oregon. Such wastes may be managed at a hazardous waste facility in Oregon if the facility is authorized to accept the wastes pursuant to ORS 466.005 et seq. and applicable regulations.]

Comment: Moved to new Special Waste section OAR 340-61-061(3).

2. Rule OAR 340-61-010 is proposed to be amended as follows:.

340-61-010(21) ["Hazardous Waste" means discarded, useless or unwanted materials or residues in solid, liquid or gaseous state and their empty containers which are classified as hazardous pursuant to ORS 459.410.] "Hazardous waste" means discarded, useless or unwanted materials or residues and other wastes which are defined as hazardous waste pursuant to ORS 466.005.

Comment: Definition updated to be consistent with current Hazardous Waste statute:

340-61-010(49) "Cleanup materials contaminated by hazardous substances" means contaminated materials from the cleanup of releases of hazardous substances into the environment.

340-61-010(50) "Hazardous substance" means any substance defined as a hazardous substance pursuant to section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601 et seq.; oil, as defined in ORS 466.540; and any substance designated by the Commission under ORS 466.553.

340-61-010(51) "Release" has the meaning given in ORS 466.540(14).

3. Rule OAR 340-61-061 is proposed to be added as follows:

Rules pertaining to Special Wastes.

340-61-061 (1) Cleanup materials contaminated by hazardous substances.

(a) The land and facilities used for disposal, treatment or other handling or transfer of, or use or other resource recovery from cleanup materials contaminated by hazardous substances are defined as a disposal site under ORS 459.005 and are subject to the requirements of these rules, including permit requirements, and other applicable Department regulations.

(b) After September 1, 1990, cleanup materials contaminated by hazardous substances may not be landfilled except in accordance with a permit issued pursuant to these rules which specifically authorizes disposal of such materials.

(c) The Department may authorize an owner or operator of a landfill to receive cleanup materials contaminated by hazardous substances for disposal after September 1, 1990, if the following criteria are met:

(i) The disposal facility has a liner system which performs equivalent to a composite liner consisting of a geomembrane component and two feet of soil achieving a maximum saturated hydraulic conductivity of 1×10^{-6} centimeters per second;

(ii) The facility has a blanket leachate collection system;

(iii) The facility is in compliance with the operating requirements of the permit;

(iv) A waste management plan for the facility is approved by the Department which specifically addresses the management of the cleanup materials and requires, at a minimum, the following practices:

(a) The owner or operator of the landfill maintains for the facility a copy of the analytical results of one or more representative composite samples from the contaminated materials received for disposal;

(b) The owner or operator maintains for the facility a record of the source, types, volumes, treatment prior to disposal, and disposal location of the contaminated materials received for disposal, and reports the sources, types, and volumes received to the Department in a monthly or quarterly waste report;

(c) Contaminated cleanup materials are treated to eliminate free liquids; and

(d) Contaminated soils, except sludges, are incorporated into the interim cover material for disposal unless such practice would increase risks to public health or the environment; and

(v) Any other requirements which the Department determines are necessary to protect public health and the environment.

(d) The Department may authorize an owner or operator of a landfill to receive cleanup materials contaminated by hazardous substances for disposal after September 1, 1990, at a facility which does not meet the performance criteria in subparagraph (c)(i)-(c)(iii) of this subsection if:

(i) the cleanup materials contain concentrations of hazardous substances which do not exceed the cleanup levels approved by the Department for the site from which the materials were removed; or

(ii) the Department determines that the total concentrations and the hazardous characteristics of the hazardous substances in the cleanup materials will not present a threat to public health or the environment at the disposal facility, after considering the following factors:

(a) the compatibility of the contaminated materials with the volumes and characteristics of other wastes in the landfill;

(b) the adequacy of barriers to prevent release of hazardous constituents to the environment, including air, ground and surface water, soils, and direct contact;

(c) the populations or sensitive areas, such as aquifers, wetlands, or endangered species, potentially threatened by release of the hazardous substances;

(d) the demonstrated ability of the owner or operator of the facility to properly manage the wastes;

(e) relevant state and federal policies, guidelines and standards; and

(f) the availability of treatment and disposal alternatives.

(2) Hazardous Wastes. Wastes defined as hazardous wastes must be managed in accordance with ORS 466.005 et seq. and applicable regulations.

(3) Hazardous Wastes from Other States. Wastes which are hazardous under the law of the state of origin shall not be managed at a solid waste disposal site when transported to Oregon. Such wastes may be managed at a hazardous waste facility in Oregon if the facility is authorized to accept the wastes pursuant to ORS 466.005 et seq. and applicable regulations.

Comment: Moved from Specified Waste section, OAR 340-61-060(6).

(4) Waste Oils. Large quantities of waste oils, greases, oil sludges, or oil soaked wastes shall not be placed in any disposal site unless special provisions for handling and other special precautions are included in the approved plans and specifications and operational plan to prevent fires and pollution of surface or groundwaters.

Comment: Moved from Specified Waste section, OAR 340-61-060(4).

4. Revise OAR 340-61-120 to add new subparagraph (2)(i).

Permit Fee Schedule
340-61-120.

(2) Application Processing Fee. An application processing fee varying between $50 and $2,000 shall be submitted with each application. The amount of the fee shall depend on the type of facility and the required action as follows:

(a) A new facility (including substantial expansion of an existing facility):
(A) Major facility[1] $2,000
(B) Intermediate facility[2] $1,000
(C) Minor facility[3] .....$ 300

(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 .....
(B) Intermediate facility .....
(C) Minor facility .....$ 125

(d) Permit renewal (without significant changes):
(A) Major facility .....$ 250
(B) Intermediate facility .....$ 150
(C) Minor facility .....$ 100

(e) Permit modification (including new operational plan, closure plan or improvements:
(A) Major facility .....$ 500
(B) Intermediate facility .....$ 250
(C) Minor facility .....$ 100

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

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

(h) Letter authorizations, new or renewal .....$ 100

(i) Special waste authorization (Any permit or plan review application which seeks new, renewed, or significant modification in authorization to landfill cleanup materials contaminated by hazardous substances):

(A) Authorization to receive 100,000 tons or more of designated cleanup up waste per year: $ 50,000;

(B) Authorization to receive at least 50,000 but less than 100,000 tons of designated cleanup material per year: $ 25,000;

(C) Authorization to receive at least 25,000 but less than 50,000 tons of designated cleanup material per year: $ 12,500;

(D) Authorization to receive at least 10,000 but less than 25,000 tons of designated cleanup material per year: $ 5,000;

(E) Authorization to receive at least 5,000 but less than 10,000 tons of designated cleanup material per year: $ 2,500;

(F) Authorization to receive at least 1,000 but less than 5,000 tons of designated cleanup material per year: $ 500.

(G) Authorization to receive less than 1,000 tons of designated cleanup material per year: $ 250.

ATTACHMENT B

Agenda Item T, October 20, 1989 EQC Meeting.

STATEMENT OF NEED FOR RULEMAKING

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

(1) Legal Authority

ORS 459.045(1) and (3) require the Commission to adopt reasonable and necessary rules governing the management of solid wastes to prevent pollution of the air, ground and surface waters. The Commission is authorized specifically to establish design and operational standards for land disposal facilities and to define "wastes" subject to solid waste regulation.

ORS 459.235(2) and ORS 468.065 authorize the Commission to establish solid waste permit fees, subject to review of the Executive Department and prior approval of the appropriate legislative review body.

(2) Need for the Rule

a) Disposal standards:

Hazardous substances are a group of substances (primarily chemicals) designated pursuant to the major federal environmental statutes and the Oregon Environmental Cleanup Law, ORS 466.547, as presenting a significant threat to public health and the environment if released into the environment. These environmental statutes provide authorities and processes for identifying and cleaning up releases of hazardous substances.

Oregon's solid waste statute and regulations allow materials from cleanup actions which are contaminated by hazardous substances but are not defined as "hazardous wastes" subject to hazardous waste management authorities to be disposed of in any solid waste disposal facility which is permitted by the Department to accept such wastes. These regulations broadly require that such permits include operational plans for the facility which specifically address these hazardous materials, and prohibit the release of any substance from a facility which would degrade the environment. However, the regulations do not provide any specific criteria for

determining when disposal of hazardous substances may be authorized.

The development of the Department's environmental cleanup programs (e.g., its state "Superfund", leaking underground storage tank, and drug lab cleanup programs) has created an increasing demand on the Department for information and action on requests to dispose of contaminated cleanup material in solid waste landfills. Standards for permitting the disposal of these materials in solid waste landfills are needed to support the Department's decisionmaking and to guide the public in planning cleanup actions. The proposed rule would provide these standards.

b) Fees:

The Department estimates that the equivalent of one full time professional technical staff person (1 FTE) would be needed during the initial and subsequent fiscal years to complete required permit actions on applications to landfill contaminated cleanup materials in accordance with the new standards. The proposed rule would establish a permit fee to fund the additional FTE.

c) Restructuring of regulation:

The existing "General Rules for Specified Wastes" section in the solid waste regulations, OAR 340-61-060, addresses both (a) categories of wastes which require additional management controls because they contain hazardous constituents and (b) categories of wastes which do not contain hazardous constituents but require specific management controls to address other characteristics. Combining these two distinct, hazardous vs. nonhazardous categories of waste streams in the same section in the rule may be confusing or misleading to the public. The proposed rule changes would establish a separate section for each of these categories of wastes.

d) Updating the regulation:

The Waste Tire statute, ORS 459.705 et seq., has been enacted and the definition of "hazardous waste" in ORS 466.005 has been revised since the adoption of OAR 340-61-060. OAR 340-61-060 needs to be updated to be consistent with relevant provisions of these statutes. The proposed rule would make the changes needed.

Principal Documents Relied Upon

ORS 459.045, 459.235(2), and 466.547 et seq.

determining when disposal of hazardous substances may be authorized.

The development of the Department's environmental cleanup programs (e.g., its state "Superfund", leaking underground storage tank, and drug lab cleanup programs) has created an increasing demand on the Department for information and action on requests to dispose of contaminated cleanup material in solid waste landfills. Standards for permitting the disposal of these materials in solid waste landfills are needed to support the Department's decisionmaking and to guide the public in planning cleanup actions. The proposed rule would provide these standards.

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The Department estimates that the equivalent of one full time professional technical staff person (1 FTE) would be needed during the initial and subsequent fiscal years to complete required permit actions on applications to landfill contaminated cleanup materials in accordance with the new standards. The proposed rule would establish a permit fee to fund the additional FTE.

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The existing "General Rules for Specified Wastes" section in the solid waste regulations, OAR 340-61-060, addresses both (a) categories of wastes which require additional management controls because they contain hazardous constituents and (b) categories of wastes which do not contain hazardous constituents but require specific management controls to address other characteristics. Combining these two distinct, hazardous vs. nonhazardous categories of waste streams in the same section in the rule may be confusing or misleading to the public. The proposed rule changes would establish a separate section for each of these categories of wastes.

d) Updating the regulation:

The Waste Tire statute, ORS 459.705 et seq., has been enacted and the definition of "hazardous waste" in ORS 466.005 has been revised since the adoption of OAR 340-61-060. OAR 340-61-060 needs to be updated to be consistent with relevant provisions of these statutes. The proposed rule would make the changes needed.

Principal Documents Relied Upon

ORS 459.045, 459.235(2), and 466.547 et seq.

Federal Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq., and legislative history.

Solid Waste files, Oregon Waste Systems permit file re: landfill performance standards.

LAND USE COMPATIBILITY STATEMENT

Land Use Consistency

The Department has concluded that the proposal conforms with the Statewide Planning Goals and Guidelines.

Goal 6 (Air, Water and Land Resources Quality): This proposed rule is designed to protect surface and groundwater quality in the affected are and is consistent with this Goal.

Goal 11 (Public Facilities and Services): This proposed rule would allow for solid waste disposable in an environmentally sound manner and is consistent with this Goal.

This 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 same manner as indicated for testimony in this notice.

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.

ATTACHMENT C

FISCAL AND ECONOMIC IMPACT STATEMENT

I. Introduction:

Proposed Actions:

Oregon's solid waste statute and regulations (ORS 459.005 et seq. and OAR 340, Division 61) allow materials from cleanup actions which are contaminated by hazardous substances but are not defined as "hazardous wastes" subject to hazardous waste management authorities to be disposed of in any solid waste disposal facility which is permitted by the Department to accept such wastes. Current regulations broadly require that such permits include operational plans for the facility which specifically address these hazardous materials, and prohibit the release of any substance from a facility which would degrade the environment. However, the current regulations do not presently provide any specific criteria for determining when disposal of hazardous substances may be authorized.

The proposed rules establish standards for permitting disposal of cleanup materials and create a permit fee to fund the Department's implementation of the proposed standards. With respect to some landfills, these standards may be more restrictive than those the Department might presently impose. The fee would be assessed on applicants for new, renewed, or modified permit authorization to receive contaminated cleanup materials for disposal in a solid waste landfill.

Overall Economic Impacts:

Owners and operators of landfills are imposing their own restriction on the types of wastes accepted for disposal. Only a limited number of operators currently do or are likely in the future to accept cleanup materials contaminated by hazardous substances for disposal. Nevertheless, the new permitting standards may limit the ability of some of these owners or operators to accept contaminated cleanup materials for disposal at some landfills in the state which otherwise would have received such wastes, or may require additional investment to upgrade facilities.

A reduction in the availability of landfills to accept cleanup materials may result in increased costs for cleanup and disposal of these materials. Some wastes will need to be transported further for disposal at increased transportation costs. In addition, landfills that can accept the wastes may, in some instances, charge more for disposal. Restrictions on landfilling may also result in a shift toward treatment of cleanup materials prior to or in lieu of disposal, possibly with higher net cleanup costs.

The permit fee would increase costs of disposal at most 50 cents per ton of cleanup materials. In most instances, owners or operators would pass the fee onto generators of cleanup materials or, more broadly, to all landfill users as part of their charges for disposal.

The recordkeeping and reporting requirements in the proposed regulation are not expected to require significant additional resources.

II. General Public:

To the extent that the general public is financially responsible (directly or through fees and taxes) for the costs of cleanup of releases of hazardous substances, the economic impacts described above would affect the general public.

III. Small Business:

Small businesses would be affected in the same way as the general public. Small businesses with major liability for cleanup costs could be significantly impacted.

Few small businesses are expected to own or operate landfills which currently do or will in the future accept contaminated cleanup materials for disposal.

IV. Large Business:

Large businesses would also be affected in the same way as the general public. In addition, a few landfill owners or operators which would otherwise accept contaminated cleanup materials for disposal may not be authorized to do so under the proposed permitting standards.

V. Local Governments:

Local governments would be affected in the same way as the general public and as large businesses which own or operate landfills.

VI. Other State Agencies:

Other state agencies would be affected in the same way as the general public if responsible for the costs of cleanup of hazardous substances.

SW\SK2287

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Attachment D

Proposed Rules Relating to the Solid Waste Management of Contaminated Cleanup Materials

Hearing Dates: December 5, 1989
December 6, 1989
December 7, 1989

Comments Due: December 15, 1989

WHO IS AFFECTED: Owners and operators of solid waste landfills having or seeking permit authorization to dispose of contaminated materials from the cleanup of releases of hazardous substances. Generators and other persons, including public and private entities, responsible for cleanup of releases of hazardous substances.

WHAT IS PROPOSED: The Department proposes to add new administrative rules to establish standards for permitting the solid waste disposal of cleanup materials contaminated by hazardous substances, OAR 340-61-061, and to establish a new permit fee to fund the Department to implement the new standards, OAR 340-61-120(2)(i). The Department also proposes to restructure OAR 340-61-060, governing management of specified wastes, and update this section to be consistent with related statutes.

WHAT ARE THE HIGHLIGHTS: The proposed amendments would:

- o establish standards for permitting solid waste landfills to receive cleanup materials contaminated by hazardous substances for disposal (new OAR 340-61-061(1));
- o establish a new permit fee to fund the Department's implementation of the new criteria for permitting disposal of contaminated cleanup materials (new OAR 340-61-120(i));
- o restructure OAR 340-61-060 into two sections to address separately rules for (a) wastes which require specific management controls because of their hazardous constituents (new special waste section, OAR 340-61-061) and (b) wastes which do not contain hazardous constituents but have other characteristics warranting unique rules (existing specific waste section, OAR 340-61-060).
- o update provisions in OAR 340, Division 61, to make them consistent with changes in related statutes, ORS 459.705 (Waste Tires) and ORS 466.005 (Hazardous Waste).

(over)

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

11/1/86

FOR FURTHER INFORMATION:

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

HOW TO COMMENT:

A public hearing will be held before a hearings officer at:

9:30 a.m.
December 5, 1989
School Administration Building
Room 330
520 NW Wall Street
Bend, OR

9:30 a.m.
December 6, 1989
Jackson Education Service District
Boardroom
101 North Grape
Medford, OR

9:30 a.m.
December 7, 1989
DEQ Headquarters
Conference Room 4A
811 SW Sixth Avenue
Portland, 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., December 15, 1989.

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 NEXT STEP:

The Environmental Quality Commission may adopt new rules identical to the ones proposed, adopt modified rules as a result of testimony received, or may decline to adopt rules. The Commission will consider the proposed new rule and rule revisions at its meeting on February 23, 1990.

SB8951.D

ATTACHMENT E

MUNICIPAL SOLID WASTE LANDFILLS
WITH LINERS AND LEACHATE COLLECTION SYSTEMS

Only two facilities in Oregon presently have liner and leachate collection systems which meet the performance standards proposed in OAR 340-61-061(1)(c). A few other facilities have liner and leachate collection systems that could probably be permitted for disposal of a range of cleanup materials under the proposed permitting standards. These facilities are listed below. Additional new and expanded facilities with liner and leachate collection systems are expected to be proposed over the next few years. The operator of any facilities may refuse to accept cleanup materials.

Facility	County	Comments
Coffin Butte Landfill	Benton	One area complies with proposed performance standards
Oregon Waste Systems	Gilliam	Fully complies with proposed performance standards
Finley Buttes Landfill	Morrow	Proposed, not yet under construction
Hillsboro Landfill	Washington	Proposed expansion area, fall 1990
Riverbend Sanitary Landfill	Yamhill	Proposed expansion area, end of 1990
Woodburn Landfill	Marion	Backup landfill for incinerator bypass material and ash monofill only

SW\SK2286

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: October 20, 1989
Agenda Item: U
Division: HSW
Section: SW/WTP

SUBJECT:

Waste Tire Rules -- Deleting reimbursement eligibility of ocean reefs. Establishing Waste Tire Beneficial Use Storage Permit. Establishing criteria for financial assistance. Allowing use of reimbursement funds in excess of one cent per pound for waste tire recycling Demonstration Projects. Other housekeeping changes in waste tire storage and carrier permitting, reimbursement and cleanup rules.

PURPOSE:

- The purpose of the deletion of ocean reefs made of waste tires from reimbursement eligibility is to comply with legislation passed by the 1989 Legislature.

- The purpose of establishing a Waste Tire Beneficial Use Storage Permit category is to regulate storage of tires which are used for a beneficial purpose, such as tire fences.

- The purpose of establishing criteria for financial assistance to waste tire storage permittees is to incorporate Department guidelines into rule clarifying circumstances under which permittees may be assisted in removing waste tires.

- The purpose of allowing use of reimbursement funds in excess of the one cent per pound for waste tire recycling Demonstrations Projects is to give such projects an additional incentive and to show that recycling uses are feasible.

ACTION REQUESTED:

___ Work Session Discussion
___ General Program Background
___ Potential Strategy, Policy, or Rules

___ Agenda Item ___ for Current Meeting
___ Other: (specify)

_X_ 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:

A public hearing is requested to receive public comment on the proposed rule changes listed above, and on the proposed new rules establishing procedures, storage standards and fees for Waste Tire Beneficial Use Storage Permits. Notice of the public hearing will be mailed to known interested persons, including waste tire permittees, and will be published in newspapers of general circulation in Oregon.

AUTHORITY/NEED FOR ACTION:

_X_	Required by Statute: ORS 459.785; 1989 SB 482	Attachment ___
	Enactment Date: 1987 (HB 2022); 1989	
_X_	Statutory Authority: ORS 459.750, .770, .785	Attachment ___
___	Pursuant to Rule: _____	Attachment ___
___	Pursuant to Federal Law/Rule: _____	Attachment ___
___	Other:	Attachment ___

_X_ Time Constraints: (explain)

- Senate Bill 482 excluding waste tires in ocean reefs from the waste tire reimbursement becomes effective on October 3, 1989. The rule needs to be amended to reflect that change.

- The Department has several applications from persons wanting an exemption from the waste tire storage permit requirement for their "beneficial use" of stored waste tires. These need to be acted on.

- Several waste tire storage permittees have requested financial assistance from the Department to remove waste tires. The Department has recommended approval of some requests to the Commission based on Department guidelines; we would like to adopt the essentials of the guidelines as rule to clarify eligibilities and level of assistance.

DEVELOPMENTAL BACKGROUND:

___	Advisory Committee Report/Recommendation	Attachment ___
___	Hearing Officer's Report/Recommendations	Attachment ___
___	Response to Testimony/Comments	Attachment ___
_X_	Prior EQC Agenda Items:	
	Agenda Item K, 4/14/89 EQC Meeting - Amendments to Permitting Requirements for Waste Tire Storage Sites and Waste Tire Carriers	
	Agenda Item G, 7/8/88 EQC Meeting - Waste Tire Program Permitting Requirements	Attachment ___
___	Other Related Reports/Rules/Statutes:	Attachment ___
_X_	Supplemental Background Information	Attachment ___
	- Guidelines, Financial Assistance	Attachment _E_

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

1. Ocean reef exclusion. No one has applied for a reimbursement for use of waste tires in ocean reefs, although a few persons have expressed interested in this use. Use of tires for reefs in nonocean waters, estuaries and bays is still allowed.

2. Waste Tire Beneficial Use Storage Permit. A number of persons either are using or would like to use waste tires for beneficial purposes such as tire fences, or for holding down tarps. The proposed Beneficial Use Storage Permit has a lower fee schedule than regular storage permits, and more flexible storage standards for these "beneficial uses." Legislative committees have indicated that standard waste tire storage permits should not be required for beneficial uses.

3. Criteria for financial assistance to waste tire storage permittees. The current rule requires all sites receiving financial assistance to rank high in environmental risk and to demonstrate financial hardship. The proposed rule would add the following criteria defining financial hardship for individuals and corporate officers: a household income below 80 percent of the U. S. Department of Housing and Urban Development's (HUD) median area income, and $20,000 in assets.

   The proposed rules would require permittees who are individuals or corporations to spend their own funds up to the threshold; the Department would assist with up to 90 percent (for individuals) or 80 percent (for corporations) of expenses above the threshold. At its September 6, 1989 meeting, the Waste Tire Advisory Committee considered and reached consensus supporting the proposed levels of reimbursement for the several categories of permittee. The Committee felt strongly that all persons should contribute something toward the removal of waste tires from their site. In addition, the statute states that the Department may "assist" a permittee with tire removal. The Department has interpreted that to mean that no person should receive total funding.

   For a permittee which is a municipality, no financial hardship test is proposed. Rather, the Department would pay 80 percent of the cleanup cost if the following special circumstances exist: the tire pile existed before January 1, 1988; and the municipality did not charge to accept the tires for disposal.

4. A higher rate of reimbursement for "demonstration projects" involving waste tire recycling. The rate would be based on the cost difference between using material from waste tires, and using regular materials. The Department recommends that up to $100,000 per demonstration project be allowed at the higher rate. This should encourage recycling projects by providing an extra incentive over the regular reimbursement level of one cent per pound of rubber used from waste tires. For example, the reimbursement could assist a local government with a rubber-modified paving project, which is more expensive than conventional paving.

   The Waste Tire Advisory Committee considered these proposed rule revisions at their September 6, 1989 meeting. The Department's proposed revisions

incorporate all the Committee's recommendations, except the recommendation that demonstration projects be limited to a maximum of $20,000 each. The Department finds that too restrictive, since the purpose of the demonstration project is to add flexibility to the reimbursement to encourage recycling uses of waste tires.

PROGRAM CONSIDERATIONS:

1. Ocean reef exclusion. This meshes well with the Department's rule allowing exclusion of environmentally detrimental uses from the reimbursement.

2. Waste Tire Beneficial Use Storage Permit. The statute provides an exemption to the waste tire storage permit requirement for tire retailers storing under 1,500 tires, and for retreaders storing under 3,000. No other exemptions are foreseen in the statute. However, legislative intent as expressed by various Legislative committees was that persons using tires beneficially, such as for holding down tarps or in a fence, should not have the same requirements as persons simply storing tires. They should, to the extent possible, be relieved from storage and fee requirements.

The statutory definition of "store" is broad: "the placing of waste tires in a manner that does not constitute disposal of the waste tires." The Attorney General has advised us that the definition includes storage of waste tires even when such "storage" may be serving a useful purpose for the person storing tires.

The current rule attempted to meet the legislative intent by establishing a "beneficial use exemption" provision to provide regulation of these uses without requiring a full-blown permit (which would include a $250 application fee, $250 annual compliance fee, and compliance with storage standards which could prevent applicants from using the tires in the way they desire.)

The current rule allows the Department to grant an exemption to the waste tire storage permit requirement for persons storing whole waste tires but using them beneficially "if the applicant can demonstrate to the Department's satisfaction that:

(a) The applicant is using the tires for a permanent useful purpose with a documented economic value; and

(b) The waste tires used in this way will meet state and local government requirements for vector control, health, fire control, safety and other environmental concerns; and

(c) The use otherwise is not in conflict with local ordinances and state and Federal laws and administrative rules." (OAR 340-62-015(7))

Some problems have emerged in administering the current rule. Reviewing applications for beneficial use exemptions has taken more time than expected. The Department has required sign-offs from local governments on land use compatibility and health concerns. We have required applicants to submit sketches and maps showing how tires are being used. We have found it necessary to require certain actions (such as drilling holes in tires for drainage) to address environmental concerns. In many cases we will have to revisit a site to make sure it is not violating the terms of the exemption, and we would take action if it is. In fact, this procedure has been a permitting procedure in all but name. It has become clear that it is more appropriate to handle these uses under permit.

The Department's proposed solution is to establish a Waste Tire Beneficial Use Storage Permit, with a separate fee schedule and separate storage standards. The proposed fee schedule is lower than that for regular waste tire storage permits, which is appropriate since both the initial level of review and especially the annual compliance review will require less staff effort.

Additionally, most applicants are expected to be private citizens who cannot easily afford permit fees, rather than businesses. The regular permit storage standards were designed for large numbers of tires stored in a pile, and are not easily applied to "beneficial uses," which most often have individual configurations requiring variances to the standards. The proposed rule establishes standards applicable to most beneficial uses, and has a section specifically for tire fences.

3. Criteria for financial assistance to waste tire storage permittees. The statute allows use of the Waste Tire Recycling Account to assist a permittee with processing or removal of tires. The Commission must make a finding that special circumstances allow for use of the funds, or that strict compliance with a tire removal date set by the Department would result in "substantial

curtailment or closing of the permittee's business or operation or the bankruptcy of the permittee." (ORS 459.780 (2)(b) and OAR 340-62-150) Existing rules define "special circumstances" of a tire pile as those creating an environmental risk, and state that "financial hardship on the part of the permittee shall be an additional criterion in the Department's determination" of whether financial assistance for cleanup is warranted.

The Department developed guidelines to ensure equitable evaluation of a permittee's ability to pay for cleanup without causing "substantial curtailment" of the permittee's business or operation (Attachment E). The Attorney General advised us that the Department could give financial assistance on the basis of the statute and the existing rule. However, providing financial assistance is a public benefit, and the public needs to know the basis for granting or denying aid. The issue is to what extent details laid out in the guidelines should be adopted in rule. Adopting very detailed rules could limit the Department's ability to deal with unforeseen special circumstances as they arise. The Department proposes to adopt major points of the guidelines as rule.

No financial hardship criterion is proposed for municipalities on the advice of the Attorney General; rather, special circumstances are defined under which partial financial assistance to a municipality would be appropriate.

4. A higher rate of reimbursement for "demonstration projects" involving waste tire recycling. A reimbursement rate of one cent per pound was established by rule on November 8, 1988, for persons using rubber from waste tires. So far the reimbursement program has not substantially increased the use of waste tires, and 94 percent of the $121,000 in reimbursement funds distributed has been for energy recovery.

The one cent per pound constitutes a substantial subsidy for energy-recovery uses. However, for other uses one cent per pound is not high enough to overcome such barriers as concerns about product reliability and lack of experience with the use. In order to encourage uses which are considered higher in the Solid Waste hierarchy, such as road paving, the Department would

like the authority to provide a higher reimbursement rate for rubber recycling demonstration projects.

A limit of $100,000 per project would be set for such projects. The level of reimbursement would be based on the difference in cost between using rubber from waste tires and the cost of standard materials. It might differ from project to project, but the Department would not approve a rate which exceeded the state median cost of tire disposal ($1 per tire, or about five cents per gross pound). If the per-project limit were spent on one paving project using rubber-modified asphalt concrete, and if the Department offered five cents per pound of recycled rubber used, 14 miles of two-lane highway could be paved using the rubber from 165,000 tires. A demonstration project would be unlikely to involve more than 10 miles of paving.

A demonstration project would have to occur within the State. It would have to demonstrate a use of waste tires which does not yet have an established market in Oregon. The Department would allow one demonstration project per "use." However, if varying climatic or other conditions were a major concern in demonstrating the feasibility of the use, demonstration projects for one "use" might be approved in various geographic areas of the state, or where different conditions (such as traffic levels) prevail. No more than one project per applicant would be considered, unless the second project were for a different use.

This higher reimbursement rate should not pose a problem with respect to availability of funds for other purposes. The Department currently has about $1.5 million available for reimbursement and tire pile cleanups, and we expect that amount to grow to about $2.1 million by June 30, 1990.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Request public hearings to take testimony on the draft rules as proposed in Attachment A, including:

   a. Exclusion of waste tires in ocean reefs from reimbursement eligibility.

   b. Establishing a waste tire beneficial use storage permit.

c. Establishing general criteria for financial assistance to waste tire storage permittees.

d. Allowing increased rate of reimbursement for demonstration projects recycling tires.

2. Two other alternatives were considered to deal with "beneficial uses" of waste tires:

a. Modify the draft rule to exclude "beneficial uses" of waste tires from the definition of tire "storage," thus excluding them from Department regulation.

b. Modify the draft rule to remove the Beneficial Use Storage Permit option, and require all persons storing tires, even if they are used for a beneficial purpose, to obtain a "second-stage" waste tire storage permit.

4. One other alternative was considered for handling financial assistance for permittees: modify the draft rule to exclude specific references to criteria used to determine "financial hardship" of a permittee, and use the guidelines developed by the Department and the Advisory Committee to determine assistance eligibilities and levels.

5. Two other alternatives were considered for the level of reimbursement:

a. Modify the draft rule to allow a higher reimbursement amount (such as two or three cents per pound) for uses other than energy recovery.

b. Modify the draft rule to set a limit of $20,000 for each demonstration project, as recommended by the Waste Tire Advisory Committee.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission adopt Alternative 1.

The proposed rule has the support of the Advisory Committee (with the exception noted on page 4). It corresponds better to the statute in establishing a special permit category with appropriate provisions to regulate "beneficial uses" of waste tires rather than regulating them by exemption. Adopting essential parts of the financial assistance guidelines as rule will clarify for the public the criteria the Department

will use in granting public benefits. Allowing a higher level of reimbursement for recycling demonstration projects will encourage such projects without changing the basic structure of the reimbursement which has not been in place long enough to test its effectiveness in stimulating new/expanded uses of waste tires. Allowing the Department to spend up to $100,000 per year per project for demonstration projects will give the Department flexibility to work with existing larger tire piles on projects large enough to demonstrate the viability of a given recycling use. Other housekeeping changes will improve administration of the waste tire program.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The rule incorporates the change made by the 1989 Legislature excluding tires used in ocean reefs from eligibility for the reimbursement.

The proposed rule is consistent with legislative intent to regulate all storage of waste tires, but make appropriate provisions to allow legitimate "beneficial uses" of tires.

The rule follows agency policy on specifying by rule what criteria are to be used in determining benefits.

The rule takes the Solid Waste hierarchy into account by offering a bonus for waste rubber recycling demonstration projects.

ISSUES FOR COMMISSION TO RESOLVE:

1. Is the proposed Beneficial Use Storage Permit the appropriate way to regulate persons who are storing over 100 waste tires and using them for a beneficial purpose?

2. Should the Department adopt the major elements of its guidelines on financial assistance to permittees as rule? Or should the rule remain more general, leaving the Department more flexibility in dealing with individual cases?

3. In providing financial assistance to remove tires, should the Department give assistance for only part (80 or 90 percent) of the remaining costs of cleanup after the permittee has been required to contribute their own funds up to the threshold set by the Department?

4. Is allowing use of a higher reimbursement rate for tire recycling demonstration projects the proper way to give an extra push to uses higher on the Solid Waste hierarchy?

INTENDED FOLLOWUP ACTIONS:

Publication of intent to hold a hearing in the Secretary of State's Bulletin on November 1, 1989, and publication of notice of public hearing in newspapers.

Hold hearings on November 15, 1989 in Bend and Salem, and on November 16 in Pendleton and Medford.

Receive public comment until November 27, 1989.

Prepare a hearing officer's report for final rule adoption by the Commission in January, 1990.

Approved:

Section: Greenwood

Division: Greenwood for S.H.

Director:

Report Prepared By: Deanna Mueller-Crispin

Phone: 229-5808

Date Prepared: October 4, 1989

dmc
reefrev.eqc
10/4/89

ATTACHMENT A

Proposed Revisions: 10/3/89

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
ADMINISTRATIVE RULES
DIVISION 62 - SOLID WASTE MANAGEMENT: WASTE TIRES

Proposed additions to rule are underlined.
Proposed deletions are in brackets [].

Purpose

340-62-005 The purpose of these rules is to prescribe requirements, limitations and procedures for storage, collection, transportation, and disposal of waste tires; and to prescribe procedures for using the Waste Tire Recycling Account to reimburse users of waste tires, and to clean up tire piles.

Definitions

340-62-010 As used in these rules unless otherwise specified:

(1) "Abatement" -- the processing or removing to an approved storage site of waste tires which are creating a danger or nuisance, following a legal nuisance abatement procedure.

(2) "Beneficial use" -- storage of waste tires in a way that creates an on-site economic benefit, other than from processing or recycling, to the owner of the tires, such as in certain agricultural uses.

(3) [(2)] "Buffings" -- a product of mechanically scarifying a tire surface, removing all trace of the surface tread, to prepare the casing to be retreaded.

(4) [(3)] "Commission" -- the Environmental Quality Commission.

(5) [(4)] "Common carrier" -- any person who transports persons or property for hire or who publicly purports to be willing to transport persons or property for hire by motor vehicle; or any person who leases, rents, or otherwise provides a motor vehicle to the public and who in connection therewith in the regular course of business provides, procures, or arranges for, directly, indirectly, or by course of dealing, a driver or operator therefor.

(6) [(5)] "Department" -- the Department of Environmental Quality.

(7) [(6)] "Director" -- the Director of the Department of Environmental Quality.

(8) [(7)] "Dispose" -- to deposit, dump, spill or place any waste tire on any land or into any water as defined by ORS 468.700.

(9) "DMV" -- Oregon Department of Motor Vehicles.

(10) [(8)] "End user":

(a) For energy recovery: the person who utilizes the heat content or other forms of energy from the incineration or pyrolysis of waste tires, chips or similar materials.

(b) For other eligible uses of waste tires: the last person who uses the tires, chips, or similar materials to make a product with economic value. If the waste tire is processed by more than one person in becoming a product, the "end user" is the last person to use the tire as a tire, as

tire chips, or as similar materials. A person who produces tire chips or similar materials and gives or sells them to another person to use is not an end user.

(11) [(9)] "Energy recovery" -- recovery in which all or a part of the waste tire is processed to utilize the heat content, or other forms of energy, of or from the waste tire.

(12) [(10)] "Financial assurance" -- a performance bond, letter of credit, cash deposit, insurance policy or other instrument acceptable to the Department.

(13) [(11)] "Land disposal site" -- a disposal site in which the method of disposing of solid waste is by landfill, dump, pit, pond or lagoon.

(14) "Nonocean waters" -- fresh waters, tidal and nontidal bays and estuaries as defined in ORS 541.605.

(15) [(12)] "Oversize waste tire" -- a waste tire exceeding a 24.5-inch rim diameter, or which is excluded from Federal excise tax (except a passenger tire).

(16) [(13)] "Passenger tire" -- a tire with less than an 18-inch rim diameter.

(17) "Passenger tire equivalent" -- a measure of mixed passenger and truck tires, where five passenger tires are considered to equal one truck tire.

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

(19) [(15)] "Private carrier" -- any person who operates a motor vehicle over the public highways of this state for the purpose of transporting persons or property when the transportation is incidental to a primary business enterprise, other than transportation, in which such person is engaged.

(20) [(16)] "PUC" -- the Public Utility Commission of Oregon.

(21) "Recycle" or "recycling" -- any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity.

(22) [(17)] "Retreader" -- a person engaged in the business of recapping tire casings to produce recapped tires for sale to the public.

(23) [(18)] "Rick" -- to horizontally stack tires securely by overlapping so that the center of a tire fits over the edge of the tire below it.

(24) [(19)] "Store" or "storage" -- the placing of waste tires in a manner that does not constitute disposal of the waste tires.

(25) [(20)] "Tire" -- a continuous solid or pneumatic rubber covering encircling the wheel of a vehicle in which a person or property is transported, or by which they may be drawn, on a highway. This does not include tires on the following:

(a) A device moved only by human power.

(b) A device used only upon fixed rails or tracks.

(c) A motorcycle.

(d) An all-terrain vehicle, including but not limited to, three-wheel and four-wheel ATVs, dune buggies and other similar vehicles. All-terrain vehicles do not include jeeps, pick-ups and other four-wheel drive vehicles that may be registered, licensed and driven on public roads in Oregon.

(e) A device used only for farming, except a farm truck.

(26) [(21)] "Tire carrier" -- a person who picks up or transports waste tires for the purpose of storage or disposal. This does not include the following:

(a) Solid waste collectors operating under a license or franchise from a local government unit and who transport fewer than 10 tires at a time.

(b) Persons who transport fewer than five tires with their own solid waste for disposal.

(27) [(22)] "Tire processor" -- a person engaged in the processing of waste tires.

(28) [(23)] "Tire retailer" -- a person in the business of selling new replacement tires at retail, whose local business license or permit (if required) specifically allows such sale.

(29) [(24)] "Tire derived products" -- tire chips or other usable materials produced from the physical processing of a waste tire.

(30) [(25)] "Truck tire" -- a tire with a rim diameter of between 18 and 24.5 inches.

(31) [(26)] "Waste tire" -- a tire that is no longer suitable for its original intended purpose because of wear, damage or defect, and is fit only for:

(a) Remanufacture into something else, including a recapped tire; or

(b) Some other use which differs substantially from its original use.

(32) [(27)] "Waste Tires Generated in Oregon" -- Oregon is the place at which the tire first becomes a waste tire. A tire casing imported into Oregon for potential recapping, but which proves unusable for that purpose, is not a waste tire generated in Oregon. Examples of waste tires generated in Oregon include but are not limited to:

(a) Tires accepted by an Oregon tire retailer in exchange for new replacement tires.

(b) Tires removed from a junked auto at an auto wrecking yard in Oregon.

Waste Tire Storage Permit Required

340-62-015 (1) After July 1, 1988, a person who stores more than 100 waste tires in this state is required to have a waste tire storage permit from the Department. The following are exempt from the permit requirement:

(a) A tire retailer who stores not more than 1,500 waste tires for each retail business location.

(b) A tire retreader who stores not more than 3,000 waste tires outside for each individual retread operation.

(2) Piles of tire derived products are not subject to regulation as waste tire storage sites if they have an economic value.

(3) If tire derived products have been stored for over six months, the Department shall assume they have no economic value, and the site operator must either:

(a) Apply for a waste tire storage site permit and comply with storage standards and other requirements of OAR 340-62-005 through 340-62-045; or

(b) Demonstrate to the Department's satisfaction that the tire derived products do have an economic value by presenting receipts, orders, or other documentation acceptable to the Department for the tire derived products.

(4) After July 1, 1988, a permitted solid waste disposal site which stores more than 100 waste tires, is required to have a permit modification addressing the storage of tires from the Department.

(5) The Department may issue a waste tire storage permit in two stages to persons required to have such a permit by July 1, 1988. The two stages are a "first-stage" or limited duration permit, and a "second-stage" or regular permit.

(6) Owners or operators of existing sites not exempt from the waste tire storage site permit requirement shall apply to the Department by June 1, 1988 for a "first-stage" permit to store waste tires. A person who wants to establish a new waste tire storage site shall apply to the Department at least 90 days before the planned date of facility construction. A person applying for a waste tire storage permit on or after September 1, 1988 shall apply for a "second-stage" or regular permit.

[(7) The Department may grant an exemption to the requirement to obtain a waste tire storage permit for whole waste tires if the applicant can demonstrate to the Department's satisfaction that:

[(a) The applicant is using the tires for a permanent useful purpose with a documented economic value; and

[(b) The waste tires used in this way will meet state and local government requirements for vector control, health, fire control, safety and other environmental concerns; and

[(c) The use otherwise is not in conflict with local ordinances and state and Federal laws and administrative rules.]

(7) Persons who store more than 100 waste tires but utilize them for a beneficial use may apply to the Department for a waste tire beneficial use storage permit rather than a "second stage" or regular permit.

(8) Use of waste tires which is regulated under ORS 468.750 and for which a permit has been acquired is not subject to additional regulation by this rule.

(9) [(8)] Failure to conduct storage of waste tires according to the conditions, limitations, or terms of a permit or these rules, or failure to obtain a permit, is a violation of these rules and shall be subject to civil penalties as provided in OAR Chapter 340, Division 12 or to any other enforcement action provided by law. Each day that a violation occurs is a separate violation and may be the subject of separate penalties.

(10) [(9)] After July 1, 1988 no person shall advertise or represent himself/herself as being in the business of accepting waste tires for storage without first obtaining a waste tire storage permit from the Department.

(11) [(10)] Failure to apply for or to obtain a waste tire storage permit, or failure to meet the conditions of such permit constitutes a nuisance.

"Second-Stage" or Regular Permit

340-62-020 (1) An application for a "second-stage" or regular waste tire storage permit shall:

(a) Include such information as shall be required by the Department, including but not limited to:

(A) A description of the need for the waste tire storage site;

(B) The zoning designation of the site, and a written statement of compatibility of the proposed waste tire storage site with the acknowledged local comprehensive plan and zoning requirements from the local government unit(s) having jurisdiction.

(C) A description of the land uses within a one-quarter mile radius of the facility, identifying any buildings and surface waters.

(D) A management program for operation of the site, which includes but is not limited to:

(i) Anticipated maximum number of passenger and/or truck tires to be stored at the site for any given one year period.

(ii) Present and proposed method of disposal, and timetable.

(iii) How the facility will meet the technical tire storage standards in OAR 340-62-035 for both tires currently stored on the site, and tires to be accepted.

(iv) How the applicant proposes to control mosquitoes and rodents, considering the likelihood of the site becoming a public nuisance or health hazard, proximity to residential areas, etc.

(E) A proposed contingency plan to minimize damage from fire or other accidental or intentional emergencies at the site. It shall include but not be limited to procedures to be followed by facility personnel, including measures to be taken to minimize the occurrence or spread of fires and explosions.

(F) The following maps:

(i) A site location map showing section, township, range and site boundaries.

(ii) A site layout drawing, showing size and location of all pertinent man-made and natural features of the site (including roads, fire lanes, ditches, berms, waste tire storage areas, structures, wetlands, floodways and surface waters).

(iii) A topographic map using a scale of no less than one inch equals 200 feet, with 40 foot intervals on 7.5 minute series.

(b) Submit proof that the applicant holds financial assurance acceptable to the Department in an amount determined by the Department to be necessary for waste tire removal processing, fire suppression or other measures to protect the environment and the health, safety and welfare, pursuant to OAR 340-62-025 and 340-62-035.

(c) Submit an application fee of $250. Fifty dollars ($50) of the application fee shall be non-refundable. The rest of the application fee may be refunded in whole or in part when submitted with an application if either of the following conditions exists:

(A) The Department determines that no permit will be required;

(B) The applicant withdraws the application before the Department has granted or denied the application.

(2) A "second-stage" permit may be issued for up to five years. "Second-stage" storage permits and combined tire carrier/storage permits shall expire on January 1.

(3) The Department may waive any of the requirements in subsections (1)(a)(E) (contingency plan), (1)(a)(F) (maps) or (1)(b) (financial assurance) of this rule for a waste tire storage site in existence on or before January 1, 1988, if it is determined by the Department that the site is not likely to create a public nuisance, health hazard, air or water pollution or other environmental problem. This waiver shall be considered

for storage sites which are no longer receiving additional tires, and are under a closure schedule approved by the Department. The site must still meet operational standards in OAR 340-62-035.

(4) A permittee who wants to renew his/her "second-stage" storage permit or combined tire carrier/storage permit shall apply to the Department for permit renewal at least 90 days before the permit expiration date. The renewal shall include such information as required by the Department. It shall include a permit renewal fee of $125.

(5) A permittee may request from the Department a permit modification to modify its operations as allowed in an unexpired permit. A permit modification initiated by the permittee shall include a permit modification fee of $25.

Waste Tire Beneficial Use Storage Permit

340-62-021 (1) An application for a waste tire beneficial use storage permit shall:

(a) Include such information as shall be required by the Department, including but not limited to:

(A) A description of the need for this beneficial use of waste tires.

(B) The zoning designation of the site, and a written statement of compatibility of the proposed beneficial use of waste tires on this site with the acknowledged local comprehensive plan and zoning requirements from the local government unit(s) having jurisdiction.

(C) A description of the land uses within a one-quarter mile radius of the location of the waste tires, identifying any buildings and surface waters.

(D) A management program for operation of the site, which includes but is not limited to:

(i) Number of passenger and/or truck tires to be stored on the site upon issuance of the permit, and anticipated maximum number of tires to be stored at the site in the future.

(ii) Proposed method of ultimate disposal of the tires, and date when all tires will be removed.

(iii) How the applicant will meet the technical tire storage standards for beneficial uses in OAR 340-62-036 for both tires currently stored on the site, and tires to be accepted.

(iv) How the applicant proposes to control mosquitoes and rodents, considering the likelihood of the site becoming a public nuisance or health hazard, proximity to residential areas, etc.

(E) A proposed contingency plan to minimize damage from fire or other accidental or intentional emergencies at the site. It shall include but not be limited to procedures to be followed by applicant, including measures to be taken to minimize the occurrence or spread of fires and explosions.

(F) The following maps:

(i) A site location map showing section, township, range and site boundaries.

(ii) A site layout drawing, showing size and location of all pertinent man-made and natural features of the site (including roads, fire

lanes, ditches, berms, waste tire storage areas, structures, wetlands, floodways and surface waters).

(iii) A topographic map using a scale of no less than one inch equals 200 feet, with 40 foot intervals on 7.5 minute series.

(b) Submit proof that the applicant holds financial assurance acceptable to the Department in an amount determined by the Department to be necessary for waste tire removal processing, fire suppression or other measures to protect the environment and the health, safety and welfare, pursuant to OAR 340-62-025 and 340-62-035.

(c) For applications submitted to the Department after the effective date of this rule, submit a non-refundable application fee of $100, or $40 in the case of seasonal agricultural beneficial uses.

(2) A beneficial use permit may be issued for up to five years. A beneficial use permit shall expire on January 1. A beneficial use permit may be issued in perpetuity for a beneficial use in which all the tires are permanently buried or otherwise covered with permanent materials so that the tires cannot reasonably be removed.

(3) The Department may waive any of the requirements in subsections (1)(a)(E) (contingency plan), (1)(a)(F) (maps) or (1)(b) (financial assurance) of this rule for a site storing tires for a beneficial use which was in existence on or before January 1, 1988, if it is determined by the Department that the site is not likely to create a public nuisance, health hazard, air or water pollution or other environmental problem. This waiver shall be considered for beneficial use storage sites which are no longer receiving additional tires. The site must still meet operational standards in OAR 340-62-036.

(4) A permittee who wants to renew his/her beneficial use storage permit shall apply to the Department for permit renewal at least 90 days before the permit expiration date. The renewal shall include such information as required by the Department. It shall include a permit renewal fee of $25.

(5) A permittee may request from the Department a permit modification to modify its operations as allowed in an unexpired permit. A permit modification initiated by the permittee shall include a permit modification fee of $25.

Financial Assurance

340-62-022 (1) The Department shall determine for each applicant the amount of financial assurance required under ORS 459.720(c) and OAR 340-62-020 (1)(b) and 340-62-021 (1)(b). The Department shall base the amount on the estimated cost of cleanup for the maximum number of waste passenger tire[s] equivalents allowed by the permit to be stored at the storage site or the estimated cost of fire suppression.

(2) The Department will accept as financial assurance only those instruments listed in and complying with requirements in OAR 340-61-034(3)(c)(A) through (G) or OAR 340-71-600(5)(a) through (c).

(3) The financial assurance shall be filed with the Department.

(4) The Department shall make any claim on the financial assurance within one year of any notice of proposed cancellation of the financial assurance.

Permittee Obligations

340-62-025 (1) Each person who is required by ORS 459.715 and 459.725, and OAR 340-62-015 and 340-62-055, to obtain a permit shall:

(a) Comply with the provisions of ORS 459.705 to 459.790, these rules and any other pertinent Department requirements.

(b) Inform the Department in writing within 30 days of company changes that affect the permit, such as business name change, change from individual to partnership and change in ownership.

(c) Allow to the Department, after reasonable notice, necessary access to the site and to its records, including those required by other public agencies, in order for the monitoring, inspection and surveillance program developed by the Department to operate.

(2) Each person who is required by ORS 459.715 and OAR 340-62-015 to obtain a permit shall submit to the Department by February 1 of each year an annual compliance fee for the coming calendar year in the amount of $250, except as provided in section (3) of this rule, effective February 1, 1989. The permittee shall submit evidence of required financial assurance when the annual compliance fee is submitted.

(3) The holder of a waste tire beneficial use permit shall submit to the Department by February 1 of each year, effective February 1, 1990, an annual compliance fee for the coming calendar year in the following amounts:

(a) Sites storing fewer than 1,000 waste passenger car or 200 truck tires, or where all tires are at least partially covered with permanent cover such as soil or rock, or for which a beneficial use permit has been issued in perpetuity: $0.

(b) Sites storing more than 1,000 waste passenger car or 200 truck tires: $50.

(4) [(3)] Each waste tire storage site permittee whose site accepts waste tires after the effective date of these rules shall also do the following as a condition to holding the permit:

(a) Maintain records on approximate numbers of waste tires received and shipped, and tire carriers transporting the tires so as to be able to fulfill the reporting requirements in subsection [(3)] (4)(c) of this rule. The permittee shall issue written receipts upon receiving loads of waste tires. Quantities may be measured by aggregate loads or cubic yards, if the permittee documents the approximate number of tires included in each. These records shall be maintained for a period of three years, and shall be available for inspection by the Department after reasonable notice.

(b) Maintain a record of the name (and the carrier permit number, if applicable) of the tire carriers not exempted by OAR 340-62-055(4) who deliver waste tires to the site and ship waste tires from the site, together with the quantity of waste tires shipped with those carriers.

(c) Submit a report containing the following information annually by February 1 of 1990 and each year thereafter:

(A) Number of waste tires received at the site during the year covered by the report;

(B) Number of waste tires shipped from the site during the year covered by the report;

(C) A list (and tire carrier permit number, if applicable) of the tire carriers not exempted by OAR 340-62-055(4) delivering waste tires to the site and shipping waste tires from the site.

(D) The number of waste tires located at the site at the time of the report.

(d) Notify the Department within one [working day] month of the name of any unpermitted tire carrier (who is not exempt under OAR 340-62-055(4)) who delivers waste tires to the site after January 1, 1989.

(e) If required by the Department, prepare for approval by the Department and then implement:

(A) A plan to remove some or all of the waste tires stored at the site. The plan shall follow standards for site closure pursuant to OAR 340-62-045. The plan may be phased in, with Department approval.

(B) A plan to process some or all of the waste tires stored at the site. The plan shall comply with ORS 459.705 through 459.790 and OAR 340-62-035.

(f) Maintain the financial assurance required under OAR 340-62-020(1)(b) and 340-62-022.

(g) Maintain any other plans and exhibits pertaining to the site and its operation as determined by the Department to be reasonably necessary to protect the public health, welfare or safety or the environment.

(5) [(4)] The Department may waive any of the requirements of subsections (4) [(3)](a) through (4) [(3)](c) (D) of this rule for a waste tire storage site in existence on or before January 1, 1988. This waiver shall be considered for storage sites which are no longer receiving additional tires and are under a closure schedule approved by the Department.

Department Review of Applications for Waste Tire Storage Sites

340-62-030 (1) Applications for waste tire storage permits and waste tire beneficial use storage permits shall be processed in accordance with the Procedures for Issuance, Denial, Modification and Revocation of Permits as set forth in OAR Chapter 340, Division 14, except as otherwise provided in OAR Chapter 340, Division 62.

(2) Applications for permits shall be complete only if they:

(a) Are submitted on forms provided by the Department, accompanied by all required exhibits, and the forms are completed in full and are signed by the applicant and the property owner or person in control of the premises;

(b) Include plans and specifications as required by OAR 340-62-018, [and] 340-62-020 and 340-62-021.

(c) Include the appropriate application fee pursuant to OAR 340-62-020(1)(c) or 340-62-021(1)(c).

(3) An application may be accepted as complete for processing if all required materials have been received with the exception of the financial assurance required under OAR 340-62-020(1)(b), 340-62-021(1)(b) and 340-62-

022, and the written statement of compatibility of the proposed site with the acknowledged local comprehensive plan and zoning requirements from the local government unit(s) having jurisdiction. However, the Department shall not issue a "second-stage" waste tire storage permit or waste tire beneficial use storage permit unless required financial assurance and land use compatibility have been received.

(4) Following the submittal of a complete waste tire storage permit application, the director shall cause notice to be given in the county where the proposed site is located in a manner reasonably calculated to notify interested and affected persons of the permit application.

(5) The notice shall contain information regarding the location of the site and the type and amount of waste tires intended for storage at the site. In addition, the notice shall give any person substantially affected by the proposed site an opportunity to comment on the permit application.

(6) The Department may conduct a public hearing in the county where a proposed waste tire storage site is located.

(7) Upon receipt of a completed application, the Department may deny the permit if:

(a) The application contains false information.

(b) The application was wrongfully accepted by the Department.

(c) The proposed waste tire storage site would not comply with these rules or other applicable rules of the Department.

(d) There is no clearly demonstrated need for the proposed new, modified or expanded waste tire storage site.

(8) Based on the Department's review of the waste tire storage site application, and any public comments received by the Department, the director shall issue or deny the permit. The director's decision shall be subject to appeal to the Commission and judicial review under ORS 183.310 to 183.550.

Standards for Waste Tire Storage Sites

340-62-035 (1) All permitted waste tire storage sites must comply with the technical and operational standards in this part, except that a waste tire beneficial use storage permittee shall instead comply with OAR 340-62-036, Standards for Waste Tire Beneficial Use Storage Sites.

(2) The holder of a "first-stage" waste tire storage permit shall comply with the technical and operational standards in this part if the site receives any waste tires after the effective date of these rules.

(3) A waste tire storage site shall not be constructed or operated in a wetland, waterway, floodway, 25-year floodplain, or any area where it may be subjected to submersion in water.

(4) Operation. A waste tire storage site shall be operated in compliance with the following standards:

(a) An outdoor waste tire pile shall have no greater than the following maximum dimensions:

(A) Width: 50 feet.

(B) Area: 15,000 square feet.

(C) Height: 6 feet.

(b) A 50-foot fire lane shall be placed around the perimeter of each waste tire pile. Access to the fire lane for emergency vehicles must be unobstructed at all times.

(c) Waste tire piles shall be located at least 60 feet from buildings.

(d) [(c)] Waste tires to be stored for one month or longer shall be ricked, unless the Department waives this requirement.

(e) [(d)] The permittee shall operate and maintain the site in a manner which controls mosquitoes and rodents if the site is likely to become a public nuisance or health hazard and is close to residential areas.

(f) [(e)] A sign shall be posted at the entrance of the storage site stating operating hours, cost of disposal and site rules if the site receives tires from persons other than the operator of the site.

(g) [(f)] No operations involving the use of open flames or blow torches shall be conducted within 25 feet of a waste tire pile.

(h) [(g)] An approach and access road to the waste tire storage site shall be maintained passable for any vehicle at all times. Access to the site shall be controlled through the use of fences, gates, or other means of controlling access.

(i) [(h)] If required by the Department, the site shall be screened from public view.

(j) [(i)] An attendant shall be present at all times the waste tire storage site is open for business, if the site receives tires from persons other than the operator of the site.

(k) [(j)] The site shall be bermed or given other adequate protection if necessary to keep any liquid runoff from potential tire fires from entering waterways.

(L) [(k)] If pyrolytic oil is released at the waste tire storage site, the permittee shall remove contaminated soil in accordance with applicable rules governing the removal, transportation and disposal of the material.

(5) Waste tires stored indoors shall be stored under conditions that meet those in The Standard for Storage of Rubber Tires, NFPA 231D-1986 edition, adopted by the National Fire Protection Association, San Diego, California.

(6) The Department may approve exceptions to the preceding technical and operational standards for a company processing waste tires if:

(a) The average time of storage for a waste tire on that site is one month or less; and

(b) The Department and the local fire authority are satisfied that the permittee has sufficient fire suppression equipment and/or materials on site to extinguish any potential tire fire within an acceptable length of time.

(7) Tire-derived products subject to regulation under OAR 340-62-015 (3) shall be subject to standards in this rule except that piles of such products may be up to 12 feet high if approved by local fire officials.

(8) A permittee may petition the [Commission] director to grant a variance to the technical and operational standards in this part for a waste tire storage site in existence on or before January 1, 1988. The [Commission] director may by specific written variance waive certain requirements of these technical and operational standards when circumstances of the waste tire storage site location, operating procedures, and fire control protection indicate that the purpose and intent of these rules can be achieved without strict adherence to all of the requirements.

Standards for Waste Tire Beneficial Use Storage Sites

340-62-036 (1) All permitted waste tire beneficial use storage sites must comply with the technical and operational standards in this rule.

(2) Operation. A waste tire beneficial use storage site shall be operated in compliance with the following standards:

(a) A waste tire beneficial use shall be located at least 60 feet from a structure on adjoining property.

(b) The permittee shall operate and maintain the site in a manner which controls mosquitoes and rodents.

(c) In the case of tire fences, the following are also required:

(A) For vector control:

(i) Drilling a two-inch hole into each quadrant of the downside of each tire used in the fence; or

(ii) Filling each individual waste tire with dirt; or

(iii) Another treatment approved in advance by the Department.

(B) A 50-foot fire lane shall be maintained on land under control of the permittee along the entire length of the tire fence. Access to the fire lane for emergency vehicles must be unobstructed and clear of vegetation at all times.

(C) A tire fence shall not be constructed wider than one tire width.

(d) No operations involving the use of open flames or blow torches shall be conducted within 25 feet of waste tires stored for a beneficial use.

(e) An approach and access road to the waste tire beneficial use storage site shall be maintained passable for any vehicle at all times. Access to the site shall be controlled through the use of fences, gates, or other means of controlling access.

(f) The site shall be bermed or given other adequate protection if necessary to keep any liquid runoff from potential tire fires from entering waterways.

(g) If pyrolytic oil is released at the waste tire storage site, the permittee shall remove contaminated soil in accordance with applicable rules governing the removal, transportation and disposal of the material.

(3) A permittee may petition the director to grant a variance to the technical and operational standards in this part for a waste tire storage site in existence on or before January 1, 1988. The director may by specific written variance waive certain requirements of these technical and operational standards when circumstances of the waste tire storage site location, operating procedures, and fire control protection indicate that the purpose and intent of these rules can be achieved without strict adherence to all of the requirements.

Modification of Solid Waste Disposal Site Permit Required

340-62-050 (1) After July 1, 1988, a solid waste disposal site permitted by the Department shall not store over 100 waste tires unless the permit has been modified by the Department to authorize the storage of waste tires.

(2) A solid waste disposal site permittee who accumulates fewer than [1,500] 2,000 waste tires at any given time and has a contract with a tire carrier to transport for proper disposal all such tires whenever sufficient tires have been accumulated to make up a truckload of not more than [1,500] 1,800 tires from that site, is not subject to the permit modification required by section (1) or the requirements of section (5) of this rule. However, such permittee's solid waste operating plan shall be modified to include such activity. Nevertheless, if such permittee stores over 100 tires on-site for more than six months, permit modification pursuant to section (3) shall be required to allow such storage.

(3) A solid waste disposal site permittee currently storing over 100 waste tires at its site shall apply to the Department by June 1, 1988, for a permit modification to store over 100 waste tires. A solid waste disposal site permittee who wants to begin storing over 100 waste tires at its site shall apply to the Department for a permit modification at least 90 days before the planned date of such storage.

(4) The permittee shall apply to store a maximum number of waste tires which shall not be exceeded in one year.

(5) In storing waste tires, the permittee shall comply with all rules for waste tire storage sites in OAR 340-62-015 through 340-62-025, and 340-62-035 through 340-62-045, including a management plan for the waste tires, record keeping for waste tires received and sent, contingency plan for emergencies, and financial assurance requirements.

(6) Modification of an existing solid waste permit to allow waste tire storage does not require submission of a solid waste permit filing fee or application processing fee under OAR 340-61-115.

(7) The solid waste permittee should consider storing the waste tires or tire-derived products in a manner that will not preclude their future recovery and use, should that become economically feasible.

Chipping Standards for Solid Waste Disposal Sites

340-62-052 (1) After July 1, 1989, a person may not dispose of waste tires in a land disposal site permitted by the Department unless:

(a) The waste tires are processed in accordance with the standards in section (2) of this rule; or

(b) The waste tires were located for disposal at that site before July 1, 1989; or

(c) The Commission finds that the reuse or recycling of waste tires is not economically feasible pursuant to OAR 340-62-053; or

(d) The waste tires are received from a person exempt from the requirement to obtain a waste tire carrier permit under OAR 340-62-055 (4) (a) and (b).

(2) To be landfilled under subsection (1)(a) of this rule, waste tires must be processed to meet the following criteria:

(a) The volume of 100 unprepared randomly selected whole tires in one continuous test period must be reduced by at least 65 percent of the original volume. No single void space greater than 125 cubic inches may remain in the randomly placed processed tires; or

(b) The tires shall be reduced to an average chip size of no greater than 64 square inches in any randomly selected sample of 10 tires or more. No more than 40 percent of the chips may exceed 64 square inches.

(3) The test to comply with (2)(a) shall be as follows:

(a) Unprocessed whole tire volume shall be calculated by [multiplying the circular area, with a diameter equal to the outside diameter of the tire, by the maximum perpendicular width of the tire. The total test volume shall be the sum of the individual, unprocessed tire volumes] randomly placing the 100 unprepared randomly selected whole tires in a rectangular container and multiplying the depth of unprocessed tires by the bottom area of the container;

(b) Processed tire volume shall be determined by randomly placing the processed tire test quantity in a rectangular container and leveling the surface. It shall be calculated by multiplying the depth of processed tires by the bottom area of the container.

Economic Feasibility of Reuse or Recycling Waste Tires

340-62-053 (1) Reuse or recycling of oversize waste tires and solid rubber tires is not economically feasible, and they are thus exempt from the chipping requirement under OAR 340-62-052 (2).

(2) The standard for "economic feasibility" of tire reuse or recycling shall be based on the following:

(a) The Department shall conduct a survey at least once every biennium of the charges for accepting waste passenger and truck tires at each permitted land disposal site in the state.

(b) The Department shall use the survey results to determine the mean and modal charges for passenger and truck tire disposal in the state.

(c) Either the mean or the modal charge, whichever is greater, shall be used as the base for the standard.

(d) The standard for passenger tires shall be the base plus ten percent.

(e) The standard for truck tires shall be the base plus 25 percent.

(3) Reuse or recycling of a waste tire shall be deemed economically feasible if the cost to reuse or recycle the tire is not more than the standard.

(4) If the charge for waste tire disposal at the local land disposal site is more than the standard:

(a) The local per tire disposal charge shall be the standard used to determine whether the cost of reuse or recycling is economically feasible; and

(b) Reuse or recycling shall be deemed economically feasible if the cost to reuse or recycle the passenger or truck tire is equal to or less than the charge for tire disposal at the local land disposal site.

(5) The director shall determine whether it is economically feasible to reuse or recycle waste tires in the service area of a land disposal site permittee.

(6) Only a land disposal site permittee may apply to the director to make that determination. Such application may be made after the effective date of this rule. Application shall be made on a form provided by the Department.

(7) An applicant shall submit written documentation such as bids from contractors of the cost of at least two of the best available options to reuse or recycle waste tires in quantities which could reasonably be expected to be generated in the applicant's service area. Cost shall be determined for waste tires collected at the applicant's land disposal site. The applicant may also submit documentation for costs of reuse or recycling from one or more other locations within its service area where quantities of waste tires are generated.

(8) Reuse or recycling options whose costs should be considered include transporting the waste tires to:

(a) The nearest permitted waste tire storage site accepting waste tires.

(b) A waste tire processing site.

(9) If the Department knows of a reasonable alternative for reuse or recycling of waste tires that the applicant did not consider, it may require the applicant to document costs of that option.

(10) The Department may require any additional information necessary to act upon the application.

(11) If the Department requires additional information, the application shall not be considered complete until such information is received.

(12) The director shall approve or deny a complete application within 90 days of its receipt.

(13) Application for this exemption shall not be made more often than once a year.

(14) The Department may review biennially whether any exemption granted under this part should continue in force.

Waste Tire Carrier Permit Required

340-62-055 (1) After January 1, 1989, any person engaged in picking up, collecting or transporting waste tires for the purpose of storage or disposal is required to obtain a waste tire carrier permit from the Department.

(2) After January 1, 1989, no person shall collect or haul waste tires or advertise or represent himself/herself as being in the business of a waste tire carrier without first obtaining a waste tire carrier permit from the Department.

(3) After January 1, 1989, any person who gives, contracts or arranges with another person to collect or transport waste tires for storage or disposal shall only deal with a person holding a waste tire carrier permit from the Department, unless the person is exempted by (4)(a) or (b).

(4) The following persons are exempt from the requirement to obtain a waste tire carrier permit:

(a) Solid waste collectors operating under a license or franchise from any local government unit and who transport fewer than 10 tires at any one time.

(b) Persons transporting fewer than five tires.

(c) Persons transporting tire-derived products to a market.

(d) Persons who use company-owned vehicles to transport tire casings for the purposes of retreading between company-owned or company-franchised retail tire outlets and company-owned or company-franchised retread facilities while transporting casings between those retail tire outlets and those retread facilities.

(e) Tire retailers or retreaders who transport used tires between their retail tire outlet or retread operation and their customers, after taking them from customers in exchange for other tires, or for repair or retreading while transporting used tires between their retail tire outlet or retread operation and their customers.

(f) The United States, the State of Oregon, any county, city, town or municipality in this state, or any department of any of them except when vehicles they own or operate are used as a waste tire carrier for hire.

(5) Persons exempt from the waste tire carrier permit requirement under subsection (4)(d) of this rule shall nevertheless notify the Department of this practice on a form provided by the Department.

(6) A combined tire carrier/storage permit may be applied for by tire carriers:

(a) Who are subject to the carrier permit requirement; and

(b) Whose business includes a site which is subject to the waste tire storage permit requirement.

(7) The Department shall supply a combined tire carrier/storage permit application to such persons. Persons applying for the combined tire carrier/storage permit shall comply with all other regulations concerning storage sites and tire carriers established in these rules.

(8) Persons who transport waste tires for the purpose of storage or disposal must apply to the Department for a waste tire carrier permit within 90 days of the effective date of this rule. Persons who want to begin transporting waste tires for the purpose of storage or disposal must apply to the Department for a waste tire carrier permit at least 90 days before beginning to transport the tires.

(9) Applications shall be made on a form provided by the Department. The application shall include such information as required by the Department. It shall include but not be limited to:

(a) A description, license number and registered vehicle owner for each truck used for transporting waste tires.

(b) The PUC authority number under which each truck is registered.

(c) Where the waste tires will be stored or disposed of.

(d) Any additional information required by the Department.

(10) A corporation which has more than one separate business location may submit one waste tire carrier permit application which includes all the locations. All the information required in section (9) of this rule shall be supplied by location for each individual location. The corporation shall be responsible for amending the corporate application whenever any of the required information changes at any of the covered locations.

(11) An application for a tire carrier permit shall include a $25 non-refundable application fee.

(12) An application for a combined tire carrier/storage permit shall include a $250 application fee, $50 of which shall be non-refundable. The rest of the application fee may be refunded in whole or in part when submitted with an application if either of the following conditions exists:

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

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

(13) The application for a waste tire carrier permit shall also include a bond in the sum of $5,000 in favor of the State of Oregon. In lieu of the bond, the applicant may submit financial assurance acceptable to the Department. The Department will accept as financial assurance only those instruments listed in and complying with requirements in OAR 340-61-034(3)(c)(A) through (G) and OAR 340-71-600(5)(a) through (c).

(14) The bond or other financial assurance shall be filed with the Department and shall provide that:

(a) In performing services as a waste tire carrier, the applicant shall comply with the provisions of ORS 459.705 through 459.790 and of this rule; and

(b) Any person injured by the failure of the applicant to comply with the provisions of ORS 459.705 through 459.790 or this rule shall have a right of action on the bond or other financial assurance in the name of the person. Such right of action shall be made to the principal or the surety company within two years after the injury.

(15) Any type of financial assurance submitted under section (13) of this rule shall remain in effect for not less than two years following termination of the waste tire storage permit.

(16) [(15)] A waste tire carrier permit or combined tire carrier/storage permit shall be valid for up to three years.

(17) [(16)] Waste tire carrier permits shall expire on March 1. Waste tire carrier permittees who want to renew their permit must apply to the Department for permit renewal by February 1 of the year the permit expires. The application for renewal shall include all information required by the Department, and a permit renewal fee.

(18) [(17)] A waste tire carrier permittee may add another vehicle to its permitted waste tire carrier fleet if it does the following before using the vehicle to transport waste tires:

(a) Submits to the Department:

(A) The information required in OAR 340-62-055 (9); and

(B) A fee of $25 for each vehicle added.

(b) Displays on each additional vehicle decals from the Department pursuant to OAR 340-62-063 (1)(b).

(19) [(18)] A waste tire carrier permittee may lease additional vehicles to use under its waste tire carrier permit without adding that vehicle to its fleet pursuant to section (18) [(17)] of this rule, under the following conditions:

(a) The vehicle may not transport waste tires when under lease for a period of time exceeding 30 days ("short-term leased vehicles"). If the lease is for a longer period of time, the vehicle must be added to the permittee's permanent fleet pursuant to section (18) [(17)] of this rule.

(b) The permittee must give previous written notice to the Department that it will use short-term leased vehicles.

(c) The permittee shall pay a $25 annual compliance fee in advance to allow use of short-term leased vehicles, in addition to any other fees required by OAR 340-62-055 (11), (12) and (18)[(17)], and 340-62-063 (7) and (9).

(e) Every permittee shall keep a daily record of all vehicles leased on short term, with beginning and ending dates used, license numbers, PUC authority, PUC temporary pass or PUC plate/marker, and person from whom the vehicles were leased. The daily record must be kept current at all times, subject to verification by the Department. The daily record shall be maintained at the principal Oregon office of the permittee. The daily record shall be submitted to the Department each year as part of the permittee's annual report required by OAR 340-62-063(5).

(f) The permittee's bond or other financial assurance required under OAR 340-62-055 (13) must provide that, in performing services as a waste tire carrier, the operator of a vehicle leased by the permittee shall comply with the provisions of ORS 459.705 through 459.790 and of this rule.

(g) The permittee is responsible for ensuring that a leased vehicle complies with OAR 340-62-055 through 340-62-063, except that the leased vehicle does not have to obtain a separate waste tire carrier permit pursuant to OAR 340-62-055 (1) while operating under lease to the permittee.

(20) (19) A holder of a combined tire carrier/storage permit may purchase special block passes from the Department. The block passes will allow the permittee to use a common carrier or private carrier which does not have a waste tire carrier permit. Use of a block pass will allow the unpermitted common carrier or private carrier to haul waste tires under the permittee's waste tire carrier permit.

(a) Special block passes shall be available in sets of at least five, for a fee of $5 per block pass. Only a holder of a combined tire carrier/storage permit may purchase block passes. Any unused block passes shall be returned to the Department when the permittee's waste tire permit expires or is revoked.

(b) The permittee is responsible for ensuring that a common carrier or private carrier operating under a block pass from the permittee complies with OAR 340-62-055 through 340-62-063, except that the common carrier or private carrier does not have to obtain a separate waste tire carrier permit pursuant to OAR 340-62-055(1) while operating under the permittee's block pass.

(c) A block pass may be valid for a maximum of ten days and may only be used to haul waste tires between the origin(s) and destination(s) listed on the block pass.

(d) A separate block pass shall be used for each trip hauling waste tires made by the unpermitted common carrier or private carrier under the permittee's waste tire permit. (A "trip" begins when waste tires are picked up at an origin, and ends when they are delivered to a proper disposal site(s) pursuant to OAR 340-62-063(4).)

(e) The permittee shall fill in all information required on the block pass, including name of the common carrier or private carrier, license number, PUC authority if applicable, PUC temporary pass or PUC plate/marker if applicable, beginning and ending dates of the trip, address(es) of where the waste tires are to be picked up and where they are to be delivered, and approximate numbers of waste tires to be transported.

(f) Each block pass shall be in triplicate. The permittee shall send the original to the Department within five days of the pass's beginning

date, one copy to the common carrier or private carrier which shall keep it in the cab during the trip, and shall keep one copy.

(g) The permittee shall be responsible for ensuring that any common carrier or private carrier hauling waste tires under the permittee's waste tire permit has a properly completed block pass.

(h) While transporting waste tires, the common carrier or private carrier shall keep a block pass properly filled out for the current trip in the cab of the vehicle.

(i) An unpermitted common carrier or private carrier may operate as a waste tire carrier using a block pass no more than three times in any calendar quarter. Before a common carrier or private carrier may operate as a waste tire carrier more than three times a quarter, he or she must first apply for and obtain a waste tire carrier permit from the Department.

[(20) For the purposes of ORS 459.995(1), the transportation of waste tires under OAR 340-62-055 through 340-62-063 is deemed to be collection of solid waste, and violations of these rules are subject to a civil penalty under the Solid Waste Management Schedule of Civil Penalties, OAR 340-12-065.]

Waste Tire Carrier Permittee Obligations

340-62-063 (1) Each person required to obtain a waste tire carrier permit shall:

(a) Comply with OAR 340-62-025(1).

(b) Display current decals with his or her waste tire carrier identification number issued by the Department when transporting waste tires. The decals shall be displayed on the sides of the front doors of each truck used to transport tires.

(c) Maintain the financial assurance required under ORS 459.730(2)(d).

(2) When a waste tire carrier permit expires or is revoked, the former permittee shall immediately remove all waste tire permit decals from its vehicles.

(3) Leasing, loaning or renting of permits is prohibited. No permit holder shall engage in any conduct which falsely tends to create the appearance that services are being furnished by the holder when in fact they are not.

(4) A waste tire carrier shall leave waste tires for storage or dispose of them only in a permitted waste tire storage site, at a land disposal site permitted by the Department, or at another site approved by the Department.

(5) Waste tire carrier permittees shall record and maintain for three years the following information regarding their activities for each month of operation:

(a) The approximate quantity of waste tires collected. Quantities may be measured by aggregate loads or cubic yards, if the carrier documents the approximate number included in each load;

(b) Where or from whom the waste tires were collected;

(c) Where the waste tires were deposited. The waste tire carrier

shall keep receipts or other written materials documenting where all tires were stored or disposed of.

(6) Waste tire carrier permittees shall submit to the Department an annual report that summarizes the information collected under section (5) of this rule. The information shall be broken down by quarters. This report shall be submitted to the Department annually as a condition of holding a permit together with the annual compliance fee or permit renewal application.

(7) A holder of a waste tire carrier permit shall pay to the Department an annual fee in the following amount:

Annual compliance fee (per company or corporation)	$175
Plus annual fee per vehicle used for hauling waste tires	25

(8) (a) A holder of a waste tire carrier permit who is a private carrier meeting requirements of subsection (8)(b) of this rule shall, instead of the fees under section (7) of this rule, pay to the Department an annual fee in the following amount:

Annual compliance fee	$25

(b) To qualify for the fee structure under subsection (8)(a) of this rule, a private carrier must:

(A) Use a vehicle with a combined weight not exceeding [8,000] 26,000 lbs;

(B) Transport only such waste tires as are generated incidentally to his business; and

(C) Use the vehicle to transport the waste tires to a proper disposal site.

(c) If a vehicle owned or operated by a private carrier is used for hire in hauling waste tires, the annual fee structure under section (7) of this rule shall apply.

(9) A holder of a combined tire carrier/storage permit shall pay to the Department by February 1 of each year an annual compliance fee for the coming calendar year in the following amount:

Annual compliance fee (per company or corporation)	$250
Plus annual fee per vehicle used for hauling waste tires	$ 25

(10) A holder of a waste tire carrier permit shall pay to the Department by February 15 of each year an annual compliance fee for the coming year (March 1 through February 28) as required by sections (7) through (9) of this rule. The permittee shall provide evidence of required financial assurance when the annual compliance fee is submitted.

(11) The fee is $10 for a decal to replace one that was lost or destroyed.

(12) The fee for a waste tire carrier permit renewal is $25.

(13) The fee for a permit modification of an unexpired waste tire carrier permit, initiated by the permittee, is $15. Adding a vehicle to the permittee's fleet pursuant to OAR 340-63-055 (18) [(17)] does not constitute a permit modification.

(14) A waste tire carrier permittee should check with the PUC and DMV to ensure that he or she complies with all PUC and DMV regulations.

Uses of Waste Tires Eligible for Reimbursement

340-62-110 (1) Uses of waste tires which may be eligible for the reimbursement include:

(a) Energy recovery. Energy recovery shall include:

(A) Burning of whole or chipped tires as tire-derived fuel. The tire-derived fuel shall be burned only in boilers which have submitted test burn data to the Department and whose air quality permits are not violated by burning tire-derived fuel in the quantities for which reimbursement is requested.

(B) Incineration or pyrolysis of whole tires or tire chips to produce electricity or process heat or steam, either for use on-site, or for sale.

(b) Other eligible uses. Other eligible uses shall include:

(A) Pyrolysis of tires to produce combustible hydrocarbons and other salable products.

(B) Use of tire chips as road bed base[, driveway cover,] and the like.

(C) Recycling of waste tire strips, chips, shreds, or crumbs to manufacture a new product. The new product may be produced by physical or chemical processes such as:

(i) Weaving from strips of waste tires.

(ii) Stamping out products from the tire casing.

(iii) Physically blending tire chips with another material such as asphalt.

(iv) Physically or chemically bonding tire chips or crumbs with another material to form a new product such as tire chocks.

(D) Use of whole tires:

(i) In artificial fishing reefs in nonocean waters of this state, pursuant to OAR 340-46.

(ii) For the manufacture of new products which have a market value such as buoys.

(2) If a proposed use of waste tires would in the Department's opinion cause environmental, safety or health hazards, the Department may disallow the partial reimbursement. An example of a health hazard would be use of tire chips for playground cover without removing the steel shreds.

(3) The following uses are not considered appropriate for use of the reimbursement, and shall not be eligible for the reimbursement:

(a) Reuse as a vehicle tire.

(b) Retreading.

(c) Use of tires as riprap.

(d) Use of whole or split tires for erosion control.

(e) Use of whole or split tires for tire fences, barriers, dock and racetrack bumpers, ornamental planters, agricultural uses such as raised beds, or other uses in which the user incurs little or no cost, the use is of limited economic value, and the use does not take place within a market.

(f) Use of tire buffings.

Application for Reimbursement

340-62-120 (1) Application for reimbursement for use of waste tires shall be made on a form provided by the Department.

(2) An applicant may apply in advance for certification ("advance certification") from the Department that his or her proposed use of waste tires shall be eligible for reimbursement.

(a) Such advance certification may be issued by the Department if the applicant proves to the Department's satisfaction that:

(A) The use being proposed is an eligible use under OAR 340-62-110;

(B) The applicant is an eligible end user under OAR 340-62-010(10) [(6)] and OAR 340-62-115;

(C) The applicant will be able to document that the waste tires used were generated in Oregon; and

(D) The applicant will be able to document the number of net pounds of waste tires used.

(b) The applicant must still apply to the Department for reimbursement for waste tires actually used, and document the amount of that use, pursuant to sections (3) and (4) of this rule.

(c) Advance certification issued by the Department to an applicant shall not guarantee that the applicant shall receive any reimbursement funds. The burden of proof shall be on the applicant to document that the use for which reimbursement is requested actually took place, and corresponds to the use described in the advance certification.

(3) An applicant may apply to the Department directly for the reimbursement each quarter without applying for advance certification. The application shall be on a form provided by the Department.

(4) To apply for reimbursement for the use of waste tires an applicant shall:

(a) Apply to the Department no later than thirty (30) days after the end of the quarter in which the waste tires were used.

(b) Unless the applicant holds an advance certification for the use of waste tires for which they are applying, prove to the Department's satisfaction that:

(A) The use being proposed is an eligible use under OAR 340-62-010; and

(B) The applicant is an eligible end user under OAR 340-62-010(10) [(6)] and OAR 340-62-115.

(c) Provide documentation acceptable to the Department, such as bills of lading, that the tires, chips or similar materials used were from waste tires generated in Oregon.

(d) Provide documentation acceptable to the Department of the net amount of pounds of waste tires used (including embedded energy from waste

tires) in the quantity of product sold, purchased or used. Examples of acceptable documentation are:

(A) For tire-derived fuel: receipts showing tons of tire-derived fuel purchased.

(B) For incineration of whole tires producing process heat, steam or electricity: records showing net tons of rubber burned.

(C) For pyrolysis plants producing electricity or process heat or steam: billings showing sales of kilowatt hours or tons of steam produced by the tire pyrolysis, calculations certified by a professional engineer showing how many net pounds of tires were required to generate that amount of energy, and receipts or bills of lading for the number of waste tires actually used to produce the energy.

(D) For pyrolysis technologies producing combustible hydrocarbons and other salable products: billings to customers showing amounts of pyrolysis-derived products sold (gallons, pounds, etc.) with calculations certified by a professional engineer showing the number of net pounds of waste tires, including embedded energy, used to produce those products.

(E) For end users of tire strips, chunks, rubber chips, crumbs and the like in the manufacture of another product: billings to purchasers for the product sold, showing net pounds of rubber used to manufacture the amount of product sold.

(F) For end users of tire chips in rubberized asphalt, or as road bed material[, driveway cover] and the like: billings or receipts showing the net pounds of rubber used.

(G) For end users of whole tires: documentation of the weight of the tires used, exclusive of any added materials such as ballast or ties.

(5) The Department may require any other information necessary to determine whether the proposed use is in accordance with Department statutes and rules.

(6) An applicant for a reimbursement for use of waste tires, and the person supplying the waste tires, tire chips or similar materials to the applicant, for which the reimbursement is requested, are subject to audit by the Department (or Secretary of State) and shall allow the Department access to all records during normal business hours for the purpose of determining compliance with this rule.

(7) In order to apply for a reimbursement, an applicant must have used an equivalent of at least 10,000 pounds of waste tires or 500 passenger tires after the effective date of this rule. Waste tires may be used in more than one quarter to reach this threshold amount.

Basis of Reimbursement

340-62-130 (1) In order to be eligible for reimbursement, the use of waste tires must occur after the effective date of this rule.

(2) Any one waste tire shall be subject to only one request for reimbursement.

(3) The amount of the reimbursement shall be based on $.01 per pound for rubber derived from waste tires which is used by an applicant.

(4) The Department may authorize reimbursement funds for demonstration projects at a rate exceeding the above per pound amount if:

(a) The waste tires are recycled or reused, rather than processed for energy recovery;

(b) There is no established market in Oregon for the use which is to be demonstrated;

(c) The total funds spent on any given project does not exceed $100,000 per project; and

(d) The project is located in Oregon.

(5) [(4)] The amount of rubber used shall be based on sales of product containing the rubber; or if the applicant is an end user who consumes and does not further sell the tires, chips or similar materials, the reimbursement shall be based on net pounds of materials purchased or used.

(6) Notwithstanding (3) above, the amount of reimbursement to an end user for an eligible use of tires shall not exceed the cost to the end user of using the tires.

Criteria for Use of Funds to Clean Up Permitted Waste Tire Sites

340-62-155 (1) The Department shall base its recommendations on use of cleanup funds on potential degree of environmental risk created by the tire pile. The following special circumstances shall serve as criteria in determining the degree of environmental risk. The criteria, listed in priority order, include but are not limited to:

(a) Susceptibility of the tire pile to fire. In this, the Department shall consider:

(A) The characteristics of the pile that might make it susceptible to fire, such as how the tires are stored (height and bulk of piles), the absence of fire lanes, lack of emergency equipment, presence of easily combustible materials, and lack of site access control;

(B) How a fire would impact the local air quality; and

(C) How close the pile is to natural resources or property owned by third persons that would be affected by a fire at the tire pile.

(b) Other characteristics of the site contributing to environmental risk, including susceptibility to mosquito infestation.

(c) Other special conditions which justify immediate cleanup of the site.

(d) A local fire district or a local government deems the site to be a danger or nuisance, or an environmental concern that warrants immediate removal of all waste tires.

(2) In determining the degree of environmental risk involved in the two criteria above, the Department shall consider:

(a) Size of the tire pile (number of waste tires).

(b) How close the tire pile is to population centers. The Department shall especially consider the population density within five miles of the pile, and location of any particularly susceptible populations such as hospitals.

(3) In the case of a waste tire storage permittee which is also a local government:

(a) The following special circumstances may also be considered by the

Department in determining whether financial assistance to remove waste tires is appropriate:

(A) The tire pile was in existence before January 1, 1988.

(B) The waste tires were collected from the public, and the local government did not charge a fee to collect the tires for disposal.

(b) If both the above conditions are present, the Department may assist the local government with up to 80 percent of the net cost of tire removal.

(4) [(3)] Financial hardship on the part of the permittee or responsible party shall be an additional criterion in the Department's determination of the amount of cleanup funds appropriate to be spent on a site. Financial hardship means that strict compliance with OAR 340-62-005 through 340-62-045 would result in substantial curtailment or closing of the permittee's business or operation, or the bankruptcy of the permittee. The burden of proof of such financial hardship is on the permittee. In interpreting when "financial hardship" may result, the Department may use the following as guidelines:

(a) In the case of a permittee who is not a corporation or a local government, the cost of cleaning up the tires:

(A) Would cause the permittee's annual gross household income to fall below 80 percent of the area median income as determined by the U.S. Department of Housing and Urban Development; and/or

(B) Would reduce the permittee's net assets (excluding one automobile and homestead) to below $20,000.

(b) In the case of a permittee which is a corporation, the cost of complying with the tire removal schedule required by the Department:

(A) Would cause the annual gross household income of each of the corporate officers and owners to fall below 80 percent of the area median income as determined by the U.S. Department of Housing and Urban Development; and

(B) Would reduce the net assets (excluding basic assets of building, equipment and inventory) of the corporation to below $20,000; and

(C) Would, as certified in a statement from the corporation's accountant or attorney, cause substantial curtailment or closing of the corporation, or bankruptcy.

(5) The permittee is required to contribute its own funds to the cost of tire removal up to the point where "financial hardship," as specified in (4) above, would ensue; the Department may assist the permittee with the remaining cost of tire removal to the following extent:

(a) For a permittee who is not a corporation or a local government: up to 90 percent of the cost (plus any cost of waste tire storage permit fees paid by the permittee);

(b) For a corporation: up to 80 percent of the cost.

(6) A permittee may receive financial assistance for no more than one complete waste tire removal or processing job.

Procedure for Use of Cleanup Funds for a Permitted Waste Tire Storage Site

340-62-160. (1) The Department may recommend to the Commission that

cleanup funds be made available to partially pay for cleanup of a permitted waste tire storage site, if all of the following are met:

(a) The site ranks high in the criteria making it an environmental risk, pursuant to OAR 340-62-155.

(b) The permittee submits to the Department a compliance plan to remove or process the waste tires. The plan shall include:

(A) A detailed description of the permittee's proposed actions;

(B) A time schedule for the removal and or processing, including interim dates by when part of the tires will be removed or processed.

(C) An estimate of the net cost of removing or processing the waste tires using the most cost-effective alternative. This estimate must be documented.

(c) The plan receives approval from the Department.

(2) A permittee claiming financial hardship under OAR 340-62-155(4) [(3)] must document such claim through submittal of the permittee's state and federal tax returns for the past three years, business statement of net worth, and similar materials. If the permittee is a business, the income and net worth of other business enterprises in which the principals of the permittee's business have a legal interest must also be submitted.

(3) If the Commission finds that use of cleanup funds is appropriate, the Department shall agree to pay part of the Department-approved costs incurred by the permittee to remove or process the waste tires. Final payment shall be withheld until the Department's final inspection and confirmation that the tires have been removed or processed pursuant to the compliance plan.

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ATTACHMENT B

RULEMAKING STATEMENTS
for
Proposed New Rules and Revisions to Existing Rules
Pertaining to Storage and Transportation of Waste Tires,
Cleanup of Tire Piles,
and Eligibility for Reimbursement for Use of Waste Tires

OAR Chapter 340, Division 62

Pursuant to ORS 183.335, these statements provide information on the intended action to adopt a rule.

STATEMENT OF NEED:

Legal Authority

The 1987 Oregon Legislature passed the Waste Tire Act regulating the disposal, storage and transportation of waste tires, and establishing a fund to clean up waste tire piles and reimburse persons who use waste tires. ORS 459.785 requires the Commission to adopt rules and regulations necessary to carry out the provisions of ORS 459.705 to 459.790. ORS 459.770 requires the Commission to adopt rules to carry out the provision of that section pertaining to reimbursement for use of waste tires. The Commission is adopting two new rules, and revisions to existing rules which are necessary to carry out the provisions of the Waste Tire Act.

Need for the Rule

Improper storage and disposal of waste tires represents a significant problem throughout the State. The Waste Tire Act establishes a comprehensive program to regulate the disposal, storage and transportation of waste tires. The purpose of the reimbursement is to stimulate the market for waste tires, providing an alternative to landfill disposal. The new rule is needed to properly regulate storage of tires. The rule revisions are needed to make changes the Department has found necessary in administering this program.

Principal Documents Relied Upon

a. Oregon Revised Statutes, Chapter 459.
b. Oregon Administrative Rules, Chapter 340, Division 62.

LAND USE CONSISTENCY STATEMENT:

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

With regard to Goal 6 (Air, Water and Land Resources Quality), the rules provide for the proper storage and disposal of waste tires. The law provides that anyone storing 100 waste tires after July 1, 1988 must obtain a waste tire storage permit from the Department of Environmental Quality. The new rule creates a new category of storage permit, Waste Tire Beneficial Use Storage Permit, for persons who are storing tires but using them for a beneficial purpose. Storage standards are established for this permit category. The rule also incorporates a prohibition, passed by the 1989 Legislature, for ocean reefs made of waste tires to receive the waste tire program reimbursement. This use of waste tires can be problematic in turbulent waters. The rule also establishes criteria for financial assistance to waste tire storage site permittees to help remove their waste tires. This will promote proper cleanup and disposal of waste tires.

With regard to Goal 11 (Public Facilities and Services), criteria are also established for financial assistance for municipalities which have waste tire storage permits. This would assist local governments to properly dispose of waste tires.

The rules do not appear to conflict with other Goals.

Public comment on any land use issue involved is welcome and may be submitted in the manner described in the accompanying NOTICE OF PUBLIC HEARING.

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

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

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ATTACHMENT C

FISCAL AND ECONOMIC IMPACT STATEMENT

I. Introduction

The rule establishes a new permit category of waste tire storage permit, Waste Tire Beneficial Use Storage Permit. ORS 459.715 requires persons storing over 100 waste tires after July 1, 1988 to obtain a storage permit from the Department of Environmental Quality. This new permit category would apply to persons who store tires but use them for a beneficial purpose. It establishes lower permit fees than for "regular" waste tire storage permits, and sets appropriate standards for storage.

The rule also establishes criteria for granting financial assistance to waste tire storage permittees (individuals, corporations and municipalities) to assist in removal or processing of waste tires. Demonstration of financial hardship is required.

The rule also would allow the Department to reimburse persons using waste tires in recycling demonstration projects at a higher rate than that already established by rule for other uses of waste tires.

II. General Public

The general public is not directly affected economically by these rule changes. In cases where the Department assists a municipality to remove waste tires, the taxpayers in that municipality may benefit indirectly by not having to pay additional rates to clean up the tires.

Members of the public who are storing or want to store over 100 tires as a "beneficial use" will be required to obtain a Waste Tire Beneficial Use Storage Permit, while under the existing rule they could possibly have obtained an exemption to the permit requirement. They will be required to submit an application fee ($40 - $100, depending on the use), and annual compliance fees, ranging from $0 to $50. They may also be required to present financial assurance (a bond, for example) to the Department that the tires will be properly removed when the beneficial use is ended. Some additional expense will be required to submit plans, maps, proof of land use compatibility, and other materials to the Department. Time required could range from four to 10 hours to prepare these materials. Total first-year cost of obtaining the beneficial use permit (including administrative time) could be from $80 to $350. Annual costs thereafter could run from $0 to $175. There may be 50 to 100 potentially affected persons in the

State; the Department currently has 21 applications on file. Persons may also choose to remove or not collect the tires rather than apply for a permit.

Members of the public who also hold regular Waste Tire Storage Permits may be eligible for financial assistance in removing tires under the new criteria. The statute provides that such financial assistance may be given if tire cleanup as required of a permittee by the Department would cause substantial curtailment of the permittee's business or operation, or bankruptcy. The rule would allow the Department to pay for up to 90% of the cost of tire cleanup if the permittee's income is below 80% of the U.S. Department of Housing and Urban Development's median area income; and has less than $20,000 in assets. If the permittee's income and assets are higher, financial assistance would be correspondingly less. The permittee would remain responsible for the portion of the cleanup costs not paid by the Department. The Department estimates that there may be from five to 20 potentially eligible persons (not all of whom are currently permittees) in the State. Cleanup costs for their tire piles range from approximately $5,000 to $200,000.

III. Small Business

Some farmers who store waste tires to use them for agricultural purposes may need to apply for the Waste Tire Beneficial Use Storage Permit. The same economic analysis applies to them as to the General Public (above). Some small businesses may want to use tires for fences; they would be subject to the same requirement and analysis.

Small businesses which are also waste tire storage permittees may also receive financial assistance to remove tires under the criteria in this rule. Very similar criteria apply to a sole proprietor as those for individuals (see General Public, above). If the small business is a corporation, slightly different criteria apply. The corporate officers' income and the corporation's net assets are taken into account. If financial hardship criteria are met, the Department could pay 80% of the remaining cost of the tire cleanup. The Department estimates that there may be from five to 10 potentially eligible small businesses in the State (not all of whom are now waste tire storage permittees). The small business would be required to pay for the remaining cost of cleanup.

A small business supplying or using waste tires in a recycling demonstration project approved by the Department could be eligible for the increased amount of reimbursement (over $.01 per pound of rubber used). The magnitude of the subsidy would depend on the amount of rubber used, and the increased level of reimbursement deemed appropriate by the Department. The Department would

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The rule also establishes criteria for granting financial assistance to waste tire storage permittees (individuals, corporations and municipalities) to assist in removal or processing of waste tires. Demonstration of financial hardship is required.

The rule also would allow the Department to reimburse persons using waste tires in recycling demonstration projects at a higher rate than that already established by rule for other uses of waste tires.

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The general public is not directly affected economically by these rule changes. In cases where the Department assists a municipality to remove waste tires, the taxpayers in that municipality may benefit indirectly by not having to pay additional rates to clean up the tires.

Members of the public who are storing or want to store over 100 tires as a "beneficial use" will be required to obtain a Waste Tire Beneficial Use Storage Permit, while under the existing rule they could possibly have obtained an exemption to the permit requirement. They will be required to submit an application fee ($40 - $100, depending on the use), and annual compliance fees, ranging from $0 to $50. They may also be required to present financial assurance (a bond, for example) to the Department that the tires will be properly removed when the beneficial use is ended. Some additional expense will be required to submit plans, maps, proof of land use compatibility, and other materials to the Department. Time required could range from four to 10 hours to prepare these materials. Total first-year cost of obtaining the beneficial use permit (including administrative time) could be from $80 to $350. Annual costs thereafter could run from $0 to $175. There may be 50 to 100 potentially affected persons in the

anticipate reimbursement levels of $.02 to $.04 per net pound of rubber used.

IV. Large Business

The criteria for financial assistance to waste tire storage permittees are also applicable to large businesses. Criteria are as outlined for corporations (see Small Business, above). The Department is not aware of any large businesses that may be eligible for assistance as a permittee for tire pile cleanup.

A large business could also receive the increased subsidy (over $.01 per pound of rubber used) in a waste tire recycling demonstration project.

V. Local Governments

The rule also establishes criteria for financial assistance to waste tire storage permittees which are also municipalities. If a municipality has a waste tire pile that was in existence before January 1, 1988, and for which the municipality charged no fee to the public to accept waste tires, the Department could provide up to 80% of the cost of removing the tires.

Currently there are two such potentially eligible permittees, one with about 15,000 tires and one with over 600,000. Cost of tire removal from these sites could be up to $25,000 and $700,000 respectively. The local government would have to cover the remaining costs of tire removal.

Local governments would also be eligible for the increased subsidy (over $.01 per pound of rubber used) in waste tire recycling demonstration projects.

VI. State Agencies

A state agency involved in a waste tire recycling demonstration project would be eligible for the increased subsidy, either directly or indirectly. For example, if the Department of Transportation were involved in a demonstration paving project using rubber-modified paving, the subsidy would go to the paving contractor, but would presumably be passed through at least in part to ODOT.

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Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Proposed Rules Relating to Regulating Storing, Transportation and Disposal of Waste Tires; Cleanup of Waste Tire Piles; and Reimbursement of Persons Using Waste Tires

Hearing Dates: 9/15/89
9/16/89
Comments Due: 9/27/89

WHO IS AFFECTED: Persons storing over 100 waste tires, including when the storage of such tires creates a benefit for the person storing them. Persons hauling waste tires. Waste tire storage permittees. Persons using waste tires for recycling. Solid waste disposal site operators.

WHAT IS PROPOSED: The Department proposes to adopt two new administrative rules, OAR 340-62-021 and 340-62-036 to establish Waste Tire Beneficial Use Storage Permits. The Department also proposes to revise existing administrative rules OAR 340-62-005, 340-62-010, 340-62-015, 340-62-020, 340-62-022, 340-62-025, 340-62-030, 340-62-035, 340-62-050, 340-62-052, 340-62-053, 340-62-055, 340-62-063, 340-62-110, 340-62-120, 340-62-130, 340-62-155, and 340-62-160, which establish procedures and standards governing waste tire storage site permits and waste tire carrier permits, and procedures for tire pile cleanup and reimbursement to persons using waste tires.

WHAT ARE THE HIGHLIGHTS: The new rules would establish a new waste tire storage permit category for persons storing over 100 tires when the storage of such tires constitutes a "beneficial use." A separate fee schedule and storage standards would be established for this Waste Tire Beneficial Use Storage Permit. Rule revisions would add eligibility criteria for waste tire storage permittees to receive financial assistance from the Department to clean up tire piles. They would remove waste tires used in ocean reefs from eligibility for the reimbursement for use of waste tires. They would also allow the Department to reimburse persons using waste tires in recycling demonstration projects at a rate higher than the established $.01 per pound of rubber used. They would raise the combined weight for a waste tire carrier who is a "private carrier" from 8,000 to 27,000 lbs.

HOW TO COMMENT: Public hearings will be held before a hearings officer at:

4:00 - 7:30 p.m.
Wed., November 15, 1989
School Administration Bldg.
Bond St. Conf. Room, 330
520 N.W. Wall St.
Bend, OR

4:00 - 7:30 p.m.
Wed., November 15, 1989
Marion Co. Courthouse
Court Administrator's Off.
1st Floor Conference Room
148 High St. NE
Salem, OR

(over)

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

11/1/86

FOR FURTHER INFORMATION:

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

Public hearings (continued)

4:00 - 7:30 p.m. Thurs., November 16, 1989 Blue Mountain Com. College Pioneer Bldg., Room 12 N.W. Carden St. Pendleton, OR	4:00 - 7:30 p.m. Thurs., November 16, 1989 Jackson Co. Education Serv. Boardroom, 1st Fl. Jackson ESD 101 N. Grape Medford, OR

Written or oral comments on the proposed rule changes may be presented at the hearings. Written comments may also be sent to the Department of Environmental Quality, Waste Tire Program, Hazardous and Solid Waste Division, 811 S. W. 6th Avenue, Portland, OR 97402, and must be received no later than 5:00 p.m., Monday, November 27, 1989.

Copies of the complete proposed rule package may be obtained from the DEQ Hazardous and Solid Waste Division. For further information, contact Deanna Mueller-Crispin at 229-5808, or toll-free at 1-800-452-4011.

WHAT IS THE NEXT STEP:

The Environmental Quality Commission may adopt new rules identical to the ones proposed, adopt modified rules as a result of testimony received, or may decline to adopt rules. The Commission will consider the proposed new rule and rule revisions at its January, 1990 meeting .

GB8935

Attachment E

WASTE TIRE PROGRAM

GUIDELINES FOR USE OF CLEANUP FUNDS

POLICIES AND PROCEDURES

Incorporating recommendations made by the Waste Tire Advisory Committee at their April 19 and September 6, 1989 meetings

DEPARTMENT OF ENVIRONMENTAL QUALITY

September 15, 1989

Contact Person: Deanna Mueller-Crispin
Waste Tire Program Coordinator
229-5808

I. Purpose

Help persons comply with the waste tire program statute while avoiding "substantial curtailment or closing" of the person's business, and avoiding bankruptcy of the person or business.

II. Program Summary

This program may partially reimburse waste tire storage site permittees for costs incurred in waste tire removal. It also provides funds to contract to abate (clean up) unpermitted tire piles, subject to cost recovery from the responsible person. It may partially reimburse the tire removal costs incurred by a local government in abating a waste tire pile.

III. Eligibility Criteria

a. In General. The law provides that cleanup funds may be used to assist in removing or processing waste tires from a permittee's site if special circumstances make such assistance appropriate, or if strict compliance with the waste tire law would:

- Result in substantial curtailment or closing of a waste tire permittee's business or operation; or

- Result in the bankruptcy of the permittee.

b. The "Applicant" must be the permittee holding a waste tire storage site permit from the Department.

c. For Individuals. DEQ will assume that waste tire removal would result in "substantial curtailment" of the individual's "operation," or in his/her bankruptcy, and thus financial assistance would be provided, if costs of such removal would:

- Result in the reduction of the individual's gross household income to below 80 percent of the area median income (as determined by HUD); and/or

- Result in the reduction of the net household assets (excluding the primary residence, its contents, and one car) to below $20,000.

c. For Sole Proprietorships & Partnerships. DEQ will assume that waste tire removal would result in "substantial

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- Result in the reduction of the gross household income (including all sources of income) of the owner(s) or officers to below 80 percent of the area median income (for sole proprietorships and partnerships only, based on "net income" to the owners from the business excluding depreciation); and/or

- Result in the reduction of the assets of the business to below $20,000 (excluding basic assets of building, equipment and inventory. Cash, investments, stock, real property and accounts receivable will be decreased by any outstanding liabilities [loans, wages payable to others than owner(s), and accounts payable]).

- Partners in a partnership will be held accountable for tire cleanup costs ("paydown" requirement) in proportion to their partnership share in the business.

d. Corporations. DEQ will assume that waste tire removal would result in "substantial curtailment" of the corporation's business, or in its bankruptcy, and thus financial assistance would be provided, if costs of such removal would:

- Result in the reduction of the corporate officers' and corporate owners' gross household income to below 80 percent of the area median income (as determined by HUD); and/or

- Result in the reduction of the net corporate assets to below $20,000 (excluding basic assets of building, equipment and inventory. Cash, investments, stock, real property and accounts receivable will be decreased by any outstanding liabilities [loans, wages payable to others than officers and officers' household members, and accounts payable]); and

- If the corporation's accountant or attorney submits a certified statement that the cost would cause substantial curtailment or closing of the corporation, or bankruptcy.

- Corporate officers and owners will be held accountable for tire cleanup costs ("paydown" requirement) in proportion to their share in the corporation.

e. Municipalities. DEQ will assume that the following special circumstances make it appropriate to provide financial assistance to municipalities:

- The tire pile to be cleaned up existed before January 1, 1988;

- The tires collected were from the public, and the municipality did not charge to collect them for disposal.

Summary:

Class:	Income Threshold	Asset Threshold
Individuals	gross household: 80% median	household $20,000 (excl. homestead & family car)
Sole proprietor, partnership	modified gross (net from bus.) household: 80% med.	business $20,000 (excl. building, equip. & invent'y)
Corporation	gross household, all corporate officers: 80% median	corporation $20,000 (excl. building, equip. & invent'y)
Municipalities	NA (see above)	NA (see above)

IV. Definitions

a. Gross Income: Before tax income for the preceding 12 months from all sources of all occupants of the household unless verified as a paying boarder, including but not limited to wages, commissions, bonus, overtime, Social Security and retirement benefits, Veteran's benefits, public assistance, child support and alimony, interest and dividends, rental or boarder rent income, support from a non-member of the household, unemployment compensation and disability payments, net profits from sole or joint proprietorship or home businesses, and the living expenses portion of student grants for those students residing in the home for the 12 months preceding the date of application.

An exception to the prior 12 month rule is allowed if the applicant or co-applicant is 65 or over and has retired during the prior 12 month period. In these cases, income is from the date of retirement and projected forward 12 months. If this information is not available, the Department shall use the best and most recent information available, including averaging income from the most recent three years of tax returns.

b. Allowable Deductions to Gross Income: All non-reimbursed medical, dental, optical expenses, including nursing home costs, home nursing costs; child support and alimony.

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e. Municipalities. DEQ will assume that the following special circumstances make it appropriate to provide financial assistance to municipalities:

- The tire pile to be cleaned up existed before January 1, 1988;

c. Net Assets: Resources that can be liquidated or used as collateral for a private loan in order to fund waste tire removal, such as: real property, stocks and bonds, savings accounts, credit union shares, cash on hand, vehicles, equipment, less the principal balance of outstanding loans, excluding the mortgage(s) on the primary residence. Value of real property should be county assessor's appraisal; for the cleanup/abatement site, value should be the property's value with tires removed.

d. 80 Percent of Area Median Income: The current level of 80 percent of the median income of the county or SMSA in which the applicant lives, as determined annually by the U.S. Department of Housing and Urban Development (HUD). Income is based on household size.

e. Household Members: All persons, regardless of relationship or age, who are considered dependents of the applicant as defined by the Internal Revenue Service. Those persons not determined to be dependents but who reside permanently in the household may be counted. Under these circumstances their gross annual income from all sources will be added to that of the applicant.

V. Application Process

1. DEQ assigns points to all sites on our list for cleanup or abatement funds. Sites with highest number of points are acted upon first. (Points are based on "Cleanup/Abatement of Waste Tire Piles Point System" paper, 12/28/88)

2. Permittee fills out application form for financial assistance. Application includes detailed description of proposed tire removal actions, time schedule, cleanup bids, etc. Application requires three years of Federal and State income tax returns.

3. DEQ approves plan (or returns to permittee for changes). DEQ determines amount of cleanup funds site would be allowed.

4. Staff prepares staff report to EQC for approval of determined amount of cleanup funds.

5. Permittee cleans up site; DEQ verifies cleanup; DEQ issues voucher for agreed-on amount.

VI. Amount of Financial Help to be Given

1. No financial help shall be given unless the applicant meets the "financial hardship" criteria.

2. "Paydown" requirement: The applicant is required to first contribute his or her own funds to the tire cleanup up to the point at which household income (on an annual basis) and/or net assets would be reduced below the thresholds listed under III, Eligibility Criteria.

3. For individuals, sole proprietorships and partnerships:

   a. On the remaining cost of the cleanup, the Department's contribution will be based on the following criteria:

Criteria	% Cost to be Forgiven
A. Financial hardship	70%
B. "Cooperative"	10% (or max. $1000[1])
C. Unknowingly dumped on	10% (or max. $1000[1])
Maximum assistance:	90% (+ permit fees, bond, but not to exceed 100%)

4. For corporations and municipalities: up to 80% of the cost.

5. The applicant's own in-kind contribution (such as labor) to the cleanup of his site may be considered by DEQ as part of applicant's required cost contribution. However, previous costs incurred by a permittee in removing tires from his site before January 1, 1989, should not be considered part of the permittee's own "financial contribution."

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