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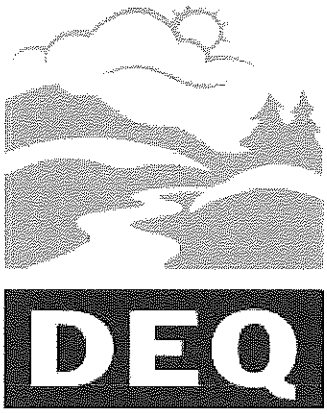
OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 04/17/1990



State of Oregon
Department of Environmental Quality

Blank Sheet Have Been Removed, which is the reason for any discrepancies in the page numbers

AGENDA ITEM OPEN FORUM

OREGON ENVIRONMENTAL QUALITY COMMISSION

WITNESS REGISTRATION

NAME (PLEASE PRINT) Dale Sherborne

ADDRESS

AFFILIATION CCIWWM

I REQUEST APPROXIMATELY 8-10 MINUTES TO SPEAK.

AGENDA ITEM OPEN FORUM

OREGON ENVIRONMENTAL QUALITY COMMISSION

WITNESS REGISTRATION

NAME (PLEASE PRINT) John Painter

ADDRESS

AFFILIATION CCNWM

I REQUEST APPROXIMATELY 8-10 MINUTES TO SPEAK.

AGENDA ITEM OPEN FORUM

OREGON ENVIRONMENTAL QUALITY COMMISSION

WITNESS REGISTRATION

Terry Jenkins
NAME (PLEASE PRINT)

ADDRESS

CC WWM
AFFILIATION

I REQUEST APPROXIMATELY 5-10 MINUTES TO SPEAK.

Twin Rocks Sanitary District - Public Forum

AGENDA ITEM _____

OREGON ENVIRONMENTAL QUALITY COMMISSION

WITNESS REGISTRATION

Gary NewKirk

NAME (PLEASE PRINT)

2234 SE 53rd Ave, Portland 97215

ADDRESS

None

AFFILIATION

I REQUEST APPROXIMATELY 30 MINUTES TO SPEAK.

AGENDA ITEM PUBLIC FORUM

OREGON ENVIRONMENTAL QUALITY COMMISSION

WITNESS REGISTRATION

NAME (PLEASE PRINT) HARRY DEMARAY

ADDRESS 576 WELCOME WAY SE SALEM

AFFILIATION GENERAL PUBLIC

I REQUEST APPROXIMATELY 2 1/2 MINUTES TO SPEAK.

"L"

AGENDA ITEM VISITOR

OREGON ENVIRONMENTAL QUALITY COMMISSION

WITNESS REGISTRATION

CHRIS BOWLES

NAME (PLEASE PRINT)

155 N FIRST HILLSBORO

ADDRESS

USA

AFFILIATION

I REQUEST APPROXIMATELY 3 MINUTES TO SPEAK.

AGENDA ITEM L

OREGON ENVIRONMENTAL QUALITY COMMISSION

WITNESS REGISTRATION

LEONARD GSTALK
NAME (PLEASE PRINT)

5050 S.W. CHILDS ROAD
ADDRESS

(INDEPENDENT) LAKE OSWEGO, REDMOND, BEAVERCREEK
AFFILIATION

I REQUEST APPROXIMATELY 10 MINUTES TO SPEAK.

Revised 4/5/90

State of Oregon

ENVIRONMENTAL QUALITY COMMISSION

A G E N D A

April 17, 1990

(Rescheduled from April 5-6, 1990)
Executive Building -- Room 3A
811 S. W. 6th Avenue, Portland, Oregon

8:00 a.m. -- WORK SESSION

1. Legislative Concepts: General Discussion

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

10:00 a.m. - REGULAR MEETING

Consent Items

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

A. Minutes of the March 1-2, 1990 Meeting

B. Approval of Tax Credit Applications

Hearing Authorizations

NOTE: Upon approval of these items, public rule making hearings will be held in each case to receive public comments. Following the hearings, the item will be returned to the Commission for consideration and final adoption of rules.

I. Chlorofluorocarbons (CFCs) and Halons: Proposed New Rules to Establish Finding That Equipment for Recycling CFCs in Automobile Air Conditioners is Available and Affordable

J. Used Oil/Road Oiling: Proposed Rules (SB 166)

K. Waste Reduction: Proposed Rules for Waste Reduction Plans (SB 855)

Public Forum

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

Recommendations to EQC from Youth Commission for Fish and Wildlife

Public Comments

Action Items

D. Portland Airport Noise Abatement Plan: Request for Extension to October 1, 1990 for Submittal of Update

E. Waste Tire Pile Cleanup: Approval of Funds from Waste Tire Recycling Account to Assist Union County

Rule Adoptions

NOTE: Hearings have already been held on these Rule Adoption items; therefore any testimony received will be limited to comments on changes proposed by the Department in response to hearing testimony. The Commission also may choose to question interested parties present at the meeting.

F. Air Quality Fees: Proposed Adoption of Permit Fee Modifications

G. Permanent Amendments to Rule for Financial Assurance for Solid Waste Sites

H. Solid Waste Fee Amendments

Informational Items

L. Tualatin Basin: Preliminary Evaluation of USA Program Plan, Stormwater Component

C. Commission Member Reports:
- Pacific Northwest Hazardous Waste Advisory Council (Hutchison)
- Governor's Watershed Enhancement Board (Sage)

Reconvened Work Session (Subject to available time.)

2. Discussion of Options for Public Input
   - Commission Meetings
   - Third Party Appeals
3. Gold Mining: Background Discussion
4. Strategic Plan: Schedule for Future Actions
5. Oral Update on Emergency Board Action on Columbia and Willamette Rivers

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

The next Commission meeting will be Friday, May 25, 1990. There will be a short work session prior to this meeting on the afternoon of Thursday, May 24, 1990.

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

Approved ____
Approved with corrections ____
Corrections made ____

MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

ENVIRONMENTAL QUALITY COMMISSION

Minutes of the Two Hundred and Third Meeting
April 17, 1990

Work Session and Regular Meeting

The Environmental Quality Commission (Commission, EQC) Work Session and Regular Meeting was convened at 8:05 a.m. in Room 3A of the Department of Environmental Quality (Department, DEQ) offices at 811 S. W. Sixth Avenue in Portland, Oregon. Commission members present were: Chairman Bill Hutchison, Vice Chairman Emery Castle, and Commissioners Bill Wessinger, Genevieve Sage and Henry Lorenzen. Also present were Michael Huston of the Attorney General's Office, Director Fred Hansen of the Department of Environmental Quality and Department staff.

This meeting was rescheduled from April 5-6, 1990, when unanticipated problems prevented a quorum being present. The April 5-6 agenda was re-ordered to fit into a one day meeting, beginning with a work session at 8:00 a.m., followed by the regular meeting at 10:00 a.m., and a reconvened work session following the regular meeting subject to available time. Agenda items continued to display the original April 5-6 date and item designation.

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

Work Session

Chairman Hutchison convened the Work Session at about 8:05 a.m.

Item 1: Legislative Concepts: General Discussion

Prior to the meeting, draft legislative proposals had been forwarded to the Commission for review. **John Loewy**, Assistant to the Director, introduced the discussion by reviewing the schedule established by the Governor's office for agency submittal of legislative proposals. The schedule requires agencies to submit proposals together with fiscal impact statements for each proposal by May 1, 1990.

Nick Nikkila, Air Quality Division Administrator, briefed the Commission on the air quality proposals and responded to questions. **Lydia Taylor**, Water Quality Division Administrator, briefed the Commission on water quality proposals and responded to questions. **Stephanie Hallock**, Hazardous and Solid Waste Division Administrator, briefed the Commission on hazardous waste and solid waste program proposals and responded to questions. **Michael Downs**, Environmental Cleanup Division Administrator, briefed the Commission on environmental cleanup program proposals and responded to questions.

The Chairman recessed the work session shortly after 10:00 a.m., to be reconvened after the regular meeting.

Regular Meeting

The regular meeting was called to order by Chairman Hutchison at about 10:15 a.m. People wishing to testify on any item were asked to fill out a witness registration sheet. The Commission then proceeded through the published agenda.

CONSENT ITEMS

Agenda Item A: Minutes of the March 1-2, 1990 EQC meeting

It was MOVED by **Commissioner Sage** that the minutes of the March 1-2, 1990 meeting be approved. The motion was seconded by **Commissioner Castle** and passed unanimously.

Agenda Item B: Approval of Tax Credit Applications

The Department presented recommendations that ten applications for tax credit be approved as follows:

T-2543	Merritt Truax;, Inc.	Spill Containment Devices with drains; manholes with recovery vessels for 5 tanks.
T-2557	Metrofueling, Inc.	Spill Containment Devices with drains; manholes with recovery vessels for 5 tanks.

T-2558	Metrofueling, Inc.	Spill Containment Devices with drains; manholes with recovery vessels for 3 tanks.
T-2560	Metrofueling, Inc.	Spill Containment Devices with drains; manholes with recovery vessels for 5 tanks.
T-2572	Pride of Oregon	Spill Containment Devices with drains; manholes with recovery vessels for 5 tanks.
T-2687	Metrofueling, Inc.	Spill Containment Devices with drains; manholes with recovery vessels for 4 tanks.
T-2697	Copeland Paving, Inc.	Replacement of 2 steel tanks; leak detection system and spill and overfill containment system; and monitoring wells.
T-2717	Arthur H. Clough, Chevron Station	Leak Detection System.
T-2898	Brewed Hot Coffee Service	Tank lining system; overfill prevention system; manhole and riser.
T-3101	Burl J. & Josephine Eastman	Tiling installation on 40 acres.

Nine of the ten applications were for underground storage tank upgrade facilities. Since these were the first of a large number of applications to come, the Department included a memorandum as an attachment to the staff report that provided background information on several issues of eligibility and requested Commission concurrence on Department interpretations of eligibility. Some of the options for upgrade of underground tank installations to meet groundwater protection concerns can have other benefits for the facility owner. The Department evaluated the potential benefits, and developed the interpretations to guide determinations of cost of the eligible facility and the percent of cost allocable to pollution control. The Department recommendations on applications presented for approval were consistent with the interpretations presented in the memorandum.

The Commission generally agreed with the interpretations in the memorandum. It was noted that applicants can present information to support a different interpretation if they feel their particular circumstances are different or unique, and that the Commission could approve such applications.

It was MOVED by Commissioner Castle that the tax credit applications be approved as recommended by the Department. The motion was seconded by **Commissioner Lorenzen** and unanimously approved.

Hearing Authorizations

Agenda Item I: Chlorofluorocarbons (CFCs) and Halons: Proposed New Rules to Establish Finding That Equipment for Recycling CFCs in Automobile Air Conditioners is Available and Affordable

This agenda item recommended that the Commission authorize a public hearing on proposed rules to implement and enforce ORS 468.612-621 for the reduction and recycling of certain chlorofluorocarbons as presented in Attachment A of the staff report. The proposed rules would establish standards for automobile air conditioner coolant recovery and recycling equipment, and define the Civil Penalty Matrix and Class of any violation of CFC statutes or rules. The proposed hearing would also gather public comment on the determination of the availability and affordability of recovery and recycling equipment. The statute requires the Commission to make a finding of availability and affordability concurrent with adoption of the rules.

Commissioner Lorenzen asked if the Department had considered a regional approach to the availability and affordability determination to deal with areas of the state with sparse population where the volume of business would not be sufficient to pay for the equipment that could be easily affordable for a larger installation. Nick Nikkila responded that the Department was concerned about the issue, and wanted to get input through the public hearing process in both eastern and western Oregon. The Commission indicated their desire to further consider this issue when the matter comes back to them for adoption of findings and the rules.

It was MOVED by **Commissioner Wessinger** that the Department recommendation be approved. The motion was seconded by Commissioner Sage, and unanimously approved.

Agenda Item J: Used Oil/Road Oiling: Proposed Rules (SB 166)

This agenda item recommended that the Commission authorize a public hearing on proposed rules to set standards for the use of used oil for dust suppression, as an herbicide, or for other direct uses in the environment as presented in Attachment A of the staff report. The proposed rules would implement SB 166 passed by the 1989 legislature. Federal rules previously adopted by reference by the Commission prohibit the use of used oil for dust control or road treatment if the used oil has been contaminated with dioxin or any other hazardous waste (other than a waste identified solely on the basis of ignitability). The proposed rules go further than federal rules by setting specific standards and testing requirements for used oil. The proposed rules also amend existing enforcement rules to establish classes for violations of the rules.

Peter Spendelow, Hazardous and Solid Waste Division, discussed the effects that the new Environmental Protection Agency rules promulgated March 29, 1990 on the Toxicity Characteristic Leaching Procedure (TCLP) would have on road oiling. Almost all used oil contains sufficient quantities of benzene and other toxic organic molecules to be regulated as a hazardous waste under the TCLP rules, and thus would be prohibited from use for dust control. The Department intends to put forward amendments to the used oil rules proposed in Item J during the hearing process to add standards for those toxic organic molecules identified under the TCLP rules that are common constituents of used oil, and thus address the provisions of the new federal rules.

It was MOVED by Commissioner Wessinger that the Department recommendation be approved. The motion was seconded by Commissioner Sage and unanimously approved.

Agenda Item K: Waste Reduction: Proposed Rules for Waste Reduction Plans (SB 855)

This agenda item recommended that the Commission authorize a public hearing on proposed rules presented in Attachment A of the staff report which would set criteria for approval of solid waste reduction programs required under ORS 459.055, as amended by SB 855 adopted by the 1989 legislature.

The proposed rules set standards for waste reduction programs required for jurisdictions sending more than 75,000 tons of waste to a landfill established after 1979 as a conditional use in an exclusive farm use zone. Peter Spendelow pointed out that the existing rules on this subject address the process of developing a waste reduction program, while the new proposed rules address the requirements for the program itself.

It was MOVED by Commissioner Castle that the Department recommendation be approved. The motion was seconded by Commissioner Lorenzen and unanimously approved.

PUBLIC FORUM

John Krieg, Wren Hedine, and **Lisa Montgomery**, members of the Youth Commission from the Fish and Wildlife Department made a special appearance before the Commission to present an overview of their efforts and their recommendations regarding environmental quality.

The Youth Commission was formed in December 1989. It consists of 24 members selected from high schools around the state. The members were required to attend meetings and field activities, and then met to discuss their experiences and prepare a report of their concerns and recommendations.

Slides were shown about the field activities of the Youth Commission. Specific recommendations relating to environmental quality included the following:

- Greater emphasis on pollution prevention.
- More testing of products prior to marketing to avoid the need for recall.
- Require responsible parties to pay for cleanups.
- Higher fines for pollution violators.
- Increased education on the effects of pollution.
- A switch to alternative products that are recyclable.
- Higher water quality standards.
- Mandatory recycling for state agencies.
- Reduced garbage rates for people who recycle.
- Awards for environmentally responsible industries.
- Expand the Bottle Bill.
- Increase Public Involvement.

In response to a question from Chairman Hutchison, one Youth Commission representative indicated that prior to the Youth Commission experience, they were not that aware of what DEQ did, and generally believed that "... DEQ was not on our side."

The Commission thanked the Youth Commission for their efforts, presentation, and recommendations.

Dale Sherborne and **John Pointer**, representing Concerned Citizens for Wastewater Management, asked for a full investigation of DEQ because they believe the Director and the Department have not listened to their charges, answered their questions, or taken appropriate actions regarding violations of permit requirements and rules by the City of Portland. They indicated they had appeared before the Commission multiple times and still had not had their basic questions answered. They asked that their questions be fully addressed during the meeting so they would not have to come back.

Chairman Hutchison stated that the Department has put a lot of energy in to trying to respond to the questions they have submitted. He advised Mr. Pointer that the time allotted for their presentation had been fully used. Upon being interrupted by Mr. Pointer, Chairman Hutchison stated that it was not possible to deal with this matter in the public forum, advised Mr. Pointer to take whatever action he felt he needed to take to resolve his concerns to his satisfaction, and asked him to leave the table.

Gary Newkirk, owner of a home in the Twin Rocks Sanitary District, appeared regarding continuing problems of sewage spills from the Twin Rocks sewer system onto his property. He stated that DEQ has refused to take enforcement action against Twin Rocks for failure to report sewerage spills. He presented documentation of unreported spills on several separate occasions. He asked that his documentation be reviewed. He noted that he had filed a lawsuit against the District. The lawsuit was finally resolved, but the district has not responded.

Mary Halliburton, Water Quality Division, noted that staff did provide testimony during the lawsuit. Twin Rocks submitted plans for a pump station to be installed on Mr. Newkirk's property. Staff has approved those plans. After installation of the pump station, an overflow from a nearby manhole did occur and was investigated by staff. The Department is pursuing conditions regarding operation and maintenance of the collection system as part of the review of the permit renewal application submitted by Twin Rocks Sanitary District. The Department is attempting to include requirements imposed by the court into the permit where appropriate. The Department does not have authority to regulate sewage backups into private property; therefore, property owners must address such matters through private action. The Department does urge system owners to take actions to prevent such backups. Mr. Newkirk noted that DEQ staff has not contacted him in conjunction with any investigation of spills. He concluded by asserting that DEQ is negligent for failing to act, and that goals should be changed to enforce restoration and repairs of sewerage systems that DEQ has required be built.

Commissioner Sage suggested that the Commission need to further discuss the issue of "recourse" in conjunction with the work session discussion on public input. Chairman

Hutchison asked staff to come back on the issue of whether the problem under discussion is a system failure problem as opposed to a single property owner problem.

Harry Demaray, advised the Commission that he had been "summarily fired" from his position as a DEQ employee, and that he had previously appealed actions of the Director to the Supreme Court. He asked the Commission to intercede on his behalf, remove the individuals responsible, and reinstate him as an employee of the Department. Commissioner Castle asked if the matter was before the Employee Relations Board (ERB). Mr. Demaray indicated it was, but his past experience on two occasions suggested to him that ERB review was a waste of time.

Chris Bowles, representing the Unified Sewerage Agency, noted that the Commission adopted rules for the Tualatin Basin for permanent onsite stormwater quality facilities. Those rules are to go into effect in June. At the December meeting, the Commission requested that the matter of the start date be brought back in April for possible modification. The matter is not on the agenda, and it is important to the jurisdictions in Washington County that the start date be moved back to July. The Commission decided to consider the matter further in relation to Agenda Item L later in the meeting.

ACTION ITEMS

Agenda Item D: Portland Airport Noise Abatement Plan: Request for Extension to October 1, 1990 for Submittal of Update

This agenda item recommends that the Commission approve a request submitted by the Port of Portland (Port) for an extension to October 19, 1990 for submittal of an updated Noise Abatement Plan for the Portland International Airport. The extension would allow the neighborhood representatives, the airline industry, the Department, the Port, and other interested parties, additional time to cooperatively develop the best possible program. The Department indicated that granting the requested additional time to complete evaluations of possible changes in flight patterns, operational procedures, and other pertinent issues being addressed by the Port through the Noise Abatement Advisory Committee is in the public's best interest.

It was MOVED by Commissioner Wessinger that the Department Recommendation be approved. The motion was seconded by Commissioner Castle, and unanimously approved.

Agenda Item E: Waste Tire Pile Cleanup: Approval of Funds from Waste Tire Recycling Account to Assist Union County

This agenda item recommends that the Commission approve the use of funds from the Waste Tire Recycling Account to assist Union County to expedite cleanup of approximately 65,000 waste tires at a permitted waste tire storage site. Under the program as proposed, Union County would arrange for the cleanup (which is estimated to cost $98,700), the Department would inspect and approve the cleanup operation, and then pay for 80% of the net cost from the Waste Tire Recycling Account.

During discussion of the item, Commissioner Wessinger asked if such approvals for funds could be delegated to the Director. The Department agreed to investigate the possibility of delegation.

It was MOVED by Commissioner Castle that the Department Recommendation be approved. The motion was seconded by Commissioner Wessinger and unanimously approved.

The meeting was recessed for lunch, and then reconvened.

RULE ADOPTIONS

Agenda Item F: Air Quality Fees: Proposed Adoption of Permit Fee Modifications

This agenda item recommended that the Commission adopt proposed rule amendments as presented in Attachments A1 and A2 of the staff report. The rule amendments impose a one time surcharge on compliance determination fees for Air Contaminant Discharge Permits and impose filing and application processing fees for Indirect Source Construction Permits. The air quality program has a projected funding deficit resulting because federal funds and fees have not increased to cover increased program costs. The fee increase and new fees recommended provide adequate revenue to fund an effective industrial source control program for the remainder of the biennium. Some portions of the air quality program will be operated at a reduced level in order to eliminate the remainder of the projected deficit.

Nick Nikkila and **Wendy Sims** presented information and responded to questions on the proposal. Two categories of permits are affected. New permanent fees were proposed on applications for Indirect Source Construction Permits. For industrial source Air Contaminant Discharge Permits, a one-time increase in the Annual Compliance Determination Fee was proposed. The increase is 88% for sources on regular permits and 20% for sources on minimal source permits. The fee increases are projected to

generate $15,000 and $280,000 respectively in increased revenue for the current biennium. They noted that public testimony was supportive of the fee increase.

Commissioner Castle expressed support for an alternative to adopt emission-based fees. He acknowledged that this alternative is not possible at this time, however.

It was MOVED by Commissioner Wessinger that the Department Recommendation be approved. The motion was seconded by Commissioner Castle and unanimously approved.

Agenda Item G: Permanent Amendments to Rule for Financial Assurance for Solid Waste Sites

This agenda item recommends that the Commission adopt permanent rule amendments for Financial Assurance for Solid Waste Sites as presented in Attachment A of the staff report. The proposed rule amendments would allow the permit applicant for a new regional solid waste disposal facility to commence operation immediately after receiving DEQ approval of the applicant's financial plan. The previous rule required a three month waiting period. The proposed rule was adopted as a temporary rule by the Commission on December 1, 1989, and is now proposed to be adopted as a permanent rule.

It was MOVED by Commissioner Sage that the Department Recommendation be approved. The motion was seconded by Commissioner Wessinger and unanimously approved.

Agenda Item H: Solid Waste Fee Amendments

This agenda item recommended that the Commission adopt rule amendments that would add a 50 cent per ton disposal fee on domestic solid waste generated in Oregon beginning July 1, 1990, pursuant to the provision of HB 3515 passed by the 1989 Legislature. The proposed rule, which is presented in Attachment A of the staff report, establishes how the fee will be collected. Statute directs the revenues from the fee to be used for household hazardous waste collection activities, DEQ waste reduction programs, additional groundwater monitoring and enforcement, local government solid waste planning activities, grants to local governments for recycling, and DEQ administrative expenses in administering the uses of the fee. The proposed rules do not address issues related to use of the fee revenue.

Director Hansen explained the proposed fee amendments and noted that it would not apply to solid waste from out of state. Commissioner Lorenzen asked why the Commission couldn't adopt an emergency rule requiring the same fee on out of state waste. Director Hansen answered that the Legislature gave the Environmental Quality Commission the authority to levy a surcharge on out of state waste only after January 1991.

It was MOVED by Commissioner Castle that the Department Recommendation be approved. The motion was seconded by Commissioner Sage and unanimously approved.

INFORMATIONAL ITEMS

Agenda Item L: Tualatin Basin: Preliminary Evaluation of USA Program Plan, Stormwater Component

This agenda item presented preliminary observations on the stormwater component of the Unified Sewerage Agency (USA) plan for the Tualatin Basin. The USA plan is the first one being reviewed. Observations presented in the attachment to the staff report are preliminary. No recommendation for Commission action was presented at this time. **Roger Wood**, Water Quality Division, advised the Commission on the process for review that was underway.

Chris Bowles, representing USA, again raised the issue of the June 1 date in the Commission rule for requiring permanent on-site facilities for stormwater in connection with new construction. The date causes a burden to the jurisdictions because the effective date of the programs presented in their plans is July 1. The current rule would require the jurisdictions to adopt rules to meet the June 1 date that would be effective for only one month and would be replaced by the permanent plan rules on July 1. Therefore, they requested that, based on evidence that plans have been submitted and that the jurisdictions are moving forward, the June 1 date be modified.

Lori Faha, representing the City of Portland, expressed support for the request of USA.

Commissioner Castle noted that the Commission had committed to clarify this matter at the April meeting and should do so. He supported an extension of the June 1 date to July 1 as requested by the Jurisdictions. Director Hansen identified the options for the Commission as follows: (a) Amend the rule to change the date to July 1; (b) Direct the Department to use it discretionary authority to not take enforcement action on the June 1 date as long as the jurisdictions are proceeding on schedule. The rule could be changed immediately by Temporary Rule as long as the emergency findings could be articulated.

By consensus, the Commission expressed its support for the request of the jurisdictions and asked the Department to return at the May meeting with a proposed temporary rule to delay the June 1 date to July 1.

Leonard Stark, representing himself, provided written information to the Commission. He stressed that every organization and individual should pay their share of cost for cleaning up the Tualatin River.

Agenda Item C: Commission Member Reports

Chairman Hutchison noted that the Pacific Northwest Hazardous Waste Advisory Council is still on for June 4-5, 1990 in Portland. This should be the last meeting of the Council.

Commissioner Sage noted that the last meeting of the Governor's Watershed Enhancement Board (GWEB) was on April 12, 1990 in Roseburg. Issues discussed include structure, increased staffing, and budget for GWEB. She also commended Roger Wood for assisting in securing Clean Water Act Section 319 funds to assist in leveraging GWEB funding for projects.

There was no further business for the regular meeting, so it was adjourned. The Commission then reconvened the work session.

Work Session (Reconvened)

Item 1: (continued) Legislative Concepts: General Discussion

Tom Bispham, Regional Operations Division Administrator, briefed the Commission on enforcement enhancement legislative proposals and responded to questions. **Alan Hose**, Laboratory Division Administrator, briefed the Commission on the Laboratory Certification proposal and responded to questions.

The Commission then asked the Department to prepare a summary of the Department's understanding of the discussion and forward it to the Commission for review as soon as possible. For purposes of reflecting the discussions, a portion of the text of a memo forwarded to the Commission following the meeting is reproduced below:

> At the end of the Work Session presentation on legislative proposals a memorandum summarizing the status of the proposals was requested by the Commission. What follows is a

listing of the proposals in the Department's priority order. This priority listing represents the Chairman's comments at the Work Session as well as the best judgment of Department staff as to importance, practicality, and feasibility.

Two proposals have been dropped from the list completely. They are the phosphate ban and the proposal for the Columbia River. In both cases the Department is required to report to the legislature and legislative proposals are not necessary at this time.

1. COMPREHENSIVE AIR QUALITY FEE

While this proposal is the most difficult to design and probably the most problematic with regard to achieving passage, it is also the most forward looking and creative of the proposals. The kind of analysis which will be required to refine the proposal will be needed before and during the legislative session to react to the similar proposal presented by the Oregon Environmental Council and probably drafted as a bill by the legislative interim committee.

2. SOLID WASTE REDUCTION ENHANCEMENT

This proposal is being prepared with the advice of a broad-based advisory committee. It recognizes the need to move forward with a more aggressive solid waste reduction and recycling program in the state. While the focus now is on recycling goals and standards, the advisory committee will be considering other facets of waste reduction as well. Given the actions of the last legislature on our solid waste reduction bills, and the intense interest in the subject, it is incumbent upon us to go forward to the legislature with the best program we can devise. While not all of the work of the advisory committee may be ready to meet our legislative deadlines, its continuing work will be available for consideration during the session.

3. VOLUNTARY CLEANUPS

This is an innovative approach to addressing a critical problem faced by the agency and the regulated community; how to monitor and certify the voluntary cleanup of sites contaminated by hazardous materials to allow for property transfer and development.

4,5. HAZARDOUS WASTE DISPOSAL FEE INCREASE, ENFORCEMENT ENHANCEMENT

These proposals are all important extensions of authority, budgetary enhancement, or program improvements which are important to the affected programs and/or to the operations of the Department.

6. ASBESTOS INSPECTIONS OF PUBLIC ACCESS BUILDINGS

Asbestos is one of the most dangerous airborne pollutants. This proposal will provide the opportunity for a significant reduction in public exposure to asbestos. The provision in the proposal which clarifies questions of liability enhances our ability to take enforcement action and will have the additional effect of actually reducing our workload, enabling us to conduct more on-site inspections. EPA has agreed to provide funding to develop the public access building portion of the proposal and to support initial implementation if it is enacted.

7. WASTE TIRE PROGRAM EXTENSION

Legislation is needed to extend the $1.00 fee on purchase of new tires as will be recommended by the Waste Tire Advisory Committee along with program improvements.

8. ANALYTICAL LABORATORY CERTIFICATION

An important step toward assuring the quality of data which the Department uses to regulate. There may be ways short of new statutory authority to achieve this end.

9. SPILL CONTINGENCY PLANS FOR INDUSTRY

Based on legislation enacted in Washington State, this proposal will certainly be proposed by legislators, if not by DEQ.

10. FINANCIAL INCENTIVES FOR WOODSTOVES

Given our track record on woodstove pollution control legislation, this bill might better be offered by someone other than DEQ.

Item 2: Discussion of Options for Public Input

The Commission first discussed options for public input in relation to rule adoption agenda items at Commission meetings. The issue is one of assuring that people do not bypass the hearing process in favor of appearing before the Commission during the adoption process, and that the Commission is not unduly influenced by oral testimony received at the meeting.

Commissioner Lorenzen expressed a preference for a process that allows response on all issues after the public hearing but requires all testimony to be submitted in written form. Chairman Hutchison was not comfortable with requiring everything to be submitted in writing and suggested that Commission members could act as co-hearings officers at the public hearing and thereby place more emphasis for presenting all testimony at the hearing. Commissioner Sage indicated that testimony presented to the Commission at the adoption stage could be expression of a need for recourse rather than abuse of the system. Commissioner Castle expressed concern with the quality of the decision made by the Commission. He felt the need for debate between Commission members after testimony is received and before a decision is made. Commissioner Wessinger agreed with Commissioner Castle. Commissioner Sage noted that 11th hour oral testimony is not the most useful form for receiving information.

After further discussion, the Commission asked the Department to consider the discussion and return at the next meeting with a proposal or options that incorporate the concerns of the Commission to the greatest extent possible.

The Commission then discussed the matter of third party appeals. The Chairman thanked Michael Huston for his letter presenting options for their consideration. Commissioner Lorenzen expressed a preference for a process that would allow a third party to submit a petition for review to the Commission; with the Commission having the discretion to either accept the petition and cause a contested case hearing or reject the petition. Commissioner Castle expressed agreement with Commissioner Lorenzen.

Commissioner Sage raised the issue of the public forum period as an outlet for the public when they feel the need for recourse. There was no conclusion reached on this issue.

Item 3. Gold Mining: Background Discussion

Jerry Turnbaugh, Water Quality Division, presented a brief background discussion on the technology and environmental problems associated with mining and cyanide leaching of low grade ore to extract gold. The Department anticipates receiving one or more applications for large scale mining and leaching operations in Eastern Oregon, but has not yet received any such application. **Allen Throop,** representing the Department of Geology and Mineral Industries (DOGAMI), was present and responded to questions from the Commission. Mr. Throop indicated that the Department of Water Resources and the Department of Fish and Wildlife are also involved with DEQ and DOGAMI in a cooperative approach to issues related to mining activities.

Commissioner Lorenzen expressed concern about the impacts of large scale mining activities, and the need to evaluate the broader issues associated with mining and ore processing before any permit applications are filed. He indicated that clear guidance is needed. Commissioner Castle agreed and added that consideration must be given to beneficial uses.

Item 4. Strategic Plan: Schedule for Future Actions

The Commission acknowledged the schedule for future actions on the Strategic Plan as presented in the staff report.

Item 5. Oral Update Emergency Board Action on Columbia and Willamette Rivers

Krystyna Wolniakowski, Water Quality Division, advised that the Emergency Board has taken action to release the funding for the Columbia River Study contingent on the signing of the agreement by the parties.

Neil Mullane, Water Quality Division, advised that the Technical Committee that will be evaluating the Willamette Study Plan was being appointed, and will be meeting on Monday, April 23, 1990.

Director Hansen noted that a Dioxin Work Session is scheduled for June 13, 1990. Further details on the agenda and schedule are being developed.

There was no further business and the work session was adjourned at 3:50 p.m.

Approved ____
Approved with corrections ____
Corrections made ____

MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

ENVIRONMENTAL QUALITY COMMISSION

Minutes of the Two Hundred and Second Meeting
March 1-2, 1990

Field Trip and Work Session

Thursday, March 1, 1990

The Environmental Quality Commission (Commission) briefly visited three food processing facilities in the Hermiston area enroute to Pendleton. Facilities visited include Lamb Weston, Simplot, and Hermiston Foods. The Commission was briefed on wastewater disposal facilities and proposals at each location. The Commission ate lunch at the Umatilla Electric Co-op offices in Hermiston where they received a briefing by Fred Ziari, President of IRZ Consulting, on the irrigation management program in the area.

The scheduled Environmental Quality Commission Work Session was convened at 2:55 p.m. in Room 148, Pioneer Hall at Blue Mountain Community College in Pendleton, Oregon. Commission members present were: Chairman Bill Hutchison, Vice Chairman Emery Castle, and Commissioners Bill Wessinger, Genevieve Sage and Henry Lorenzen. Also present were Michael Huston of the Attorney General's Office, Director Fred Hansen of the Department of Environmental Quality (Department or DEQ) and Department staff.

Item 1: Triennial Review of Water Quality Standards: Background and Discussion

Neil Mullane and **Krystyna Wolniakowski** of the Water Quality Division staff briefed the Commission on the federal requirements for review of water quality standards every three years, and the status of the process in Oregon. The review will determine if revisions are needed to standards to reflect current scientific data and assure that beneficial uses are protected. The triennial review consists of reviewing current technical data and information on water quality criteria, requesting comment from the public on the standards which they may want specifically reviewed, developing issue papers on the standards which may be revised, public review of the issue papers, developing proposed rule revisions, conducting public hearings to review proposed changes, and as appropriate, modifying and adopting new and revised standards. The Department's review process was initiated in December 1989. The initial public comment period closed January 16, 1990. Issue papers are currently being developed on each of the standards that are being considered for revision.

The Commission expressed the desire for further options for their input prior to the rulemaking process. The Department responded that the issue papers will be forwarded to the Commission for review and input prior to development of any proposed rule revisions. These issue papers will

provide background analysis and options for consideration and should provide an improved foundation for Commission direction.

Item 2. In-Stream Water Rights: Background and Discussion of Potential for Rulemaking

Neil Mullane briefed the Commission on legislation passed in 1987 that authorizes the State Parks Department, the Department of Fish and Wildlife, and DEQ to apply for instream water rights to maintain and support public uses within natural streams and lakes. The Department will have to adopt rules describing procedures and methodologies for determining instream flow needs before any application can be submitted to the Water Resources Department. The Department proposed to establish candidates for application by identifying streams where flows are insufficient to assimilate wastes and meet water quality standards and where other agencies have not applied for instream rights or where the stream is not withdrawn from further appropriation. Some of this work will be done in conjunction with establishment of TMDLs (total maximum daily loads). The Department will then develop the required procedural rules and expects to return to the Commission for hearing authorization in May or June. Since no funding was provided for this activity, proceeding as currently planned will require delay of other work.

The Commission expressed the view that a significant workload is involved with this project. **Director Hansen** noted that the ideal approach is to utilize the TMDL process. However, it will take many years to complete this process. The problem is to reserve the needed stream flows at the earliest date before available waters are appropriated for out of stream uses and are not available for instream uses. Thus, the Department has concluded that a 3 to 6 month delay in the TMDL process is justified in order to pursue high priority instream water rights. In response to a question from Commissioner Castle, Director Hansen noted that a delay in the TMDL process does not change the end result. However, a delay in establishment of an instream right may effectively forego the opportunity to achieve the end result of protecting instream uses. **Commissioner Castle** commented that under the circumstances, the establishment of instream rights seems more important. The Commission recognized that it will be necessary to balance the priority of establishment of instream water rights with the requirements of the consent decree for establishment of TMDLs.

Item 3. Dioxin and Total Chlorinated Organics: Short, Medium, and Long Range Strategies; Options for Public Forum; Status of Regulatory Actions; and Columbia River TMDL Progress Report

Chairman Hutchison noted that the Governor had written to the Commission and supported their actions to date and encouraged that certainty be brought to this issue in the near future. He also noted that a meeting had been held with interested participants in the process to discuss options for a public forum.

Neil Mullane referred the Commission to the staff report which contains information regarding short, medium and long term strategies. He also indicated that the Department had prepared a memo outlining options for a public forum that had been developed after the recent meeting with interested participants. He noted that permits had been issued for implementation of dioxin reductions at the bleached kraft pulp mills. The permits and permit evaluation reports were attached to the staff background paper. Finally, he noted that the Department has met with the Environmental Protection Agency (EPA) to discuss their draft TMDL for the Columbia. The Department's evaluation was attached to the staff memorandum. EPA is proceeding to complete a draft TMDL for public review.

Director Hansen passed out a memo presenting notes prepared by Shirley Kengla from the discussion on the Public Forum that was held on February 26, and then outlined thoughts on a structure for a forum. The structure included establishment of blocks of time with a single issue addressed by a panel during each time block; the panel would be made up of 2 or 3 technical experts, potentially one from the industrial side, one from the environmental side, and possibly one selected by the Department; the experts would present and discuss information and the public would listen; and finally there would be some opportunity for public comment at the end of the process. Other options regarding structure include a decision on whether the audience for the forum should be the Commission (with the public as observers) or the public. Another issue would be whether public education should be a purpose of the forum. Director Hansen stressed that the most important issue is to select the specific questions that would be addressed by the experts. The notes from the meeting contained a list of potential questions. Director Hansen noted that the questions should be decided before the experts are selected.

After some discussion, the consensus of the Commission was that the audience should be the Commission; specific questions should be formulated to be addressed by experts; the selection of experts and focus of the forum should be on informing the Commission of issues critical to Commission decisions; the forum should be a one day session; and that Commissioner Lorenzen, Director Hansen, and Neil Mullane should prepare recommendations on the questions to be addressed for consideration at the April meeting.

Item 4. Strategic Plan: Review of Draft Document

The Department presented a final draft of the Strategic Plan to the Commission with a recommendation that notice of opportunity for public input be issued.

Commissioner Wessinger suggested that the wording of the items in the draft under the heading "Candidates for Deferral, Modification, or Elimination" is inconsistent with the heading. The Department was instructed to modify the heading to make it clear that the listed items are priorities for resource reduction.

By consensus, the Commission instructed the Department to proceed to public notice on the Strategic Plan.

At the request of the Chairman, the Department provided the Commission with a memo describing the intended next steps regarding preparation of operating plans and performance indicators. Since the Commission did not have a chance to review this material in advance of the meeting, the Chairman asked that it be considered at the next work session.

Special Public Forum on Groundwater

Thursday, March 1, 1990

The Commission convened a special public forum on groundwater shortly after 7:30 p.m. in the Cayuse Room, Red Lion Inn at Indian Hills, Pendleton, Oregon. **Amy Patton**, Manager of the Groundwater Section of the Water Quality Division, presented background information on Oregon's groundwater protection program. Others who presented their views to the Commission included **Mike Henderson**, representing Lamb Weston, **Scott Duff**, representing the Oregon Wheat Growers League, **Tom Darnell**, representing the Oregon State University Extension Service, **Representative C. R. "Chuck" Norris**, State Representative for District 57, and **Bart Barlow**, representing himself.

Regular Meeting

Friday, March 2, 1990

The Environmental Quality Commission meeting was convened at 8:35 a.m. in Room 148, Pioneer Hall, at the Blue Mountain Community College in Pendleton. In attendance were Chairman Bill Hutchison, Vice Chairman Emery Castle, and Commissioners Bill Wessinger, Genevieve Sage and Henry Lorenzen. Also present were Michael Huston of the Attorney General's Office, Director Fred Hansen of the Department of Environmental Quality and Department staff.

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

The meeting was called to order by Chairman Hutchison. People wishing to testify on any item were asked to fill out a witness registration sheet. The Commission then proceeded through the published agenda.

Agenda Item A: Minutes of the January 18-19, 1990 EQC Meeting

It was MOVED by Commissioner Sage that the minutes be approved. The motion was seconded by Commissioner Wessinger and passed unanimously.

Agenda Item B: Civil Penalties Settlements

There were no civil penalty settlements for consideration at this meeting.

Agenda Item C: Approval of Tax Credit Applications

The Department presented recommendations that 41 applications for tax credit be approved and 2 certificates be transferred as follows:

(1) January 19, 1990, Report (carried forward to March 2, 1990 Meeting):

T-2390 Pacific Power & Light	Oil Spill Containment System
T-2434 Teledyne Industries, Inc.	Wastewater Treatment System
T-2442 Pennwalt Corp.	Earthen Dikes
T-2447 Prince Seeds, Inc.	Straw Storage Shed
T-2467 Portland General Electric	Oil Spill Containment System
T-2478 Portland General Electric	Oil Spill Containment System
T-2493 Pacific Power & Light	Oil Spill Containment System
T-2693 W. & Trudy Radke	Straw Storage Shed
T-2713 Robert Schmidt	Straw Storage Shed
T-2742 Willamette Industries	Waste Paper Baler System
T-2753 Kurt & Ellen Kayner	Straw Storage Shed
T-2758 Smith Bros. Farms	Straw Storage Shed Facility
T-2783 Far West Fibers	Solid Waste Recycling Facility
T-3029 Edner Bros, Inc.	Rears Propane Flamer
T-3093 Christensen Farms	Used Hesston Baler and Accumulator
T-3102 ABC Recycling	Solid Waste Recycling Facility
T-3129 James VanLeeuwen	Round Baler and Round Bale Mover
T-3130 Wallace Zielinski	Case International Big Baler; Case Accumulator

(2) March 2, 1990, Report:

T-2318 Teledyne Industries, Inc.	Venturi Scrubber System
T-2472 Willamette Industries, Inc.	Baghouse, two cyclones, four fans and ancillary

	equipment
T-2536 Willamette Industries, Inc.	Two pneumafil filters and 8-head sander
T-2663 South Coast Lumber Co.	16' diameter pneumafil bag filter
T-2670 Precision Castparts Corporation	Spill Containment Facility
T-2686 Walter J. Wilmes	Straw Storage Shed
T-2802 J.S.G., Inc.	Straw Storage Shed
T-2838 Charles V. & Catherine Grimes	Straw Storage Shed
T-2902 Wm. J. Stellmacher	Straw Storage Shed
T-3078 Far West Fibers	Recycling Compactor and Container
T-3126 Willamette Industries, Inc.	Baghouse, Pneumafil Filters and ancillary equipment
T-3128 J.S.G., Inc.	Wheel Loader
T-3132 Eder Farms, Inc.	Round Baler
T-3136 Oak Park Farms, Inc.	Straw Storage Shed
T-3137 Oak Park Farms, Inc.	Straw Storage Shed
T-3139 Estergard Farms, Inc.	Straw Storage Shed
T-3141 Estergard Farms, Inc.	Straw Rake, Buck Rake, and Rears Propane Flamer

Transfer of Tax Credit Certificates:

Cert. #1678 Pleasant Valley Ply, Inc.	Ducting and Damper Control System
Cert. #1635 Pleasant Valley Ply, Inc.	Air Emission Scrubber

(3) March 2, 1990 Supplemental Report:

T-2827 Ernest Smyth	Baler; Hay Squeezer; and Tractor
T-2941 J.S.G., Inc.	Tractor
T-2942 J.S.G., Inc.	Tractor
T-3131 James VanLeeuwen	Tractor
T-3135 Tom Herndon	Tractor
T-3140 Donald Estergard	Tractor

Roberta Young, of the Management Services Division, presented corrected information on the calculation of the percent allocable to pollution control on application T-2827.

Commissioner Lorenzen questioned the number of tractors claimed for tax credit. He cautioned that it is difficult to establish the percentage of any implement use for a particular operation. He urged the Department to keep on top of this matter to keep things from getting out of hand.

It was MOVED by Commissioner Lorenzen that all tax credit applications except 2742, 2472, 2536, 2670, and 3126 be approved as recommended by the Department. The motion was seconded by Commissioner Sage and unanimously approved.

It was MOVED by Commissioner Sage that tax credit applications 2742, 2472, 2536, 2670, and 3126 be approved as recommended by the Department. The motion was seconded by Commissioner Castle and approved with four votes in favor. Commissioner Wessinger abstained from voting on the motion.

Agenda Item D: Commission Member Reports

Chairman Hutchison reported that a toxic use reduction program that Oregon has taken the lead in developing through the Pacific Northwest Hazardous Waste Advisory Council is working its way through the Washington legislature and has been introduced in the Idaho legislature. The next meeting of the Council will be its last meeting and will be June 4 & 5, 1990 in Portland.

Commissioner Sage reported that the Governor's Watershed Enhancement Board (GWEB) reviewed the first round of applications for project funding for the second biennium at its last meeting.

PUBLIC FORUM

H. C. Wright, representing Wright Chevrolet in Fossil, Oregon, advised the Commission of the problems faced by small service stations as a result of the regulations on underground tanks. He stressed that small stations cannot comply and operate.

Agenda Item E: Regional Managers Report

Bruce Hammon, Manager of the Eastern Region for the Department of Environmental Quality, presented an oral overview of significant environmental program activities in the Eastern Region.

Commissioner Castle asked whether Washington and Idaho programs are similar to Oregon's programs. Director Hansen responded that Washington addresses the same issues as Oregon, but in a different way than Oregon. Oregon generally provides more technical assistance than Washington. Idaho does not operate programs in all the same areas as Washington and Oregon, and generally uses a lighter touch in their regulatory approach.

Agenda Item F: Air Quality State Implementation Plan: Approval of Lane Regional Air Pollution Authority Rule Title 34, "Air Contaminant Discharge Permits" as part of the State Implementation Plan

This agenda item recommended the Commission adopt the Lane Regional Air Pollution Authority (LRAPA) Title 34, "Air Contaminant Discharge Permits" as presented in Attachment A of the staff

report as a revision to the Oregon State Implementation Plan. The Amendments provide better public access to the permitting process, are technically stronger, will result in additional information on air emissions being gathered, and will provide better recovery of the LRAPA permit program costs from permit fees.

Director Hansen noted that the Lane Regional fees included in this item are different from the permit fees charged by the Department. In the past, the Commission has attempted to maintain consistent fees between state and local programs. However, the Commission has approved different fees for LRAPA because of the strong local support for the program.

It was MOVED by Commissioner Castle that the Department Recommendation be approved. The motion was seconded by Commissioner Sage and was unanimously approved.

Agenda Item G: Reclaimed Plastic Tax Credit: Adoption of Temporary Rules as Permanent Rules

On December 1, 1989, the Commission adopted temporary rules to facilitate implementation of changes in the plastics tax credit program adopted by the 1989 legislature in SB 1083. The Commission also authorized a hearing to adopt the rules as permanent rules. This agenda item proposed adoption of the permanent rules as presented in Attachment A of the staff report. A public hearing was held on January 9, 1990. Testimony was submitted in support of the rules by two individuals. A comment by the Oregon Department of Energy suggested that the rules make reference to their Business Energy Tax Credit Program. The Department did not propose any change in the rules because the Statute is clear on the relationship between the programs.

It was MOVED by Commissioner Castle that the Department Recommendation be approved. The motion was seconded by Commissioner Lorenzen and unanimously approved.

Agenda Item H: Disposal of Cleanup Materials Contaminated with Hazardous Substances: Adoption of Amendments to the Solid Waste Rules (Previously referred to as "Special Wastes")

This item proposed the adoption of amendments to the Solid Waste Rules regarding "specified wastes." On October 20, 1989, the Commission authorized public hearings on proposed rules which would create a new category of waste called "special waste" that included cleanup materials contaminated with hazardous substances. A public hearing was held on December 6, 1989. Based on testimony received and further discussions with the Solid Waste Advisory Committee, the Department made a number of changes to the proposed rules. Among the changes was amendment to the specified waste rules by adding new subcategories rather than creating a new category in the rules. The Department recommended adoption of the rules as presented in Attachment A of the staff report.

Commissioner Lorenzen asked if it was possible to spread soil from an underground tank cleanup on the desert rather than transporting it to a site authorized to receive the material as a "specified waste". **Steve Greenwood**, of the Hazardous and Solid Waste Division, responded that spreading could occur for treatment under a letter of authorization. However, if the material is moved off site for disposal, it must go to an approved site.

It was MOVED by Commissioner Wessinger that the Department Recommendation be approved. The motion was seconded by Commissioner Castle and unanimously approved.

Agenda Item I: Underground Storage Tank (UST) Program: Adoption of Permanent Rules for:
1. UST Grant Reimbursement Program
2. UST Loan Guarantee and Interest Rate Subsidy Program

Agenda Item I-1 proposed the adoption of permanent rules establishing a program to provide reimbursement grants of up to 50% of the cost of tightness testing and soil assessment on motor fuel underground storage tanks, but not to exceed $3,000. The proposed rules also modified the definitions for an underground storage tank and a service provider for an undergound storage tank to be consistent with September 23, 1988 federal UST rules. Temporary rules were adopted September 15, 1989, and a hearing for adoption of permanent rules was authorized. Hearings were held in December. The Department recommended adoption of the rules as presented in Attachments A, B, and C of the staff report.

Agenda Item I-2 proposed the adoption of permanent rules establishing a program to provide loan guarantees and interest rate subsidies to commercial lending institutions that provide loans for soil remediation and upgrading or replacing underground storage tanks for motor fuel. The loan guarantee is limited to 80% of the cost of the loan principal not to exceed $64,000. The interest rate subsidy is provided to the commercial lending institution as a state income tax credit and is limited to the difference in loan expenses on a 7.5% loan and 3% above the prime rate at the time the loan is made. The proposed rules also establish a numerical priority system that is intended to give preference to small retail businesses that provide motor fuel to rural population centers. The Commission authorized a hearing on permanent rules on September 8, 1989. Temporary rules were adopted on October 20, 1989. The Department recommended adoption of the rules as presented in Attachment A of the staff report.

Richard Reiter, Hazardous and Solid Waste Division, reviewed the background of these two items and explained the basis for the Department recommendations. He also reported on recent Federal oversight hearings where consideration is being given to delay of the federal financial responsibility requirements. He noted that testimony strongly indicated that the problem with the federal underground tank program is not insurance availability, but rather is simply that small businesses can't afford to comply. The rules recommended for Commission adoption provide some assistance to small business, although it may not be enough. With respect to Agenda Item I-1, Mr. Reiter

indicated that requests had been received for 900 applications to date, and that the program can help 1,130 installations. Thus, the priority system does not appear to be necessary. With respect to Agenda Item I-2, requests have been received from 400, whereas funding is available to assist only 245 businesses.

It was MOVED by Commissioner Castle that the Department Recommendation on Agenda Items I-1 and I-2 be approved. The motion was seconded by Commissioner Wessinger and unanimously approved.

The Chairman then announced that Items U, Q, and T would be taken out of order to accommodate people who had signed up to testify.

Agenda Item U: Water Quality Permit Fees: Proposed Municipal Source Fee Increase to Help Fund Groundwater Program, Pretreatment Program and Sludge Program

This agenda item recommended that the Commission authorize a rulemaking hearing on proposed rules to increase annual compliance determination fees for sewage treatment facilities. The revenue generated from the increased fees would be used to fund implementation of portions of the 1989 Groundwater Protection Act as directed by the Legislature, and to fund sludge management and pretreatment activities contingent upon Legislative Emergency Board review. The proposed rules were presented in Attachment A of the staff report.

Chairman Hutchison invited three individuals who had asked to testify on this agenda item (Floyd Collins, City of Salem; John Lang, City of Portland; and Gary Krahmer, Unified Sewerage Agency) and DEQ Water Quality staff (Dick Nichols, Neil Mullane, and Mark Ronayne) to offer input concerning the Department's request for authorization to hold a public hearing on modifications to OAR 340-45-75(3) related to proposed increases in Annual Compliance Determination fees.

Dick Nichols provided the Commission with a brief summary of the Agenda item and **Mark Ronayne** advised that the Department's Domestic Sludge and Pretreatment Advisory Committees would meet March 14, 1990, to review the basis of FTE proposed with staff.

Floyd Collins, summarized concerns AOSA (Association of Oregon Sewerage Agencies) addressed in a February 27, 1990, letter they had submitted to the Commission. Mr. Collins noted previous discussions with Water Quality program staff had indicated seven FTE would probably be required to effectively implement the Department's domestic sludge and pretreatment programs. However, proposed rule modifications indicated 15 positions would be needed to implement program responsibilities. As a result, AOSA stated they could not support the level of FTE proposed by DEQ without a more detailed evaluation of how proposed fees were derived.

Mr. Collins stated AOSA was concerned that the rules proposed to fund both point and nonpoint source control programs within the Tualatin subbasin exclusively using fees from the sewage treatment facilities in the subbasin. AOSA was concerned that sewage treatment plants should not be burdened with funding regulatory functions other than those directly associated with sewage treatment plants. Activities related to nonpoint source pollution should be funded by other sources of money. AOSA was concerned that by adopting the approach proposed in the rules, a policy decision was being made that would be extended to other basins where TMDLs would be adopted.

Fred Hansen stated that the Tualatin River water pollution control program was viewed by the Department as an exception because of the complex issues associated with it. The Department did not view our funding approach for the Tualatin as the pattern to be used for other basins.

John Lang and **Gary Krahmer** noted staff's willingness to meet with regulated sources via the joint Advisory Committee meetings and testimony previously covered by Floyd Collins had addressed matters they wished raised before the Commission.

It was MOVED by Commissioner Wessinger that the Department recommendation be approved. The motion was seconded by Commissioner Castle and unanimously approved.

Agenda Item Q: Water Quality Rules: Proposed Rules on Re-Use of Reclaimed Water

This agenda item recommended that the Commission authorize a rulemaking hearing on proposed rules that establish effluent quality limitations, effluent monitoring and other requirements for sewage treatment facility owners that provide reclaimed water (treated effluent) for beneficial purposes such as agricultural and landscape irrigation. The proposed rules were presented in Attachment A of the staff report.

This agenda item was introduced and briefly described by Dick Nichols, Municipal Facilities Engineer, in the Water Quality Division. Mr. Gary Krahmer of the Unified Sewerage Agency of Washington County stated that his agency supported authorization of the proposed rules for hearing. As part of his agency's proposal for reducing effluent discharges to the Tualatin River, use of reclaimed water would play a large role. Rules relative to reclaimed water would be helpful in determining the extent to which reclaimed water could be used.

Director Fred Hansen cautioned the Commission that, although there was no one present that objected to the proposed rules, this did not mean that the use of reclaimed water would be noncontroversial. Most controversy, however, will not be with the rules as much as when individual, site-specific projects are proposed using reclaimed water. Neighbors to such projects may object to the use of reclaimed water.

It was MOVED by Commissioner Castle that the Department recommendation be approved. The motion was seconded by Commissioner Sage and unanimously approved.

Agenda Item T: Water Quality Permit Fees: Proposed Industrial Source Fee Increase to Help Fund Groundwater Program

This agenda item recommended that the Commission authorize a rulemaking hearing on proposed rules to increase permit fees for industrial sources to help fund the 1987 Groundwater Protection Act as directed by the Legislature. The proposed rules were presented in Attachment A of the staff report.

It was MOVED by Commissioner Castle that the Department recommendation be approved. The motion was seconded by Commissioner Lorenzen and unanimously approved.

The Chairman then returned to the published order of the agenda.

Agenda Item J: Enforcement Policy and Civil Penalty Procedure: Adoption of Proposed Rule Amendments

This agenda item proposed that the Commission adopt amendments to the enforcement and civil penalty rules as presented in Attachment A of the staff report. The proposed rules would make the field burning program subject to the same enforcement policy and procedures as the rest of the Department programs and make housekeeping corrections based on experience working with the rules. The Commission authorized a hearing at the December 1, 1989, meeting. Hearings were held January 5 and 8, 1990, in Portland. Written testimony was received until January 16, 1990.

Yone McNalley, of the Regional Operations Division, highlighted the provisions of the proposed rule amendments. The Department also presented additional recommended revisions in wording to clarify the intent of OAR 340-12-045(1)(c)(A).

It was MOVED by Commissioner Castle that the Department Recommendation, as amended, be approved. The motion was seconded by Commissioner Sage and unanimously approved.

Agenda Item K: Tax Credit Program: Adoption of Proposed Rule Amendments

This agenda item recommended that the Commission adopt proposed amendments to the pollution control facility tax credit rules as presented in Attachment A of the staff report. The proposed rules incorporate modifications necessary to implement changes made by the 1989 legislature, as well as modifications to clarify the intent of current rules. A public hearing was held on the proposed amendments on January 9, 1990.

It was MOVED by Commissioner Sage that the Department Recommendation be approved. The motion was seconded by Commissioner Lorenzen and unanimously approved.

Agenda Item L: Incinerator Rule: Amendments to Better Address Municipal and Hospital Units

This agenda item recommended that the Commission adopt new rules for solid waste, infectious waste, and crematory incinerators as presented in Attachment C of the staff report. The purpose of the rules is to provide better and more uniform protection to the public from particulates, acid gasses and toxic air pollutants, and provide uniform performance standards for both incineration equipment and monitoring systems. A hearing on the proposed rules was authorized at the October 20, 1989, Commission meeting. Public hearings were held in Portland, Medford, and Bend.

Nick Nikkila, Air Quality Division Administrator, summarized the proposed rules, indicating that they contain more stringent and uniform emission standards and other requirements for all waste incinerators than do the current rules. Mr. Nikkila emphasized that the Department's current incinerator rules are very inadequate and behind the times. As a result, the Department has been setting emission limits and other requirements on a case-by-case basis through the Department's Air Contaminant Discharge Permits. He indicated that these rules would require the use of Best Available Control Technology and continuous emission monitoring, which would significantly reduce air contaminants from incinerators, particularly toxic air emissions. He added that the Department realizes that the costs associated with these rules will be substantial, and may force smaller incinerator facilities to shut down, thereby favoring regional incineration of waste.

Brian Finneran from the Air Quality Division distributed to the Commission a table which compared and contrasted the Department's proposed incinerator rules with other states' rules and proposed incinerator rules from the Environmental Protection Agency. Mr. Finneran indicated that this table showed that the proposed rules were equally as stringent as those states which recently adopted strong incinerator rules. He then summarized some of the major issues raised during the public comment period, and outlined some of the changes made as a result of this input. These changes included aligning the Department's rules with EPA's proposed rules, additional requirements for operator training and certification, and a reduction in compliance time for crematories to three years. The Department also proposed a correction to the definition of "particulate matter" in the rules.

Mr. Nikkila and Mr. Finneran concluded the discussion by answering several questions from the Commission concerning the proposed rules and responding to a series of questions raised in a letter to Commissioner Sage from Mr. Paul Wyntergreen representing Oregon Environmental Council. Mr. Nikkila also indicated two additional corrections that would be made to the rules, one involving requirements for incinerator design and operation, and the other a reference to a possible reduction in the compliance date for existing incinerators, if similar incinerator rules are adopted.

It was MOVED by Commissioner Wessinger that the Department Recommendation as amended to include the three corrections noted above, be approved. The motion was seconded by Commissioner Castle and unanimously approved.

Agenda Item M: Woodstove Certification Program: Adoption of Proposed Modifications to Conform to New EPA Requirements

This agenda item recommended that the Commission adopt amendments to the Woodstove certification rules to accept EPA's woodstove certification program as meeting Oregon's requirements in order to eliminate duplication of effort, reduce requirements imposed on woodstove manufacturers, and reduce staff workload. The proposed rule amendments were presented in Attachment A of the staff report. The Commission authorized hearing on the proposal at the December 1, 1989, meeting. A public hearing was held January 16, 1990.

Steve Crane from the Air Quality Division staff reviewed the issues that were raised in the hearing on the proposed rules and summarized the position reflected in the Department recommendation.

Jim Hermann, representing Earth Stove Marketing, Inc., expressed the view that the summary of testimony on the January 16th hearing was not adequate, that pellet stoves should all be exempt based on the air to fuel ratio, that the Department was inappropriately asking for new regulatory authority, that it was not necessary for the Department to remain active in the certification program, and that DEQ was not enforcing the regulations.

John Crouch, representing the Wood Heating Alliance, stated that there would be no need for a program by the end of the year, therefore, if the program was continued, it should have a one year sunset date on it.

Chairman Hutchison commented that he was not comfortable changing any of the Department recommendations.

It was MOVED by Commissioner Castle that the Department Recommendation be approved. The motion was seconded by Commissioner Lorenzen and unanimously approved.

Agenda Item N: Asbestos Program: Proposed Adoption of Rules on Sampling for Air Quality Clearance

This agenda item recommended that the Commission adopt proposed amendments to the asbestos program rules to incorporate requirements for air sampling at asbestos abatement projects to assure that national emission standards for hazardous air pollutants are not exceeded and that abated areas are safe for reoccupancy. A public hearing was held on the proposal on January 18, 1990, in Salem. The proposed rules were presented in Attachment A of the staff report.

Commissioner Sage asked a question about how the exemption provision of the rule would be used. **Sarah Armitage** of the Air Quality Division explained that the Department recognized that under certain physical conditions, abatement contractors would not be able to comply exactly with the regulations, or there would be major hardships in complying. One example would be when fiber counts outside containments were higher than inside counts, due to "dirty" conditions. The Department would then consider allowing the lowest practicable fiber count for clearance of the site. Another example of possible exemption would be when a facility requested to utilize their own staff to perform sampling and analyses, and could provide sufficient proof of financial hardship in using an independent third party, appropriate training and lack of bias.

It was MOVED by Commissioner Sage that the Department Recommendation be approved. The motion was seconded by Commissioner Castle and unanimously approved.

Agenda Item O: Confirmed Release List and Inventory and Hazardous Waste Management Fees: Authorization for Hearing on Proposed Rule Amendments to Establish Criteria and Procedure for Adding or Removing Sites per HB 3235 and Amend Fees

This agenda item recommended that the Commission authorize a rulemaking hearing on proposed rule amendments relating to the confirmed release list and inventory pursuant to HB 3235 passed by the 1989 legislature. The proposed rules were included in Attachment A of the staff report and provide criteria and procedures for implementation and administration of a hazardous substances site discovery program, including a process for evaluation and preliminary assessment of releases of hazardous substances, and a process for developing and maintaining a statewide list of confirmed releases and an inventory of sites requiring investigation, removal, or remedial action. The proposal would also amend existing rules pertaining to the fee for wastes entering hazardous waste disposal facilities to conform to amendments in the 1989 legislation.

It was MOVED by Commissioner Wessinger that the Department recommendation be approved. The motion was seconded by Commissioner Sage and unanimously approved.

Agenda Item P: Waste Reduction: Proposed Rules for Waste Reduction Plans (Withdrawn)

This item was withdrawn from the agenda and will be considered at a subsequent meeting.

Agenda Item R: Sewerage Works Construction Grants: Proposed Rule Modifications

This agenda item recommended that the Commission authorize a rulemaking hearing on amendments to the rules governing state administration of the federal sewerage works construction grant program. The proposed amendments were presented in Attachment A of the staff report.

The amendments were necessary to conform to the Federal Water Quality Act of 1987 and to facilitate the process of phasing out the grant program.

It was MOVED by Commissioner Wessinger that the Department recommendation be approved. The motion was seconded by Commissioner Lorenzen and unanimously approved.

Agenda Item S: Water Quality Rules: Proposed Minor Rule Changes Affecting Industrial and Agricultural Sources

This agenda item recommended that the Commission authorize a rulemaking hearing on water quality rule amendments affecting industrial and agricultural sources as presented in Attachment A of the staff report. Changes are necessary to conform to provisions of 1989 legislation, clarify the intent of existing rules, and correct inconsistencies between various rules.

It was MOVED by Commissioner Castle that the Department recommendation be approved. The motion was seconded by Commissioner Sage and unanimously approved.

Special Agenda Item: Conceptual Authorization for Hearing on Modification of Air Quality Permit Fees

Nick Nikkila, Air Quality Division Administrator advised the Commission of a critical shortfall of revenue to support the existing approved level of the Air Quality Program. The Department is in the process of developing proposed fee modifications to address part of the shortfall. Staff was working with an industrial group in the development of a proposal. Before any fee increases can be effective, the Commission must adopt the changes by rule, and the Emergency Board must review the action.

The Department requested that the Commission grant conceptual authorization to proceed to rulemaking hearing on increased air fees as soon as a proposal is completed.

It was MOVED by Commissioner Lorenzen that a hearing be authorized as proposed by the Department. The motion was seconded by Commissioner Wessinger and unanimously approved.

Legislative Proposals:

John Loewy, Assistant to the Director, reminded the Commission that Legislative Proposals must be submitted to the Executive Department by May 1, 1990, with fiscal impact statements attached. To meet this schedule, the Department was asking for Commission reaction to the list of brainstorming ideas that had been forwarded to the Commission. The Department proposed that the initial list would be narrowed following further staff review, and that selected proposals would

be presented in more detail for discussion at the April work session. The Commission concurred in this approach.

Clean Air Act Status:

Nick Nikkila briefed the Commission on the current status of the proposed reauthorization of the Federal Clean Air Act.

There was no further business and the meeting was adjourned at 2:25 p.m.

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

DATE: March 27, 1990

TO: Environmental Quality Commission

FROM: John H. Loewy JHL
Assistant to the Director

SUBJECT: Work Session-Legislative Proposals

The enclosed draft legislative proposals have been prepared for discussion at the work session scheduled for Thursday, April 5 at 12:30 p.m. At that time staff will be prepared to describe each proposal and indicate how each fits into the strategic plan and overall agency goals and objectives. We will also be ready to discuss various options which have been considered in developing the proposals and what policy implications are inherent in going forward with them.

1. Comprehensive Air Pollution Fee
2. Asbestos Inspections of Public Access Buildings
3. Financial Incentives For Residential Woodstoves
4. Columbia River Water Quality Commission
5. Spill Contingency Plans For Industry
6. Phosphorus Ban
7. Solid Waste Reduction Enhancement
8. Hazardous Waste Disposal Fee Increase
9. Waste Tire Program Extension
10. Voluntary Cleanups
11. Enforcement Enhancement
12. Analytical Laboratory Certification

LEGISLATIVE PROPOSAL

AGENCY Dept. of Environmental Quality CONCEPT PROPOSAL _____

SUBJECT/TITLE Comprehensive Air Pollution Fee Assessment

CONTACT PERSON Nick Nikkila PHONE NUMBER 229-5397

ALTERNATE CONTACT John Kowalczyk PHONE NUMBER 229-6459

BUDGET IMPACT: YES: X NO: _____
(If Yes, Attach Fiscal Impact)

HOUSEKEEPING: YES: _____ NO: X

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PURPOSE STATEMENT:

Our current capability to achieve and maintain a healthful air quality within the state's air sheds is dependent upon our ability to detect air quality deterioration, to stay abreast of current technological advances, and to require the installation of current technology through the permitting or rule making process. While successes can certainly be pointed out, we are rapidly coming to the point where this approach alone will no longer be sufficient. The concept of a fee based system which creates an ever present incentive for the continuing reduction of pollutant emissions and improves the competitiveness of less polluting alternatives is being more widely discussed at national and state levels.

LEGISLATIVE PROPOSAL:

The Department proposes, for legislative consideration, a fee based system that is sufficiently comprehensive to address Oregon's most significant source categories of air pollution. These source categories include industrial, agriculture, silvilculture, woodheating, and transportation.

The proposed fee would be based upon an across-the-board value assigned on a per ton pollutant basis. The fee could be reduce, but not below a set floor, for specific source categories based on previous costs and degree of pollutant control. As a result, industrial sources which have already borne capital and operating costs for pollution control equipment could be assessed a lower emission rate based fee

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GOVERNOR'S OFFICE APPROVAL INFORMATION:

APPROVED FOR DRAFTING: YES: _____ NO: _____

SIGNED: _____ DATE: _____

than would slash burning or field burning. Slash burning and field burning fees could be set on a per acre basis at a level that would make nonburning alternatives more competitive. Fees for woodheating emissions could be assessed on the sale of cordwood that would improve the competitiveness of other less polluting sources of residential heating. In urban areas where mass transit is available, a fee could be assessed against automobile parking spaces that would provide a basis in favor of the use of mass transit.

Monies received from the proposed fees could be directed to an "Air Quality Improvement" fund. This fund could be used as a revenue source for the Department's air quality program as well as research and financial incentives to assist the public and industry in such areas as residential heating system replacement and alternatives to agricultural burning.

POLICY IMPLICATIONS:

Historically the air quality program has been based on a traditional regulatory approach. This proposal would add a low cost approach market based system which relies on voluntary action to reduce pollution.

AGENCIES AFFECTED:

The U.S. Forest Service, Bureau of Land Management, and the Oregon Departments of Forestry, Agriculture, Revenue, and Environmental Quality.

PUBLICS AFFECTED:

Potentially all significant emitters of air pollution including agriculture, industry, forestry, firewood/fuel dealers and retailers, residential woodstove owners.

LEGISLATIVE PROPOSAL

AGENCY Dept. of Environmental Quality CONCEPT PROPOSAL _____

SUBJECT/TITLE ASBESTOS INSPECTIONS OF PUBLIC ACCESS BUILDINGS

CONTACT PERSON Sarah Armitage PHONE NUMBER 229-5186

ALTERNATE CONTACT Nick Nikkila PHONE NUMBER 229-5397

BUDGET IMPACT: YES:_____ NO: XXXX
(If Yes, Attach Fiscal Impact)

HOUSEKEEPING: YES: _____ NO: XXXX

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PURPOSE STATEMENT:

Oregon's current approach to reduce public exposure to airborne asbestos consists of: requiring adequate training of asbestos abatement workers and contractors establishing work practice requirements; requiring notification prior to the removal/handling of asbestos; inspecting for compliance with work practice requirements during abatement projects; investigating building projects involving materials suspected of containing asbestos and, responding to citizen complaints.

While this approach has been successful in reducing public exposure to airborne asbestos, 40 to 50% of DEQ's Asbestos Program enforcement cases arise because the building owner and contractor simply failed to consider or ascertain the presence of asbestos prior to demolition or renovation. These situations are generally discovered through responses to citizen complaints and, by the time they are discovered, substantial demolition or renovation has occurred, accompanied by public exposure. It is DEQ's belief that this situation can be significantly remedied through a statutory requirement that buildings to which the public has general access must be inspected for the presence of asbestos, by a certified inspector, prior to renovation or demolition.

DEQ has been advised by legal counsel at DOJ that their job would be made easier, and the asbestos regulatory scheme more complete, if language were added to the statute to make it clear that our ability to assess and receive a civil penalty for potential or actual public exposure is not dependent upon a finding of "intent" to remove or otherwise handle asbestos. While DEQ agrees this clarification should be pursued, we are

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GOVERNOR'S OFFICE APPROVAL INFORMATION:

APPROVED FOR DRAFTING: YES:_____ NO:_____

SIGNED: _____ DATE:_____

currently evaluating the correct vehicle for such a proposal. It could be a part of the above described proposal, a separate proposal offered by DOJ, or a part of some other asbestos related proposal that may come up prior to the session.

LEGISLATIVE PROPOSAL:

1. Require asbestos inspections of public access buildings prior to demolition of renovation.
Amend ORS 468.875 et seq. to require that all buildings to which the public has general access must be inspected by a certified asbestos inspector for the presence of asbestos prior to demolition or renovation. This will ensure that building owners/managers are aware of any asbestos that might exist in their building and be disturbed during renovation or demolition. Existing statute then requires that any such asbestos be addressed according to DEQ work practice requirements in order to prevent public exposure.

2. Establish certification requirements for asbestos building inspectors.
Amend ORS 468.875 et seq. to require persons who inspect buildings for the presence of asbestos to be certified by DEQ and require that such certification can only be provided after the individual has successfully completed a DEQ accredited course of training in the performance of such inspections.

3. Establish accreditation requirements for asbestos building inspector training courses.
Amend ORS 468.875 et seq. to extend current DEQ accrediation authority to include asbestos building inspector course work.

POLICY IMPLICATIONS:

The proposed statutory amendments will increase DEQ's ability to prevent public exposure to airborne asbestos. It represents an extension of the current policy which requires training course accreditation and worker certification for persons engaged in the business of asbestos removal/handling.

AGENCIES AFFECTED:

The changes are expected to reduce the number of citizen complaints received and the resultant number of DEQ responses to those complaints. This reduction in workload is expected to be offset by the increased need to inspect the work practices being carried out at buildings in which building inspections have revealed asbestos is present. Asbestos

related workload for Department of Justice is anticipated to either be reduced or stay the same.

PUBLICS AFFECTED:

The affected publics include the owners/managers of public access buildings who would be required to have their buildings inspected by a DEQ certified asbestos inspector. The general public will benefit through a reduction in exposure to airborne asbestos.

LEGISLATIVE PROPOSAL

AGENCY Dept. of Environmental Quality CONCEPT PROPOSAL _____

SUBJECT/TITLE Financial Incentives for Residential Woodstoves

CONTACT PERSON Nick Nikkila PHONE NUMBER 229-5397

ALTERNATE CONTACT John Kowalczyk PHONE NUMBER 229-6459

BUDGET IMPACT: YES: X NO: _____
(If Yes, Attach Fiscal Impact)

HOUSEKEEPING: YES: _____ NO: X

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PURPOSE STATEMENT:

In several areas of the state, Oregonians must cope with levels of airborne respirable particulate (PM10) that significantly exceed federal ambient air quality health standards. In most, if not all, of these areas, residential wood heaters are significant or predominant sources of this pollution problem.

The Department assumes the role of technical advisor for the affected local governments and advocate that they enact control measures such as mandatory curtailment. Local governments respond that government mandates are not enough to solve this problem and must be coupled with incentives which make it easier for citizens to replace their home heating systems with less polluting heating systems. The ability of local governments to provide such incentives is limited and they believe the responsibility should be shared at the state level. The Department has considered this argument and proposes to offer language to create one or more state level incentives for legislative consideration.

LEGISLATIVE PROPOSAL:

1. Tax Credit for Residential Woodstove Replacement

Amend ORS 468 to allow a tax credit to the owner of a residence in which an existing woodstove has been replaced by a less polluting source of residential heating. A maximum limit on the amount of tax credit would be fixed and tax

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GOVERNOR'S OFFICE APPROVAL INFORMATION:

APPROVED FOR DRAFTING: YES: _____ NO: _____

SIGNED: _____ DATE: _____

credits up to that amount would be proportioned to the PM10 reduction resulting from the heat plant replacement. Thus, a change over from a conventional woodstove to a certified stove would result in a credit equal to 50% of the lid; from a conventional stove to a pellet stove would result in a credit equal to 90% of the lid and to fuel oil, gas or electric would result in a credit equal to the lid. The DEQ would be designated as the agency authorized to review and approve such tax credit applications.

2. Establishment of Low Interest Loan Program Funded by a Fee on the Sale of Cord Wood for Residential Heating.

Amend ORS 468 to allow a fee of $_____/cord to be assessed on cord wood sold for use in residential heating. The revenues from this fee would be used to fund a low interest loan program, administered by DEQ, for financing residential woodstove replacement.

POLICY IMPLICATIONS:

Current legislation exempts residential woodheating from regulation. This proposal would modify this pre-exemption to allow fee assessments on woodstove owners and cordwood sales.

AGENCIES AFFECTED:

The Oregon Departments of Revenue and Environmental Quality.

PUBLICS AFFECTED:

Firewood/fuel dealers and retailers, residential woodstove dealers and retailers, residential woodstove owners.

LEGISLATIVE PROPOSAL

AGENCY Dept. of Environmental Quality CONCEPT PROPOSAL _____

SUBJECT/TITLE Columbia River Water Quality Commission

CONTACT PERSON Lydia Taylor PHONE NUMBER 229-5324

ALTERNATE CONTACT Krystyna Wolniakowski PHONE NUMBER 229-6018

BUDGET IMPACT: YES: Unknown NO: _____
(If Yes, Attach Fiscal Impact)

HOUSEKEEPING: YES: _____ NO: _____

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PURPOSE STATEMENT:

There is considerable interest expressed by the E$E committee members to develop legislation that would formal establish a commission to develop and implement policies for the protection of water quality in the Columbia River.

LEGISLATIVE PROPOSAL:

There is no proposal on the table at this time.

POLICY IMPLICATIONS:

The legislation would attempt to manage water quality in the Columbia River with a Bi-state Commission. This could bring into question the authority of the EQC to establish and implement a water quality management plan for the river. This includes controling sources and establishing water quality standards.

AGENCIES AFFECTED:

State: ODFW, WRD, PARKS, DLCD, OSDF, ODOA,

Federal: EPA, Corp of Engineers, USFW, USFS, NMF,

PUBLICS AFFECTED:

Citizens of the Columbia River drainage. Particularly those in the basin below Bonneville Dam to the mouth of the river.

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GOVERNOR'S OFFICE APPROVAL INFORMATION:

APPROVED FOR DRAFTING: YES: _____ NO: _____

SIGNED: _____ DATE: _____

LEGISLATIVE PROPOSAL

AGENCY Dept. of Environmental Quality CONCEPT PROPOSAL _____

SUBJECT/TITLE Spill Contingency Plans for Industry

CONTACT PERSON Bruce Sutherland PHONE NUMBER 229-6035

ALTERNATE CONTACT Neil Mullane PHONE NUMBER 229-5284

BUDGET IMPACT: YES: unknown NO: _____
(If Yes, Attach Fiscal Impact)

HOUSEKEEPING: YES: _____ NO: X

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PURPOSE STATEMENT: To esure that the transporters, users and storers of bulk oil and hazardous materials are prepared to deal with spills of products into waters of the State. The Exxon Valdez spill has demonstrated that the best method of protecting the unique and special marine and estuarine environments on the west coast is to prevent spills. Training, planning, and exercising response systems is one way to prevent spills and to ensure appropriate response when spills do occur.

LEGISLATIVE PROPOSAL: Storage facilities and transporters of bulk oil and hazardous materials shall have a contingency plan for the containment and cleanup of spills into waters of the state. The Department shall by rule adopt standards for the preparation of the plan, approval of the plan and routine exercising of the plan.

POLICY IMPLICATIONS: Will require increased staff at the Department to review plans and oversee the routine exercising of those plans. A funding source will have to be found to carry out the new responsibilities. Will require coordination with State of Washington for facilities and transporters on the Columbia River.

AGENCIES AFFECTED: The DEQ. the Fish and Wildlife Dept., the State Fire Marshal's Office, and the Emergency Management Division.

PUBLICS AFFECTED: The major impact will be to private industry who will have to develop and maintain contingency plans and exercise them on a regular basis. Increased operating costs may be transfered to the consumer but the public will enjoy increased protection of the environment.

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GOVERNOR'S OFFICE APPROVAL INFORMATION:

APPROVED FOR DRAFTING: YES: _____ NO: _____

SIGNED: _____ DATE: _____

LEGISLATIVE PROPOSAL

AGENCY Dept. of Environmental Quality CONCEPT PROPOSAL _____

SUBJECT/TITLE Phosphorus Ban

CONTACT PERSON Robert Baumgartner PHONE NUMBER 229-5877

ALTERNATE CONTACT Neil Mullane PHONE NUMBER 229-5284

BUDGET IMPACT: YES: Unknown NO: _____
(If Yes, Attach Fiscal Impact)

HOUSEKEEPING: YES: _____ NO: _____

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PURPOSE STATEMENT:

The Department will be investigating the potential of establishing a ban on the sale of soap and detergents containing high concentrations of phosphorus. The advisory committee to work on this issue will be appointed in April. Consequently the details of proposed legislation are not available at this time.

LEGISLATIVE PROPOSAL:

Will be developed by the Advisory Committee and is not available at this time.

POLICY IMPLICATIONS:

The legislation could assist the Department in the reduction of nutrient loading to the waters of the state.

AGENCIES AFFECTED:

None identified at this time.

PUBLICS AFFECTED:

The effect could be on all the citizens of the state, the sewage treatment facilities, companies such as industrial and commercial laundries, and the companies manufacturing and retailing soap and detergents.

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GOVERNOR'S OFFICE APPROVAL INFORMATION:

APPROVED FOR DRAFTING: YES: _____ NO: _____

SIGNED: _____ DATE: _____

LEGISLATIVE PROPOSAL

AGENCY Dept. of Environmental Quality CONCEPT PROPOSAL _____

SUBJECT/TITLE Solid Waste Reduction Enhancement Act

CONTACT PERSON David Rozell PHONE NUMBER 229-6165

ALTERNATE CONTACT Robert Danko PHONE NUMBER 229-6266

BUDGET IMPACT: YES: X NO: _____
(If Yes, Attach Fiscal Impact) Not attached

HOUSEKEEPING: YES: _____ NO: X

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PURPOSE STATEMENT: To increase solid waste reduction and recycling activities in Oregon through the implementation of a comprehensive program of recycling goals and standards, data reporting, recycling market enhancement, financial and other incentives for recycling and waste reduction education and promotion activities

LEGISLATIVE PROPOSAL: To modify existing recycling statutes (ORS 459.165 to 200) to give the EQC authority to develop and implement recycling goals and standards for all recycling activities in Oregon. This new authority would also include general authority to require annual reporting from all recycling operators and the ability to enforce goals if necessary. Other programs are proposed that would make it the policy of the state to foster recycling and recycling businesses as part of the state's economic development plans. New funding for this program would come from an increase in the municiple solid waste tipping fees approved as part of HB 3515 (1989).

POLICY IMPLICATIONS: These programs are the logical next step to the existing recycling and waste reduction programs in Oregon. Goals and standards will reduce the administrative difficulties and inequities that currently exist with the Recycling Opportunity Act (1983), and strengthening the markets will make it easier for all Oregonians to recycle. With the additional information the DEQ will be better able to monitor and evaluate all recycling operations which are a part of the solid waste management and resource conservation policies of the state.

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GOVERNOR'S OFFICE APPROVAL INFORMATION:

APPROVED FOR DRAFTING: YES: _____ NO: _____

SIGNED: _____ DATE: _____

AGENCIES AFFECTED: DEQ would add to its solid waste reduction authorities and the Department of Economic Development and the Department of General Services would have responsibilities for market development activities and procurement activities respectively.

PUBLICS AFFECTED: Local governments would have responsibilities for the implementation of recycling programs. Recycling businesses would have to comply with new reporting requirements and they should see an increase in recycling business as a result of these programs.

NOTE: The Solid Waste Reduction Advisory Committee is meeting twice in the next three weeks to further define this proposal.

LEGISLATIVE PROPOSAL

AGENCY Dept. of Environmental Quality CONCEPT PROPOSAL _____

SUBJECT/TITLE Increase in the Hazardous Waste Disposal Fee

CONTACT PERSON Bob Danko PHONE NUMBER 229-6266

ALTERNATE CONTACT Roy Brower PHONE NUMBER 229-6585

BUDGET IMPACT: YES: X NO: _____
(If Yes, Attach Fiscal Impact) (Not Attached)

HOUSEKEEPING: YES: _____ NO: X

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PURPOSE STATEMENT:

Presently ORS 465.375 assesses a fee on each ton of waste brought into a hazardous waste management facility for treatment by incineration or disposal by landfilling. The fee is $20/ton and was set by the 1987 legislature. The revenue from this assessment is deposited in the Hazardous Substance and Remedial Action Fund (HSRAF) to be used by the Department for programs associated with the cleanup of hazardous substances. During the 1989-91 biennium, the revenue from the $20/ton fee should be about four million dollars.

The Department proposes to increase the fee from $20 to $30/ton. The purposes of this proposal are to 1) raise additional dollars to fund hazardous waste reduction and management activities; and 2) encourage alternative management programs for waste that is now being landfilled at hazardous waste disposal sites. ORS 466.010(2) sets the policy of the state to give priority in managing hazardous waste to methods that reduce the quantity and toxicity of hazardous waste generated before using other management methods, the last of which is disposal by landfilling.

LEGISLATIVE PROPOSAL:

The Department is proposing to modify ORS 465.375 so that the fee is $30/ton on waste brought into hazardous waste management facilities for treatment by incineration or disposal by landfilling. Two thirds of the revenues would be deposited into the HSRAF for the Department's environmental cleanup activities; one third would fund part of the Department's hazardous waste reduction and management work.

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GOVERNOR'S OFFICE APPROVAL INFORMATION:

APPROVED FOR DRAFTING: YES: _____ NO: _____

SIGNED: _____ DATE: _____

The proposal will be accompanied by a decision package requesting expenditure limitation for the additional revenue.

POLICY IMPLICATIONS:

This proposal does not change state policy addressing hazardous waste reduction and management. Revenue from the increased fee will allow the Department to improve its toxic use reduction and hazardous waste reduction program, now funded by an assessment on the possession of hazardous substances. Revenue will also fund additional work with the state's hazardous waste generators to improve their understanding of program requirements. Revenue will allow the Environmental Quality Commission to adjust the generator fee structure so that waste reduction and recycling activities are rewarded.

The hazardous waste facility near Arlington is the only commercial hazardous waste disposal site in the state. The Department does not expect the fee increase to significantly affect disposal patterns at the site.

AGENCIES AFFECTED:

No state or local agencies are directly affected.

PUBLICS AFFECTED:

The affected publics include the hazardous waste generators within and outside Oregon who ship waste to the Arlington site for disposal. Less than twenty percent of the waste disposed at the Arlington site comes from Oregon generators. Also affected are Oregon generators and toxic users who will benefit from additional waste reduction technical assistance. The general public will benefit because the proposal should ultimately result in less hazardous waste being generated, better oversight of the waste that is generated, and improved compliance by generators.

LEGISLATIVE PROPOSAL

AGENCY Dept. of Environmental Quality CONCEPT PROPOSAL _____

SUBJECT/TITLE Waste Tire Program

CONTACT PERSON Deanna Mueller-Crispin PHONE NUMBER 229-5808

ALTERNATE CONTACT Steve Greenwood PHONE NUMBER 229-5782

BUDGET IMPACT: YES: X NO: _____
(If Yes, Attach Fiscal Impact) (Not attached)

HOUSEKEEPING: YES: _____ NO: X

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PURPOSE STATEMENT: To continue the reimbursement program for recycling waste tires, provide funds for some tire pile cleanups, and continue staffing at levels sufficient to administer those tasks; to improve the market for waste tires through procurement requirements; and to make housekeeping changes to facilitate program operation.

LEGISLATIVE PROPOSAL: Extend the $1 fee on purchase of new tires (both a two-year and a four-year extension are being considered; the Waste Tire Advisory Committee supports a two-year extension); require highway paving projects over a certain threshold to use some percentage of rubberized paving; require state and local government agencies to purchase retreaded tires; require waste tire generators to give their waste tires to permitted waste tire carriers only. Housekeeping changes include making illegal tire hauling and dumping a criminal offense, and allowing more flexibility for "private carriers" under waste tire carrier permit requirement.

There will be an accompanying decision package requesting limitation.

POLICY IMPLICATIONS: The policy implications of the program changes are not significant, since this is an on-going program and no major changes of direction are being proposed. A two-year as opposed to a four-year extension of the tire fee is more a function of remaining unmet needs and staffing requirements than a function of policy. The procurement requirements would support the Department's charge to promote

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GOVERNOR'S OFFICE APPROVAL INFORMATION:

APPROVED FOR DRAFTING: YES: _____ NO: _____

SIGNED: _____ DATE: _____

materials reuse and recycling. Provisions for criminal penalties would support the Department's conviction that illegal tire dumpers are a serious problem.

AGENCIES AFFECTED: Department of Revenue (fee); Department of Transportation (paving requirements); all State agencies with vehicle fleets (retread procurement requirement); local governments (paving and retread requirements, and criminal penalty enforcement).

PUBLICS AFFECTED: Retail tire dealers; wrecking yard operators; retreaders; persons who transport or store waste tires; general public purchasing new tires and having to dispose of waste tires; persons using or recycling waste tires and processors of waste tires.

LEGISLATIVE PROPOSAL

AGENCY Dept. of Environmental Quality CONCEPT PROPOSAL _____

SUBJECT/TITLE Voluntary cleanups

CONTACT PERSON Mike Downs PHONE NUMBER 229-5254

ALTERNATE CONTACT _____ PHONE NUMBER _____

BUDGET IMPACT: YES: Potentially NO: _____
(If Yes, Attach Fiscal Impact)

HOUSEKEEPING: YES: _____ NO: X

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PURPOSE STATEMENT:

To develop a public/private partnership to provide oversight of noncomplex cleanups of hazardous substances at contaminated sites in Oregon.

LEGISLATIVE PROPOSAL:

To establish a neutral, nonprofit organization capable of providing technical oversight and certification of hazardous substance cleanups at contaminated sites. The cleanups to be conducted voluntarily by responsible parties utilizing their funds.

To require responsible parties that discover hazardous substance contamination on their property to notify the Department of the existence of the contamination and related available information on contaminants, concentration, quantity, location, media affected, proposed response, etc.

POLICY IMPLICATIONS:

Establishing a private, nonprofit organization to oversee and certify hazardous substance cleanups is a new experiment for Oregon environmental programs, and as such raises several policy issues including:

How to establish and maintain the neutrality of such an organization so that it has creditability with all parties that would have an interest in its work; e.g. DEQ, PRPs, public interest/environmental groups, and the business community.

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GOVERNOR'S OFFICE APPROVAL INFORMATION:

APPROVED FOR DRAFTING: YES: _____ NO: _____

SIGNED: _____ DATE: _____

How to ensure its role is limited to technical oversight and assistance and doesn't spill over into policy-making or other governmental regulatory functions.

How to fund such an organization. What level of funding should be from the responsible parties it assists versus from other more independent, neutral sources?

Can this model work for other environmental programs, or should it be limited to hazardous substance cleanups?

Should this organization be prohibited from becoming a competitor with environmental consulting firms, or encouraged to engage in this type of activity?

AGENCIES AFFECTED:

Department of Environmental Quality

PUBLICS AFFECTED:

Financial institutions, real estate developers, environmental consultants, environmental attorneys, business, industry, and government agencies. In other words anyone involved in buying, selling, developing, utilizing or cleaning up property contaminated with hazardous substances.

LEGISLATIVE PROPOSAL

AGENCY Dept. of Environmental Quality CONCEPT PROPOSAL _____

SUBJECT/TITLE ENFORCEMENT ENHANCEMENT

CONTACT PERSON Holly Duncan PHONE NUMBER 229-6742

ALTERNATE CONTACT Thomas R. Bispham PHONE NUMBER 229-5287

BUDGET IMPACT: YES: XXXX NO: _____
(If Yes, Attach Fiscal Impact)

HOUSEKEEPING: YES: _____ NO: _____

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PURPOSE STATEMENT:

In the past decade, the Oregon Legislature has adopted numerous environmental programs, many of which require some degree of enforcement and compliance monitoring. The Department of Environmental Quality is the state agency authorized by statute to implement and enforce these environmental programs.

The Department's experience in implementation and enforcement has demonstrated a need for clarification and enhancement of the enforcement statutes. The statutory changes presented in this proposal are needed to ensure that enforcement actions taken by the Department are consistent, effective and an efficient use of the Department's resources.

The Department wants to ensure that enforcement resources are focused in the most effective and meaningful way. Certain statutory requirements are out-dated, do not apply to recently-enacted environmental programs and may be an impediment to achieving compliance with the regulations. The statutes which are addressed in this package require modifications to serve a useful purpose.

The Department's authority to assess civil penalties for environmental violations is limited by statute and, under certain circumstances, may not be a sufficient deterrent to future violations. For some violations, the maximum civil penalty allowed by statute is not adequate based on the risk of harm to public health and damage to the environment. Additionally, there is some inconsistency in the civil penalties authorized for various environmental programs within the agency.

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GOVERNOR'S OFFICE APPROVAL INFORMATION:

APPROVED FOR DRAFTING: YES: _____ NO: _____

SIGNED: _____ DATE: _____

LEGISLATIVE PROPOSAL:

All portions of the enforcement proposal relate to promoting efficient, consistent and effective enforcement of Oregon's environmental statutes. The proposal contains five concepts:

1. **Remove the requirement for a five day warning.**
ORS 468.125 requires the Department to provide a violator with 5 days advance notice prior to civil penalty assessments for certain pollution violations. The warning requirement is a resource-intensive procedure and may be an impediment to effective enforcement of air, water, solid waste and certain asbestos violations. The Department proposes that the 5 day warning requirement be removed.

2. **Increase civil penalty ceilings for noise and solid waste violations.**
ORS 468.130 provides that civil penalties for solid waste and noise violations shall not exceed $500 per day. Civil penalties may be assessed up to $10,000 per day for most other environmental violations. The Department proposes to increase the maximum civil penalty for solid waste and noise violations to $10,000 per day to be consistent with other programs and to provide a greater economic incentive for a violator to comply with applicable law.

3. **Increase civil penalty authority to $100,000 for the extreme violations.**
Civil penalties are limited to $500/day for noise and solid waste, $10,000/day for most other violations and $20,000/day for negligent or intentional oil spills. For one time or short duration violations which result in significant environmental or public health impacts, the Department proposes to raise the maximum civil penalty to $100,000 per day.

4. **Add "hazardous substances" to the oil spill regulation enacted by the 1989 Legislature.**
The 1989 Legislature passed House Bill 3493 which grants the Department the authority to assess a civil penalty against any person who negligently or wilfully spills <u>oil</u> into the waters of the state. The civil penalty is "commensurate with the amount of damage incurred." See, ORS 468.817. The Department proposes to include "hazardous substances" as defined in ORS 465.200(9) in the substances to which HB 3493 applies.

5. **Amend spill response statutes to increase enforceability.**
ORS 466.635 states that a person who owns or controls oil or hazardous materials which are spilled or released must notify the Emergency Management Division "as soon as that person knows the spill or release is a reportable quantity." The Department proposes to delete the language requiring knowledge of the reportable quantities for all hazardous

materials because the Department would have difficulty enforcing the statute as currently drafted. The proposed language would read:

> "Any person owning or having control over any oil or hazardous material and [who has knowledge of a] spills or releases a reportable quantity shall immediately notify the Emergency Management Division." [as soon as that person knows the spill or release is a reportable quantity.]

ORS 466.645 requires a party liable for a spill to immediately clean up the spill "under the direction of the department." The Department proposes to delete the language requiring DEQ oversight of remediation because participating in all remedial activities is resource-intensive and often unnecessary. The Department believes the spiller must always take immediate measures to stop, contain and clean up a spill.

POLICY IMPLICATIONS:

The proposed enhancements of Oregon's environmental enforcement statutes would increase the Department's ability to use enforcement procedures efficiently and effectively. The changes would allow the Department to take the level of enforcement action which is consistent with the actual or potential environmental damage caused by the violation.

The proposal would increase the Department's ability to achieve regulatory compliance by providing an adequate economic deterrent to noncompliance.

Additionally, removing the 5 day warning requirement would remove an unnecessary and resource-intensive impediment to enforcement. The changes would provide consistency in enforcement for all of the state's environmental programs.

AGENCIES AFFECTED:

The changes would impact the Oregon Department of Justice in addition to DEQ because the increase in formal enforcement actions would result in an increased need for representation by the Assistant Attorneys General.

PUBLICS AFFECTED:

Enhancement of the enforcement statutes as presented in this proposal would impact the violators of Oregon's environmental statutes because the possible civil penalties for some environmental violations would be larger. Significantly, the changes would also impact those persons, industries, corporations, and units of local governments who are complying with the environmental laws because the enhanced civil penalties would remove the economic advantage of those who operate in violation of the regulations.

LEGISLATIVE PROPOSAL

AGENCY Dept. of Environmental Quality CONCEPT PROPOSAL ____

SUBJECT/TITLE ANALYTICAL LABORATORY CERTIFICATION

CONTACT PERSON Claude Shinn PHONE NUMBER 503-229-5983

ALTERNATE CONTACT Alan W. Hose PHONE NUMBER 503-229-5983

BUDGET IMPACT: YES: XXX NO: ____
[FISCAL IMPACT STATEMENT PREMATURE, AT THIS TIME]

HOUSEKEEPING: YES: ____ NO: XXX

- -

PURPOSE STATEMENT: The Department of Environmental Quality and the regulated community are increasingly dependent on environmental sampling/monitoring and chemical analytical data. Data use includes: assessing environmental impact of pollutant discharges, regulating source compliance, development of control strategies, investigation & documentation of spills/releases of hazardous chemicals, to control processes, develop and assess spill cleanup activities, etc.

LEGISLATIVE PROPOSAL:

Part I. Authorize the Department of Environmental Quality to develop, adopt, implement and enforce standards and regulations leading to certification of entities which sample, conduct chemical analyses, or prepare environmental data for submittal to the Department. Once implemented, only environmental monitoring or test data produced or confirmed by certified laboratories would be accepted by the Department. This would include compliance self-monitoring, groundwater, RCRA testing, Remedial Action monitoring, State Superfund, etc.

Part II. Authorize the Department of Environmental Quality to assess an annual fee for laboratory certification which covers the cost to the Department of administration and execution of the program.

- -

GOVERNOR'S OFFICE APPROVAL INFORMATION:

APPROVED FOR DRAFTING: YES: ____ NO: ____

SIGNED: ____ DATE: ____

POLICY IMPLICATIONS: Establishment of an Environmental Laboratory Certification Program would result in a number of policy implications including:

1. A Schedule-of-Compliance (SOC) for achieving "approved" status could become part of the permit issuance/renewal requirements and, as such, an element of enforcement activity.

2. In addition to permit fees, sources required to do self-monitoring would be assessed fees to cover the cost of Laboratory Certification if they wish to operate a certified laboratory.

3. A "reciprocity policy" would be necessary to deal with Certification of labs doing analytical work in out-of-state laboratories, whether a subsidiary of the source or from a contract laboratory. Out-of-state laboratories would be charged appropriate fees.

AGENCIES AFFECTED: Other state agencies potentially affected by this legislation are the Health Division Laboratory, Agriculture Laboratory, Fish & Wildlife, Transportation, Energy, and Forestry.

There are no jurisdictional issues apparent. The only other laboratory certification or licensing programs we are aware of are clinical, medical, FDA grain & milk laboratories, and drinking water laboratories, none of which conflict with the proposed concept.

PUBLICS AFFECTED: Those affected by the Laboratory Certification Legislative Proposal include: municipal waste water treatment plants and industries performing self-monitoring of discharges; commercial labs doing sampling and analytical work for permittees, both in- and out-of-state; and consultants, both in- and out-of-state, doing contract environmental sampling, analyses, evaluating chemical characteristics of waste under Resource Conservation and Recovery Act (RCRA), solid waste, groundwater, or Superfund programs; and any laboratory submitting environmental sampling or analytical data to the Department. A 1987 survey of Laboratories indicated general support for this concept.

State of Oregon

Department of Environmental Quality Memorandum

Date:

To: Environmental Quality Commission

From: Harold Sawyer

Subject: Item 2; April 5, 1990, Work Session
Discussion of Options for Public Input

Attached are the following documents which provide background for the work session discussion on options for public input:

- Letter to Chairman Hutchison from Michael Huston regarding "Third Party Appeals of Permits"
- Memorandum from Fred Hansen to Chairman Hutchison regarding "Options for Public Input"
- "Permitted Source Data"

Chairman Hutchison is preparing a memorandum on this topic that will be forwarded to you early next week.

DAVE FROHNMAYER
ATTORNEY GENERAL

JAMES E. MOUNTAIN, JR.
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

PORTLAND OFFICE
1515 SW 5th Avenue
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Telephone: (503) 229-5725
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William P. Hutchison, Chairman
Environmental Quality Commissi
811 S.W. Sixth
Portland, Oregon 97204

Third party appeals

Subject: Third Party Appeals o
DOJ File No. 340-330-

Dear Chairman Hutchison:

You have asked us for legal ad on permit appeal procedures. Spec ier the Environmental Quality Commi than the permittees to request challenge permits issued by the Quality (DEQ). You have also a background information on the r hearings, the consequences for practices of similar permitting agencies. We provide this information below, concentrating on the options legally available to the commission and the legal ramifications of those options. Of course, we offer no opinion on the policy or administrative questions related to these options.

QUESTION AND ANSWER

May the Environmental Quality Commission, through rulemaking, give persons other than permittees the right to request contested case hearings on discharge permits issued by DEQ? Yes.

DEQ makes a vast array of other permit, license, certification and variance decisions, and the particular statutes governing these other decisions may alter the legal analysis offered below.

Footnote 1: The advice in this letter refers primarily to the major pollution discharge permits issued by DEQ, such as air contaminant discharge permits, NPDES (federal water quality) permits, and WPCF (state water quality) permits. DEQ makes a vast array of other permit, license, certification and variance decisions, and the particular statutes governing these other decisions may alter the legal analysis offered below.

WHAT IS A CONTESTED CASE HEARING?

A contested case hearing is one form of decision making recognized by the Oregon Administrative Procedures Act. Contested case procedures are frequently similar to, although less formal than, procedures in a judicial trial. The essential procedures of a contested case include a complaint or notice of a proposed action, a hearing on the record to accept evidence, cross-examination, the opportunity to raise objections, a decision and entry of a written order with findings based upon the record, and an opportunity to appeal the order to the Court of Appeals. ORS 183.415-.480; see also Bay River v. Environmental Quality Commission, 26 Or App 717, 549 P2d 689 (1976).

In certain circumstances, a contested case can be used to announce agency policy. ORS 183.355(5). More commonly, however, a contested case is used to apply established policy to the particular facts and parties in a matter. In this sense, contested cases are often called "adjudicative" and are distinguished from "legislative" decisions, such as rulemaking.

A contested case hearing can be conducted by the entire commission or by a designated hearings officer. When a hearings officer is used, the hearings officer's opinion will usually be subject to review by the entire commission. ORS 183.464.

CURRENT POLICY FOR GRANTING CONTESTED CASE HEARINGS

Currently, by administrative Rule 2, only dissatisfied permittees have the right to demand a contested case hearing on pollution discharge permits. Under the present rules, interested persons or groups other than the permittee, often referred to as "third parties," may not request contested case hearings as of right. Instead, the only recourse usually available to third parties will be to challenge the permit in circuit court. It should be noted, however, that when a permittee requests a contested case hearing, third parties may petition to participate in the proceeding. Under the Attorney

Footnote 2: OAR 340-14-025(5) provides: "If the applicant is dissatisfied with the conditions or limitations of any permit issued by the Department, he may request a hearing before the Commission or its authorized representative. Such a request for hearing shall be made in writing to the Director within 20 days of the date of mailing of the notification of issuance of the permit. Any hearing held shall be conducted pursuant to the regulations of the Department."

General's model rules for contested cases, third parties my be given party status if they have a personal interest or represent a public interest in the outcome of the proceeding. OAR 137-03-005.

On limited occasions, the commission has deviated from its general policy of giving only permittees the right to request a contested case hearing. In the siting of a landfill for the Portland metropolitan area, the commission gave interested persons and groups the right to request a contested case hearing. More recently, the commission allowed third parties the right to request a contested case hearing on permit modifications related to dioxin. The Administrative Procedures Act appears to contemplate that agencies may order a contested case proceeding on a case-by-case basis. See ORS 183.310(2)(a)(D).

THE CURRENT STATE OF THE LAW

The state statutes governing discharge permit procedures are generally quite broadly stated. One exception is ORS 468.070(3), which specifically requires that contested case procedures be provided for "modification, suspension, revocation or refusal to issue or renew" a permit. Presumably, the commission's current policy of granting contested cases only to permittees derives in part from this statute.

At the same time, our office has consistently advised the commission that it could, pursuant to its general rulemaking authority, extend contested case hearings rights to third parties. See ORS 468.015. In short, the statute requires contested case procedures only in certain cases, but it does not preclude the commission from extending this procedure to other cases. See also Linnton Plywood Assoc. v.DEQ, 68 Or App 412, 681 P2d 1180 (1984).

OPTIONS FOR CHANGE

Given the commission's latitude under the statutes, there would appear to be several, legally available options for shaping permit appeals. A few of these options can be summarized as follows:

(1) Give all persons the right to bring a contested case hearing to challenge the provisions of a permit. For example, this could be accomplished by replacing the word "applicant" with "any person" in OAR 340-14-025(5).

(2) Give persons other than the permittees the right to request contested case hearings, but make the right subject to certain standing or other limitations. One way to create such a limit would be to require the person or group to have a

personal interest or represent a public interest. This is essentially the same standard which is currently used to determine whether a third party may intervine in an existing contested case proceeding, and it is considered to be a fairly low standard. A slightly stricter standard, used in other areas of administrative law, is to require that a person be "adversely affected or aggrieved" by the issuance of a permit to gain the right to request a hearing. An even stricter standard, which is also used in some instances to determine standing in court, requires a person to demonstrate a "substantial injury" that will be caused by the proposed agency action.

(3) Expand contested case hearing rights only under certain circumstances or in certain cases. Under this option, the commission would outline certain criteria under which a hearing would be granted. For example, the commission could specify that hearings would be granted only on permits which could cause major environmental effects as defined by the commission. The right to a hearing could also be contingent on the amount or type of pollutant at issue.

(4) Continue the present practice of granting contested case hearing rights to third parties only on a case-by-case basis.

POTENTIAL EFFECTS ON THE HEARING PROCESS

The most obvious effect of a change of permit procedures would be extend to third parties an administrative remedy, whereas the current system only allows them a judicial remedy. Arguably, this change would merely shift the "trial" of permits from court to the agency, where greater agency control can be exercised over the proceeding. It is also possible, however, that providing an administrative remedy may increase the number of disputed cases, because an agency contested case is usually less expensive and more accessible than a judicial trial. It is difficult to find empirical evidence of these potential effects. It is clear, however, that DEQ has experienced fairly few judicial challenges to permit decisions.

Many agencies have found contested case proceedings to be time consuming and resource intensive. These problems can often be minimized by using sound hearing techniques, such as requiring similar parties to consolidate their presentations, using pre-hearing conferences to focus the issues, and requiring pre-filed written testimony from witnesses. Most agencies use the legal services of our office in contested case proceedings. The Administrative Procedures Act, however, does permit agencies to represent themselves in contested case hearings under certain

conditions. ORS 183.450(7). Current statutes and rules would also allow lay representatives to appear for parties in a DEQ permit proceeding. Oregon Laws 1987, ch 833; OAR 137-03-008.

EFFECT ON JUDICIAL REVIEW

The expansion of hearing rights to third parties would alter the process of judicial review of DEQ permit decisions. Under the current system, if a third party wishes to challenge the provisions of a permit and the permittee does not, the third party's recourse is to the circuit court. The circuit court proceeding is, at least technically, a trial de novo. In a trial de novo, the court creates its own record through the admission of evidence. Nonetheless, in cases involving appeals of state agency decisions, it is fairly common for the parties and the court to rely heavily on the record created by the agency.

If third parties are granted a contested case hearing, their sole judicial recourse is then with the Court of Appeals. ORS 183.482. In this instance, the court's review is limited to the agency's record, with the court reversing only for certain legal or procedural error or for lack of substantial evidence to support the agency's decision.

OTHER AGENCIES' PERMIT PROCEDURES

A review of other agency permitting procedures reveals considerable diversity, with some agencies allowing third parties to seek a contested case hearing and others not allowing a contested case hearing at all. A few examples are offered below.

(1) Division of State Lands

By administrative rule, the Division of State Lands allows third parties to request contested case hearings to challenge removal and fill permits. According to the rule "[a]n applicant or other persons aggrieved or adversely affected by issuance or denial of permits...may request a contested case hearing. OAR 141-85-072(2).

(2) Board of Forestry

Under the Forest Practices Act, any person that the board finds is "adversely affected or aggrieved" by a forest plan my request a hearing to challenge the forest plan. ORS 527.700.

(3) Water Resources Commission

By statute, the Water Resources Commission is to hold a contested case hearing if a proposed water right will conflict with existing rights or be prejudicial to the public interest.

ORS 537.170-180. Thus, third parties have no absolute right to a contested case hearing, but they may be granted one on a case-by-case basis.

(4) Parks and Recreation Department

As to beach improvement permits, neither the applicant nor third parties are entitled to a contested case hearing ORS 390.650. Their sole remedy for challenging the agency's decision is with circuit court.

Please let me know if we can be of further assistance on this matter.

Sincerely,

Michael B. Huston
Attorney-in-Charge
Natural Resources Section

cc: Fred Hansen, DEQ
Harold Sawyer, DEQ

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

DATE: March 9, 1990

TO: Bill Hutchison

FROM: Fred Hansen

SUBJECT: Options for Public Input

You asked that I give some beginning thoughts on how better to achieve public input for framing the issue for a work session item at the April Meeting.

I start with the assumption that the process of public comment before the Commission during meetings is out of hand, disrupts the process, and is not leading to good policy making. In addition, and to me at least as serious if not more, is that the current process of allowing whoever is present to speak has meant that people who have properly followed the process but are not present, don't speak, or are not as forceful in their presentations do not have their views given as much consideration as they merit. Having said that, here are some ideas.

Rulemaking

Assumptions:

- A DEQ staff member presides at the required public rulemaking hearing (on behalf of the Commission).
- An objective summary of testimony is prepared by the presiding officer.
- Testimony submitted, both oral and written, is evaluated by the Department, and a final recommendation for rule language is prepared in the form of the EQC staff report.
- The EQC staff report is mailed to the EQC 2 weeks prior to the meeting.
- The EQC staff report is mailed to those persons who testified or expressed an interest in the item, together with a notice of the meeting where it will be considered, at least 10 days prior to the meeting.

Options for input after preparation of the EQC staff report:

1. Notify persons who testified at the hearing or submitted written testimony that any questions or problems with the

way the Department interpreted their testimony or with changes made to the rules as a result of testimony should be communicated to the Department no later than close of business on Wednesday before the meeting.

Persons signing up to testify at the Meeting would be asked by the Chair:

- Did they submit their concerns as written or oral testimony during the hearing process?

  If they didn't, they would need a good reason to be allowed to add any testimony at this point and generally would be prohibited.

- If they did submit testimony, are their present concerns related to the way the Department interpreted their testimony or the changes that the Department proposed in response to testimony; and have they communicated their concerns to the Department prior to the meeting?

  If they answer no to any of the questions, the Chair should advise that further testimony is out of order. An orderly process that is fair to all concerned requires that they stay within the guidelines (that would have been communicated to them earlier anyway).

  In special and limited circumstances, the Commission could elect to defer consideration of the item until later in the meeting, and direct persons shut off from testimony to meet with staff outside the meeting room. Staff could then report back to the Commission on the concerns raised, and any recommendations for adjustment that staff believes may be appropriate without disadvantaging the interest of others in the proceeding.

If this approach were followed strictly for one or two meetings, it would become clear that bypassing the process would not be acceptable.

This approach would require more attention on the part of staff to assure that Department summary of testimony and recommendations are mailed to those who presented testimony and expressed an interest in the item and to be certain they are aware of potential problems.

2. A modification of the approach in #1 would be for the Chair to (1) announce that testimony received would be limited to comments on changes made by staff in response to hearing testimony, (2) direct people who signed up to testify to meet with the appropriate staff before the item would be considered, (3) invite staff to come forward on the item and frame the issue before any testimony would be received (all limited only to those items changed by staff since the public hearing). Those adding testimony could possibly sit at the table in panel form with the Staff.

   This would have to be modified or rejected if it got out of hand.

Permits

a. Establish a formal procedure for third parties to petition the Commission to call for a contested case review of a permit issued by the Department. Do this in a manner similar to a petition for a declaratory ruling (ie. the Commission has discretion to issue a ruling, but is not bound to do so).

   This process would be established by rule. The only parties that could cause a contested case are the Applicant or the Commission. In order to give some certainty to an applicant, it would probably be necessary to place some limitation upon the time allowed for petition and Commission decision on whether to cause the contested case.

b. Modify rules to provide for third parties who affirmatively submitted comments in the process prior to issuance of the permit to request a contested case hearing on any permit issued by the Department.

   Rules would have to be changed to provide for this process. The number of permit actions in a typical year that could be moved into the contested case process needs to be identified to give some indication on the potential resource demands.

c. Do not change the process. Today, anyone can ask the Commission to review the actions of the Department if they feel an action is inappropriate. The difference between this option and option a. above is that the process is not formally defined nor does the review here have to be a

formal contested case. The Commission could ask for a briefing on the question at hand by the Department and determine whether or not to proceed to a contested case hearing.

Note: In all issues involving third party appeals, I want to point out that we will be overwhelmed in terms of workload if we have very many appeals beyond what we would normally have under the current procedures.

I know there are many other issues and approaches which could fall under this topic, but I hope this provides a good beginning for discussion.

cc EQC Members

Permitted Source Data

Department of Environmental Quality

Permit Type	Number of Permitted Facilities	Number of Permit Actions in 1989		
		New Permits	Modified Permits	Renewal Permits
Air Contaminant Discharge	600	32	47	102
Water Quality				
NPDES (Stream Discharge)	382	5	18	38
WPCF (No Stream Discharge)	341	14	21	19
Solid Waste Facility	316	25	7	5
Total	1639	76	93	164

Average Number permits to be renewed each year (based on 5 year permits) = 327

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

DATE: March 15, 1990

TO: Environmental Quality Commission

FROM: Jerry Turnbaugh, Industrial Waste Section, WQ Div.

SUBJECT: Work Session Item 3: Gold Mining--Background Discussion

Following is the outline of a 20-minute oral presentation scheduled for your April 5, 1990 Work Session:

HEAPLEACH GOLD MINING

What is it? A technology for utilizing low-grade ore

Where is it? Eastern Oregon historical mining districts

Who is it? Large US and Canadian companies

Process? Use of sodium cyanide to dissolve gold

Economics? Profits, jobs, state revenue, mine life

Impacts? Water, wildlife, aesthetics

Regulation? Land use, air/water discharge, reclamation

Protection? Recommendations for Oregon

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

Meeting Date: April 6, 1990
Agenda Item: B
Division: Hazardous & Solid Waste
Section: Underground Storage Tanks

TO: Environmental Quality Commission

FROM: Fred Hansen, Director

SUBJECT: Interpretative Issues - Underground Storage Tank (UST) Pollution Control Facility Tax Credits

As a result of HB 3080, over the last six months you considered and adopted temporary and final financial assistance rules to help small businesses test their property and underground tanks, conduct soil remediation, and upgrade or replace their tanks. Three forms of financial assistance have been established: grant reimbursements of 50 percent up to $3,000 to test soils, piping and tanks, loan guarantees of 80 percent of the loan principal up to $64,000 and a subsidized interest rate of 7.5 percent to upgrade or replace tanks and do soil cleanup.

A fourth form of financial assistance is also available to owners and operators of underground storage tanks - pollution control facility tax credits. HB 2178 extended the pollution control facility tax credit program through December, 1995, reestablished the maximum allowable credit at 50 percent (five percent per year over ten years), eliminated the need for preliminary certification and made the program retroactive until January 1, 1987. We have received numerous (more than 80 so far) applications for UST tax credits under the water pollution control section of the pollution control facility tax credit program. Nine of those applications are being presented to you at the April 6, 1990 meeting for recommended approval. The majority of the outstanding applications will come to you at the May meeting.

UST pollution control facilities fall into three general categories: leak detection, spill and overfill prevention and corrosion control. Applications are being submitted for pollution control equipment on new installations, as well as to upgrade or replace existing equipment. In most cases the issues of eligibility are fairly straightforward. However, certain leak

detection devices and corrosion control methods raise interpretation issues relative to the percent properly allocable to pollution control. In addition, labor charges may need to be treated differently depending on whether or not the installation is on an existing or new tank system. Presented below is a brief review of the federal requirements and the most common pollution control devices being used to comply. Also highlighted are the interpretative questions that have been raised by the applications received to date. The report concludes with a discussion of the eligibility for pollution control facility tax credits for tank removals and installation of above ground tanks. These two interpretation questions are raised by applications being processed for the May meeting.

REQUIREMENT: LEAK ("RELEASE") DETECTION

For new UST systems installed after December 23, 1988, "advanced release detection" equipment is required at the time of installation. The four leak detection methods EPA allows for new installations include (1) automatic tank gauges, (2) monitoring between the two walls of double-walled tanks, (3) soil vapor monitoring and (4) ground water monitoring wells. Figure I shows these leak detection systems. Also shown are several additional methods that are allowed for existing UST systems when they are combined with manual inventory control and periodic tank tightness testing.

For existing UST systems, EPA provided a five year phase-in schedule for installing leak detection equipment with the first compliance deadline falling on December 23, 1989 for those tank systems installed before 1965 or tanks whose installation age is unknown. Tanks installed between 1965 and 1969 have until December 23, 1990 as a compliance deadline. In addition to the immediate installation of the advanced release detection methods mentioned above, existing tanks owners can also use manual inventory control with monthly reconciliation of the data and periodic tank and piping tightness testing depending on the age of the tank. For example, daily inventory monitoring with monthly reconciliation and annual tightness testing for an existing UST system without corrosion protection and spill and overfill prevention is allowed for the next ten years in lieu of installing advanced leak detection equipment.

Use of an automatic tank gauge to meet the release detection requirement raises a percent allocable issue in that the data from such devices can also perform inventory control functions. For example, with the data from the automatic tank gauge, employee theft or a short fill from a distributor could readily be detected. Furthermore, with the constant monitoring of inventory, a dealer can more easily schedule deliveries and take advantage of slight differences in the wholesale price of the product. Lastly,

there are labor cost savings in not having to manually stick the tank and perform the monthly reconciliation. Consequently, while the principal purpose of an automatic tank gauge may be to satisfy the EPA rule, it may not be the sole purpose.

When asked by applicants for guidance on the percent allocable, we have indicated that a determination must be made by the applicant. In reviewing the determination made by nine different applicants the following claims have been made:

Number of Applicants	Percent Allocable
6	100
1	60
1	50
1	?

The eight specific allocations above represent a median of 100 percent, a mean of 89 percent and a range of 50 to 100 percent. A mid-point of the range would be 75 percent. From this sample it is clear, most applicants consider the inventory control benefits as negligible. From our knowledge of this industry, we believe that is the case for all but the bigger operators, generally those with multiple outlets that can benefit to the greatest extent from the inventory control information. Nevertheless, all operators could benefit if they choose to. Consequently, the Department recommends that a standard percent allocable be applied to all tax credit applications for automatic tank gauges. If an applicant disagrees with the Department's standard percent allocable, they would be free, on a case by case basis, to make an argument for a different percent allocable.

The argument for 100 percent allocable to pollution control is that automatic tank gauges provide continuous ability to detect leaks, resulting in an environmental benefit. The inventory control benefit is incidental because it occurs only when there is a dishonest employee, fuel distributor or faulty dispensing equipment. However, all operators benefit from the reduced labor costs to manually stick the tank and perform the reconciliation calculations. Therefore it would seem that an argument can be made that automatic tank gauges are not 100 percent allocable to pollution control but perhaps 90 percent, 10 percent being for inventory control.

REQUIREMENT: SPILL AND OVERFILL PREVENTION

New UST systems must provide spill and overfill prevention upon installation. Most often this requirement is met by a combination of check valves in the fill pipe and a five to twenty-five gallon reservoir installed around the top of the fill pipe. The fill spout reservoir will capture, for the purpose of

reinjecting into the tank, most overfills due to faulty dispensing nozzles on the delivery truck. See Figure II for some examples of spill and overfill prevention devices. In addition, concrete paving and catch basins in the fuel dispensing area should also be considered pollution control facilities. From the soil cleanup work being done in conjunction with voluntary tank removals, it is clear that contamination from fuel dispensing is a very common occurrence. Over 80 percent of all tank removals involve some level of soil cleanup often associated with surface spills or overflows.

For existing installations, EPA has allowed up to ten years, beginning December 23, 1988, to come into compliance with the spill and overfill prevention requirement. Unlike release detection, there is no schedule depending on the age of the tank. A tank owner or operator may install spill and overfill equipment immediately or wait most of the ten years before complying.

Retrofitting spill and overfill prevention involves digging down around each fill pipe, installing the spill protection device and repaving the remainder of the excavated area. Depending on where the fill pipes are located relative to the dispensing islands, there may or may not be a disruption of the sale of product.

In the Portland Metropolitan area it will be necessary for the spill and overfill prevention device to also be compatible with stage one vapor recovery equipment now, and stage two vapor recovery if rules are adopted. Such equipment is readily available on the market at this time.

We believe spill prevention equipment is solely for the purpose of pollution control and therefore 100 percent allocable.

REQUIREMENT: CORROSION PROTECTION

For new installations, corrosion protection must be installed when the system is put in the ground. Most common corrosion control methods are cathodic protection (piece of sacrificial metal attached to the tank), an impressed current system (artificial introduction of electrical current around the tank), fiberglass tanks and piping and composite systems (i.e. steel tank with fiberglass coating. In addition, EPA recognizes double-walled tanks with monitoring between the two walls as achieving the equivalent of corrosion protection. For maximum environmental protection, some businesses combine double-wall protection with a corrosion control method (i.e. double-walled fiberglass system or double-walled composite system). See Figure III for examples of corrosion protection. As with spill prevention, EPA provides up to ten years to retrofit an existing system with corrosion protection. There are no intermediate dates based on the age of the tanks.

We believe there are two questions as to the claimed facility costs for fiberglass tanks and double-walled tanks. The first question is is the entire cost of the tank system the claimed facility cost or is it the difference between a bare steel tank system versus a corrosion protected tank? The second question is how to treat the labor costs on new versus existing tank systems? We believe the principal purpose of the tank is to hold the product, not to protect the environment. Without the tank, it would be impossible to store a product underground for sale. Furthermore, on new systems we believe most of the labor cost to install the tank is for installation purposes and not associated with pollution control. Therefore, we would not expect to accept most labor charges on new fiberglass and double-walled tank installations, unless there is a clear showing that the pollution control equipment required additional labor that would not otherwise be required to install the tank system itself.

In addition to outright replacing existing tanks with fiberglass or double walled tanks, it is possible to retrofit existing tanks with cathodic protection or an impressed current system. In the case of upgrading an existing tank system, we believe most of the labor costs are eligible expenses because the work is being undertaken for pollution control purposes. Furthermore, for existing tanks EPA allows one additional corrosion protection method - interior lining of the tank.

To date we have been advising applicants to present us with information that can be used to determine the actual cost difference between a fiberglass or double-walled system and an equivalently-sized bare steel tank system. Once determined, we advised them to claim 100 percent of this cost difference as allocable to pollution control.

Upon reflection, however, it seems to make more sense to make a determination of the percent allocable on the entire system cost using the formula:

$$\frac{\text{Total System Cost} - \text{Equivalent Bare Steel Tank System Cost}}{\text{Total System Cost}} = \% \text{ of Total Allocable.}$$

Unlike standard cathodic protection or impressed current systems where the control devices are added on and the costs readily identifiable, you either buy a fiberglass tank or double-walled system, or you don't. The pollution control facility is inherent to the system's design and/or material of construction.
In doing recent research on typical installations, we found the percent allocable can vary widely depending on the level of pollution control protection the applicant seeks to install. The

table below identifies some typical choices that applicants can make for a 12,000 gallon underground tank system.

Type of Tank	Range of Costs	Average Costs	Percent Allocable
Bare steel tank	$4670 - $6500	$5308	-
Fiberglass - Single Wall	$5536 - $7275	$6134	14%
Fiberglass - Double Wall	$12,760 - $16,460	$14,610	64%
Fiberglass clad steel - single wall	$7885 - $9142	$8328	36%
Fiberglass clad steel - double wall	$12,395 - $14,225	$13,005	59%
Cathodically protected steel - single wall	$6139 - $6373	$6235	15%
Cathodically protected steel - double wall	$12,340 - $13,911	$13,126	60%

In conclusion, we believe that for fiberglass and double-walled tanks systems the entire facility cost should be the claimed cost and the percent allocable to pollution control will be determined by the difference in cost between the claimed facility and an equivalently sized bare steel tank system. For new installation we do not believe labor costs to install the tank should be included. On the other hand, where steel tanks are replaced with fiberglass or double-walled tanks, labor costs should be included in the total claimed facility cost. We will use the table above to advise you if a particular application fails to fall within a "normal" range. Since our research is limited in scope, we will also advise you if we find our normal or average costs don't seem reflective of future applications being submitted to the Commission for certification.

TANK REMOVALS AND ABOVE GROUND TANKS

There are two other interpretative considerations relative to underground tank systems that will come to your attention with applications to be presented in May. While we are still researching the issues to determine a final recommendation, we thought we would alert you to the issues at this time.

Many businesses with underground tanks are choosing to remove and not replace them. They decide to purchase product at retail or at commercial card lock facilities and avoid the compliance costs and future potential liability costs associated with a possible spill

or release. It is conceivable someone may attempt to claim a tax credit for removal of a potential source of pollution. It is our opinion that tank removal costs are not eligible for pollution control facility tax credits since there is no pollution control facility being financed.

A second issue arises in a decision to replace underground tanks with above ground tanks, where permitted by the State Fire Marshal. Again, someone may claim that by bringing tanks above ground they have eliminated a source of potential contamination, and that placing the tanks above ground represents an alternate method of achieving pollution control benefits.

It is our opinion that the principal purpose of the above ground tanks is to hold product, not to prevent pollution. However, to the degree that secondary containment is provided and oil-water separators or leak detection devices are installed, they are pollution control devices and are eligible. But the basic tank system is just that, a storage tank for product not a pollution control device.

SUMMARY:

It is the Department's position that the following interpretations be applied to the UST pollution control facility tax credit program. We would request the Commission's concurrence in these interpretations. Any applicant is free to provide the necessary information to show these interpretations should not apply to their particular pollution control facility tax credit application.

1. All automatic tank gauging leak detection systems provide some non-pollution related benefits to tax credit applicants. These benefits include continuous inventory control that can detect employee theft, short wholesale shipments and information to schedule cost-effective deliveries. Additionally there are reduced labor costs since manual sticking of the tank is not needed and reconciliation of the recorded data is done electronically. It is the Department's position that 90 percent of the cost of these automatic leak detection systems should be allocable to pollution control on a uniform basis for all applications.

2. Most labor costs associated with entirely new installations of underground tank systems should not be considered an eligible claimed facility cost. In order to install a new tank system to hold product it is necessary to incur most labor costs. If there are any additional costs to install discreet pollution control devices (i.e. install cathodic protection on a bare steel tank system), only those additional costs can be claimed.

3. The claimed facility cost for fiberglass, composite (steel clad with fiberglass) or double-walled tanks systems shall be the total facility cost. The percent allocable to pollution control shall be determined by the formula:

$$\frac{\text{Total System Cost} - \text{Equivalent Bare Steel Tank System Cost}}{\text{Total System Cost}} = \% \text{ of Total Allocable.}$$

4. Tank removal associated with a closure of an underground storage tank facility is not a pollution control facility for purposes of tax credit program. Tank removal associated with tank replacement to meet the federal UST requirements is an eligible claimed facility cost.

5. Although additional research is being done, on a preliminary basis we don't believe tank replacement costs for an above ground tank installation should be considered eligible facility costs. Pollution control devices (i.e. secondary containment, leak detection systems) installed on above ground systems are eligible facility costs.

RPR:rr
TAXCREDT
March 20, 1990

Attachments:
Figure I - Leak detection Alternatives
Figure II - Overfill and Spill Prevention Alternatives
Figure III - Corrosion Control Alternatives

Figure I

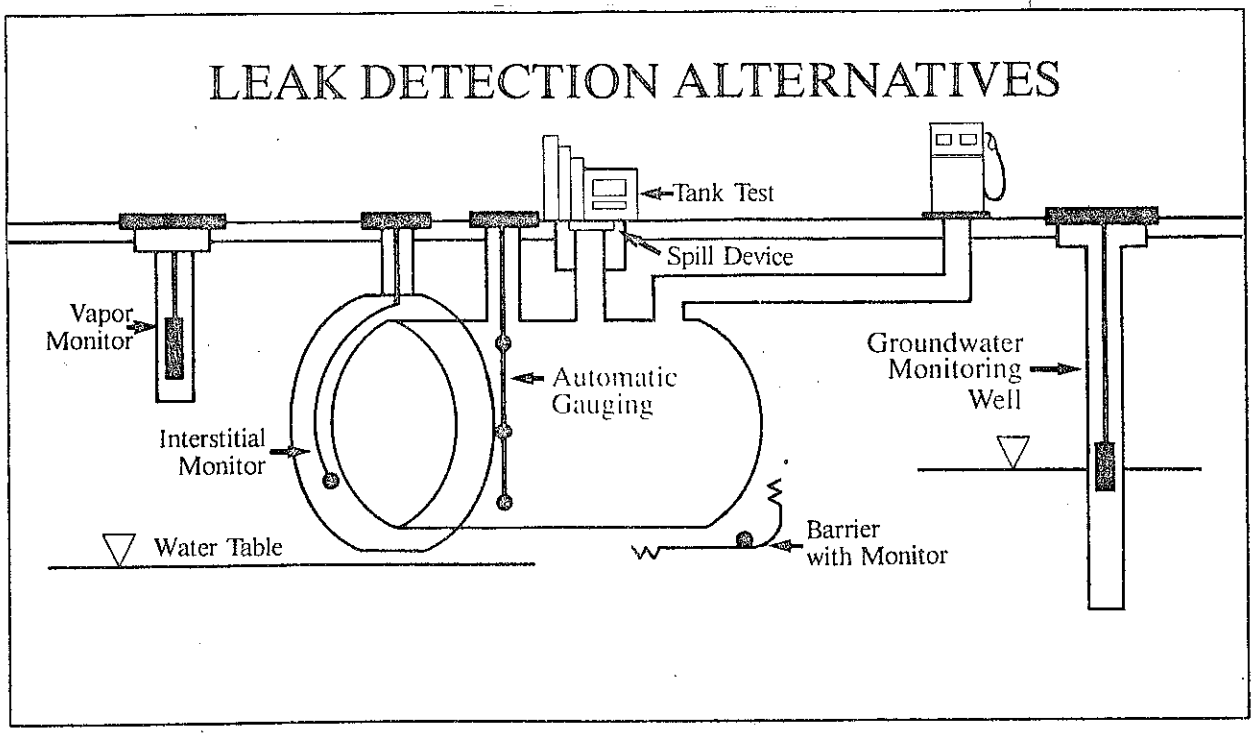


Figure II

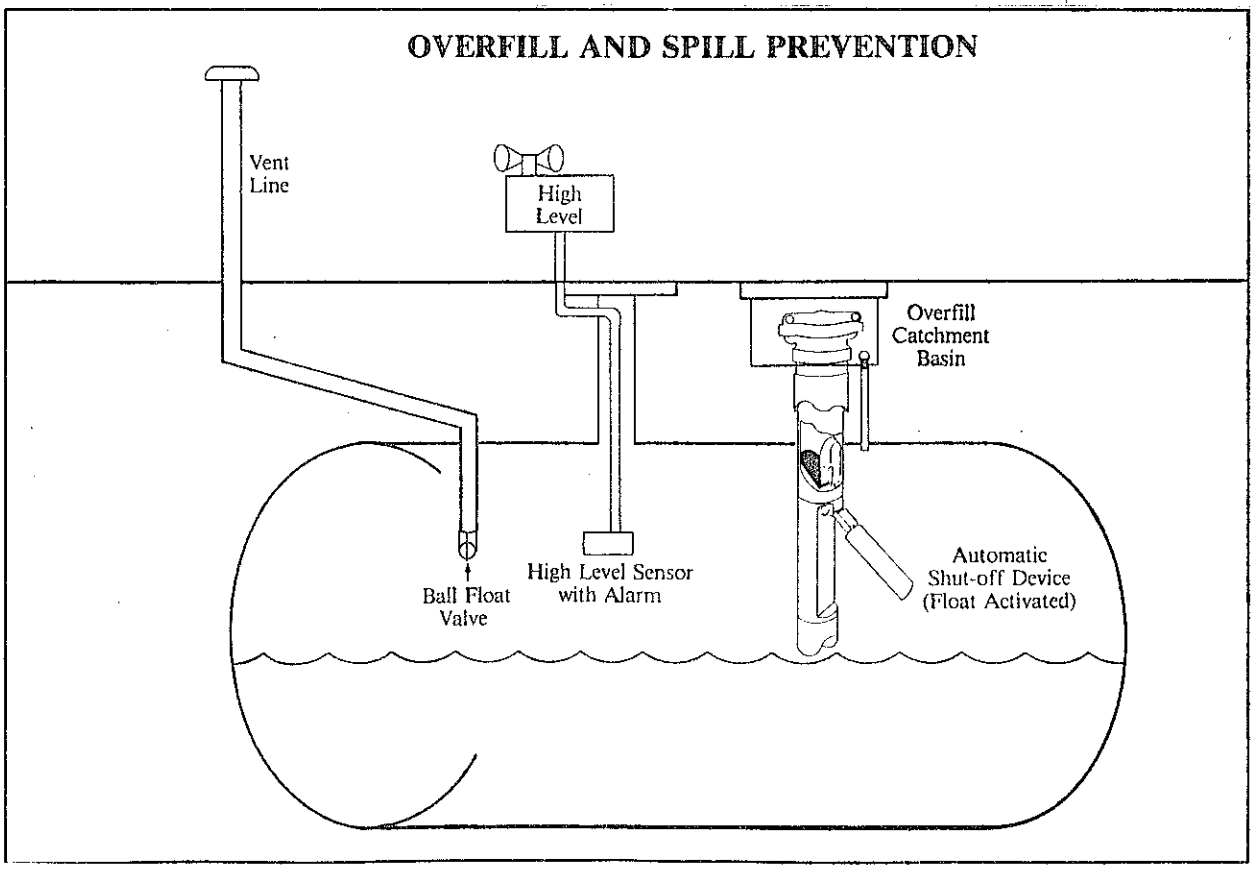
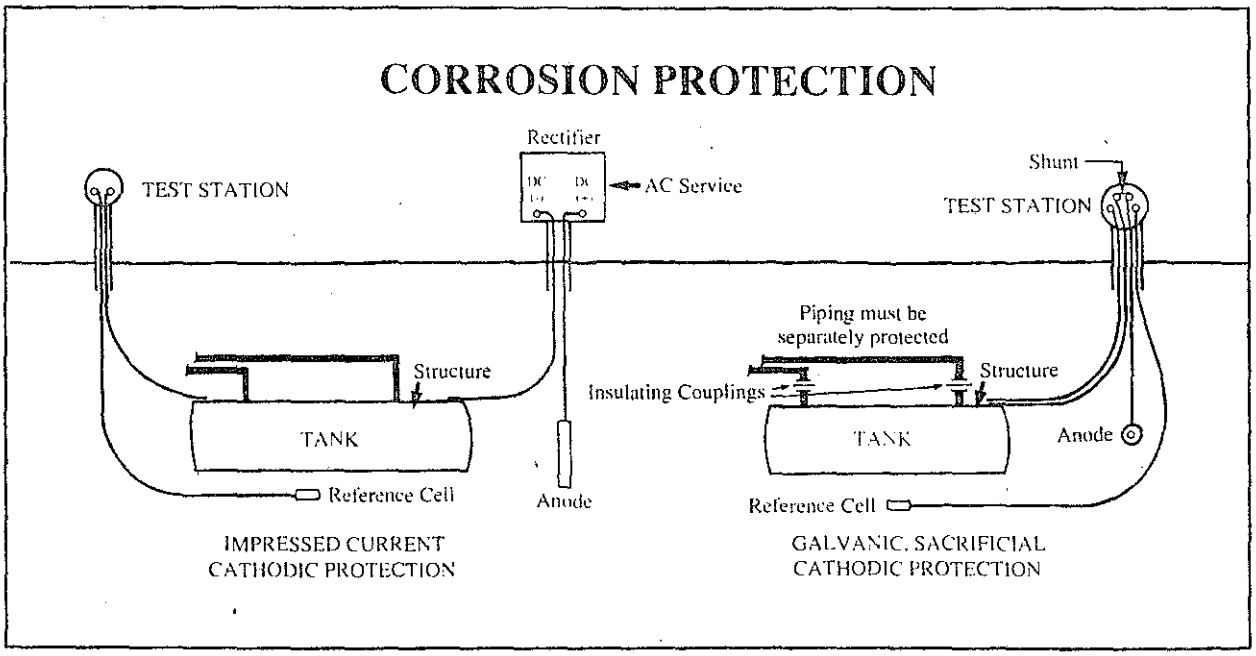


Figure III


CORROSION PROTECTION
Rectifier
AC Service
TEST STATION
Shunt
TEST STATION
Piping must be
separately protected
Structure
Insulating Couplings
Structure
TANK
TANK
Anode
Reference Cell
Anode
Reference Cell
IMPRESSED CURRENT
CATHODIC PROTECTION
GALVANIC, SACRIFICIAL
CATHODIC PROTECTION

State of Oregon
Department of Environmental Quality

Memorandum

Date: March 22, 1990

To: Environmental Quality Commission

From: Fred Hansen

Subject: Agenda Item 4; April 5, 1990, Work Session.
Strategic Plan: Schedule for Future Actions

At the March 1, 1990, Work Session in Pendleton, the Department provided the Commission with copies of the attached draft memorandum to Division Administrators which establishes an approach and schedule for development of "operating plans" and "performance indicators." Since there was not time to review the material at the meeting, this item has been placed on the April 5 Work Session to provide opportunity for discussion.

The present schedule for actions related to the Strategic Plan is summarized as follows:

April 11, 1990 Written comments on the draft Strategic Plan are due. Public Notice and copies of the plan were mailed to those on the EQC mailing list on March 12 and 13. A press release has also been issued notifying of the availability of the draft plan for review.

May 24, 1990 The Commission will discuss the comments received and the Department's evaluation at the regularly scheduled work session, and will make any final modifications to the plan.

May 31, 1990 Each Division will complete a draft display of high priority objectives, projects and tasks. These will be reviewed by Division Administrators on June 4, 1990. (See attached Memo to Division Administrators for more details on the proposed approach.)

June 28-29, 1990 The high priority objectives, projects, and tasks for the Department for the remainder of this biennium will be reviewed by the Commission.

Quarterly Thereafter The Department will report to the Commission on the status of the priority objectives, projects, and tasks.

DRAFT

State of Oregon
Department of Environmental Quality

Memorandum

Date: February 28, 1990

To: Division Administrators

From: Fred Hansen

Subject: **Division Operating Plans** and **Performance Indicators**

The next steps we have identified in the Strategic Planning process are:

- Display of **Division Operating Plans** in relation to the Strategic Plan.
- Development of **Performance Indicators** for the Agency Programs.

Following are the assumptions and approach we will use for these next steps.

Division Operating Plans

ASSUMPTIONS

1. The primary immediate purpose of the Strategic Plan is to establish direction for legislative concept and budget development for the 1991-1993 Biennium.

2. The work program of the Department for the current biennium (1989-1991) is essentially fixed by prior budget approval, federal requirements, etc. The ability to adjust to pursue new or significantly modified initiatives of the Strategic Plan is limited.

3. The Department can fairly rapidly complete a display of high priority projects and tasks that are on-going or planned during the 1989-1991 biennium, and identify how these projects and tasks can be related to Strategic Plan goals and priorities.

APPROACH

- Each Division will display their high priority objectives, projects, and tasks on the attached tabular display form in accordance with the following schedule:

    a. Complete a draft by **May 31, 1990**, for review by Division Administrators on **June 4, 1990.**

    b. Forward final document to EQC on **June 15, 1990**, along with the material package for the **June 29, 1990**, meeting.

DRAFT

Department of Environmental Quality

_____ Division Operating Plan

Priority Objectives related to Strategic Plan
July 1, 1990 - June 30, 1991

Priority Objectives	Significant Tasks	Responsible Unit	Target Date	Notes
a. Develop Health & Safety Plan (Goal 7) (All Program High Priority 6)	Develop Draft	Health & Safety Manager as lead with Interdivisional Task Force Asistance	July 1, 1990	
	Review and Finalize Draft	Division Administrators and Director	August 1, 1990	
	Develop Implementation Strategy	Health & Safety Manager and Task Force	Sept. 1, 1990	
	Adopt Implementation Strategy and Begin Implementation	Division Administrators and Director	October 1, 1990	

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: April 6, 1990
Agenda Item: B
Division: MSD
Section: Administration

SUBJECT:

Pollution Control Tax Credits.

PURPOSE:

Approve Pollution Control Tax Credit Applications.

ACTION REQUESTED:

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

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

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

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

Tax Credit Application Review Report
(See list on next page)

Tax Credit Application Review Reports:

T-2543	Merritt Truax, Inc.	-	Spill Containment Devices with trains; manholes with recovery vessels for 5 tanks.
T-2557	Metrofueling, Inc. Inc.	-	Spill Containment Devices with trains; manholes with recovery vessels for 5 tanks.
T-2558	Metrofueling, Inc.	-	Spill Containment Devices with trains; manholes with recovery vessels for 3 tanks.
T-2560	Metrofueling, Inc.	-	Spill Containment Devices with trains; manholes with recovery vessels for 5 tanks.
T-2572	Pride of Oregon	-	Spill Containment Devices with trains; manholes with recovery vessels for 5 tanks.
T-2687	Metrofueling, Inc.	-	Spill Containment Devices with trains; manholes with recovery vessels for 4 tanks.
T-2697	Copeland Paving, Inc.	-	Replacement of 2 steel tanks; leak detection system and spill and overfill containment system; and monitoring wells.
T-2717	Arthur H. Clough, Chevron Station	-	Leak Detection System.
T-2898	Brewed Hot Coffee Service	-	Tank lining system; overfill prevention system; manhole and riser.
T-3101	Burl J. & Josephine Eastman	-	Tiling installation on 40 acres.

DESCRIPTION OF REQUESTED ACTION:

Issue Tax Credit Certificates for Pollution Control Facilities.

AUTHORITY/NEED FOR ACTION:

X	Required by Statute: ORS 468.150-468.190	Attachment ___
	Enactment Date: _____	
___	Statutory Authority: _____	Attachment ___
___	Pursuant to Rule: _____	Attachment ___
___	Pursuant to Federal Law/Rule: _____	Attachment ___
___	Other:	Attachment ___
___	Time Constraints: (explain)	

DEVELOPMENTAL BACKGROUND:

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

The cover memo to this staff report provides the Department's interpretive guidelines for approving tax credits for underground storage tank upgrade facilities. All of the application review reports, with the exception of T-3101, were evaluated in consideration of these guidelines.

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

None.

PROGRAM CONSIDERATIONS:

None.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

None.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends the Environmental Quality Commission approve T-2543, T-2557, T-2558, T-2560, T-2572, T-2687, T-2697, T-2717, T-2898, and T-3101 in that they comply with the Pollution Control Tax Credit Program requirements and regulations.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

Yes.

Note - Pollution Tax Credit Totals:

Proposed April 6, 1990 Totals

Air Quality	$ 24,074
Water Quality	65,693
Hazardous/Solid Waste	- 0 -
Noise	- 0 -
	$ 89,767

Calendar Year Totals Through March 31, 1990

Air Quality	$ 2,381,117
Water Quality	1,796,320
Hazardous/Solid Waste	106,934
Noise	- 0 -
	$ 4,284,371

ISSUES FOR COMMISSION TO RESOLVE:

The Director requests EQC concurrence with the proposed interpretive guidelines for underground storage tank facility tax credit applications.

INTENDED FOLLOWUP ACTIONS:

Notify applicants of Environmental Quality Commission actions.

Approved:

Section: Roberta Young

Division: Peter A. Dalke

Director: Fred Hansen

Report Prepared By: Roberta Young

Phone: 229-6408

Date Prepared: March 21, 1990

RY:y
MY100434
March 21, 1990

Application No. TC-2543

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Merritt Truax, Inc.
PO Box 2099
Salem, OR 97308

The applicant owns and operates a retail service station at 3175 W 11th in Eugene, OR.

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

2. Description of Facility

The claimed pollution control facilities described in this application are EBW 705-5 spill containment manholes with recovery vessels for overfill protection installed on each of the applicants five underground storage tanks containing petroleum motor fuel.

Claimed Facility Cost:

5 EBW 705-5 Spill Containment devices with drains	$ 815.00
Installation of EBW 705-5 on 5 tanks	1,500.00
	$2,315.00

(Documentation of cost was provided.)

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

a. The request for preliminary certification was filed July 22, 1988, more than 30 days before installation commenced in April, 1989.

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

c. Installation of the facility was substantially completed on April 14, 1989 and the application for certification was found to be complete within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases into soil or water. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."

Prior to completing the work claimed, the facility had no spill or overfill prevention system and any spills or overfill of petroleum would run directly into the ground.

To respond to spill and overfill prevention requirements, the applicant installed EBW 705-5 spill containment manholes with recovery vessels on each of his five petroleum motor fuel underground storage tanks. This equipment meets EPA requirements for spill and overfill prevention.

The applicant did not indicate if any soil assessment or tank testing work was accomplished before undertaking this project. The Department would not expect the company to proceed with the investment if any indication of leaking would have been detected.

The applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

The claimed facility is intended to prevent spills and to protect from overfills. The applicant states that the fuel captured from overfills can be reused, but adds that the economic gain from such reuse is too small to have an effect.

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

There is no annual percent return on investment as the applicant claims no gross annual income from the facility.

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

The methods chosen are acceptable methods for meeting the requirements of federal regulations. Other than different manufacturers of the same equipment, there are no alternatives in meeting this requirement.

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

The applicant claims no savings or increase in costs as a result of the facility installation.

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

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

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

5. Summation

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

b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facilities is to comply with requirements imposed by the federal

Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases into soil or water. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."

c. The facility complies with DEQ statutes and rules.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $2,315.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-2543.

Barbara Anderson
HazMat\SM2831
(503) 229-5769
March 13, 1990

Application No. TC-2557

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Metrofueling, Inc.
PO Box 2099
Salem, OR 97308

The applicant owns and operates a cardlock commercial fueling site at 8100 NE Union, Portland, OR.

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

2. Description of Facility

The claimed pollution control facilities described in this application are EBW 705-5 spill containment manholes with recovery vessels for overfill protection installed on each of the applicants five underground storage tanks containing petroleum motor fuel.

Claimed Facility Cost:

5 EBW 705-5 Spill Containment devices with drains	$ 815.00
Installation of EBW 705-5 on 5 tanks	1,808.50
	$2,623.50

(Documentation of cost was provided.)

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

a. The request for preliminary certification was filed July 22, 1988, more than 30 days before installation commenced in March, 1989.

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

c. Installation of the facility was substantially completed on April 15, 1989 and the application for certification was found to be complete within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases into soil or water. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."

Prior to completing the work claimed, the facility had no spill or overfill prevention system and any spills or overfill of petroleum would run directly into the ground.

To respond to spill and overfill prevention requirements, the applicant installed EBW 705-5 spill containment manholes with recovery vessels on each of his five petroleum motor fuel underground storage tanks. This equipment meets EPA requirements for spill and overfill prevention.

The applicant did not indicate if any soil assessment or tank testing work was accomplished before undertaking this project. The Department would not expect the company to proceed with the investment if any indication of leaking would have been detected.

The applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

The claimed facility is intended to prevent spills and to protect from overfills. The applicant states that the fuel captured from overfills can be reused, but adds that the economic gain from such reuse is too small to have an effect.

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

There is no annual percent return on investment as the applicant claims no gross annual income from the facility.

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

The methods chosen are acceptable methods for meeting the requirements of federal regulations. Other than different manufacturers of the same equipment, there are no alternatives in meeting this requirement.

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

The applicant claims no savings or increase in costs as a result of the facility installation.

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

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

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

5. Summation

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

b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facilities is to comply with requirements imposed by the federal

Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases into soil or water. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."

c. The facility complies with DEQ statutes and rules.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $2,623.50 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-2557.

Barbara Anderson
HazMat\SM2833
(503) 229-5769
March 13, 1990

Application No. TC-2558

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Metrofueling, Inc.
PO Box 2099
Salem, OR 97308

The applicant owns and operates a cardlock commercial fueling site at 11426 NE Sandy Blvd., Portland, OR.

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

2. Description of Facility

The claimed pollution control facilities described in this application are EBW 705-5 spill containment manholes with recovery vessels for overfill protection installed on each of the applicants three underground storage tanks containing petroleum motor fuel.

Claimed Facility Cost:

3 EBW 705-5 Spill Containment devices with drains	$ 489.00
Installation of EBW 705-5 on 3 tanks	900.00
	$1,389.00

(Documentation of cost was provided.)

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

a. The request for preliminary certification was filed July 22, 1988, more than 30 days before installation commenced in March, 1989.

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

c. Installation of the facility was substantially completed on April 15, 1989 and the application for certification was found to be complete within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases into soil or water. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."

Prior to completing the work claimed, the facility had no spill or overfill prevention system and any spills or overfill of petroleum would run directly into the ground.

To respond to spill and overfill prevention requirements, the applicant installed EBW 705-5 spill containment manholes with recovery vessels on each of his three petroleum motor fuel underground storage tanks. This equipment meets EPA requirements for spill and overfill prevention.

The applicant did not indicate if any soil assessment or tank testing work was accomplished before undertaking this project. The Department would not expect the company to proceed with the investment if any indication of leaking would have been detected.

The applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

The claimed facility is intended to prevent spills and to protect from overfills. The applicant states that the fuel captured from overfills can be reused, but adds that the economic gain from such reuse is too small to have an effect.

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

There is no annual percent return on investment as the applicant claims no gross annual income from the facility.

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

The methods chosen are acceptable methods for meeting the requirements of federal regulations. Other than different manufacturers of the same equipment, there are no alternatives in meeting this requirement.

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

The applicant claims no savings or increase in costs as a result of the facility installation.

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

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

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

5. Summation

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

b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facilities is to comply with requirements imposed by the federal

Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases into soil or water. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."

c. The facility complies with DEQ statutes and rules.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $1,389.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-2558.

Barbara Anderson
HazMat\SM2832
(503) 229-5769
March 13, 1990

Application No. TC-2560

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Metrofueling, Inc.
PO Box 2099
Salem, OR 97308

The applicant owns and operates a cardlock commercial fueling site at 13295 SW Pacific Hwy, Tigard, OR.

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

2. Description of Facility

The claimed pollution control facilities described in this application are EBW 705-5 spill containment manholes with recovery vessels for overfill protection installed on each of the applicants five underground storage tanks containing petroleum motor fuel.

Claimed Facility Cost:

5 EBW 705-5 Spill Containment devices with drains	$ 815.00
Installation of EBW 705-5 on 5 tanks	1,500.00
	$2,315.00

(Documentation of cost was provided.)

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

a. The request for preliminary certification was filed July 22, 1988, more than 30 days before installation commenced in March, 1989.

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

c. Installation of the facility was substantially completed on April 15, 1989 and the application for certification was found to be complete within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases into soil or water. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."

Prior to completing the work claimed, the facility had no spill or overfill prevention system and any spills or overfill of petroleum would run directly into the ground.

To respond to spill and overfill prevention requirements, the applicant installed EBW 705-5 spill containment manholes with recovery vessels on each of his five petroleum motor fuel underground storage tanks. This equipment meets EPA requirements for spill and overfill prevention.

The applicant did not indicate if any soil assessment or tank testing work was accomplished before undertaking this project. The Department would not expect the company to proceed with the investment if any indication of leaking would have been detected.

The applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

The claimed facility is intended to prevent spills and to protect from overfills. The applicant states that the fuel captured from overfills can be reused, but adds that the economic gain from such reuse is too small to have an effect.

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

There is no annual percent return on investment as the applicant claims no gross annual income from the facility.

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

The methods chosen are acceptable methods for meeting the requirements of federal regulations. Other than different manufacturers of the same equipment, there are no alternatives in meeting this requirement.

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

The applicant claims no savings or increase in costs as a result of the facility installation.

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

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

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

5. Summation

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

b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facilities is to comply with requirements imposed by the federal

Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases into soil or water. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."

c. The facility complies with DEQ statutes and rules.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $2,315.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-2560.

Barbara Anderson
HazMat\SM2835
(503) 229-5769
March 13, 1990

Application No. TC-2572

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Pride of Oregon
PO Box 2099
Salem, OR 97308

The applicant owns and operates a retail service station at 7832 Squirrel Hill Rd SE, Salem, OR.

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

2. Description of Facility

The claimed pollution control facilities described in this application are EBW 705-5 spill containment manholes with recovery vessels for overfill protection installed on each of the applicants five underground storage tanks containing petroleum motor fuel.

Claimed Facility Cost:

5 EBW 705-5 Spill Containment devices with drains	$ 815.00
Installation of EBW 705-5 on 5 tanks	1,500.00
	$2,315.00

(Documentation of cost was provided.)

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

a. The request for preliminary certification was filed July 22, 1988, more than 30 days before installation commenced in January, 1989.

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

c. Installation of the facility was substantially completed on February 1, 1989 and the application for certification was found to be complete within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases into soil or water. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."

Prior to completing the work claimed, the facility had no spill or overfill prevention system and any spills or overfill of petroleum would run directly into the ground.

To respond to spill and overfill prevention requirements, the applicant installed EBW 705-5 spill containment manholes with recovery vessels on each of his five petroleum motor fuel underground storage tanks. This equipment meets EPA requirements for spill and overfill prevention.

The applicant did not indicate if any soil assessment or tank testing work was accomplished before undertaking this project. The Department would not expect the company to proceed with the investment if any indication of leaking would have been detected.

The applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

The claimed facility is intended to prevent spills and to protect from overfills. The applicant states that the fuel captured from overfills can be reused, but adds that the economic gain from such reuse is too small to have an effect.

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

There is no annual percent return on investment as the applicant claims no gross annual income from the facility.

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

The methods chosen are acceptable methods for meeting the requirements of federal regulations. Other than different manufacturers of the same equipment, there are no alternatives in meeting this requirement.

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

The applicant claims no savings or increase in costs as a result of the facility installation.

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

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

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

5. Summation

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

b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facilities is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases into soil or water. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): Installation or construction of facilities

which will be used to detect, deter, or prevent spills or unauthorized releases."

c. The facility complies with DEQ statutes and rules.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $2,315.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-2572.

Barbara Anderson
HazMat\SM2834
(503) 229-5769
March 13, 1990

Application No. TC-2687

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Metrofueling, Inc.
PO Box 2099
Salem, OR 97308

The applicant owns and operates a cardlock commercial fueling site at 30100 SW Parkway in Wilsonville, OR.

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

2. Description of Facility

The claimed pollution control facilities described in this application are EBW 705-5 spill containment manholes with recovery vessels for overfill protection installed on each of the applicants four underground storage tanks containing petroleum motor fuel.

Claimed Facility Cost:

4 EBW 705-5 Spill Containment devices with drains	$ 652.00
Installation of EBW 705-5 on 4 tanks	1,200.00
	$1,852.00

(Documentation of cost was provided.)

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

a. The request for preliminary certification was filed November 25, 1988, less than 30 days before installation commenced on December 1, 1988. However, according to the process provided in OAR 340-15-015(1)(b), the application was reviewed by DEQ staff and the applicant was notified that the application was complete and that installation could commence.

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

c. Installation of the facility was substantially completed on January 9, 1989 and the application for certification was found to be complete within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases into soil or water. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."

Prior to completing the work claimed, the facility had no spill or overfill prevention system and any spills or overfill of petroleum would run directly into the ground.

To respond to spill and overfill prevention requirements, the applicant installed EBW 705-5 spill containment manholes with recovery vessels on each of his four petroleum motor fuel underground storage tanks. This equipment meets EPA requirements for spill and overfill prevention.

The applicant did not indicate if any soil assessment or tank testing work was accomplished before undertaking this project. The Department would not expect the company to proceed with the investment if any indication of leaking would have been detected.

The applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

The claimed facility is intended to prevent spills and to protect from overfills. The applicant states that the fuel captured from overfills can be reused, but adds that the economic gain from such reuse is too small to have an effect.

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

There is no annual percent return on investment as the applicant claims no gross annual income from the facility.

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

The methods chosen are acceptable methods for meeting the requirements of federal regulations. Other than different manufacturers of the same equipment, there are no alternatives in meeting this requirement.

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

The applicant claims no savings or increase in costs as a result of the facility installation.

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

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

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

5. Summation

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

b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facilities is to comply with requirements imposed by the federal

Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases into soil or water. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."

c. The facility complies with DEQ statutes and rules.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $1,852.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-2687.

Barbara Anderson
HazMat\SM2830
(503) 229-5769
March 13, 1990

Application No. 2697

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Copeland Paving, Inc.
P. O. Box 608
Grants Pass, OR 97526
UST Facility Number 5948

The applicant owns and operates an asphalt and concrete paving production plant; sand and gravel material yard; truck repair shop and corporate offices at this location.

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

2. Description of Facility

The claimed pollution control facilities described in this application are replacement of two steel underground storage tanks with two 12,000 gallon fiberglass underground storage tanks; fiberglass piping to dispensing pumps; automatic inventory control devices and leak detectors, concrete slab with spill containment manholes and catch basins for spill and overfill protection and four groundwater monitoring wells.

The applicant claims the following costs and percentages for the claimed pollution control facility. The applicant provided an accountant certified list of costs for system components.

Claimed facility cost	$36,341.25
Percent allocable to pollution control	41.9%

Of the amount shown above, the Department determined that $5,422.80 was ineligible pursuant to the definition of a pollution control facility as stated in ORS 468.155 and the adjusted facility cost is $30,918.45. The rationale for making this adjustment is explained in Section 4.a. - Evaluation of the Application.

Adjusted claimed facility cost	$30,918.45

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

a. The request for preliminary certification was filed December 10, 1988, more than 30 days before installation commenced on January 15, 1989.

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

c. Installation of the facility was substantially completed on February 22, 1989 and the application for certification was found to be complete within two years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases into soil or water. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."

Prior to completing the work claimed, the facility had two steel tanks and piping, one 10,000 gallon tank holding gasoline and one 12,000 gallon tank holding diesel fuel, which were 20 years old and had started to rust.

Effective 12-22-88, EPA established a ten year phase-in program for tank owners to upgrade existing underground storage tanks to new tank standards. This includes installing pollution control equipment to provide protection against releases due to corrosion, to prevent spills and release from overfill, and to monitor for leaks.

To respond to corrosion protection, the applicant replaced the two existing steel tanks with two fiberglass tanks (one for diesel and the other for gasoline) and replaced the existing steel piping with fiberglass piping. This involved removal of the old tanks and removal and disposal of the contaminated soil. Using fiberglass tanks and piping meets EPA requirements for corrosion protection.

To respond to spill and overfill prevention, the applicant covered the fuel dispensing area with a concrete slab, installed Mascott spill containment manholes, a G.P. steel catch basin and overfill prevention valves. This equipment meets EPA requirements for spill and overfill prevention.

To respond to leak detection requirements, the applicant installed an EASI-OM-588 automatic inventory control, leak detector and four ground water monitoring wells, for advanced release detection monitoring. This equipment meets EPA requirements for leak detection.

With respect to the applicant's claimed facility cost of $36,341.25, the Department determined that some of the costs included in this figure are not eligible pursuant to the definition of a pollution control facility in ORS 648.155. A breakdown of the applicant's claimed costs is shown below with ineligible costs identified.

Facility	Applicant Claimed Costs	Department Adjusted Costs
Removal old tank	$ 1,236.00	$ 0.00
Removal saturated material	1,055.00	0.00
Fiberglass tanks (2)	12,459.00	12,459.00
Installation of Tanks	1,902.50	1,902.50
Fiberglass Plumbing	2,087.57	2,087.57
Installation of Plumbing	1,507.00	1,507.00
Leak detection system	5,549.23	5,549.23
Spill containment system	575.60	575.60
Overfill protection system	843.93	843.93
Backfill/regrade/concrete	5,590.60	5,590.60
Monitoring wells	403.02	403.02
Gas pumps and accessories	3,131.80	0.00
Total	$36,341.25	$30,918.45
Adjusted Eligible Facility Cost		$30,918.45

With respect to removal of old tanks at $1,236.00, the old tanks were located in an excavated area different from where the new tanks were placed. The applicant concluded that this cost was not eligible and the Department agrees.

With respect to removal of saturated material at $1,055.00, ORS 468.155(2)(f) states that a pollution control facility does not include costs related to "clean up" activities.

With respect to the cost of gas pumps and accessories at $3,131.80, ORS 468.155(2)(d) states that a pollution control facility does not include the cost of any portion of that facililty that makes an "insignificant contribution" to pollution control. Even though the applicant included the cost of gas pumps and accessories in total facility cost, the applicant stated that these costs are not eligible facility costs and had deleted them from the determination of percent allocable. The Department agrees with the applicant's determination.

For some reason, the applicant did not include the cost of a concrete slab and catch basin placed in the area where vehicles are fueled. Since spills during fuel dispensing are a known cause of soil and groundwater contamination, the department has included this $5,590.60 cost as eligible. The applicant also did not include $297.00 for the excavation of a plumbing ditch which the Department has included as eligible.

Although the applicant did not indicate if any soil assessment or tank testing work was accomplished before undertaking this project, he did indicate that contaminated soil was discovered upon removal of the old tanks. The applicant also shows a cost to remove soils before installing new tanks.

The applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

   There is no annual percent return on investment as the applicant claims no gross annual income from the facility.

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

The methods chosen are acceptable methods for meeting the requirements of federal regulations. The applicant considered coated steel tanks but found the cost to be approximately the same, but with a shorter life expectancy, than the fiberglass.

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

The applicant claims no savings or increase in costs as a result of the installation.

5) Any other factors which are relevant in establishing the portion of the actual cost of the facility properly allocable to pollution control.

The applicant evaluated the allocable pollution control benefits of fiberglass tanks by determining the difference in cost between two fiberglass tanks and two equivalent bare steel tanks at $1,698.60. The applicant then considered 100% of this cost allocable to pollution control. The applicant did not provide a fiberglass versus bare steel cost difference for plumbing components associated with the tanks, but indicated that 100% of such cost ($2,087.57) should qualify as pollution control. The resulting portion of total tank system (tanks and plumbing) cost that this represents is 26%.

With respect to labor costs, the applicant considered tank installation costs to be 100% allocable to pollution control. Plumbing installation costs were considered to be 100% allocable by the applicant with the exception of the earlier referred to $297.00 for plumbing ditch excavation, which was not claimed, but was determined to be an eligible cost by the Department.

As discussed in a separate background memo, the Department now believes it more logical to make a determination of the percent allocable by using a formula based on the difference in costs between fiberglass and bare steel as a percent of the total tank system (tanks and plumbing). Applying this formula to the costs presented by the applicant, where the total tank system cost is $14,546.57 less

a bare steel system (tanks and plumbing, with the cost of plumbing equal for both systems) cost of $12,847.97, divided by the total tank system cost of $14,546.57, the resulting percent allocable to pollution control is 11.7%. This is slightly below the "normal" cost of 14%.

The Department has determined that labor costs associated with the installation of the tanks and plumbing are 100% allocable to pollution control, since the pollution control could not be achieved without this labor cost.

The applicant's claimed cost for a leak detection system (EASI Fuel Management System) in the amount of $5,549.23 is reduced to 90% of this amount based on a determination by the Department that this is the portion of cost properly allocable to pollution control. This results in an amount allocable to pollution control of $4,994.07.

In summary, we find the actual cost of the facility properly allocable to pollution control as follows:

	Eligible Facility Cost	Percent Allocable	Amount Allocable
Leak Detection:			
Leak detection system	$5,549.23	90.0%	$4,994.07
Monitoring wells	403.02	100.0%	403.02
Spill & Overfill Prevention:			
Spill Containment system	575.60	100.0%	575.60
Overfill protection system	843.93	100.0%	843.93
Backfill/regrade/concrete	5,590.60	100.0%	5,590.60
Corrosion Protection:			
Fiberglass tanks (2)	12,459.00	11.7%	1,457.70
Installation of tanks	1,902.50	100.0%	1,902.50
Fiberglass plumbing	2,087.57	11.7%	244.25
Installation of plumbing	1,507.00	100.0%	1,507.00
Total	$30,918.45	56.7%	$17,518.67

5. Summation

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

b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to

comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility:, defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."

c. The facility complies with DEQ statutes and rules.

d. The portion of the facility cost that is properly allocable to pollution control is 56.7%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $30,918.45 with 56.7% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-2697.

Barbara J. Anderson
(503) 229-5769
March 21, 1989
TC2697

Application No. TC-2717

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Arthur H. Clough Chevron Station
100 Beech Street
Arlington, OR 97526
UST Facility Number 8058

The applicant owns and operates a service station at this location.

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

2. Description of Facility

The claimed pollution control facility described in this application is a Veeder-Root TLS-250 computerized leak detection system with an overfill alarm and spill buckets. This equipment was installed to serve the applicant's three gasoline filled underground storage tanks.

The applicant claims the following cost and percentage for the claimed pollution control facility. The applicant provided documentation of cost.

Claimed Facility cost	$12,200.69
Percent allocable to pollution control	100%

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

a. The request for preliminary certification was filed January 17, 1989, more than 30 days before installation commenced on February 20, 1989.

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

c. Installation of the facility was substantially completed on April 3, 1989 and the application for certification was found to be complete within two years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases into soil or water. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."

Prior to completing the work claimed, the facility had two 20 year old 8,000 gallon underground storage tanks and one 2,000 gallon underground storage tank holding gasoline. The tanks had no system for detecting leaks or preventing spills and overfills. The existence of corrosion control prior to completing the work is unknown.

Effective 12-22-88, EPA established a ten year phase-in program for tank owners to upgrade existing underground storage tanks to new tank standards. This includes installing pollution control equipment to provide protection against releases due to corrosion, to prevent spills and release from overfill, and to monitor for leaks.

To respond to spill and overfill prevention requirements, the applicant installed spill buckets and a computer system with an overfill alarm. This equipment meets EPA requirements for spill and overfill prevention.

To respond to leak detection requirements, the applicant installed a Veeder-Root TLS-250 computer system with sensor probes in each of the three tanks. This work was accomplished by excavating to uncover the tanks and installing the probes, then connecting them to the computer equipment which was installed in the service station office. This equipment meets EPA requirements for leak detection.

At this time we have no information on the applicant's plan for meeting the corrosion control requirements. However, EPA allows up through 12-22-88 to meet the corrosion control requirement.

With respect to the applicant's claimed facility cost of $12,200.69, the Department determined that all of the

costs included in this figure are eligible pursuant to the definition of a pollution control facility in ORS 648.155. A breakdown of the applicant's claimed costs is shown below.

Facility	Applicant Claimed Costs	Department Approved Costs
Veeder-Root TLS-250 Computer leak detection system	$ 6,611.38	$ 6,611.38
System installation and excavation	5,070.47	5,070.47
Concrete replacement	518.84	518.84
Total	$12,200.69	$12,200.69
Eligible Facility Cost		$12,200.69

The applicant did not indicate if any soil assessment or tank testing work was accomplished before undertaking this project. The Department would not expect the company to proceed with the investment if any indication of leaking would have been detected during this project.

The applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

There is no annual percent return on investment as the applicant claims no gross annual income from the facility.

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

The methods chosen are acceptable methods for meeting the requirements of federal regulations. Other than other manufacturers of similar equipment, there are no alternatives to meeting the spill and overfill protection and leak detection requirements. Automatic tank gauging is recognized by EPA as an advance release detection method and one of the alternatives for new installations as well as upgrading existing installations.

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

The applicant claims no savings or increase in costs as a result of the installation.

5) Any other factors which are relevant in establishing the portion of the actual cost of the facility properly allocable to pollution control.

The applicant's claimed cost for the spill and overfill prevention/leak detection equipment (Veeder-Root TLS-250 System) in the amount of $6,611.38 is reduced to 90% of this amount based on a determination by the Department that this is the portion of cost properly allocable to pollution control. This results in an eligible cost finding of $5,950.24.

The cost of installation, excavation and concrete replacement associated with the system is determined to be 100% allocable to pollution control, since the pollution control could not be achieved without this labor effort.

In summary, we find the actual cost of the facility properly allocable to pollution control as follows:

	Eligible Cost	Percent Allocable	Amount Allocable
Spill and Overfill Prevention and Leak Detection:			
Veeder-Root TLS-250 computer system	$6,611.38	90.0%	$5,950.24
System installation and excavation	5,070.47	100.0%	5,070.47
Concrete replacement	518.84	100.0%	518.84
Total	$12,200.69	94.6%	$11,539.55

5. Summation

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

b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility:, defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."

c. The facility complies with DEQ statutes and rules.

d. The portion of the facility cost that is properly allocable to pollution control is 94.6%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $12,200.69 with 94.6% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-2717.

Barbara J. Anderson
(503) 229-5769
March 21, 1989
TC2717

Application No. TC-2898

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Brewed Hot Coffee, Inc.
802 NE Davis Street
Portland, OR 97232
UST Facility Number 1730

The applicant owns and operates a bottled water and coffee delivery service at this location.

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

2. Description of Facility

The claimed pollution control facility described in this application is a Bridgeport Chemical GA 27P epoxy lining system to an underground storage tank; an overfill prevention system and bung, riser and manhole to accommodate the future installation of a leak detection system.

The applicant claims the following cost and percentage for the claimed pollution control facility. The applicant provided documentation of cost.

Claimed Facility cost	$9,765.00
Percent allocable to pollution control	100%

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

a. The request for preliminary certification was filed May 15, 1989, less than 30 days before installation commenced on June 10, 1989. However, according to the process provided in OAR 340-16-015(1)(b), the application was reviewed by DEQ staff and the applicant was notified that the application was complete and that installation could commence.

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

c. Installation of the facility was substantially completed on June 13, 1989 and the application for certification was found to be complete within two years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases into soil or water. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."

Prior to completing the work claimed, the facility had an unlined 12,000 gallon underground storage tank. In addition, the fill spout to the tank did not have a spill and overflow prevention device. The facility holds unleaded gasoline to be dispensed into the company's fleet of delivery trucks.

Effective 12-22-88, EPA established a ten year phase-in program for tank owners to upgrade existing underground storage tanks to new tank standards. This includes installing pollution control equipment to provide protection against releases due to corrosion, to prevent spills and release from overfill, and to monitor for leaks.

To respond to corrosion protection, the applicant lined the interior of the tank with an epoxy resin, a method recognized by EPA for corrosion protection. The deadline for compliance is December 1998. This work was accomplished by excavating to the top of the tank, cutting an 18 x 18 inch hole to enter the tank, removing and properly disposing of sludge, ultrasonically testing the thickness of the walls, sandblasting the interior surface to prepare it for the epoxy resin, spraying on the resin coating, curing the resin, and performing final installation testing of the coating.

To respond to spill and overfill prevention, the applicant installed an Emco Wheaton A1000 Automatic Overfill Prevention System. This system is compatible with Stage I vapor recovery systems. This equipment meets EPA requirements for spill and overfill prevention. The deadline for compliance is also December 1998.

The applicant also installed a 4" bung and riser and 18" manhole in anticipation of having to comply with leak detection requirements which, based on their tank's age, would be required by December 1993.

With respect to the applicant's claimed facility cost of $9,765.00, the Department determined that all of the costs included in this figure are eligible pursuant to the definition of a pollution control facility in ORS 648.155. A breakdown of the applicant's claimed costs is shown below.

Facility	Applicant Claimed Costs	Department Approved Costs
Bridgeport Chemical GA 27P tank lining system	$8,215.00	$8,215.00
Emco Wheaton A1000 overfill protection system	1,250.00	1,250.00
Bung, riser and manhole	300.00	300.00
Total	$9,765.00	$9,765.00
Eligible Facility Cost		$9,765.00

The applicant did not indicate if any soil assessment or tank testing work was accomplished before undertaking this project. The Department would not expect the company to proceed with the investment in lining the tanks if any indication of leaking would have been detected during this project.

The applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

The claimed facility is intended to prevent leaks from corrosion or spillage and does not recover or

convert waste products into salable or usable commodity.

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

There is no annual percent return on investment as the applicant claims no gross annual income from the facility.

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

The methods chosen are acceptable methods for meeting the requirements of federal regulations. The applicant considered removal of the tank and purchase of fuel on the open market. This alternative was estimated to cost $5,000.

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

The applicant claims no savings or increase in costs as a result of the installation.

5) Any other factors which are relevant in establishing the portion of the actual cost of the facility properly allocable to pollution control.

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

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

5. Summation

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

b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility:, defined in OAR 340-16-025(2)(g): Installation or construction of facilities

which will be used to detect, deter, or prevent spills or unauthorized releases."

c. The facility complies with DEQ statutes and rules.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $9,765.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-2898.

Barbara J. Anderson
(503) 229-5769
March 21, 1989
TC2898

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Burl J. & Josephine Eastman
37309 Jefferson-Scio Drive
Scio, OR 97374

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

Application was made for tax credit for air pollution control equipment.

2. Description of Claimed Facility

The equipment described in this application is a tiling installation on 40 acres located at 37331 Jefferson-Scio Drive, Scio, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: $24,074.35
(Accountant's Certification was provided.)

3. Procedural Requirements

The equipment is governed by ORS 468.150 through 468.190, and by OAR Chapter 340, Division 16. The equipment has met all statutory deadlines in that:

a. Purchase of the equipment was substantially completed on November 12, 1989, and the application for final certification was found to be complete on December 19, 1989, within two years of substantial purchase of the equipment.

b. The applicant received preliminary certification approval on August 24, 1989.

4. Evaluation of Application

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

This reduction is accomplished by reduction of air contaminants, defined in ORS 468.275, and the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)(A):

"Drainage tile installations which will result in a reduction of grass seed acreage under production."

The applicant states that this acreage will not be open field burned at any time in the future.

b. Eligible Cost Findings

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

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

   The equipment does not recover or convert waste products into a salable or usable commodity. The equipment allows other crops to be grown in place of grass seed.

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

   There is no annual percent return on the investment as the applicant claims no increase in gross annual income is anticipated from crop conversion.

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

   The method chosen is an accepted method for reduction of air pollution. The method is one of the least costly, most effective methods of reducing air pollution.

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

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

5. Any other factors which are relevant in establishing the portion of the actual cost of the equipment properly allocable to the prevention, control or reduction of air pollution.

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

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

5. Summation

a. The equipment was purchased in accordance with all regulatory deadlines.

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

c. The equipment complies with DEQ statutes and rules.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $24,074.35, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3101.

J. Britton:ka
(503) 686-7837
December 5, 1989

Certificate No. 2136

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Date of Issue 4/17/90

Application No. T-2543

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: Merritt Truax, Inc. Peter F. Meyer P.O. Box 2099 Salem, OR 97308	Location of Pollution Control Facility: 3175 W. 11th Eugene, OR 97402
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

Installation of EBW 705-5 spill containment manholes with recovery vessels on 5 tanks.

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

Date Pollution Control Facility was completed: 4/14/89 Placed into operation: 4/14/89

Actual Cost of Pollution Control Facility: $2,315.00

Percent of actual cost properly allocable to pollution control:

100 Percent

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

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

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

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

Signed [signature]

Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on the 17th day of April, 1990.

Certificate No. 2137

Date of Issue 4/17/90

Application No. T-2557

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: Metrofueling, Inc. Peter F. Meyer P.O. Box 2099 Salem, OR 97308	Location of Pollution Control Facility: 8100 NE Union Avenue Portland, OR 97211
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

Installation of EBW 705-5 spill containment manholes with recovery vessels on 5 tanks.

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

Date Pollution Control Facility was completed: 4/15/89 Placed into operation: 4/15/89

Actual Cost of Pollution Control Facility: $2,623.50

Percent of actual cost properly allocable to pollution control:

100 percent

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

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

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

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

Signed _____

Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on the 17th day of April, 1990.

Certificate No. 2138

Date of Issue 4/17/90

Application No. T-2558

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: Metrofueling, Inc. Peter F. Meyer P.O. Box 2099 Salem, OR 97308	Location of Pollution Control Facility: 11426 NE Sandy Blvd. Portland, OR 97220
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

Installation of EBW 705-5 spill containment manholes with recovery vessels on 3 tanks.

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

Date Pollution Control Facility was completed: 4/05/89 Placed into operation: 4/05/89

Actual Cost of Pollution Control Facility: $ 1,389.00

Percent of actual cost properly allocable to pollution control: 100 percent

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

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

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

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

Signed _____

Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on the 17th day of April, 1990.

Certificate No. 2139

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Date of Issue 4/17/90

Application No. T-2560

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: Metrofueling, Inc. Peter F. Meyer P.O. Box 2099 Salem, OR 97308	Location of Pollution Control Facility: 13295 SW Pacific Hwy. Tigard, OR 97223
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

Installation of EBW 705-5 spill containment manholes with recovery vessels on 5 tanks.

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

Date Pollution Control Facility was completed: 4/15/89 Placed into operation: 4/15/89

Actual Cost of Pollution Control Facility: $2,315.00

Percent of actual cost properly allocable to pollution control:

100 Percent

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

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

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

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

Signed _____

Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on the 17th day of April, 1990.

Certificate No. 2140

Date of Issue 4/17/90

Application No. T-2572

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: Pride of Oregon Peter F. Meyer P.O. Box 2099 Salem, OR 97308	Location of Pollution Control Facility: 7832 Squirrel Hill Rd., SE Salem, OR 97306
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

Installation of EBW 705-5 spill containment manholes with recovery vessels on 5 tanks.

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

Date Pollution Control Facility was completed: 2/01/89 Placed into operation: 2/01/89

Actual Cost of Pollution Control Facility: $2,315.00

Percent of actual cost properly allocable to pollution control: 100 Percent

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

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

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

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

Signed _____

Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on the 17th day of April, 1990.

Certificate No. 2141

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Date of Issue 4/17/90

Application No. T-2687

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: Metrofueling, Inc. Peter F. Meyer P.O. Box 2099 Salem, OR 97308	Location of Pollution Control Facility: 30100 SW Parkway Wilsonville, OR 97338
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

Installation of EBW 705-5 spill containment manholes with recovery vessels on 4 tanks.

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

Date Pollution Control Facility was completed: 1/09/89 Placed into operation: 1/09/89

Actual Cost of Pollution Control Facility: $1,852.00

Percent of actual cost properly allocable to pollution control: 100 Percent

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

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

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

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

Signed _____

Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on the 17th day of April, 1990.

Certificate No. 2142

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Date of Issue 4/17/90

Application No. T-2697

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
Copeland Paving, Inc. P.O. Box 608 Grants Pass, OR 97526	695 SE J Street Grants Pass, OR 97526
As: ☐ Lessee ☒ Owner	
Description of Pollution Control Facility: Replacement of 2 steel tanks with fiberglass; installation of EASI-OM-588 leak detection system; spill and overfill prevention system; and monitoring wells.	
Type of Pollution Control Facility: ☐ Air ☐ Noise ☒ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil	
Date Pollution Control Facility was completed: 2/22/89	Placed into operation: 2/27/89
Actual Cost of Pollution Control Facility: $ 30,918.45	
Percent of actual cost properly allocable to pollution control: 56.7 Percent	

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

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

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

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

Signed William P. Hutchison Jr.

Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on the 17th day of April, 1990.

Certificate No. 2143

Date of Issue 4/17/90

Application No. T-2717

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
Arthur H. Clough P.O. Box 98 Arlington, OR 97812	100 Beech Street Arlington, OR 97812
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

Veeder-Root TLS-250 Computerized leak detection system with overfill alarm and spill buckets installed on 3 tanks.

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

Date Pollution Control Facility was completed: 4/03/89 Placed into operation: 5/01/89

Actual Cost of Pollution Control Facility: $12,200.69

Percent of actual cost properly allocable to pollution control:

94.6 Percent

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

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

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

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

Signed _____

Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on the 17th day of April, 1990.

Certificate No. 2144

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Date of Issue 4/17/90

Application No. T-2898

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: Brewed Hot Coffee Steven M. Strauch 802 NE Davis Street Portland, OR 97232-2932	Location of Pollution Control Facility: 802 NE Davis Street Portland, OR 97232-2932
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

Installation of a GA 27P epoxy tank lining; Emco Wheaton A1000 overfill protection; bung, riser and manhole on 1 tank.

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

Date Pollution Control Facility was completed: 6/13/89 Placed into operation: 6/19/89

Actual Cost of Pollution Control Facility: $9,765.00

Percent of actual cost properly allocable to pollution control:

100 Percent

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

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

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

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

Signed _____

Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on the 17th day of April, 1990.

Certificate No. 2145

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Date of Issue 4/17/90

Application No. T-3101

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
Burl J. & Josephine Eastman 37309 Jefferson-Scio Drive Scio, OR 97374	37331 Jefferson-Scio Drive Scio, OR 97374
As: ☐ Lessee ☒ Owner	
Description of Pollution Control Facility: Tile Installation	
Type of Pollution Control Facility: ☐ Air ☐ Noise ☒ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil	
Date Pollution Control Facility was completed: 11/12/89	Placed into operation: 11/12/89
Actual Cost of Pollution Control Facility: $24,074.35	
Percent of actual cost properly allocable to pollution control: 100 Percent	

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

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

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

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

Signed _____

Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on the 17th day of April, 1990.

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: April 6, 1990
Agenda Item: D
Division: Air Quality
Section: Noise Control

SUBJECT:

Portland Airport Noise Abatement Plan: Request for Extension to October 1990 for Submittal of Update

PURPOSE:

Noise Control Regulations for Airports, Oregon Administrative Rule (OAR) 340-35-045(4)(e), requires the submittal of updated noise abatement plans for the Environmental Quality Commission's (EQC, Commission) evaluation and reauthorization six months prior to the fifth anniversary of the original approval.

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 ___

DESCRIPTION OF REQUESTED ACTION:

On September 8, 1981, the Oregon Environmental Council (OEC) requested that the Department of Environmental Quality (DEQ, Department) initiate proceedings to require the Port of Portland (Port), proprietor of the Portland International Airport, to develop and implement a comprehensive noise abatement strategy. A Noise Abatement Program was developed in accordance with airport regulations OAR 340-35-045 and approved by the Commission on August 19, 1983. The EQC reviewed the Program's status on April 19, 1985 and reapproved it with revisions to the originally approved implementation schedule.

The renewal date for an updated Noise Abatement Program is April 19, 1990. The Port is requesting an extension of this deadline until October 19, 1990 to allow for the completion of an Air Traffic Capacity Study. The Air Traffic Capacity Study was not a component of the originally approved, or revised, Noise Abatement Program. Approval of this request will enable the Port to develop a strategy using most current air traffic growth projections.

AUTHORITY/NEED FOR ACTION:

___	Required by Statute: _____	Attachment ___
	Enactment Date: _____	
_X_	Statutory Authority: ORS 467.060	Attachment ___
_X_	Pursuant to Rule: OAR 340-35-045(4)(e) and 340-35-100	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 ___
_X_	Prior EQC Agenda Items: (list)	Attachment ___

August 19, 1983 - Agenda Item H
November 2, 1984 - Agenda Item J
April 19, 1985 - Agenda Item G

___	Other Related Reports/Rules/Statutes:	Attachment ___
___	Supplemental Background Information	Attachment ___

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

Noise abatement at Portland International Airport has undergone many transitions since 1983. Future growth in air traffic volumes, modifications to flight patterns, changes in operational procedures, and land use will affect the airline industry, the military, the business community, neighborhoods located near the airport, and the public-at-large.

To address the various issues of concern, the Port has appointed a citizens' Noise Abatement Advisory Committee (NAAC) and several sub-committees. Neighborhood representatives, the airline industry, the Federal Aviation Administration (FAA), the Department, and the Port serve on these committees. Committee members are aware of this request for extension and have not expressed any opposition.

PROGRAM CONSIDERATIONS:

The Department believes approval of this request will produce a better end product. Further evaluation of current and projected airport transportation needs will allow the development of a Noise Abatement Program based on the most recently available information. Extension of the update deadline will also allow the Port and the NAAC to complete their review of the air traffic and population weighted impact studies, recommended changes in flight operations, and compliance monitoring.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. The Commission may approve the request, allowing the Port until October 19, 1990 to submit an updated Noise Abatement Program. As a condition of approval, the Commission may request that the Port provide an oral overview report at its May or June meeting.

2. The Commission could deny the request and require the applicant to submit for renewal an updated proposal without further delay. This alternative will probably require revisions to the approved plan, as more information becomes available on future growth projections and operational needs identified by the Air Traffic Capacity Study.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends approval of Alternative 1. (Authorization to submit an updated Noise Abatement Plan prior to October 19, 1990).

This recommendation would provide the neighborhood representatives, the airline industry, the Department, the Port, and other interested parties, additional time to cooperatively develop the best possible program. The Department also believes that granting additional time to complete evaluations of possible changes in flight patterns, operational procedures, and other pertinent issues being addressed by the Port through the NAAC is in the public's best interest.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

It is the Department's opinion that the recommended action is consistent with the strategic plan, agency policy, and legislative policy

ISSUES FOR COMMISSION TO RESOLVE:

1. No major issues. The Commission may receive public testimony in support of this request.

INTENDED FOLLOWUP ACTIONS:

The Department's Noise Control Section (staff) will continue to serve on the NAAC and its sub-committees, and provide technical assistance.

The final updated Noise Abatement Program will be completed and submitted within the timeframe set by the Commission.

Approved:

Section: Terry L Obteshka

Division: Nick Dobler

Director: Fred Haueter

Report Prepared By: Terry Obteshka

Phone: 229-5989

Date Prepared: March 12, 1990

TLO:a
NOISE\AH2029
(3/90)

ATTACHMENT A

Port of Portland

Box 3529 Portland, Oregon 97208
503/231-5000
TLX: 474-2039

January 4, 1990

Mr. William P Hutchison
Chairman
Environmental Quality Commission
Twooze, Marshall, Shenker
Holloway, Duden
333 S.W. Taylor St.
Portland, OR 97204-24496

EXTENSION OF SUBMITTAL DATE FOR PORTLAND INTERNATIONAL AIRPORT NOISE ABATEMENT PLAN UPDATE

The Port of Portland is required to update the Portland International Airport (PDX) Noise Abatement Plan and submit it to the Oregon Department of Environmental Quality (DEQ) for consideration for renewal. This update and submittal is required by the DEQ Airport Noise Rule, and is to occur four and a half years after the last update renewal, which would be April 1990. The purpose of this letter is to request an extension of this date to October 1990.

Since implementation of the PDX Noise Plan in 1983, we have seen a shrinkage of the airport's noise impact boundary from 128 square miles to 68 square miles. The impacted population within the boundary has decreased from 178,000 to 26,000, which represents an additional 46 percent reduction above the reduction envisioned in the 1983 Plan. These significant gains in noise compatibility are largely attributable to a fluid noise mitigation process, which resulted in numerous refinements to the original procedures.

DEQ has played a major role in helping the Port, and more specifically the Port's Noise Abatement Advisory Committee (NAAC) achieve this success.

The Port in cooperation and coordination with the NAAC recently initiated the required noise plan update in conjunction with an airport capacity study. The capacity study will analyze future airport needs and its ability to accommodate the community's air transportation demand. The noise plan update will seek to balance community concerns with these airport needs. Each has an impact on the other. Noise procedures tend to limit capacity, and capacity enhancements sometimes create additional noise impacts.

The noise plan update and capacity study process will take approximately one year to complete, and will involve a DEQ representative, members of the NAAC, and local residents.

We believe that an extension of the April 1990 date to allow completion of this recently initiated cooperative effort will be in the best interest of the community, the Environmental Quality Commission, the airport users and the Port. If you have any questions concerning the noise plan update, or the existing program, please contact the Port's Noise Program Manager John Newell. John can be reached at 231-5000, extension 407.

Keith Phildius
Director of Aviation

CC: Fred Hansen, DEQ
Nick Nikkila, DEQ

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: April 6, 1990
Agenda Item: E
Division: H&SW
Section: Waste Tire

SUBJECT:

Waste Tire Pile Cleanup: Approval of Funds from Waste Tire Recycling Account to Assist Union County

PURPOSE:

The purpose is to allow use of funds from the Waste Tire Recycling Account to expedite cleanup of approximately 65,000 waste tires at a permitted 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 65,000 waste tires from Union County Road Department's (UCRD) permitted waste tire storage site, pursuant to OAR 340-64-150(1)(a); 340-64-155(1), (2), and (3); and 340-64-160(1).

DESCRIPTION OF REQUESTED ACTION:

The Waste Tire Recycling Account is funded by a $1 fee on new replacement tires. The account may be used to help clean up waste tire piles.

The statute (ORS 459.780(2)(a)) requires the Environmental Quality Commission (Commission) to make a finding before the Department of Environmental Quality (Department) may use funds to assist a permittee in removing waste tires. The Commission must find that special circumstances allow for use of the funds. The special circumstances for the UCRD site are:

> The 65,000 automobile waste tires are in one pile in a 10 feet deep pit and pose an environmental threat; a waste tire fire would be difficult to extinguish and could result in toxic air and ground emissions that could contaminate the atmosphere, groundwater and neighboring wildlife habitat.

The Department may use cleanup funds in the Waste Tire Recycling Account to partially pay to remove or process waste tires from a permitted waste tire storage site pursuant to OAR 340-64-150(1)(a). OAR 340-64-155(3) allows the Department to financially assist a waste tire storage permittee which is also a local government with up to 80% of the total costs of the cleanup as long as the following criteria are met: the municipality must have collected no fees on the waste tires disposed, and the waste tires must have been disposed before January 1, 1988. The UCRD site meets both of these conditions.

This site is the first municipal waste tire storage site permittee that has requested and qualifies for financial assistance. UCRD submitted a letter dated November 20, 1989 to the Department requesting financial assistance.

The site is located approximately six miles south of the city of La Grande and approximately one half mile east of Highway 84. It is a gravel pit bordered by flatlands used for agriculture, grazing and the Oregon State Ladd Marsh Wildlife Management Area. The County has collected waste tires at

this site for over 20 years without a fee, to help alleviate the waste tire problems of illegal disposal, dumping, and to avoid illegal burning of waste tires throughout their region.

With assistance from the Waste Tire Advisory Committee, the Department developed guidelines (Attachment C) for determining the percentage of financial assistance that could be allocated to a local government. The guidelines suggest percentages of eligible costs which the Department will pay based on an index relating county population to the number of waste tires. A county with an index of less than one will receive 80% of the net cost of cleanup. UCRD's index is 0.4 (25,000 population divided by 65,000 waste tires). Therefore, the UCRD would receive financial assistance equalling 80% of the net cost of the waste tire cleanup. The cleanup will be conducted by UCRD. Waste tires will be removed by a permitted waste tire carrier and will be properly disposed, stored or processed.

AUTHORITY/NEED FOR ACTION:

X	Required by Statute: ORS 459.780(2)(a) Enactment Date: 1987	Attachment A
__	Statutory Authority:	Attachment __
X	Pursuant to Rule: OAR 340-64-150(1)(a); 340-64-155(1), (2), and (3); and 340-64-160(1)	Attachment B
__	Pursuant to Federal Law/Rule:	Attachment __
__	Other:	Attachment __
X	Time Constraints: (explain)	

The permit allows the permittee until October 31, 1992, to remove the waste tires. It is environmentally desirable, however, to have the permittee remove the tires as quickly as possible because the site is adjacent to the Ladd Marsh Game Management Area.

DEVELOPMENTAL BACKGROUND:

X	Advisory Committee Report/Recommendation	Attachment C
__	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 ___

- Letter from UCRD Attachment D
- UCRD proposed waste tire cleanup plan Attachment E

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The Waste Tire Advisory Committee helped develop the guidelines for determining the amount of financial assistance available to an applicant. The guidelines address individuals, sole proprietorships, partnerships, corporations and municipalities. The Department expects to recommend use of cleanup funds on a first-come, first-serve basis.

There are 16 permitted waste tire storage sites, of which two are municipalities. The other municipality and at least six additional permittees have also indicated to the Department that they will request financial assistance. Some of these sites rank higher in environmental risk than UCRD, but have not yet submitted complete financial information and cleanup plans to the Department.

UCRD acquired a waste tire storage site permit with the intention to dispose of the waste tires properly. The monies budgeted for this purpose, approximately $25,000, were taken from their road maintenance and personnel budgets and were not extra available funds. UCRD cannot allocate further funds without negative financial impact to their road maintenance and personnel budgets. UCRD could remove the waste tires over a period of three and a half years or longer without financial assistance from the Waste Tire Recycling Account.

PROGRAM CONSIDERATIONS:

The program currently has about $1.6 million available for reimbursement to users of waste tires, and for site cleanup. By June 30, 1990, the Department estimates that these figures will increase to $2.1 million. Thus, we anticipate having adequate funds to meet requests for financial assistance to remove tires.

As required by OAR 340-64-160(1)(b), the permittee has submitted to the Department a waste tire removal plan describing the proposed action with a time schedule and cost estimate of $98,700 (Attachment E).

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Removal of the tires over a period of three and a half years or longer by the permittee without financial assistance from the Waste Tire Recycling Account. This is the timetable requested by UCRD if no financial assistance is available.

2. Removal of all waste tires by September 30, 1990, or earlier with assistance from the Waste Tire Recycling Account, basing assistance on the existing rule and Department guidelines.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

Alternative 2. This is the first permitted municipality that has completed a request for financial assistance to remove waste tires. We recommend proceeding immediately with financial assistance for the following reasons:

1. The site is located close to populated areas (La Grande, Island City) and is adjacent to the Oregon State Ladd Marsh Game Management Area. A waste tire fire would negatively impact the communities' air quality, and resulting pyrolytic oils could also enter surface and ground waters. This would harm wildlife habitat at the Ladd Marsh Game Management Area.

2. The statute gives us the legal authority to provide the assistance.

3. The Waste Tire Advisory Committee has approved guidelines for use of the funds.

4. The Waste Tire Recycling Account has an adequate fund balance that can reasonably be used for financial assistance. Use of funds now would fulfill legislative intent to clean up tires piles as quickly as possible.

5. This is the first municipality requesting financial assistance and it can be used as a test case for Department ground rules for future use of permittee cleanup funds.

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 waste tires as quickly as possible, thus eliminating the potential environmental problems associated with tire piles.

ISSUES FOR COMMISSION TO RESOLVE:

1. The Commission adopted rules establishing criteria for financial assistance to local governments, allowing assistance of up to 80% of the cost. The Guidelines for Determining Financial Assistance to Local Governments (Attachment C) establish an index to determine what percentage of costs will actually be paid. Should the Guidelines be put into rule form? (The Attorney General has informed us that we can proceed with the Union County action based on the Guidelines.)

INTENDED FOLLOWUP ACTIONS:

UCRD will arrange for the cleanup; the Department will inspect and approve the cleanup operation, and then issue a check to the contractor for 80% of the net cost.

Approved:

Section: Deanna Mueller-Crispin for SRP

Division: Stephanie Hallock

Director: Fred Hansen

Report Prepared By: Bradford D. Price

Phone: 229-6792

Date Prepared: March 19, 1990

BDP:k
WT\SK2591
March 19, 1990

may apply for a reimbursement of part of the cost of such use.

(3) Any costs reimbursed under this section shall not exceed the amount in the Waste Tire Recycling Account. If applications for reimbursement during a period specified by the commission exceed the amount in the account, the commission shall prorate the amount of all reimbursements.

(4) The intent of the partial reimbursement of costs under this section is to promote the use of waste tires by enhancing markets for waste tires or chips or similar materials. The commission shall limit or eliminate reimbursements if the commission finds they are not necessary to promote the use of waste tires.

(5) The commission shall adopt rules to carry out the provisions of this section. The rules shall:

(a) Govern the types of energy recovery or other appropriate uses eligible for reimbursement including but not limited to recycling other than retreading, or use for artificial fishing reefs;

(b) Establish the procedure for applying for a reimbursement; and

(c) Establish the amount of reimbursement. [1987 c.706 §13]

Note: See note under 459.705.

459.775 Waste tire recycling account; use of funds. The Waste Tire Recycling Account is established in the State Treasury, separate and distinct from the General Fund. All moneys received by the Department of Revenue under ORS 459.504 to 459.619 shall be deposited to the credit of the account. Moneys in the account are appropriated continuously to the Department of Environmental Quality to be used:

(1) For expenses in cleaning up waste tire piles as provided in ORS 459.780;

(2) To reimburse persons for the costs of using waste tires or chips or similar materials; and

(3) For expenses incurred by the Department of Environmental Quality in carrying out the provisions of sections ORS 459.710, 459.715 and 459.770 to 459.790. [1987 c.706 §14]

Note: See note under 459.705.

459.780 Tire removal or processing plan; financial assistance; department abatement. (1) The department, as a condition of a waste tire storage site permit issued under ORS 459.715 to 459.760, may require the permittee to remove or process the waste tires according to a plan approved by the department.

(2) The department may use moneys from the Waste Tire Recycling Account to assist a permittee in removing or processing the waste tires. Moneys may be used only after the commission finds that:

(a) Special circumstances make such assistance appropriate; or

(b) Strict compliance with the provisions of ORS 459.705 to 459.790 would result in substantial curtailment or closing of the permittee's business or operation or the bankruptcy of the permittee.

(3) The department may use subsections (4) to (7) of this section if:

(a) A person fails to apply for or obtain a waste tire storage site permit under ORS 459.715 to 459.760; or

(b) A permittee fails to meet the conditions of such permit.

(4) The department may abate any danger or nuisance created by waste tires by removing or processing the tires. Before taking any action to abate the danger or nuisance, the department shall give any persons having the care, custody or control of the waste tires, or owning the property upon which the tires are located, notice of the department's intentions and order the person to abate the danger or nuisance in a manner approved by the department. Any order issued by the department under this subsection shall be subject to appeal to the commission and judicial review of a final order under the applicable provisions of ORS 183.310 to 183.550.

(5) If a person fails to take action as required under subsection (4) of this section within the time specified the director may abate the danger or nuisance. The order issued under subsection (4) of this section may include entering the property where the danger or nuisance is located, taking the tires into public custody and providing for their processing or removal.

(6) The department may request the Attorney General to bring an action to recover any reasonable and necessary expenses incurred by the department for abatement costs, including administrative and legal expenses. The department's certification of expenses shall be prima facie evidence that the expenses are reasonable and necessary.

(7) Nothing in ORS 459.705 to 459.790 shall affect the right of any person or local government unit to abate a danger or nuisance or to recover for damages to real property or personal injury related to the transportation, storage or disposal of waste tires. The department may reimburse a

transact a surety business within the State of Oregon. The bond shall be filed with the department and shall provide that:

(a) In performing services as a waste tire carrier, the applicant shall comply with the provisions of ORS 459.705 to 459.790 and rules adopted by the commission regarding tire carriers; and

(b) Any person injured by the failure of the applicant to comply with the provisions of ORS 459.705 to 459.790 or the rules adopted by the commission regarding waste tire carriers shall have a right of action on the bond in the name of the person, provided that written claim of such right of action shall be made to the principal or the surety company within two years after the injury. [1987 c.706 §6]

Note: See note under 459.705.

459.735 Notification of permit application in county of proposed disposal site. (1) Following the submittal of a waste tire storage site permit application, the director shall cause notice to be given in the county where the proposed site is located in a manner reasonably calculated to notify interested and affected persons of the permit application.

(2) The notice shall contain information regarding the location of the site and the type and amount of waste tires intended for storage at the site, and may fix a time and place for a public hearing. In addition, the notice shall give any person substantially affected by the proposed site an opportunity to comment on the permit application. [1987 c.706 §7]

Note: See note under 459.705.

459.740 Hearing on site permit application. The department may conduct a public hearing in the county where a proposed waste tire storage site is located and may conduct hearings at other places as the department considers suitable. At the hearing the applicant may present the application and the public may appear or be represented in support of or in opposition to the application. [1987 c.706 §8]

Note: See note under 459.705.

459.745 Department action on application; appeal. Based upon the department's review of the waste tire storage site or waste tire carrier permit application, and any public comments received by the department, the director shall issue or deny the permit. The director's decision shall be subject to appeal to the commission and judicial review under ORS 183.310 to 183.550. [1987 c.706 §9]

Note: See note under 459.705.

459.750 Storage site and carrier permit fees. A fee may be required of every permittee under ORS 459.715 to 459.760. The fee shall be in an amount determined by the commission to be adequate, less any federal funds budgeted therefor by legislative action, to carry on the monitoring, inspection and surveillance program established under ORS 459.760 and to cover related administrative costs. [1987 c.706 §10]

Note: See note under 459.705.

459.755 Revocation of storage site or carrier permit. The director may revoke any permit issued under ORS 459.715 to 459.760 upon a finding that the permittee has violated any provision of ORS 459.715 to 459.760 or rules adopted pursuant thereto or any material condition of the permit, subject to appeal to the commission and judicial review under ORS 183.310 to 183.550. [1987 c.706 §11]

Note: See note under 459.705.

459.760 Monitoring and inspection of storage site; access to site and records. The department shall establish and operate a monitoring, inspection and surveillance program over all waste tire storage sites and all waste tire carriers or may contract with any qualified public or private agency to do so. After reasonable notice, owners and operators of these facilities must allow necessary access to the site of waste tire storage and to its records, including those required by other public agencies, for the monitoring, inspection and surveillance program to operate. [1987 c.706 §12]

Note: See note under 459.705.

459.765 Department use of fees. Fees received by the department pursuant to ORS 459.730 and 459.750 shall be deposited in the State Treasury and credited to the department and are continuously appropriated to carry out the provisions of ORS 459.720 to 459.760. [1987 c.706 §12a]

Note: See note under 459.705.

459.770 Partial reimbursement for purchase or use of tire chips; rules. (1) Any person who purchases waste tires generated in Oregon or tire chips or similar materials from waste tires generated in Oregon and who uses the tires or chips or similar material for energy recovery or other appropriate uses may apply for partial reimbursement of the cost of purchasing the tires or chips or similar materials.

(2) Any person who uses, but does not purchase, waste tires or chips or similar materials, for energy recovery or another appropriate use,

OAR 340-64: -150(1)(a); -155(1)(2)&(3); -160(1)

Use of Waste Tire Site Cleanup Funds

340-64-150 (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 340-64-160.

(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 340-64-165.

(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 340-64-155.

(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 340-64-155.

(b) The local government and the Department must have an agreement on how the waste tires shall be properly disposed of.

(340-64-150 effective 11/8/88)

Criteria for Use of Funds to Clean Up Permitted Waste Tire Sites

340-64-155 (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) 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 340-64-005 through 340-64-045 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 the state 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 who are also corporate stockholders to fall below the state 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 Department may assist a permittee with the cost of tire removal to the following extent:

(a) For a permittee whose income and/or assets are above the thresholds in section (4) of this rule: 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 section (4), would ensue. The Department may pay the remaining cost of the cleanup.

(b) For a permittee whose income and assets fall below the thresholds in section (4) of this rule, the Department may pay up to the following percentage of the cost of cleanup:

(A) For an individual or a partnership: 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) The Department may reduce to $1,500 the permittee's required contribution to the cleanup cost in the case of a permittee whose net equity in assets exempt under section (4) of this rule is less than $50,000, or who is over 65 years of age and whose net exempt assets are less than $100,000.

(7) A permittee may receive financial assistance for no more than one complete waste tire removal or processing job.

(340-64-155 revised and effective 1/24/90)

Procedure for Use of Cleanup Funds for a Permitted Waste Tire Storage Site

340-64-160 (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 340-64-155.

(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 340-64-155(4) 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.

(340-64-160 revised and effective 1/24/90)

Use of Cleanup Funds for Abatement by the Department

340-64-165 (1) The Department may use funds in the Account to contract for the abatement of:

(a) A tire pile for which a person has failed to apply for or obtain a waste tire storage site permit.

(b) A permitted waste tire storage site if the permittee fails to meet the conditions of such permit.

Guidelines for Determining Financial Assistance to Local Government Permitted Waste Tire Storage Sites, Pursuant to OAR 340-64-155(3).

The following guidelines, supported by the Waste Tire Advisory Committee on March 14, 1990, are part of the "Waste Tire Program Guidelines for Use of Cleanup Funds: Policies and Procedures".

Introduction

The purpose of providing financial assistance to a local government is to assist it in complying with the waste tire program statute while lessening the negative financial impact. OAR 340-64-155 describes criteria for use of the Waste Tire Recycling Account fund to be used for clean up of permitted waste tire storage sites. OAR 340-64-155(3), effective January 24, 1990, allows for funds to be used to financially assist a waste tire storage site permittee which is also a local government, if certain conditions are present. The conditions are:

1. The tire pile was in existence before January 1, 1988; and

2. The waste tires were collected from the public, and the local government did not chargee a fee to collect the tires for disposal.

The rule allows the Department to assist the local government with up to 80 percent of the net cost of tire removal, if both conditions are present. The following are guidelines for determining the percent of financial assistance, up to 80 percent of the net cost, to the local government.

Guidelines for Determining Financial Assistance to a Municipality

The Department will use an index to determine the percentage of financial assistance to a county or city. This index will be determined by dividing the county's population by the number of waste tires at the site (county population/# of waste tires). An index of less than 1 indicates there are more tires at the site than there are people within the county. This shows there are either a lot of tires or a small population within that county or both. If this is the case, then the Department should offer the highest percentage of assistance since the local government would have a greater per capita burden in raising funds for the cleanup.

On the other extreme, an index of greater than 500 indicates there is a small number of tires, or a large population, or both. If this is true, the local government is more likely to be able to raise funds to finance most of the cost for waste tire removal.

The following Index Chart shows the index number and percentage of financial assistance which would be allocated to the local government.

INDEX	FINANCIAL ASSISTANCE (%)
less than 1.0	80%
1.0 - 9.9	70%
10.0 - 99.9	60%
100.0 - 499.9	50%
greater than 500	25%

The following are some examples of determining the index and percent of financial assistance (% F.A.):

COUNTY	POPULATION	# OF TIRES	INDEX	% F.A.
Klamath	59,000	650,000	0.09	80%
Union	25,000	60,000	0.4	80%
Douglas	92,000	50,000	1.8	70%
Multnomah	562,000	50,000	11.2	60%
Multnomah	562,000	3,000	187.3	50%

CONSIDERATIONS

City governments will be treated the same as counties. The population of a city will be divided by the number of waste tires at the site to determine the index for financial assistance.

The Department may lower the percentage of financial assistance to a municipality if the municipality is either uncooperative or out of compliance with their waste tire storage site permit.

A permitted local government site with a minimum of 1,000 waste tires can acquire financial assistance from the Department.

UNION COUNTY PUBLIC WORKS DEPARTMENT

P.O. BOX 1103, La Grande, Oregon 97850 Phone (503) 963-1016

November 20, 1989

Bradford D. Price, Waste Tire Specialist
Hazardous and Solid Waste Division,
Solid Waste Section
Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, Oregon 97204

RE: Waste Tire Storage Site Permit #WTS1109.

Dear Mr. Price:

The following letter is intended to bring the Union County Public Works Department permit into compliance until the waste tires can be disposed of properly. It is our understanding that the DEQ will possibly have funds available during the next calendar year to assist us with disposal process. This would move the waste tire removal completion date to midsummer 1990.

Schedule C - Compliance Conditions and Schedules.

Item #3. Stacking tire piles for fire lanes.

We request a waiver to Item #3 based upon the upcoming winter conditions. The amount of rain and snow received in the Grande Ronde Valley will greatly retard any chances of fire. We also have water available adjacent the Ladd Pit. There exists an ample supply of soils to smother a fire since the tire site is surrounded on three sides by an approximately twenty foot high berm.

Item #5. Management Plan

Based upon our last meeting, we now plan on the disposal of all waste tires by midsummer of 1990. This is estimated on our budgeted amount of $25,000 and the remainder of the cost being assumed by the DEQ.

Item # 6. Fire Suppression Equipment

This condition would be very expensive and we feel that the spending of our dollars would be more effectively spent for actual tire disposal rather than buying fire suppression equipment and materials. Also because of the reasons discussed in Item #3 and the planned 100% disposal of the waste tires next year, we request a waiver to compliance condition #6.

Schedule D - Storage and Operational Standards

Item #2. Waste tire pile dimensions

Based upon the plans for 100% disposal in 1990, we request a waiver from this requirement. Again we feel that spending our budgeted dollars on actual removal is more cost effective than spending dollars on restacking the tires.

Item #3. Tire ricking

As previously discussed in Schedule C, Items #3 and #5; and Schedule D, Item #2, we request a waiver on this item. Once again we would not be spending our limited budget on an item that would be the long term solution that we are both looking toward obtaining.

Item #4. Fire Lane

A fire lane now exists around the perimeter but is not fifty feet in width. It is unobstructed with the tires being more than fifty feet from the property line.

Items #5 and #6. Access and operations

An approach road is existing and passable with the access from the county road being gated and locked. There is no legal public entry to this entire pit site.

Item #7. Operations

There are no active operations in this storage area. It is used solely for storage of seldom used materials.

Items #8, #9 and #10. Miscellaneous

The Public Works Department intends to adhere to these conditions as closely as possible.

It is still as has been in the past our intent to dispose of these tires properly. This is indicated by our budgeted amount depicted in this years budget and our constant communications with your department during the past year. These budgeted monies are not extra monies but have been removed from our road maintenance and personnel line items.

It is our request that the previously stated waivers be granted and that financial assistance be offered for us to enable a timely and absolute disposal of these waste tires according to the DEQ's rulings.

Sincerely,

Richard A. Comstock

Richard A. Comstock
Director of Public Works

ATTACHMENT E

UNION COUNTY PUBLIC WORKS DEPARTMENT

P.O. BOX 1103, La Grande, Oregon 97850 Phone (503) 963-1016

March 19, 1990

Mr. Brad Price, Waste Tire Specialist
c/o Deanna Meuller-Cristin
Department of Environmental Quality
Hazardous Solid Waste
811 S.W. 6th Avenue
Portland, Oregon 97204

Dear Brad,

Our compliance plan to remove the waste tires in Ladd Pit pursuant to OAR 340-62-160-1.b is as follows: 1) Competitive quotes were received from permitted haulers with the lowest quote being $98,700; 2) The time frame for completion is to be by June 30, 1990; 3) Entire cleanup of tires is to be accomplished with 20% to 30% anticipated rock laden tires to go to landfill and 4) The contractor will be required to furnish documentation of where the tires have been sent and the number of tires to landfill versus recycling measures.

Thank you for your cooperation in this matter.

Sincerely,

Richard A. Comstock

Richard A. Comstock
Director of Public Works

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: April 6, 1990
Agenda Item: F
Division: Air Quality
Section: Program Operations

SUBJECT:

Air Quality Fees: Proposed Adoption of Permit Fee Modifications

PURPOSE:

Two modifications in the fee structure for air pollution permits are requested. The increased fee revenue is needed to fund the existing air quality programs through the remainder of the current fiscal biennium.

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: Indirect Sources	Attachment A1
Proposed Rules: Air Contaminant Discharge Permits	Attachment A2
Rulemaking Statements	Attachment B
Fiscal and Economic Impact Statement	Attachment C
Public Notice	Attachment D

___ Issue a Contested Case Order
___ Approve a Stipulated Order
___ Enter an Order

Proposed Order	Attachment ___

___ Approve Department Recommendation

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

DESCRIPTION OF REQUESTED ACTION:

The proposed amendment of the Air Contaminant Discharge Permit fees will add a one time surcharge for all Air Contaminant Discharge Permits as part of the annual compliance determination fee. Currently, the Air Contaminant Discharge Permit fee schedule, Table I of OAR 340-20-155, contains three fee components: a $75 filing fee, submitted with all applications; an application processing fee submitted with each application for a new, modified, or renewal permit; and a compliance determination fee submitted annually by holders of regular permits, and once every five years by holders of minimal source permits. The fee schedule is subdivided by source category, based primarily on Standard Industrial Classifications. The latter two types of fees differ between source categories depending on the relative time to draft and issue permits and to assure compliance with the permit.

The surcharge on the annual compliance determination fee requires an 88 percent surcharge on the fee for the next year (Fiscal Year 1991) for all sources holding regular Air Contaminant Discharge Permits. This represents an increase of $80 to $1,880 over the existing fees of $90 to $3,235. Each Minimal Source will be assessed a 20 percent surcharge. The lower rate is appropriate since minimal sources are not generally inspected or assessed a compliance determination fee annually.

The Indirect Source Construction Permit fee includes a $100 filing fee and a $500 application processing fee. Sources requiring extended analysis will be subject to an additional $2,000 processing fee. Fees are not currently assessed for this type of permit.

AUTHORITY/NEED FOR ACTION:

___	Required by Statute: _____ Enactment Date: _____	Attachment ___
_X_	Statutory Authority: ORS 469.065(2)	Attachment E
___	Pursuant to Rule: _____	Attachment ___
___	Pursuant to Federal Law/Rule: _____	Attachment ___
___	Other:	Attachment ___

_X_ Time Constraints: (explain)

The permit fee increases are needed to maintain existing air pollution control programs for the remainder of the current biennium (through June 30, 1991). Environmental Quality Commission (EQC, Commission) action at this meeting will

allow the Department of Environmental Quality (DEQ, Department) to present the rule amendments to the May meeting of the Legislative Emergency Board. Their approval is required prior to implementation of the fee revisions. Approval at this time is needed to ensure that the increased revenues are generated during the second year of the current biennium.

A combination of cost increases were approved by the 1989 Oregon Legislature but funding of the increases was only provided for a small portion of the air pollution control program. Increased funding was not provided to offset increased costs in program elements supported by fees or federal funds. The cost increases include cost of living adjustments, an upgrading of the statewide position classification system, and increased Workers Compensation insurance costs. Previous unfunded increases in the cost of other fund and federal fund supported program components have resulted in the elimination of fund balances.

The Annual Compliance Determination Fees have not been raised since 1987, when a 13.8 percent fee increase was approved. The preceding fee increase was a smaller increase approved in 1983.

The air pollution control program is anticipating a shortfall of approximately $700,000 out of $10,000,000 in Regional Operations, Air Quality Program Operations, Technical Services, Planning and Development, and Laboratory programs. The Regional Operations and Program Operations activities are directed at filing and investigating permit applications, issuing or denying permit applications, and conducting source inspections and compliance assurance for industrial sources. These activities are budgeted at a level of twenty-four full time employees. Portions of the other sections activities also are directed at industrial source control, including permitting.

As directed in the statute, permit fees are to be based on the cost of conducting the permit and compliance programs. However, permit fees only cover a minor portion of the total program costs. Permit revenue was $703,909 in 1985-1987 and $821,225 in 1987-1989. Revenue of $800,000 is projected for the current biennium. The proposed fee increase would generate an additional $295,000 bringing the total for this biennium to $1,095,000. This is still substantially less than the full program cost.

The Air Quality Division expects to reduce program costs by an additional $450,000 for this biennium, resulting in a minimal amount of contingency funds. This will be accomplished by maintaining position vacancies, postponing or eliminating capital outlay expenditures, eliminating some laboratory analyses for a one year period, shifting of expenditures where appropriate to program areas with surpluses in nontransferable funds, and a number of other adjustments. The cutbacks affect the Air Quality, Laboratory, and Regional Operations Divisions.

DEVELOPMENTAL BACKGROUND:

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

The proposed rule was placed on public notice on March 15, 1990 by publication. A public hearing will be held on March 30, 1990. Following the hearing, a Hearing Officer's Report and a Response to Testimony will be prepared and distributed as attachments to this agenda item. The Department will review the comments submitted and, if appropriate, submit revisions to the proposed rule language.

Due to the need for immediate action, it was not possible to utilize formal advisory group input in developing the fee revision proposal. Instead, the Department presented alternatives for the fee increase at two meetings with industry representatives. Based on their input, the original concept of a permanent fee increase was revised. Industry representatives advocated that any essential fee increase take the form of a one time surcharge based upon a percentage of the compliance determination fee, with minimal sources assessed about one fifth of the percentage assessed on regular sources. The proposed Indirect Source Construction Permit fees are equivalent to those already charged by the Lane Regional Air Pollution Authority for permits in Lane County.

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

Any increase in permit fees will be paid directly by the regulated sources. For the Annual Compliance Determination Fees, the costs will be paid by the regulated industries. The Indirect Source Construction Permit fees will be paid by the owners, operators, or developers of affected new commercial developments, including large parking lots, airports, and highways.

The proposed fee amendments affect both large and small sources. Since the fees would be increased by percentages, the amount of the fee increase will be greater for more complex sources than for smaller sources. Minimal Sources, which are frequently small businesses, would be affected by a smaller fee increase than regular sources.

PROGRAM CONSIDERATIONS:

An increase in revenue is needed to maintain the existing industrial source control programs through June 30, 1991. The increased revenue will be used to fund existing positions. The Department's ability to process Air Contaminant Discharge Permits and Indirect Source Construction Permit applications, and to assess compliance of industrial sources will not be reduced below the levels of effort at the start of this biennium. This level of effort is less than the fully authorized level for compliance determination, but is adequate to meet minimum inspection goals.

There will be temporary reductions in the overall air quality control program. For instance, 75% of the "Chemical Mass Balance" analysis of ambient air quality samples will be eliminated for one year. Since this data is needed for long term air quality planning, a one year gap in data can be tolerated. A prolonged lack of data would reduce the effectiveness of air quality planning efforts. Similarly, leaving a rule development position vacant for a portion of the biennium will cause a delay in the promulgation of a number of air quality control rules. These and other reductions in staffing, program funding, or capital outlay would have negative impacts if continued.

The rule change is not being proposed as an amendment to the State Implementation Plan, since it only affects the costs of obtaining and holding air pollution permits and does not affect pollution control requirements.

The proposed fee increase is not adequate to cover anticipated program expenses for the 1991 to 1993 biennium. Cost of living salary adjustments and position reclassification costs will have a magnified effect in the next biennium. Additional funding may also be necessary to develop additional resources for timely processing of permit applications, respond to increased public involvement in the permitting process, incorporate toxic air pollutant reviews, and provide for increased inspection and monitoring of sources which are most likely to cause ambient air quality problems. However, the Department is not proposing

permanent revisions in the Annual Compliance Determination Fee table. At this time, revisions in the federal Clean Air Act or state statutes are under consideration which would institute emission fees for sources of air pollution. Since emission fees could provide additional resources for the long term funding of the Department's air quality programs, the proposed fee surcharge is only intended to provide increased revenue for this biennium.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

The Department evaluated means of reducing the budget deficit, generating additional federal fund and state general fund revenue, and various means of increasing other fund revenue. Since all identifiable reductions which do not result in significant adverse program impacts are being taken, no further reductions are being considered. Additional federal funds or general funds are not likely to be available, although the Department will pursue any available increase in these areas to reduce the impacts of the cutbacks planned for this biennium and future fee increases.

Alternatives considered for increasing other fund revenue are listed below.

1. Increase fees in other program areas. This alternative is not feasible since most other fees are dedicated to specific program areas, such as motor vehicle inspections, asbestos control, and woodstove control. The Annual Compliance Determination Fees are appropriate fees to increase since the deficit is related to industrial source control. Indirect Source Construction Permit fees are appropriate since that program benefits specific sources, which do not currently pay any fee for application review.

2. Assess a one time Annual Compliance Determination Fee surcharge on regulated industries to provide funding for the remainder of the biennium.

   This is the recommended alternative. It is the most responsive means of addressing the critical need to provide adequate funding to maintain air quality programs for the current biennium.

3. Adopt the fee surcharge as a temporary rule.

   This option requires collection of the fee surcharges within six months of rule adoption, rather than allowing the Department to collect the fees as part of the routine annual billing cycle. It also makes implementation of the Indirect Source Construction Permit fees impractical, since the fees would only be collected upon submittal of applications for new indirect sources. In addition, temporary rules do not require public comment periods or public hearings, which the Department wants to conduct.

4. Adopt a permanent revision to the fee table.

   The Department looked closely at this alternative. It allows for across the board adjustments to both the application processing fees and annual compliance determination fees, as well as industry-specific adjustments for those permit categories which require more time to process permits or assess compliance than is reflected in the current table. The Department considered a 100 percent increase in the application processing fee and a 45 percent increase in the annual compliance determination fee. This is coupled with supplemental fees, applicable only to those sources with special permit processing or compliance determination needs. Areas which increase Department costs above the industry norms include late filing of applications, control technology determinations for major new sources, and emissions test review.

   This alternative provides adequate funding for the current biennium and an improved funding base for the next biennium. However, it is likely that changing federal or state laws will make more extensive revisions to the fee structure necessary in the next biennium. The federal Clean Air Act reauthorization could require the adoption of a new fee structure.

5. Assess a fee proportionate to the amount of emissions from each source, rather than basing the fee on the Department's level of effort in controlling the source.

   The Department is considering this option for the long term. A similar proposal is before the U.S. Congress as part of the proposed Clean Air Act reauthorization. However, ORS 469.065 does not currently allow for fees based solely on quantity of emissions.

6. Assess fees based on the actual cost to the Department of permitting and inspecting each source.

   This option is not feasible at this time. There is some question as to whether ORS 468.065 would allow for this type of fee assessment, since the statute refers anticipated costs. The Department does not have time to develop, at present, a fee structure which would fairly account for differences in the amount of time spent on sources of the same type. Varying costs can be incurred because of differences in travel time from the source to a regional office, different reviewers, and varying neighborhood sensitivity to like sources. The Department lacks records of the staff and support time spent on permitting of each individual source, as opposed to source types.

7. Request a General Fund increase to obtain the needed revenue.

   This alternative was recommended by industry representatives. Since cost increases were mandated by the Legislature, it was felt that increased funding should be provided by the Legislature. The Department does not consider this to be a feasible alternative. General Funds available to the Emergency Board are limited. If funds did become available, they could be used to restore portions of the air quality programs which are being curtailed to reduce the deficit. In addition, the proposed fees are still far below the total cost of the permitting and compliance determination programs.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends approval of Alternative 2; adoption of a one time surcharge on compliance determination fees for Air Contaminant Discharge Permits, and filing and application processing fees for Indirect Source Construction Permits.

The recommendation provides adequate revenue to fund effective industrial source control programs for the remainder of the biennium. Some portions of the air quality program will be operated at a reduced level in order to eliminate the remainder of the projected deficit.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The fees are consistent with the strategic plan and agency policy. Legislative Emergency Board approval is required prior to filing with the Secretary of State.

ISSUES FOR COMMISSION TO RESOLVE:

There are no issues which the Commission must resolve at this time. The Commission may want to make a recommendation to the Department about pursuing an increase in General Fund allocation to offset program cutbacks. The Commission may also want to make recommendations about strategies for the long term funding of air quality programs.

INTENDED FOLLOWUP ACTIONS:

Assuming the Commission approves a fee change, the Department will request approval of the change at the May 16-17, 1990 session of the Legislative Emergency Board. With their approval, the rules will be filed with the Secretary of State and implemented.

Approved:

Section: _____

Division: _____

Director: _____

Report Prepared By: Wendy L. Sims

Phone: 229-6414

Date Prepared: March 22, 1990

WLS:a
PO\AH2080
(3/90)

Rules for Indirect Sources

Definitions

340-20-110 (1) "Air Quality Maintenance Area (AQMA)" means any area that has been identified by the Department having the potential for exceeding any State ambient air quality standard.

(2) "Air Quality Maintenance Area (AQMA) Analysis" means an analysis of the impact on air quality in an AQMA of emissions from existing air contaminant sources and emissions associated with projected growth and development.

(3) "Aircraft Operations" means any aircraft landing or takeoff.

(4) "Airport" means any area of land or water which is used or intended for use for the landing and takeoff of aircraft, or any appurtenant areas, facilities, or rights-of-way such as terminal facilities, parking lots, roadways, and aircraft maintenance and repair facilities.

(5) "Associated Parking" means a parking facility or facilities owned, operated, and/or used on conjunction with an Indirect Source.

(6) "Average Daily Traffic" means the total traffic volume during a given time period in whole days greater than one day and less than one year divided by the number of days in that time period, commonly abbreviated as ADT.

(7) "Commence Construction" means to begin to engage in a continuous program of on-site construction or on-site modifications, including site clearance, grading, dredging, or landfilling in preparation for the fabrication, erection, installation, or modification of an Indirect Source. Interruptions and delays resulting from acts of God, strikes, litigation, or other matters beyond the control of the owner shall be disregarded in determining whether a construction or modification program is continuous.

(8) "Commission" means Environmental Quality Commission.

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

(10) "Director" means the Director of the Department or Regional Authority and authorized deputies or officers.

(11) "Expressway" means a divided arterial highway for through traffic with full or partial control of access and generally with grade separations at major intersections.

(12) "Freeway" means an Expressway as defined in section 340-20-110(9) with full control of access.

(13) "Highway Section" means a highway of substantial length between logical termini (major crossroads, population centers, major traffic generators, or similar major highway control elements) as normally included in a single location study or multi-year highway improvement program.

(14) "Indirect Source" means a facility, building, structure, or installation, or any portion of combination thereof, which indirectly causes or may cause mobile source activity that results in emissions of an air contaminant for which there is a State standard. Such Indirect Sources shall include, but not be limited to:

(a) Highways and Roads.
(b) Parking Facilities.
(c) Retail, commercial, and industrial facilities.
(d) Recreation, amusement, sports, and entertainment facilities.
(e) Airports.
(f) Office and Government Buildings.
(g) Apartments and Mobile Home Parks.
(h) Educational Facilities.
(i) Hospital Facilities.
(j) Religious Facilities.

(15) "Indirect Source Construction Permit" means a written permit in letter form issued by the Department or Regional Authority having jurisdiction, bearing the signature of the Director, which authorizes the permittee to commence construction of an Indirect Source under construction and operation conditions and schedules as specified in the permit.

(16) "Indirect Source Emission Control Program (ISECP)" means a program which reduces Mobile Source emissions resulting from the use of the Indirect Source. An ISECP may include, but is not limited to:

(a) Posting transit route and scheduling information.

(b) Construction and maintenance of bus shelters and turn-out lanes.

(c) Maintaining mass transit fare reimbursement programs.

(d) Making a car pool matching system available to employees, shoppers, students, residents, etc.

(e) Reserving parking spaces for car pools.

(f) Making parking spaces available for park-and-ride stations.

(g) Minimizing vehicle running time within parking lots through the use of sound parking lot design.

(h) Ensuring adequate gate capacity by providing for the proper number and location of entrances and exits and optimum signalization for such.

(i) Limiting traffic volume so as not to exceed the carrying capacity of roadways.

(j) Altering the level of service at controlled intersections.

(k) Obtaining a written statement of intent from the appropriate public agency(s) on the disposition of roadway improvements, modifications, and/or additional transit facilities to serve the individual source.

(l) Construction and maintenance of exclusive transit ways.

(m) Providing for the collection of air quality monitoring data at Reasonable Receptor and Exposure Sites.

(n) Limiting facility modifications which can take place without resubmission of permit application.

(17) "Mobile Source" means self-propelled vehicles, powered by internal combustion engines including, but not limited to, automobiles, trucks, motorcycles, and aircraft.

(18) "Off-street Area or Space" means any area or space not located on a public road dedicated for public use.

(19) "Parking and Traffic Circulation Plan" means a plan developed by a city, county, or regional government or Regional Planning Agency, the implementation of which assures the attainment and maintenance of the state's ambient air quality standards.

(20) "Parking Facility" means any building, structure, lot, or portion thereof, designed and used primarily for the temporary storage of motor vehicles in designated parking spaces.

(21) "Parking Space" means any Off-Street Area of Space below, above, or at ground level, open or enclosed, that is used for parking one motor vehicle at a time.

(22) "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.

(23) "Population" means that population estimate most recently published by the Center for Population Research and Census, Portland State University, or any other population estimate approved by the Department.

(24) "Regional Authority" means a regional air quality control authority established under the provisions of ORS 468.505.

(25) "Regional Planning Agency" means any planning agency which has been recognized as a substate-clearinghouse for the purposes of conducting project review under the United States Office of Management and Budget Circular Number A-95, or other governmental agency having planning authority.

(26) "Reasonable Receptor and Exposure Sites" means locations where people might reasonably be expected to be exposed to air contaminants generated in whole or in part by the Indirect Source in question. Location of ambient air sampling sites and methods of sample collection shall conform to criteria on file with the Department of Environmental Quality.

(27) "Sensitive Area" means locations which are actual or potential air quality non-attainment areas, as determined by the Department.

~~[(27)]~~**(28)** "Vehicle Trip" means a single movement by a motor vehicle which originates or terminates at or uses an Indirect Source.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 81, f. 12-5-74, ef. 12-25-74; DEQ 86, f. 3-11-75, ef. 4-11-75; DEQ 110(Temp), f. & ef. 3-1-76 thru 7-14-76; DEQ 118, f. & ef. 8-11-76

Indirect Sources Required to Have Indirect Source Construction Permits

340-20-115 (1) The owner, operator, or developer of an Indirect Source identified in section (2) of this rule shall not commence construction of such a source after December 31, 1974, without an approved Indirect Source Construction Permit issued by the Department or Regional Authority having jurisdiction.

(2) All Indirect Sources meeting the criteria of this section relative to type, location, size, and operation are required to apply for an Indirect Source Construction Permit:

(a) The following sources in or within five (5) miles of the municipal boundaries of a municipality with a population of 50,000 or more including, but not limited to, Portland, Salem, and Eugene:

(A) Any Parking Facility or other Indirect Source with Associated Parking being constructed or modified to create new or additional parking (or Associated Parking) capacity of 250 or more Parking Spaces, except within the municipal boundary of Portland where the minimum number of Parking Spaces associated with an Indirect Source requiring Department approval shall be 150.

(B) Any Highway Section being proposed for construction with an anticipated annual average daily traffic volume of 20,000 or more motor vehicles per day within ten years after completion, or being modified so that the annual Average Daily Traffic on that Highway Section will be 20,000 or more vehicles per day or will be increased by 10,000 or more vehicles per day within ten years after completion.

(b)(A) The following sources within the State Implementation Plan Medford Carbon Monoxide nonattainment area boundary defined as "Beginning at the intersection of Crater Lake Highway (Highway 62) south on Biddle Road to the intersection of Fourth Street, west on Fourth Street to Riverside Avenue (Highway 99), south on Riverside Avenue to Tenth Street, west on Tenth Street to the intersection with Oakdale Avenue, north on Oakdale Avenue to the intersection with Fourth Street, east on Fourth Street to Central Avenue, north on Central Avenue to Court Street, north on Court Street to the intersection with Crater Lake Highway (Highway 62) and east on Crater Lake Highway to the point of beginning, with extensions along McAndrews Road east from Biddle Road to Crater Lake Avenue, and along Jackson Street east from Biddle Road to Crater Lake Avenue":

(B) Any Parking Facility or other Indirect Source with Associated Parking being constructed or modified to create new or additional parking (or Associated Parking) capacity of 250 of more parking spaces.

(c) Except as otherwise provided in this rule, the following sources within Clackamas, Lane, Marion, Multnomah, or Washington Counties and the municipal boundary of Medford: Any Parking Facility or other Indirect Source with Associated Parking being constructed or modified to create new or additional parking (or Associated Parking) capacity of 500 or more Parking Spaces.

(d) The following sources within Clackamas, Jackson, Lane, Marion, Multnomah, or Washington Counties: Any Highway Section being proposed for construction with an anticipated annual Average Daily Traffic volume of 20,000 or more motor vehicles per day within ten years after completion, or being modified so that the annual Average Daily Traffic on that Highway Section will be 20,000 or more motor vehicles per day, or will be increased by 10,000 or more motor vehicles per day within ten years after completion.

(e) Except as otherwise provided in this rule, the following sources in all areas of the state:

(A) Any Parking Facility or other Indirect Source with Associated Parking being constructed or modified to create new or additional parking (or Associated Parking) capacity of 1,000 or more parking spaces.

(B) Any Highway Section being proposed for construction with an anticipated annual Average Daily Traffic Volume of 50,000 or more motor vehicles per day within ten years after completion, or being modified so that the annual Average Daily Traffic on that Highway Section will be 50,000 or more motor vehicles per day, or will be increased by

25,000 or more motor vehicles per day, within ten years after completion.

(f) Any Airport being proposed for construction with projected annual aircraft operations of 50,000 or more within ten years after completion, or being modified in any way so as to increase the projected number of annual Aircraft operations by 25,000 or more within 10 years after completion.

(3) Where an Indirect Source is constructed or modified in increments which individually are not subject to review under this rule, and which are not part of a program of construction or modification in planned incremental phases approved by the Director, all such increments commenced after January 1, 1975, shall be added together for determining the applicability of this rule.

(4) An Indirect Source Construction Permit may authorize more than one phase of construction where commencement of construction or modification of successive phases will begin over acceptable periods of time referred to in the permit; and thereafter construction or modification of each phase may be begun without the necessity of obtaining another permit.

(5) Persons applying for an Indirect Source Permit shall at the time of application pay the following fees:

(a) Filing Fee of $100 (required of all applicants);

(b) Basic Application Processing Fee of $500 (required of all applicants);

(c) Extended Analysis Processing Fee of $2,000 (required of applicants with parking facilities of 1,000 or greater spaces or for those facilities locating in "sensitive areas" which are not part of an approved parking and circulation plan).

Stat. Auth.: ORS Ch. 468

Hist.: DEQ 81, f. 12-5-74, ef. 12-25-74; DEQ 86, f. 3-11-75, ef. 4-11-75; DEQ 110(Temp), f. & ef. 3-1-76 thru 7-14-76; DEQ 118, f. & ef. 8-11-76; DEQ 6-1984 (Temp), f. & ef. 4-17-84; DEQ 19-1984, f. & ef. 10-16-84

PO\AH2078

Rules for Air Contaminant Discharge Permits

Fees

340-20-165 (1) All persons required to obtain a permit shall be subject to a three part fee consisting of a uniform non-refundable filing fee of $75, an application processing fee, and an annual compliance determination fee which are determined by applying Table 1. The amount equal to the filing fee, application processing fee, and the annual compliance determination fee shall 3e submitted as a required part of any application for a new permit. The amount equal to the filing fee and the application processing fee shall be submitted with any application for modification of a permit. The amount equal to the filing fee, application processing fee, and the annual compliance determination fee shall be submitted with any application for a renewed permit.

(2) The fee schedule contained in the listing of air contaminant sources in Table 1 shall be applied to determine the permit fees, on a Standard Industrial Classification (SIC) plant site basis.

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

(4) Applications for multiple-source permits received pursuant to OAR 340-20-160 shall be subject to a single $75 filing fee. The application processing fee and annual compliance determination fee for multiple-source permits shall be equal to the total amounts required by the individual sources involved, as listed in Table 1.

(5) The annual compliance determination fee shall be paid at least 30 days prior to the start of each subsequent permit year. Failure to timely remit the annual compliance determination fee in accordance with the above shall be considered grounds for not issuing a permit or revoking an existing permit.

(6) If a permit is issued for a period less than one (1) year, the applicable annual compliance determination fee shall be equal to the full annual fee. If a permit is issued for a period greater than 12 months, the applicable annual compliance determination fee shall be prorated by multiplying the annual compliance determination fee by the number of months covered by the permit and dividing by twelve (12).

(7) In no case shall a permit be issued for more than ten (10) years.

(8) Upon accepting an application for filing, the filing fee shall be non-refundable.

(9) When an air contaminant source which is in compliance with the rules of a permit issuing agency relocates or proposes to relocate its operation to a site in the jurisdiction of another permit issuing agency having comparable control requirements, application may be made and approval may be given for an exemption of the application processing fee. The permit application and the request for such fee reduction shall be accompanied by:

(a) A copy of the permit issued for the previous location; and

(b) Certification that the permittee proposes to operate with the same equipment, at the same production rate, and under similar conditions at the new or proposed location. Certification by the agency previously having jurisdiction that the source was operated in compliance with all rules and regulations will be acceptable should the previous permit not indicate such compliance.

(10) If a temporary or conditional permit is issued in accordance with adopted procedures, fees submitted with the application for an air contaminant discharge permit shall be retained and be applicable to the regular permit when it is granted or denied.

(11) All fees shall be made payable to the permit issuing agency.

(12) Pursuant to ORS 468.535, a regional authority may adopt fees in different amounts than set forth in Table 1 provided such fees are adopted by rule and after hearing and in accordance with ORS 468.065(2).

(13) In addition to any fees required above in OAR 340-20-155 and 340-20-165, all persons required to obtain a permit shall be subject to a supplemental annual compliance determination fee payable upon billing by the Department but not later than June 30, 1991. The supplement shall be equivalent to 88% of the applicable annual compliance determination fee as shown on Table 1, except for Minimal Sources, for which the supplement shall be 20% of the applicable Table 1 annual compliance determination fee. Fees shall be calculated in five dollar increments.

Stat. Auth.: ORS Ch. 468

Hist.: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340- 20-033.08; DEQ 125, f. & ef. 12-16-76; DEQ 20-1979, f. & ef. 6-29-79; DEQ 23-1980, f. & ef. 9-26-80; DEQ 13-1981, f. 5-6-81, ef. 7-1-81; DEQ 11-1983, f. & ef. 5-31-83; DEQ 3-1986, f. & ef. 2-12-86; DEQ 12-1987, f. & ef. 6-15-87

PO\AH3000

RULE MAKING STATEMENTS FOR PROPOSED AMENDMENTS TO THE AIR CONTAMINANT DISCHARGE PERMIT PROGRAM

STATEMENT OF NEED FOR RULE MAKING

Pursuant to 183.335(7), this statement provides information on the intended action to amend a rule.

(1) Legal Authority

This proposal would amend Oregon Administrative Rules (OAR) 340, Division 20, Sections 115, 155 Table 1, and 165. It is proposed under the authority of Oregon Revised Statutes (ORS) Chapter 468.065(2) which directs the Environmental Quality Commission to establish pollution permit fees "based upon the anticipated cost of filing and investigating the application, of issuing or denying the requested permit, and of an inspection program to determine compliance or noncompliance with the permit".

(2) Need for these Rules

Permit fee increases are needed to maintain existing air pollution control programs for the remainder of the current biennium (through June 30, 1991).

(3) Principal Documents Relied Upon

Oregon Administrative Rules, OAR 340, Division 20, Sections 115, 155 Table 1 and 165.

Oregon Revised Statutes, Chapter 468, Statutes 468.065(2).

All documents referenced may be inspected at the Department of Environmental Quality, 811 SW 6th Avenue, Portland, Oregon, during normal business hours.

LAND USE CONSISTENCY STATEMENT

The proposed rules do not affect land use.

PO\AH2088

ATTACHMENT C

FISCAL AND ECONOMIC IMPACT STATEMENT FOR PROPOSED AMENDMENTS TO THE AIR CONTAMINANT DISCHARGE PERMIT PROGRAM

FISCAL AND ECONOMIC IMPACT STATEMENT

Adopting these rules would increase revenues to the Department for implementing the air quality permitting and compliance programs in Oregon. Revenues are projected to increase by up to $300,000 per year.

There would be no economic impact to the general public.

The entire cost of the fee increases would be a direct cash impact on holders of Air Contaminant Discharge Permits which are held primarily by both large and small businesses. The only known indirect cost would be pass-through of costs to customers. Many of the permits held by small businesses are Minimal Source Permits, which are less affected by the proposed fee increases.

There would be an economic impact only to those local governments that have permits.

The economic impact to the Department of Environmental Quality would be to increase revenues. There would be no increased expenses because the new fees would be implemented through the existing billing system.

Numerous other state agencies will be affected because they have permits. The cost of maintaining the permits will increase.

PO\AH2089

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Hearing Date: March 30, 1990
Comments Due: April 2, 1990

WHO IS AFFECTED: Industries and owners, operators and developers of commercial property in the State of Oregon.

WHAT IS PROPOSED: The Department of Environmental Quality is proposing to amend Oregon Administrative Rule Chapter 340, Division 20, Sections 115 and 165.

WHAT ARE THE HIGHLIGHTS: The amendments would revise the Air Contaminant Discharge Permit fee rules by adding a one time increase for all sources in the annual compliance determination fee. The Indirect Source Construction Permit rules would be amended to include filing and application processing fees.

HOW TO COMMENT: Copies of the complete proposed rule package may be obtained from the Air Quality Division in Portland (811 SW Sixth Avenue) or from the regional office nearest you. For further information, contact Terri Sylvester at (503) 229-5057.

A public hearing is scheduled for March 30, 1990, at 9:00 a.m. in Room 3A at 811 SW 6th Avenue, Portland.

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 1:00 p.m., April 2, 1990.

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 would come during a regularly scheduled meeting on April 6, 1990.

A Statement of Need, Fiscal and Economic Impact Statement, and Land Use Consistency Statement are attached to this notice.

S:a
O\AH2044

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

so provided, as may be fixed by the director, and shall be reimbursed for all expenses actually and necessarily incurred by the deputy director in the performance of the official duties of the deputy director. [1973 c.291 §2]

Note: 468.050 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 468 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

468.055 Contracts with Health Division. In addition to the authority granted under ORS 190.003 to 190.110, when authorized by the commission and the Health Division, the director and the Assistant Director for Health may contract on behalf of their respective agencies for the purposes of carrying out the functions of either agency, defining areas of responsibility, furnishing services or employees by one to the other and generally providing cooperative action in the interests of public health and the quality of the environment in Oregon. Each contracting agency is directed to maintain liaison with the other and to cooperate with the other in all matters of joint concern or interest. [Formerly 449.062]

468.060 Enforcement of rules by health agencies. On its own motion after public hearing, the commission may grant specific authorization to the Health Division or to any county, district or city board of health to enforce any rule of the commission relating to air or water pollution or solid wastes. [Formerly 449.064]

468.065 Issuance of permits; content; fees; use. Subject to any specific requirements imposed by 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:

(1) Applications for all permits authorized or required by ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter shall be made in a form prescribed by the department. Any permit issued by the department shall specify its duration, and the conditions for compliance with the rules and standards, if any, adopted by the commission pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter.

(2) By rule and after hearing, the commission may establish a schedule of fees for permits issued pursuant to ORS 468.310, 468.315, 468.555 and 468.740. The fees contained in the schedule shall be based upon the anticipated cost of filing and investigating the application, of issuing or denying the requested permit, and of an inspection program to determine compliance or noncompliance with the permit. The fee shall accompany the application for the permit.

(3) An applicant for certification of a project under ORS 468.732 or 468.734 shall pay as a fee all expenses incurred by the commission and department related to the review and decision of the director and commission. These expenses may include legal expenses, expenses incurred in processing and evaluating the application, issuing or denying certification and expenses of commissioning an independent study by a contractor of any aspect of the proposed project. These expenses shall not include the costs incurred in defending a decision of either the director or the commission against appeals or legal challenges. Every applicant for certification shall submit to the department a fee at the same time as the application for certification is filed. The fee for a new project shall be $5,000, and the fee for an existing project needing relicense shall be $3,000. To the extent possible, the full cost of the investigation shall be paid from the application fee paid under this section. However, if the costs exceed the fee, the applicant shall pay any excess costs shown in an itemized statement prepared by the department. In no event shall the department incur expenses to be borne by the applicant in excess of 110 percent of the fee initially paid without prior notification to the applicant. In no event shall the total fee exceed $40,000 for a new project or $30,000 for an existing project needing relicense. If the costs are less than the initial fee paid, the excess shall be refunded to the applicant.

(4) The department may require the submission of plans, specifications and corrections and revisions thereto and such other reasonable information as it considers necessary to determine the eligibility of the applicant for the permit.

(5) The department may require periodic reports from persons who hold permits under ORS 448.305, 454.010 to 454.040, 454.205 to 454.225, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter. The report shall be in a form prescribed by the department and shall contain such information as to the amount and nature or common description of the pollutant, contaminant or waste and such other information as the department may require.

(6) Any fee collected under this section shall be deposited in the State Treasury to the credit of an account of the department. Such fees are continuously appropriated to meet the administrative expenses of the program for which they are collected. The fees accompanying an application to a regional air pollution control authority pursuant to a permit program authorized by the commis-

ERRATA

Attachments F and G to EQC agenda item F: "Air Quality Fees: Proposed Adoption of Permit Fee Modifications."

ATTACHMENT F

MEMORANDUM

HEARING OFFICER'S REPORT

TO: Environmental Quality Commission

FROM: Terri Sylvester, Hearing Officer

DATE: April 2, 1990

SUBJECT: Public Hearing: March 30, 1990

Proposed amendments to the Air Contaminant Discharge Permit Fee Rule (OAR 340-20-165) and the Indirect Source Construction Permit Rule (OAR 340-20-115).

Schedule and Procedures

The Department of Environmental Quality held a public hearing at 9:00 a.m., on March 30, 1990, regarding the proposed one time fee increase for Air Contaminant Discharge Permit holders, and the addition of fees for Indirect Source Permits in Portland, Oregon. The time and place of the hearing were announced in the Secretary of State's Bulletin, The Oregonian and the Daily Journal of Commerce.

A total of four people attended the hearing with three persons providing verbal testimony. Written testimony was received jointly from David Paul and Karl Anuta on behalf of the Sierra Club and Northwest Environmental Defense Center (NEDC). The public comment period ended April 2, 1990 at 1:00 p.m. The written testimony is attached.

Primary Positions

Karl Anuta, NEDC, testified that he supports the addition of Indirect Source Permit fees, and increases in the Air Contaminant Discharge Permit fees. He is opposed to a one time limitation on the increase in Air Contaminant Discharge Permit fees. He feels that fees are much lower in Oregon than in other states, and the Clean Air Act may or may not go through in the near future. When it does, it will probably increase the workload as well as fees. Mr. Anuta feels that Alternative 4 is the most rational with further increases in the future.

David Paul, Sierra Club, testified that one year solutions are good for one year problems. He favored an emissions based fee but noted that the Department does not have authority to charge fees based on tonnage of pollutant emitted. Currently, permit fees collected are less than the level of effort expended in processing. Mr. Paul feels that Oregon's permit fees should be as much as in Washington and California. He is opposed to a one time fee increase since the need for additional revenue will be a continuing, not one-time, need. A permanent revision would allow industry time to budget better for the expenditure. He would prefer fees be increased permanently.

Tom Donaca, Association of Oregon Industries, testified that industry is more optimistic about the passage of the Clean Air Act sometime within the next year, and with it would be increased fees amounting to $2.25 million per year. He feels that federal funding will be maintained after the Clean Air Act is signed. The current shortfall in funds is a short-term problem that can be met with a one time increase in fees. He mentioned that this is just one of various fee increases the Department is proposing to cover an overall $2 million shortfall. Industry feels that the Department needs to be strong because it ultimately benefits industry, the community and Department staff. On behalf of industry sources, Mr. Donaca begrudgingly supports the one time fee increase.

TS

Merten & Associates
ATTORNEYS AT LAW

Charles J. Merten
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720 SW Washington St.
208 Morgan Building
Portland, Oregon
97205

FAX (503) 274-4664
(503) 227-3157

April 2, 1990

HAND-DELIVERED

Wendy Sims
Terry Sylvester
DEQ, Air Quality Division
811 SW 6th Avenue
Portland, Oregon 97204

RE: Permit Fee Rulemaking
340-20-115,-165

Dear Wendy & Terry:

On behalf of the Sierra Club and NEDC, Karl Anuta and I thank you for the opportunity to comment on these proposed rule amendments. Like the vast majority of people, we consider ourselves among the "unregulated" community. However, our concerns about the quality of air in Oregon run deep, far deeper than the simple economics of this particular proposal. Our chief concerns are:

1. A one-time fee increase is not the solution. The one-time fee increase does not bear a rational relationship to the problem. The problem is that DEQ needs more money to be the best that it can be. Less than 25% of DEQ's budget presently comes from regulated industry. That ratio should increase. There is no reason to wait for CAA amendments to authorize funding from emission fees. Permit fees could and should cover BACT/LAER review, modeling review, monitoring and other costs directly associated with permitting. If authorized, emission fees can be allocated in many more creative and significant ways. (See OEC proposal by John Charles.)

2. We should not try to second guess or anticipate the Federal Government. In the event sweeping changes are made in the Clean Air Act (CAA), DEQ can respond accordingly. At the present, DEQ is not authorized to assess emission fees. Therefore, emission fees can't be relied upon to make up present and anticipated short falls in the budget.

3. DEQ should not be pressured to have to cut back necessary operations. There is a growing need to assess and monitor permits affecting air quality.

4. DEQ should carefully review nearby State and regional air permit fee schedules. Oregon should not offer bargain basement discounts to those who seek pollution permits. At the least, Oregon should be commensurate with our neighboring states.

5. Piecemeal increments do not benefit anyone. A long-term fee increase would benefit the agency with stable funding; would benefit industry by making permit costs predictable and would benefit the public by ensuring adequate resources for a thorough review of each permit request. The present proposal should be implemented as part of a broader 5-year program with annual increases.

The Sierra Club and NEDC note that Associated Oregon Industry supports the proposal by (begrudgingly) recognizing that there is a need for the funds and that they wish DEQ to continue to improve the strength and experience of the Division.

The Sierra Club and NEDC are happy to support DEQ in the first steps of permit fee increases. We hope this is just the start.

Sincerely,

DAVID PAUL

KARL ANUTA

DP:dlc
cc: Bob Paulzer
NEDC

ATTACHMENT G

RESPONSE TO COMMENTS RECEIVED AT THE PUBLIC HEARING ON THE PROPOSED MODIFICATIONS TO AIR QUALITY FEES

The issues raised in the public hearing testimony are summarized in this report. These issues are discussed in the Environmental Quality Commission staff report, at the locations indicated below.

Issue No. 1: The need for increased fees is a continuing need, not a one time occurance. The fee increase should be permanent to provide increased revenue in this and future bienniums.

> Response: The Department agrees that the cost increases will continue, and will even escalate, in future budget periods. However, as discussed under "Alternatives Considered by the Department", the federal Clean Air Act reauthorization or new state legislation may require a restructuring of the air permit fee system during the next biennium. In that case, the current critical shortfall in revenue based on the existing fee table will be a one time occurance. If the existing fee structure is maintained in the next biennium, permanent and larger increases will required. In either case, additional rulemaking will be needed near the beginning of the next biennum to provide adequate fee revenue. The proposed one time fee increase allows the Department to address the shortfall for the current biennium without trying to predict the outcome of Clean Air Act reauthorization efforts.

Issue No. 2: Existing programs should not be cutback to offset the budget deficit. The Department should be growing, not shrinking, as the complexity of air pollution control increases.

> Response: The Department agrees that additional staff is needed to effectively implement the current air quality programs and is considering options for strengthening base programs next biennium. For this biennium, cutbacks have been made which will have temporary effects on the programs. The alternative to these cuts would have been to raise an additional $700,000 in permit fees in one year above the $800,000 expected for the biennium. That magnitude of fee increase was not considered to be practical in the short amount of time available. The cutbacks are addressed under "Program Considerations."

Issue No. 3: The existing fees are lower than the actual program costs and fees charged in other states.

> Response: The current fees do provide only a small portion of the total costs of the industrial source control program. Other states structure their permit fees in a variety of ways. Many states do have higher overall air permit fees.

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: April 6, 1990
Agenda Item: G
Division: H&SW
Section: Solid Waste

SUBJECT:

Permanent Amendments to Rule for Financial Assurance for Solid Waste Sites

PURPOSE:

The proposed rule amends OAR 340-61-029(1)(a) so that a permit applicant for a new regional solid waste disposal facility may commence operation immediately after receiving Department of Environmental Quality (Department) approval of the applicant's financial assurance plan. The previous rule required a three month waiting period.

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 B
- Public Notice — Attachment C

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

__ Approve Department Recommendation

__ Approve Department Recommendation

__	Variance Request	Attachment ___
__	Exception to Rule	Attachment ___
__	Informational Report	Attachment ___
__	Other: Adopt Temporary Rule	
	Proposed Rule	Attachment ___
	Rulemaking Statements	Attachment ___
	Fiscal and Economic Impact Statement	Attachment ___

DESCRIPTION OF REQUESTED ACTION:

The Department requests that the Environmental Quality Commission (EQC) adopt permanently the amendment to solid waste rules regarding financial assurance for regional disposal facilities, which was adopted by the EQC as a temporary rule at its December 1, 1989 meeting. When the temporary rule was adopted, the EQC authorized the Department to conduct public hearing(s) on the proposed rule, with the intent to make the rule permanent within 180 days.

On January 24, 1990, the Department conducted a public hearing on the proposed permanent adoption of the temporary rule. No adverse testimony or suggestions for revision were received. The Department is not proposing any changes to the temporary rule.

Under ORS 340-61-029(1)(a) an applicant for a solid waste permit for a new regional disposal facility "shall submit to and have approved by the Department a financial assurance plan" at least three months prior to first receiving waste. The purpose of the rule is to ensure that financial resources are available in case of premature closure or environmental problems at the regional landfill, and to provide adequate time for Department review of the financial assurance plan.

Oregon Waste Systems, Inc., (OWS) submitted a written request to the Department for variance from the rule so they could begin site operations sooner than three months after approval of their financial assurance plan.

Rather than a variance, a temporary rule change was adopted which allows a permittee of a new regional disposal facility to begin receiving waste as soon as the Department approves the applicant's financial assurance plan, if all other prerequisites to commencing operation have been satisfied.

OWS' request for waiver of the waiting period after completion of approval of this plan caused the staff to reconsider the wording of the rule. Once a financial

assurance plan is approved, there does not appear to be any reason for the plan to continue to delay operations. There would be no increased environmental risk associated with changing the rule. The intent of the law would not be violated and no other prerequisites to opening a disposal site would be affected.

The rule was shaped through discussions with the Department's Solid Waste Advisory Committee. The matter was presented to the Committee on October 17, 1989. They could not recall a specific reason for the particular wording of the rule and had no objection to changing it to accommodate all situations similar to that represented by OWS.

AUTHORITY/NEED FOR ACTION:

__	Required by Statute: _____ Enactment Date: _____	Attachment ___
_X_	Statutory Authority: ORS 459.235(3)	Attachment ___
_X_	Pursuant to Rule: OAR 340-61-029	Attachment ___
__	Pursuant to Federal Law/Rule: _____	Attachment ___

DEVELOPMENTAL BACKGROUND:

_X_	Advisory Committee Report/Recommendation	Attachment D
_X_	Hearing Officer's Report/Recommendations	Attachment G
__	Response to Testimony/Comments	Attachment ___
__	Prior EQC Agenda Items: (list)	Attachment ___
__	Other Related Reports/Rules/Statutes:	Attachment ___
_X_	Supplemental Background Information	
	Variance Request from Oregon Waste Systems, Inc.	Attachment E
	Department Letter Response to Variance Request	Attachment F

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The OWS financial assurance plan was approved by the Department October 2, 1989. To comply with OAR 340-61-029(1)(a), OWS could not receive waste until January 1, 1990. OWS expected to be in a position to receive waste from Metro or other sources prior to January 1, except for satisfying the three month wait period.

PROGRAM CONSIDERATIONS:

Department staff believes there are no significant program considerations to the proposed rule amendment.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Adopt permanently the temporary rule as set forth in Attachment A.

2. Allow the temporary rule to expire and continue to require the three month delay after Department approval of financial assurances.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission:

Adopt permanently the temporary rule as set forth in Attachment A (Alternative 1) together with the following findings:

There does not appear to be any environmental reason to delay opening a disposal site after approval of the financial assurance plan. Therefore, the rule should be changed in accordance with Attachment A. Adequate time for Department review of the plan is preserved by the proposed new rule. Other prerequisites to opening a disposal site will not be affected. Therefore, the rule should be changed permanently for all applicants. If the rule is not adopted, it is possible that opening of regional disposal facilities would be unnecessarily delayed. This could delay removing wastes from communities, industries or leaking underground storage tank cleanups.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The proposed rule change is consistent with agency and legislative policy to not impose unreasonable or burdensome regulation, while still protecting environmental quality. The rule change preserves adequate time for the Department to review and approve financial assurance plans and financial instruments.

ISSUES FOR COMMISSION TO RESOLVE:

Should the operator of a regional solid waste facility be able to receive and dispose of waste as soon as the required financial assurance is in place and approved by the Department (and all other prerequisites are satisfied), or is there reason to continue the three month delay?

INTENDED FOLLOWUP ACTIONS:

File rule with Secretary of State.

Approved:

Section: Deanna Mueller-Crispin for SPG

Division: Stephanie Hallock

Director: Jeff Harris

Report Prepared By: Ernie Schmidt

Phone: 229-5157

Date Prepared: March 8, 1990

EAS:y
SW100414

Attachment A
Agenda Item: G
Meeting Date: April 6, 1990

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.

Regional Landfills

340-61-029 (1)(a) [At least three (3) months] prior to first receiving waste, the applicant for a new regional disposal facility shall submit to and have approved by the Department, a financial assurance plan. The applicant shall allow at least 90 days for Department review of the submitted plan. For purposes of this rule, "new regional disposal facility" is a regional disposal facility which has received no waste prior to January 1, 1988.

ATTACHMENT B

Rulemaking Statements for Financial Assurance Rule Amendment

STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS 183.335(7), this statement provides information on the EQC's intended action to amend an administrative rule.

(1) Legal Authority

ORS 459.235(3) requires an applicant for a solid waste permit for a regional disposal facility to file with the Department financial assurance for protection of the environment in a form and amount established by rule by the Commission.

(2) Need for the Rule

The proposed rule amendment is needed to eliminate unnecessary delay to initiating operation of a regional disposal facility after the financial assurance plan as well as all other required submittals have been approved by the Department.

(3) Principal Documents Relied Upon

ORS 459.235, 183.335 and 183.355

Letter dated October 2, 1989, from Richard A. Daniels, Vice President and General Manager, Oregon Waste Systems, Inc., to Steve Greenwood, Department of Environmental Quality, requesting a waiver of the requirement for financial assurance to be in place three months prior to initiating landfill operations.

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): The proposed rule is designed to protect surface and groundwater quality in the affected area and is consistent with this Goal.

Goal 11 (Public Facilities and Services): The proposed rule would allow solid waste disposal in an environmentally sound manner and is consistent with this Goal.

The proposed rule does not appear to conflict with other Goals.

FISCAL AND ECONOMIC IMPACT STATEMENT

Solid waste disposal permit applicants for regional disposal facilities are impacted by the proposed rule amendment. At this time there are only two applicants. The rule amendment will enhance their ability to commence business as soon as possible.

To the extent that small businesses, large businesses, local governments, other state agencies and the general public are served by regional solid waste disposal facilities, the proposed rule amendment will assist in their ability to dispose of wastes.

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Public Hearing on Proposed Rule Change for Financial Assurance at Regional Disposal Sites

Hearing Date: January 24, 1990
Comments Due: January 31, 1990

WHO IS AFFECTED: Operators of regional solid waste disposal facilities.

WHAT IS PROPOSED: A revision of Oregon Administrative Rule 340-61-029(1)(a), to allow a regional disposal site to accept waste once approval of a financial assurance plan and all other necessary submittals have been received from the Department of Environmental Quality.

WHAT ARE THE HIGHLIGHTS: The rule provision eliminates a 90-day waiting period currently in the rule. However, applicants will still be required to allow at least 90 days for Department review of the Financial Assurance Plan.

HOW TO COMMENT: Public Hearing

10:00 a.m. - Noon
January 24, 1990
Fourth Floor Conference Room
DEQ Headquarters
811 SW Sixth Avenue
Portland, Oregon

Written comments should be sent to: Ernie Schmidt, DEQ - Solid Waste Section, 811 SW Sixth Avenue, Portland, OR 97204, by January 31, 1990.

WHAT IS THE NEXT STEP: Adoption of permanent rule revision at April 1990 EQC meeting.

SW\SK2394

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.

V. Financial Assurance

Ernie Schmidt from DEQ explained that Oregon Waste Systems had requested a variance from the rules adopted by the Commission last year on financial assurance for regional sites. The rule was originally worded so that an applicant for a regional disposal site had to both submit the financial assurance and have it approved by DEQ 90 days prior to receiving waste.

The Department intends to ask the Commission for a temporary rule change, allowing the regional site to accept waste upon approval of the financial assurance plan, but still requiring 90 days for Department review and approval. Ernie stated that the Department feels this change would not conflict with the intent of the previous rule.

Oregon Waste Systems received approval of its financial assurance plan on October 2, and would not be allowed to accept waste prior to January 1, 1990 under the old rule. They would like to receive waste prior to that date. Bob Martin indicated that it was highly unlikely that Metro will be in a position to ship waste to the OWS landfill prior to January 1. Bruce McIntosh from Oregon Waste Systems indicated that OWS would still like to be able to accept waste earlier than January 1.

Steve Schell stated that he would like to see the rule stipulate that if the Department does not act on the submitted financial assurance documents within a certain time frame, then the financial assurance would be automatically approved.

The Committee voted to support the Department's request for a temporary rule.

VI. Woodwaste Policy

Joe Gingerich from DEQ described the woodwaste task force that has been formed to develop a more cohesive policy on disposal of woodwastes. Rick Parrish is the SWAC representative on that task force. The work of the task force will be reviewed by the Solid Waste Advisory Committee before being adopted.

Joe explained that the overall policy will be to encourage reduction and reuse of woodwaste, rather than landfilling. He outlined a number of questions or issues that the task force is trying to address, including: (1) what materials should be included in the definition of woodwaste? (2) What are appropriate disposal options, and (3) what kind of information is needed to evaluate woodwaste sites? Joe explained that the task force will try to dovetail its work with the new permit instructions that are being developed. Using a matrix that identifies what information is needed at what sites, Joe stated that many woodwaste sites are likely to be able to waive many of the feasibility study requirements for landfills.

ATTACHMENT E

Oregon Waste Systems, Inc.
5240 N.E. Skyport Way
Portland, Oregon 97218
(503) 281-2722
Fax (503) 284-6957

A Waste Management Company

October 2, 1989

Steve Greenwood
Department of Environmental Quality
811 SW 6th
Portland, OR 97204

Ref S.W.P. No. 391

This letter is a request for waiver of the 90 day requirement for financial assurance being in place prior to initiating landfill operations.

As discussed the intent of this requirement in the DEQ Oregon Administrative Rules is to allow adequate time for the agency to review the quality and acceptability of the assurance instrument. OWS has been working with DEQ for over 6 months to develop such assurance which I believe has now been determined by you to be acceptable. In summary, we are providing DEQ with an environmental impairment liability insurance policy for $3m/occurrence and $6m aggregate and a letter of credit for $2.5m to assure our closure/post closure plan cost estimates of $2.5m. In essence DEQ is more than adequately assured.

Submission of that assurance today provides for waste delivery beginning 1/1/90 in accord with the 90 day requirement. However Metro has indicated an interest in early delivery of wastes beginning November 24, 1989 from the Metro South Transfer Station after they install the compactor. We have informed them that we can be prepared from an operational standpoint (people and equipment) to do so. Granting this request allows Metro and OWS to start operations in better weather conditions and at smaller start-up volumes.

This request also allows receipt of special wastes such as fuel contaminated soils from leaking underground storage tanks at this landfill with a state-of-the-art design in the high desert climate.

I understand that this request can be heard by the EQC at their October 20 meeting. Please keep me informed.

OREGON WASTE SYSTEMS, INC.

Rick

Richard A. Daniels
Vice President & General Manager

c: Jim Benedict

E-1

RAD:90:ad

ATTACHMENT F

NEIL GOLDSCHMIDT
GOVERNOR

Department of Environmental Quality

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

October 16, 1989

Richard A. Daniels
Vice President and General Manager
Oregon Waste Systems
5240 NE Skyport Way
Portland, OR 97218

Re: Financial Assurance
Gilliam County Landfill
SW Permit No. 391
Gilliam County

Dear Mr. Daniels:

We received your request for waiver of the administrative rule which requires financial assurance to be in place (approved) 90 days prior to initiating landfill operation.

The Department approved your financial assurance package for the Gilliam County Landfill on October 2, 1989. Under the current rule you cannot receive waste for disposal before January 1, 1990. You indicate METRO could be in a position to deliver waste as soon as November 24, 1989.

The Department is receptive to a variance in this situation. We believe your receiving waste before January 1 would not constitute an environmental problem. The intent of the law would not be violated by granting a variance.

The Department intends to propose a temporary rule change at the December 1, 1989 Environmental Quality Commission meeting, to clarify the intent of the present rule and allow receipt of waste upon approval of the financial assurance package. If approved, this temporary rule would be effective immediately. Discussions with METRO indicate it is unlikely they would have waste available to you before December. The temporary rule would be subject to public hearings prior to being made permanent. Approval of a variance for financial assurance will not, of course, relieve a permittee from satisfying all other prerequisites to beginning operation.

If you have any questions regarding this matter, please give Ernie Schmidt a call at 229-5157, or me at 229-5782.

Sincerely,

Ernest A. Schmidt

for Steve Greenwood, Manager
Solid Waste Section
Hazardous and Solid Waste Division

SG:ES:k
SW\SK2336
cc: Ernie Schmidt, DEQ
Stephanie Hallock, DEQ

ATTACHMENT G

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMO

TO: Environmental Quality Commission DATE: March 8, 1990

FROM: Ernest A. Schmidt, Hearing Officer

SUBJECT: Public Hearing, Proposed Rule Change for Financial Assurance at Regional Solid Waste Disposal Sites

On January 24, 1990 at 10:00 A.M., a public hearing was held in the DEQ's 4th Floor Conference Room at 811 SW Sixth Avenue, Portland, Oregon, regarding the proposed amendment of OAR 340-61-029(1)(a) so that a permit applicant for a new regional solid waste disposal facility may commence operation immediately after receiving Department approval of the applicant's financial assurance plan.

One person attended the hearing. No oral testimony was received. One item of written testimony was received. It consists of a letter from Waste Management of North America, Inc. supporting the rule amendment.

EAS:y
SW100414.C

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: April 6, 1990
Agenda Item: H
Division: HSW
Section: SW

SUBJECT:

Solid Waste Fee Amendments

PURPOSE:

Adopt rules to amend Solid Waste rules to add a 50 cent per ton disposal fee on domestic solid waste. The purpose of the fee is to comply with legislation passed by the 1989 Legislature. The proposed fee would fund a number of statewide solid waste activities not covered under current fees.

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 1989 Oregon Legislature passed House Bill (HB) 3515, one of the provisions of which was to require a new fee on domestic solid waste. This fee is in addition to the annual compliance fee and annual recycling program fee now required of solid waste permittees. The proposed rule deals only with how the fee is to be collected, and not with the activities it will be used for.

HB 3515 originally would have established a two dollar per ton fee on the disposal of solid waste. The Ways and Means Subcommittee of the Legislature amended the bill to allow a fee not to exceed 50 cents per ton. In doing so, the subcommittee and the Legislative Fiscal Office staff discussed in detail the uses of a 50 cent fee and approved expenditure limitation for the revenue projected to be raised from a 50 cent fee.

Hearings on the proposed changes in the solid waste regulations were authorized by the Environmental Quality Commission and were held in January; however, only a limited number of comments were received and no changes have been made in the proposed rule.

The proposed rule amendments:

1. Establish a 50 cent per ton fee on domestic solid waste generated in Oregon, beginning July 1, 1990.

2. Require submittal of the fee by solid waste disposal site permittees at least quarterly, except for small landfills (accepting under 1000 tons of solid waste annually) which would submit once a year.

3. Establish a procedure for estimating annual tonnage of solid waste in order to determine the amount of the fee.

The fee is expected to generate about $1 million a year, beginning in fiscal year 1990-91. The statute requires that revenue generated by the fee be used for the following activities:

1. Household hazardous waste collection activities;

2. Department of Environmental Quality (Department) waste reduction programs;

3. Additional Department groundwater monitoring and enforcement;

4. Local government solid waste planning activities;

5. Grants to local governments for recycling;

6. Department expenses in administering the above.

AUTHORITY/NEED FOR ACTION:

X	Required by Statute: 1989 HB 3515 Enactment Date: 1989	Attachment E
___	Statutory Authority: _____	Attachment ___
___	Pursuant to Rule: _____	Attachment ___
___	Pursuant to Federal Law/Rule: _____	Attachment ___
___	Other:	Attachment ___
___	Time Constraints: (explain)	

- House Bill 3515 requires the Environmental Quality Commission to establish a new schedule of fees to begin on July 1, 1990 for all disposal sites receiving domestic solid waste. The rule needs to be adopted sufficiently in advance of that date to allow garbage rates to be adjusted and administrative procedures to be established.

DEVELOPMENTAL BACKGROUND:

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

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

Generators of solid waste and ratepayers may be affected by the proposed regulation.

1. Fiscal and Economic Impacts are anticipated. See Fiscal and Economic Impact Statement, Attachment C.

2. The 50 cent per ton fee is expected to amount to a five cent per month increase in an average residential customer's garbage bill.

3. The impact on businesses will be proportionately greater than for residents, but the rate increase to businesses will still be relatively small (less than 2%).

4. Landfill operators are allowed by the statute to pass through the amount of the additional fee to generators of solid waste. Thus the impact on landfill operators will be negligible, since they must already keep records of the tonnage of garbage brought to their facility.

5. Garbage haulers are also allowed to pass through to their customers additional charges the hauler must pay at landfills due to the fee. Thus the impact on haulers will also be negligible.

6. Small landfills (under 1000 tons of solid waste annually) would be allowed to submit the fee once a year, rather than quarterly. The annual fee from such landfills would be $500 or less. Such landfills would also be required to submit an estimate of the population served, unless they are already subject to Department reporting requirements. Annual submittal would ease administrative costs for the small landfills and for the Department.

There were two concerns raised during the public testimony.

Some landfill operators testified that the Department's conversion rate of 700 pounds per compacted cubic yard of solid waste should be lower. In discussions with the Solid Waste Advisory Committee the Department found that there is substantial variation in compacting equipment and therefore in the weight of a cubic yard of garbage. Newer equipment will often exceed 700 pounds per cubic yard, and older equipment will often fall short. Nevertheless, the Advisory Committee felt that 700 pounds is a good figure for the Department to use in the rule, particularly since the compaction rate will increase over time as older equipment is replaced.

Another comment received during testimony was the concern that out-of-state waste is exempt from the proposed rule, creating a situation where Oregonians will actually pay more to use Oregon landfills than citizens from other states.

This exemption was specifically included by the Legislature in statute and cannot be changed by administrative rule. However, the same statute provides that a separate fee on out-of-state waste shall be established by the Environmental Quality Commission before January 1, 1991. The Department expects to return to the Commission with a proposed out-of-state solid waste fee rule in June of this year. For the six month period during which out-of-state waste is exempt from the fee, at 50 cents per ton the lost revenue would be about $9,000 for solid waste now entering Oregon. Another $5,000 could be lost from contaminated soils expected to be brought into Oregon. If waste from Snohomish County began entering Oregon in July 1990, additional lost revenue could total about $80,000.

PROGRAM CONSIDERATIONS:

The proposed rule specifies that the fee be submitted to the Department on the same schedule as the waste volume reports, or quarterly, whichever is more frequent. At issue is how frequently the fee should be collected: monthly, quarterly or annually. The Department's goal is to balance the administrative burden of collection with the need to begin collecting the fee in a timely manner to fund the tasks specified in the statute. The Department's approved budget is based upon the per-ton fee being collected this biennium. The Department therefore recommends that the fee be submitted with the waste volume reports, or quarterly, whichever is more frequent, with the exception for small landfills discussed above.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Adopt the proposed rule, with payment of fees on the same schedule as solid waste reports, but at least quarterly, except for small landfills which would pay annually.

   The proposed rule follows the recommendation of the Solid Waste Advisory Committee, and incorporates requirements from the statute.

2. Redraft the rule to specify annual payment of fees.

   This would simplify payment for some landfills, and collection by the Department. However, fees would not be collected until after July 1, 1991, delaying until that time implementation of the activities to be funded by this fee.

3. Redraft the rule to remove the exception for smaller landfills.

This would treat all landfills equally. However, some smaller landfills have no attendants and thus do not record the amount of solid waste brought in. They have few resources to run the landfill, and quarterly fee submittal would be an additional burden for them. In addition, the Department's administrative costs in processing small quarterly fees (less than $125) would be disproportionately high.

4. Charging less than 50 cents per ton.

The statutory language allows the Environmental Quality Commission to set the fee at less than 50 cents per ton. The option was left open for the Commission to determine that a 50 cent fee is not needed if other revenue sources become available to accomplish the desired solid waste programs. Since the action of the Legislature, however, nothing has changed and a fee of 50 cents per ton is needed to do the necessary work.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends Alternative 1. This alternative implements the statute, and provides resources to carry out the purposes established in the statute in a timely manner. It offers administrative relief to small landfills. The total amount of revenue deferred by allowing small landfills to pay annually is estimated to be about $30,000.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The proposed rule changes are consistent with Department and legislative policy. Specifically, they provide resources in a timely manner to carry out programs which are an important part of the Department's environmental mandate, such as waste reduction and ground water protection. They also provide resources to local governments for these purposes.

ISSUES FOR COMMISSION TO RESOLVE:

1. Should fees be assessed on an annual rather than quarterly basis?

2. Even if most landfills are assessed on a quarterly basis, should small landfills be allowed to submit the fee on an annual basis?

3. Is the recommended conversion rate of 700 pounds per compacted cubic yard an acceptable rate?

INTENDED FOLLOWUP ACTIONS:

1. Notify all local governments and landfill operators of the new fee and how the fee shall be collected.

2. Develop a proposed rule for a fee on out-of-state waste and return to the Commission in June for hearing authorization.

Approved:

Section: Deanna Mueller-Crispin for SPG

Division: Stephanie Hallock

Director: Fred Hansen

Report Prepared By: Steve Greenwood

Phone: 229-5782

Date Prepared: March 7, 1990

DMC:k
WT\SK2633
3/7/90

Attachment A

Proposed Amendments to OAR 340-61

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
ADMINISTRATIVE RULES
DIVISION 61 - SOLID WASTE MANAGEMENT
10/27/89

Proposed additions to rule are underlined.
Proposed deletions are in brackets [].

Permit Fees

340-61-115 (1) Beginning July 1, 1984, each person required to have a Solid Waste Disposal Permit shall be subject to a three-part fee consisting of a filing fee, an application processing fee and an annual compliance determination fee as listed in OAR 340-61-120. In addition, each disposal site receiving domestic solid waste shall be subject to an annual recycling program implementation fee as listed in Table 1, and a per-ton fee on domestic solid waste as specified in Section 5 of this rule. The amount equal to the filing fee, application processing fee, the first year's annual compliance determination fee and, if applicable, the first year's recycling program implementation fee shall be submitted as a required part of any application for a new permit. The amount equal to the filing fee and application processing fee shall be submitted as a required part of any application for renewal or modification of an existing permit.

(2) As used in this rule unless otherwise specified, the term "domestic solid waste" includes, but is not limited to, residential, commercial and institutional wastes; but the term does not include:

(a) Sewage sludge or septic tank and cesspool pumpings;

(b) Building demolition or construction wastes and land clearing debris, if delivered to disposal sites that are not open to the general public;

(c) Yard debris, if delivered to disposal sites that receive no other residential wastes.

(3) The annual compliance determination fee and, if applicable, the annual recycling program implementation fee must be paid for each year a disposal site is in operation. The fee period shall be the state's fiscal year (July 1 through June 30) and shall be paid annually by July 1. Any annual compliance determination fee and, if applicable, any recycling program implementation fee submitted as part of an application for a new permit shall apply to the fiscal year the permitted disposal site is put into operation. For the first year's operation, the full fee(s) shall apply if the disposal site is placed into operation on or before April 1. Any new disposal site placed into operation after April 1 shall not owe a compliance determination fee and, if applicable, a recycling program implementation fee until July 1.

The Director may alter the due date for the annual compliance determination fee and, if applicable, the recycling program implementation fee upon receipt of a justifiable request from a permittee.

(4) For the purpose of determining appropriate fees, each disposal site shall be assigned to a category in Table 1 based upon the amount of solid waste received and upon the complexity of each disposal site. Each disposal site which falls into more than one category shall pay whichever fee is the basis of estimated annual tonnage or gallonage of solid waste received unless the actual amount received is known. Estimated annual tonnage for domestic waste disposal sites will be based upon 300 pounds per cubic yard of uncompacted waste received, 700 pounds per cubic yard of compacted waste received, or, if yardage is not known, one ton per resident in the service area of the disposal site, unless the permittee demonstrates a more accurate estimate. Loads of solid waste consisting exclusively of soil, rock, concrete, rubble or asphalt shall not be included when calculating the annual amount of solid waste received.

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

(6) Upon the Department accepting an application for filing, the filing fee shall be non-refundable.

(7) The application processing fee may be refunded in whole or in part when submitted with an application if either of the following conditions exist:

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

(b) The applicant withdraws the application before the Department has granted or denied preliminary approval or, if no preliminary approval has been granted or denied, the Department has approved or denied the application.

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

Permit Fee Schedule

340-61-120 (1) Filing Fee. A filing fee of $50 shall accompany each application for issuance, renewal, modification, or transfer of a Solid Waste Disposal Permit. This fee is non-refundable and is in addition to any application processing fee or annual compliance determination fee which might be imposed.

(2) Application Processing Fee. An application processing fee varying between $100 and $2,000 shall be submitted with each application. The amount of the fee shall depend on the type of facility and the required action as follows:

(a) A new facility (including substantial expansion of an existing facility):

(A) Major facility[1]	$ 2,000
(B) Intermediate facility[2]	$ 1,000
(C) Minor facility[3]	$ 300

---

[1]**Major Facility Qualifying Factors:**

-a- Received more than 25,000 tons of solid waste per year; or
-b- Has a collection/treatment system which,, if not properly constructed, operated and maintained, could have a significant adverse impact on the environment as determined by the Department.

[2]**Intermediate Facility Qualifying Factors:**

-a- Received at least 5,000 but not more than 25,000 tons of solid waste per year; or
-b- Received less than 5,000 tons of solid waste and more than 25,000 gallons of sludge per month.

[3]**Minor Facility Qualifying Factors:**

-a- Received less than 5,000 tons of solid waste per year; and
-b- Received less than 25,000 gallons of sludge per month.

All tonnages based on amount received in the immediately preceding fiscal year, or in a new facility the amount to be received the first fiscal year of operation.

(b) Preliminary feasibility only (Note: the amount of this fee may be deducted from the complete application fee listed above):

(A) Major facility	$ 1,200
(B) Intermediate facility	$ 600
(C) Minor facility	$ 200

(c) Permit renewal (including new operational plan, closure plan or improvements):

(A) Major facility	$ 500
(B) Intermediate facility	$ 250
(C) Minor facility	$ 125

(d) Permit renewal (without significant change):

(A) Major facility	$ 250
(B) Intermediate facility	$ 150
(C) Minor facility	$ 100

(e) Permit modification (including new operational plan, closure plan or improvements):

(A) Major facility	$ 500

(B) Intermediate facility ..... $ 250
(C) Minor facility ..... $ 100
(f) Permit modification (without significant change in facility design or operation): All categories ..... $ 100
(g) Permit modification (Department initiated) All categories ..... No fee
(h) Letter authorizations, new or renewal: ..... $ 100
(3) Annual Compliance Determination Fee (In any case where a facility fits into more than one category, the permittee shall pay only the highest fee):
(a) Domestic Waste Facility:
(A) A landfill which received 500,000 tons or more of solid waste per year: $60,000
(B) A landfill which received at least 400,000 but less than 500,000 tons of solid waste per year: $48,000
(C) A landfill which received at least 300,000 but less than 400,000 tons of solid waste per year: $36,000
(D) A landfill which received at least 200,000 but less than 300,000 tons of solid waste per year: $24,000
(E) A landfill which received at least 100,000 but less than 200,000 tons of solid waste per year: $12,000
(F) A landfill which received at least 50,000 but less than 100,000 tons of solid waste per year: ..... $ 6,000
(G) A landfill which received at least 25,000 but less than 50,000 tons of solid waste per year: ..... $ 3,000
(H) A landfill which received at least 10,000 but less than 25,000 tons of solid waste per year: ..... $ 1,500
(I) A landfill which received at least 5,000 but not more than 10,000 tons of solid waste per year: ..... $ 750
(J) A landfill which received at least 1,000 but not more than 5,000 tons of solid waste per year: ..... $ 200
(K) A landfill which received less than 1,000 tons of solid waste per year: ..... $ 100
(L) A transfer station which received more than 10,000 tons of solid waste per year: ..... $ 500
(M) A transfer station which received less than 10,000 tons of solid waste per year: ..... $ 50
(N) An incinerator, resource recovery facility, composting facility and each other facility not specifically classified above which receives more than 100,000 tons of solid waste per year: ..... $ 8,000
(O) An incinerator, resource recovery facility, composting facility and each other facility not specifically classified above which receives at least 50,000 tons but less than 100,000 tons of solid waste per year: ..... $ 4,000
(P) An incinerator, resource recovery facility, composting facility and each other facility not specifically classified above which receives less than 50,000 tons of solid waste per year: ..... $ 2,000
(b) Industrial Waste Facility:
(A) A facility which received 10,000 tons or more of solid waste per year: ..... $ 1,500

(B) A facility which received at least 5,000 tons but less than 10,000 tons of solid waste per year: ..... $ 750

(C) A facility which received less than 5,000 tons of solid waste per year: ..... $ 150

(c) Sludge Disposal Facility:

(A) A facility which received 25,000 gallons or more of sludge per month: ..... $ 150

(B) A facility which received less than 25,000 gallons of sludge per month: ..... $ 100

(d) Closed Disposal Site: Each landfill which closes after July 1, 1984: ..... 10% of fee which would be required, in accordance with subsections (3)(a), (3)(b), and (3)(c) above, if the facility was still in operation or $50 whichever is greater.

(e) Facility with Monitoring Wells: In addition to the fees described above, each facility with one or more wells for monitoring groundwater or methane, surface water sampling points, or any other structures or locations requiring the collection and analysis of samples by the Department, shall be assessed a fee. The amount of the fee shall depend on the number of wells (each well in a multiple completion well is considered to be a separate well) or sampling points as follows: ..... $ 250 for each well or sampling point.

(4) Annual Recycling Program Implementation Fee. An annual recycling program implementation fee shall be submitted by each domestic waste disposal site, except transfer stations and closed landfills. This fee is in addition to any other permit fee which may be assessed by the Department. The amount of the fee shall depend on the amount of solid waste received as follows:

(a) A disposal site which received 500,000 tons or more of solid waste per year $20,000

(b) A disposal site which received at least 400,000 but less than 500,000 tons of solid waste per year: $18,000

(c) A disposal site which received at least 300,000 but less than 400,000 tons of solid waste per year: $14,000

(d) A disposal site which received at least 200,000 but less than 300,000 tons of solid waste per year: ..... $ 9,000

(e) A disposal site which received at least 100,000 but less than 200,000 tons of solid waste per year: ..... $ 4,600

(f) A disposal site which received at least 50,000 but less than 100,000 tons of solid waste per year: ..... $ 2,300

(g) A disposal site which received at least 25,000 but less than 50,000 tons of solid waste per year: ..... $ 1,200

(h) A disposal site which received at least 10,000 but less than 25,000 tons of solid waste per year: ..... $ 450

(i) A disposal site which received at least 5,000 but less than 10,000 tons of solid waste per year: ..... $ 225

(j) A disposal site which received at least 1,000 but less than 5,000 tons of solid waste per year: ..... $ 75

(k) A disposal site which received less than 1,000 tons of solid waste per year: ..... $ 50

(5) Per-ton fee on domestic solid waste. Each solid waste disposal site that receives domestic solid waste, except transfer stations, shall submit to the Department of Environmental Quality a fee of 50 cents per ton of domestic solid waste received at the disposal site.

(a) This per-ton fee shall apply to all domestic solid waste received after June 30, 1990.

(b) Submittal schedule:

(A) This per-ton fee shall be submitted to the Department on the same schedule as the waste volume reports required in the disposal permit, or quarterly, whichever is more frequent. Quarterly remittals shall be due on the 15th day of the month following the end of the calendar quarter.

(B) Disposal sites receiving less than 1,000 tons of solid waste per year shall submit the fee annually on July 1, beginning in 1991. If the disposal site is not required by the Department to monitor and report volumes of solid waste collected, the fee shall be accompanied by an estimate of the population served by the disposal site.

(c) As used in this section, the term "domestic solid waste" does not include:

(A) Sewage sludge or septic tank and cesspool pumpings;

(B) Building demolition or construction wastes and land clearing debris, if delivered to a disposal site that is limited to those purposes;

(C) Source separated recyclable material, or material recovered at the disposal site;

(D) Waste going to an industrial waste facility;

(E) Waste received at an ash monofill from a resource recovery facility; or

(F) Domestic solid waste which is not generated within this state.

(d) For solid waste generated within the boundaries of a metropolitan service district, the 50 cent per ton disposal fee established in this section shall be levied on the district, not on the disposal site.

ATTACHMENT B

RULEMAKING STATEMENTS
for
Proposed Revisions to Existing Rules
Pertaining to Fees on Domestic Solid Waste

OAR Chapter 340, Division 61

Pursuant to ORS 183.335, these statements provide information on the intended action to adopt a rule.

STATEMENT OF NEED:

Legal Authority

ORS 459.045(1) and (3) require the Environmental Quality Commission to adopt reasonable and necessary rules governing the management of solid wastes to prevent pollution of the air, ground and surface waters. The 1989 Oregon Legislature passed House Bill 3515 which requires the Commission to establish a schedule of fees for all disposal sites that receive domestic solid waste.

Need for the Rule

HB 3515 requires the Commission to set fees sufficient to assist in the funding of programs to reduce the amount of domestic solid waste generated in Oregon, and to reduce environmental risks at domestic waste disposal sites. The fees are to be used to fund activities in the following areas:

1. Household hazardous waste education program. Disposal of household hazardous waste and exempt small quantity generator hazardous waste in solid waste disposal sites and sewage facilities presents a potential hazard to the public health and the environment, because these facilities may not be designed for the disposal of hazardous waste. Funding is to provide information about alternatives for management of hazardous waste and household hazardous waste, and methods of reusing and recycling such waste.

2. Department of Environmental Quality (DEQ) and local government waste reduction and recycling programs. Landfill space is becoming more limited and expensive. Programs to reduce and recycle wastes reduce the impact of waste disposal on the environment, and lengthen the effective life of landfills.

3. DEQ activities for ground water monitoring and enforcement of ground water protection standards at domestic solid waste landfills. Leachate from improperly designed or managed landfills may enter and pollute ground water, causing serious and long-lasting environmental problems. Monitoring programs provide

submit to the Department of Environmental Quality a fee of 50 cents per ton of domestic solid waste received at the disposal site.

(a) This per-ton fee shall apply to all domestic solid waste received after June 30, 1990.

(b) Submittal schedule:

(A) This per-ton fee shall be submitted to the Department on the same schedule as the waste volume reports required in the disposal permit, or quarterly, whichever is more frequent. Quarterly remittals shall be due on the 15th day of the month following the end of the calendar quarter.

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(c) As used in this section, the term "domestic solid waste" does not include:

(A) Sewage sludge or septic tank and cesspool pumpings;

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(C) Source separated recyclable material, or material recovered at the disposal site;

(D) Waste going to an industrial waste facility;

(E) Waste received at an ash monofill from a resource recovery facility; or

(F) Domestic solid waste which is not generated within this state.

(d) For solid waste generated within the boundaries of a metropolitan service district, the 50 cent per ton disposal fee established in this section shall be levied on the district, not on the disposal site.

an "early warning" system so steps may be taken to prevent such ground water pollution.

4. Solid waste planning activities by counties. Local governments often have insufficient funds to properly plan for environmentally sound solid waste disposal. Funding would enhance their capability to plan for such things as special waste disposal, landfill closure and regional solid waste issues.

The proposed rule will implement the legislation, and provide resources for the above-stated purposes.

Principal Documents Relied Upon

a. Oregon Revised Statutes 459.045.
b. 1989 House Bill 3515.
b. Oregon Administrative Rules, Chapter 340, Division 61.

LAND USE CONSISTENCY STATEMENT:

The proposed rule appears to affect land use and appears to be consistent with Statewide Planning Goals and Guidelines.

Goal 6 (Air, Water and Land Resources Quality): This proposed rule is designed to further the protection of surface and groundwater quality throughout the state, and to promote waste reduction and recycling. It is consistent with this Goal.

Goal 11 (Public Facilities and Services): The proposed rule would contribute to the disposal of solid waste in an environmentally sound manner and is consistent with this Goal.

The proposed rule does not appear to conflict with other Goals.

Public comment on any land use issue involved is welcome and may be submitted in the manner described in the accompanying NOTICE OF PUBLIC HEARING.

The Department requests that local state and federal agencies review the proposed action and comment on possible conflicts with their programs affecting land use and with Statewide Planning goals within their expertise and jurisdiction.

The Department of Environmental Quality intends to ask the Department of Land Conservation and Development to mediate any appropriate conflicts brought to its attention by local, state or federal authorities.

rulstm.fee

ATTACHMENT C

FISCAL AND ECONOMIC IMPACT STATEMENT

I. Introduction

Proposed Actions:

1989 House Bill 3515 requires the Environmental Quality Commission to adopt a fee schedule for all disposal sites receiving domestic solid waste, effective July 1, 1990. It states that the fee shall not be more than 50 cents per ton on domestic solid waste generated within Oregon and received at the landfill. It requires the fee to be sufficient to assist in the funding of programs to reduce the amount of domestic solid waste generated in Oregon and to reduce environmental risks at domestic waste disposal sites.

The proposed rule establishes a fee of 50 cents per ton of domestic solid waste, payable at least quarterly to the Department of Environmental Quality (DEQ). Small landfills (receiving less than 1000 tons per year of solid waste) are allowed to pay the fee annually. This fee is in addition to already established permit fees.

Overall Economic Impacts:

DEQ estimates that about $1 million in fees will be generated annually by this action. These funds are to be deposited into a special account, and used for the purposes stated in HB 3515: household hazardous waste education program, DEQ and local government waste reduction and recycling programs, ground water monitoring and enforcement, and local solid waste planning activities. Up to 10 percent of the monies collected may be used for DEQ's expenses in accomplishing those purposes.

The statute allows landfill operators and garbage haulers to pass the cost of the fee through to their customers. As it is anticipated that most owners or operators would do this, the major impact of the fee will fall on solid waste generators and ratepayers.

The recordkeeping and reporting requirements in the proposed rule are not expected to require significant additional resources. Some administrative expense would be incurred in gaining approval to raise rates, and implementing any resulting new fee structure, perhaps a maximum of one and one-half person-weeks of staff time. At $20/hour, that impact totals $1,200.

II. General Public

The general public will be directly affected by increased rates for disposal of solid waste. It is anticipated that increased

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The recordkeeping and reporting requirements in the proposed rule are not expected to require significant additional resources. Some administrative expense would be incurred in gaining approval to raise rates, and implementing any resulting new fee structure, perhaps a maximum of one and one-half person-weeks of staff time. At $20/hour, that impact totals $1,200.

II. General Public

The general public will be directly affected by increased rates for disposal of solid waste. It is anticipated that increased

rates would go into effect on July 1, 1990. As noted above, landfill operators and garbage haulers are allowed to pass through the effect of the fee increase to their ratepayers. DEQ assumes that each person generates about one ton of garbage a year, which would result in a monthly garbage fee increase of about five cents per capita for all Oregonians. However, some of these funds will be returned to local governments for recycling programs, which would increase the opportunities for the general public to reduce the amount of waste they generate.

III. Small Business

Small businesses would be affected in the same way as the general public. However, the impact on businesses will be proportionately greater than for residential garbage customers, but the rate increase to businesses will still be relatively insignificant (less than 2%). Those landfill operators and garbage haulers that are small businesses would experience some increased administrative costs in keeping track of the tonnage of domestic solid waste collected and submitting fees to DEQ. Fees would be submitted at the same time as waste volume reports, but at least quarterly. Small landfills (collecting less than 1000 tons of solid waste a year) would be allowed to submit the fee annually.

IV. Large Business

Large businesses would also be affected in the same way as the general public and small businesses, except that waste going to an industrial waste facility is exempt from the fee.

V. Local Governments

Local governments would be affected in the same way as the general public and as small or large businesses which own or operate landfills or garbage hauling companies.

Local governments will also receive economic benefits from the fee, although the proposed rules do not deal with how the fee is to be used. The statute specifies that funds from the fee be used for activities in disposal, reduction and recycling of household hazardous waste and solid waste. The Department's 89-91 budget includes the following benefits to local governments: $400,000 for management of household hazardous wastes, and $200,000 for recycling and solid waste activities.

VI. Other State Agencies

DEQ has received authority for one new position to carry out activities funded by the fee. Other state agencies would be affected in the same way as the general public if responsible for disposal of domestic solid waste.

fisecst.fee

Attachment D

CHANCE TO COMMENT

Hearing Dates: 1/4/90
1/9/90
1/10/90
1/11/90

Comments Due: 2/2/90

WHO IS — General public disposing of solid waste, other generators of solid waste, owners and operators of solid waste landfills, garbage haulers, local governments.

WHAT IS — The Department proposes to adopt a new rule establishing a 50 cent per ton fee on domestic solid waste, as required by 1989 HB 3515. The fee will be used for waste reduction, recycling and other solid waste activities.

WHAT ARE — The proposed amendments would:

- o establish a 50 cent per ton fee on domestic solid waste generated in Oregon;
- o require that the fee be submitted as least quarterly, except for small landfills which could submit annually;
- o establish a way to estimate tonnage of solid waste if the landfill has no scale.

HOW TO — A public hearing will be held before a hearings officer at:

9:30 a.m.
January 4, 1990
DEQ Headquarters
Conference Room 4-A
811 S.W. Sixth Avenue
Portland, OR

7:00 p.m.
January 9, 1990
Pendleton, OR

7:00 p.m.
January 10, 1990
Bend, OR

7:00 p.m.
January 11, 1990
Medford, OR

Written or oral comments may be presented at the hearing. Written comments may also be sent to the

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Hearing Dates: January 4, 1990
January 9, 1990
January 10, 1990
January 11, 1990

Comments Due: February 2, 1990

WHO IS AFFECTED: General public disposing of solid waste, other generators of solid waste, owners and operators of solid waste landfills, garbage haulers, local governments.

WHAT IS PROPOSED: The Department proposes to adopt a new rule establishing a 50 cent per ton fee on domestic solid waste, as required by 1989 HB 3515. The fee will be used for waste reduction, recycling and other solid waste activities.

WHAT ARE THE HIGHLIGHTS: The proposed amendments would:

- o establish a 50 cent per ton fee on domestic solid waste generated in Oregon;
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7:00 p.m.
January 9, 1990
Blue Mountain Community College
Pioneer Building, Room 12
NW Carden Street
Pendleton, OR

7:00 p.m.
January 10, 1990
School Administration Bldg.
Bond Street Conf. Rm. 330
520 NW Wall Street
Bend, OR

7:00 p.m.
January 11, 1990
Jackson Educ. Service District, Boardroom
101 North Grape Street
Medford, OR

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

11/1/86

FOR FURTHER INFORMATION:

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

Written or oral comments may be presented at the hearing. Written comments may also be sent to the Department of Environmental Quality, Solid Waste Section, Hazardous and Solid Waste Division, 811 S.W. 6th Avenue, Portland, OR 97204, and must be received no later than 5:00 p.m., February 2, 1990.

Copies of the complete proposed rule package may be obtained from the DEQ Hazardous and Solid Waste Division. For further information, contact Steve Greenwood at 229-5782, or toll free at 1-800-452-4011.

WHAT IS THE NEXT STEP:

The Environmental Quality Commission may adopt new rules identical to the ones proposed, adopt modified rules as a result of testimony received, or may decline to adopt rules. The Commission will consider the proposed new rule and rule revisions at its meeting on April 6, 1990.

(WT\SK2370)

Written or oral comments may be presented at the hearing. Written comments may also be sent to the Department of Environmental Quality, Solid Waste Section, Hazardous and Solid Waste Division, 811 S.W. 6th Avenue, Portland, OR 97204, and must be received no later than 5:00 p.m., February 2, 1990.

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Oregon Department of Environmental Quality

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January 9, 1990
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11/1/86

SECTION 148. The fee imposed by section 140 of this Act is in addition to all other state, county or municipal fees on a petroleum product.

SECTION 149. Sections 150 to 153 of this Act are added to and made a part of ORS 459.205 to 459.355.

SECTION 150. As used in sections 150 to 153 of this 1989 Act:

(1) "Domestic solid waste" includes but is not limited to residential, commercial and institutional wastes generated within this state.

(2) "Domestic solid waste" does not include:

(a) Sewage sludge or septic tank and cesspool pumpings;

(b) Building demolition or construction wastes and land clearing debris, if delivered to a disposal site that is limited to those purposes;

(c) Source separated recyclable material, or material recovered at the disposal site;

(d) Waste going to an industrial waste facility;

(e) Waste received at an ash monofill from a resource recovery facility; or

(f) Other material excluded by the commission in order to support the purposes of ORS 459.015.

SECTION 151. The Legislative Assembly finds and declares that:

(1) Domestic solid waste disposal capacity is a matter of state-wide concern;

(2) The disposal in Oregon of domestic solid waste generated both outside and within Oregon will reduce the total capacity available for disposal of domestic solid waste generated in this state;

(3) The disposal in Oregon of domestic solid waste generated outside Oregon and within Oregon will add to the level of environmental risk associated with the transportation and disposal of those wastes; and

(4) It is in the best interest of the public health, safety and welfare of the people of Oregon to reduce the amount of domestic solid waste being generated in Oregon in order to extend the useful life of existing domestic solid waste disposal sites and to reduce the environmental risks associated with receiving waste generated outside Oregon at those sites.

SECTION 152. (1) In addition to the permit fees provided in ORS 459.235, the commission shall establish a schedule of fees to begin July 1, 1990, for all disposal sites that receive domestic solid waste except transfer stations. The schedule shall be based on the estimated tonnage or the actual tonnage, if known, received at the site and any other similar or related factors the commission finds appropriate. The fees collected pursuant to the schedule shall be sufficient to assist in the funding of programs to reduce the amount of domestic solid waste generated in Oregon and to reduce environmental risks at domestic waste disposal sites.

(2) For solid waste generated within the boundaries of a metropolitan service district, the schedule of fees, but not the permit fees provided in ORS 459.235, established by the commission in subsection (1) of this section shall be levied on the district, not the disposal site.

(3) The commission also may require submittal of information related to volumes and sources of waste or recycled material if necessary to carry out the activities in section 153 of this 1989 Act.

(4)(a) A local government that franchises or licenses a domestic solid waste site shall allow the disposal site to pass through the amount of the fees established by the commission in subsection (1) of this section to the users of the site.

(b) If a disposal site that receives domestic solid waste passes through all or a portion of the fees established by the commission in subsection (1) of this section to a solid waste collector who uses the site, a local government that franchises or licenses the collection of solid waste shall allow

the franchisee or licensee to include the amount of the fee in the solid waste collection service rate.

(5) The fees generated under subsection (1) of this section shall be sufficient to accomplish the purposes set forth in section 153 of this 1989 Act but shall be no more than 50 cents per ton.

SECTION 153. (1) The fees established by the commission under section 152 of this 1989 Act shall be deposited in the General Fund and credited to an account of the department. Such moneys are continuously appropriated to the department to carry out the purposes set forth in subsection (2) of this section.

(2) The fees collected under section 152 of this 1989 Act shall be used only for the following purposes:

(a) To implement the provisions of sections 69 to 76 of this 1989 Act.

(b) Department of Environmental Quality programs to promote and enhance waste reduction and recycling state wide, including data collection, performance measurement, education and promotion, market development and demonstration projects.

(c) Department of Environmental Quality activities for ground water monitoring and enforcement of ground water protection standards at domestic solid waste landfills.

(d) Solid waste planning activities by counties and the metropolitan service district, as approved by the department, including planning for special waste disposal, planning for closure of solid waste disposal sites, capacity planning for domestic solid waste and regional solid waste planning.

(e) Grants to local government units for recycling and solid waste planning activities.

(f) To pay administrative costs incurred by the department in accomplishing the purposes set forth in this section, the amount allocated under this subsection shall not exceed 10 percent of the fees generated under section 152 of this 1989 Act.

ATTACHMENT F

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

DATE: January 27, 1990

TO: Environmental Quality Commission

FROM: Deanna Mueller-Crispin

SUBJECT: Written Testimony: Proposed Amendments to Solid Waste Rules

Written testimony was received by the Department in response to a request for public comment regarding proposed rules establishing a 50 cent per ton fee on domestic solid waste.

A summary of the written testimony follows.

Jeremiah O'Leary, Lake County Commissioner, expressed concern that the fee would place an additional burden on Lake County. He had several questions about collection and use of the fee, including how the tonnage estimate will be calculated, both in their unattended landfills and in the attended landfill which does not weigh or measure the solid waste.

Michael R. McHenry of Pendleton Sanitary Service, Inc., questioned the Department's assumptions about the rates for converting cubic yards of waste into weight. He said that the conversion rates proposed by the Department are more than 20 percent higher than he has experienced for compacted waste (700 lbs. vs. 550).

Susan E. McHenry, Pendleton Sanitary Service, Inc., objected to the definition of "domestic solid waste," which excludes waste not generated in Oregon. She commented that monitoring and fee assessment of such waste should be treated the same as waste generated in Oregon. She pointed out the provision that if waste received is generated within a metropolitan service district, the fee burden is placed on the district rather than on the individual landfill. She felt that this constitutes inequitable treatment.

Keith Read, Solid Waste Management Supervisor of Klamath County, recommended that the payment of fees not begin until July 1, 1991, thereby allowing counties time to give reasonable notice to raise rates. He noted that the county will incur costs in collecting the fee; these additional costs will have to be passed along to the rate payer. As an alternative to an additional rate increase to cover those costs, he suggested allowing the county to keep a

percentage of the per-ton fee. He also felt that the conversion rate (700 lbs. per cubic yard of compacted waste) is 18%-20% too high. He suggested that the demolition and construction waste received at county landfills be exempt from the new fee, as it is when deposited at demolition-only landfills. He recommended that a similar or higher fee be applied to out-of-state waste. Finally, he noted that these funds would best be used at the county level, and wanted information on how to receive funding from the program.

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STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

DATE: January 4, 1990

TO: Environmental Quality Commission

FROM: Deanna Mueller-Crispin, Hearing Officer

SUBJECT: Public Hearing, Proposed Amendments to Solid Waste Rules, Portland, OR, 9:30 a.m., January 4, 1990

On January 4, 1990, a public hearing regarding proposed rules establishing a 50 cent per ton fee on domestic solid waste. Six persons attended and one presented testimony.

Marvin Schneider of Newberg Garbage in Newberg, OR, presented comments. Mr. Schneider noted that with the state's emphasis on recycling, less and less solid waste will be generated. He predicts that eventually many customers will not have garbage service at all. This proposed fee [part of which is to support recycling activities] will thus generate less revenue over time. He was concerned that there should be another source of funds to support recycling other than from garbage collection; each person in the community should support recycling.

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMO

TO: Environmental Quality Commission DATE: January 26, 1990

FROM: Tim Davison, Hearing Officer

SUBJECT: Public Hearing, Proposed Amendments to Solid Waste Rules, Pendleton, OR, 7:00 p.m., January 9, 1990

A public hearing was held in Pendleton, Oregon, at 7:00 p.m. on January 9, 1990, in Room 12 at the Pioneer Building at Blue Mountain Community College, regarding proposed rules establishing a 50 cent per ton fee on domestic solid waste. Four persons attended the hearing and three presented oral testimony.

Mr. Ted Orr of Haines, Oregon, presented comments concerning how the fees should be used. Mr. Orr recommended that the household hazardous waste collection activities not be funded from this fee, with the revenue used to assist local government waste reduction, solid waste planning activities and recycling grants. He also supported use for a portion of the revenue for monitoring groundwater quality, and agreed that the collection of fees from small landfills annually and from large landfills quarterly was appropriate.

Mrs. Susan McHenry of Pendleton Sanitary Service, Inc., in Pendleton, Oregon, provided oral testimony and stated that she would submit the comments in writing before the comment period closed. Mrs. McHenry stated that she is the secretary of the Umatilla County Solid Waste Committee and that her testimony also reflects comments made to her in that capacity by other Umatilla County operators. She commented specifically on the proposed definitions of domestic solid waste, and said that she perceived some inequity in the exclusion of wastes not generated in Oregon. Mrs. McHenry recommended that out-of-state wastes be assessed the fee, and that inconsistencies in the proposed rules be addressed so that all landfills are treated equitably. She said that she would submit these comments in writing before the comment period ends.

Mr. Michael McHenry of Pendleton Sanitary Service, Inc., in Pendleton, Oregon, also provided oral testimony pertaining to the proposed factors to be used to convert cubic yards of loose and compacted waste to weights. He stated that the proposed conversion factor was more than 20 percent greater than experienced by Pendleton Sanitary Service, Inc. Mr. McHenry suggested that the Department survey landfill owners or waste collection companies to develop more accurate conversion rates.

The public hearing was concluded at 7:30 p.m.

ETD:k
SW\SK2527

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

DATE: January 21, 1990

TO: Environmental Quality COmmission

FROM: Bradford D. Price, Hearing Officer

SUBJECT: Public Hearing, Proposed Amendments to Solid Waste Rules, Medford, OR, 7:00 p.m., January 11, 1990

On January 11, 1990, a public hearing regarding proposed rules establishing a 50 cent per ton fee on domestic solid waste, was held at the Jackson County ESD Boardroom in Medford, Oregon. Eighteen people attended the hearing and two people provided testimony.

Testimony given is as follows:

Brad Prior, Jackson County Solid Waste Coordinator, Planning Department, Medford, OR, was concerned with the definition of domestic solid waste. The legislative definition says including but not limited to residential, commercial, institutional waste generated within Oregon. Later in the same legislation, Section 151, it is stated that domestic solid waste both generated outside and within Oregon will reduce the total capacity available for the disposal of domestic solid waste generated in this state. The last three sections imply that there is a great deal of concern about domestic solid waste generated within and outside the state; the actual definition of the legislation does not limit the imposition of the 50 cent surcharge to waste generated only in this state. The proposed administration rule, 340-61-120(5)(c)(F), specifically excludes "Domestic solid waste which is not generated within this state" from the definition of domestic solid waste and it would therefore not be subject to the 50 cent per ton surcharge. He feels this is an error. He sees no reason to exclude solid waste imported into Oregon from the fee. In effect this would create a dual rate structure in favor of imported solid waste rather than domestic. If legislative language does not specifically exclude solid waste generated outside of this state, then Mr. Prior believes the out-of-state solid waste should be subject to the same requirements.

Moreland Smith, Chairman of the Rogue Valley COG Recycling Advisory Committee, made a personal and not a committee statement. He was concerned on how the funds collected were going to be divided up. He would like to suggest the funding for household hazardous waste be channeled to localities that are operating non-lined sites. These sites should have household hazardous waste removed to avoid future problems. Also, that funding should be returned to the local areas that are generating the funding, for their programs in solid waste planning and recycling promotional activities.

swph2.fee

ATTACHMENT G

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

DATE: January 28, 1990

TO: Environmental Quality Commission

FROM: Steve Greenwood

SUBJECT: Response to Testimony/Comments, Proposed Amendments to Solid Waste Rules Adding $.50 Per Ton Fee

The Department held four public hearings on the proposed revisions to the solid waste program rules establishing a 50 cent per ton fee on domestic solid waste, and accepted written public comment on the rule until February 2, 1990.

Comments generally fell into four areas:

- "Conversion rate" of cubic yards of waste into weight;
- Exclusion of out-of-state waste from the fee;
- Use of the funds generated by the fee;
- Other comments about the fee, how it will be determined and proposed exclusions.

1. "Conversion rate."

o Comment: The rate proposed by the Department for converting cubic yards of waste into waste is too high. Experience of site operators is that a cubic yard of compacted waste weighs 18% - 20% less than the 700 lbs. proposed by the Department.

o Response: In discussing the conversion rate with the Solid Waste Advisory Committee, the Department found from members of the solid waste industry that there is, in fact, variation in the compaction rate based primarily on the quality and age of the compaction equipment used. Some compactor trucks achieve a rate higher than 700 pounds per cubic yard and some older trucks achieve a lower compaction rate. However, the average will increase as older equipment is replaced, and the committee felt that 700 pounds was a good average figure to use.

o Comment: Instead of using a conversion rate based on cubic yards, the fee should be assessed on a "per business truck" basis, as each truck gets a different compaction ratio.

o Response: The method proposed would be much simpler to administer, and is the method currently used to estimate tonnage. A method based upon "per business truck" would create confusion and would be subject to the same variability problems.

2. Out-of-state waste.

o Comment: Out-of-state waste should not be excluded from the 50 cent fee. This creates an unfair rate advantage for such waste.

o Response: The statute requires a fee of no more than 50 cents per ton to be collected on "domestic solid waste" beginning on July 1, 1990. A separate section of Oregon Laws Chapter 883 requires a "surcharge" as established by the Environmental Quality Commission to be collected on solid waste generated out-of-state to be paid beginning January 1, 1991. The Department will adopt the surcharge for out-of-state waste during a separate rulemaking procedure.

3. Use of funds generated by the fee.

o Comment: Funds resulting from the fee should be returned to counties to support local efforts in waste reduction and solid waste planning.

o Response: The proposed rule does not deal with use of the funds. However, support for local recycling and solid waste planning efforts is one of the uses established by statute for the fee.

o Comment: Household hazardous waste collection activities should not be funded from the fee.

o Response: The statute specifically establishes household hazardous waste collection as one of the purposes for which the fee is to be used.

o Comment: Funding for household hazardous waste should be channelled to localities that are operating unlined sites, to assist them in removal of household hazardous wastes.

o Response: The proposed rule does not deal with use of the funds.

4. Other comments on the fee.

o Comment: Payment of fees should not begin until July 1, 1991, thereby giving counties time to give reasonable notice to raise rates.

o Response: Small landfills (accepting under 1,000 tons of waste annually) would not have to remit the fee to the Department until July 1, 1991. However, the statute requires the fee to be collected beginning on July 1, 1990.

o Comment: Counties should be allowed to keep part of the fee to cover their administrative costs of collecting the fee.

o Response: That is not one of the allowable uses to which the fee may be put under statute.

o Comment: How will the fee affect counties which currently charge no fee for solid waste disposal?

o Response: These counties will be required to submit a fee, just as they are required to submit annual compliance fees under current rule. In most cases, these counties have very small disposal sites and will use the population conversion rate to pay the annual per-ton fee.

o Comment: How will the fee be calculated for landfills which currently neither weigh their solid waste nor keep track of cubic yardage?

o Response: In such cases the rule allows the fee to be based on one ton per resident in the service area of the disposal site, unless the permittee demonstrates a more accurate estimate.

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: April 6, 1990
Agenda Item: I
Division: Air Quality
Section: Planning & Development

SUBJECT:

Chlorofluorocarbons (CFCs) and Halons: Proposed New Rules to Establish Finding that Equipment for Recycling CFCs in Automobile Air Conditioners is Available and Affordable

PURPOSE:

Authorize Public Hearings on proposed rules to implement and enforce ORS 468.612-621 for the reduction and recycling of certain chlorofluorocarbons.

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 ___
Other: Determination Of Availability and Affordability of Automobile Air Conditioner Coolant Recycling Equipment — 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:

ORS 468.612 to 621 (Attachment D) contains four distinct provisions relating to the control of chlorofluorocarbons and halons.

1) Prohibits the sale of certain products (i.e. foam packaging, fire extinguishers, noisemakers, coolants and cleaners) which contain chlorofluorocarbons and halons.
Wholesale: Effective July 1, 1990
Retail: Effective January 1, 1991

2) Directs the Environmental Quality Commission (EQC, Commission) to make a determination that equipment for the recovery and recycling of chlorofluorocarbons used in automobile air conditioners is available and affordable. No timeframe is established for this determination.

3) Starts a clock, once the determination is made, which gives businesses one year to begin using this equipment when installing, servicing or otherwise handling auto air conditioners. Smaller repair shops are given an additional year to comply.

4) Directs the Environmental Quality Commission to establish standards for the equipment and to implement and enforce a program to carry out the purposes of the statute.

The Department of Environmental Quality (DEQ, Department) is proposing rules which will establish standards for automobile air conditioner coolant recovery and recycling equipment, and define the Civil Penalty Matrix and Class of any violation of the CFC statutes or rules.

The Commission is being asked to authorize rulemaking hearings to gather public comment on the proposed rules and also on the determination of the availability and affordability of recovery and recycling equipment, which will be incorporated into the rules. The Commission will be required to make a finding of availability and affordability concurrent with rule adoption.

AUTHORITY/NEED FOR ACTION:

X	Required by Statute: ORS 468.612 - 621 Enactment Date: October 3, 1989	Attachment D
___	Statutory Authority: _____	Attachment ___
___	Pursuant to Rule: _____	Attachment ___
___	Pursuant to Federal Law/Rule: _____	Attachment ___
___	Other:	Attachment ___
___	Time Constraints: (explain)	

DEVELOPMENTAL BACKGROUND:

___	Advisory Committee Report/Recommendation	Attachment ___
___	Hearing Officer's Report/Recommendations	Attachment ___
___	Response to Testimony/Comments	Attachment ___
___	Prior EQC Agenda Items: (list)	Attachment ___
X	Other Related Reports/Rules/Statutes: OAR 340-12-026 through -080 "Enforcement Procedure and Civil Penalties"	Attachment ___
X	Supplemental Background Information	Attachment E

Stratospheric Ozone Depletion - Background Document

Evidence has shown that the release of chlorofluorocarbons and halons to the atmosphere is destroying the Earth's protective stratospheric ozone layer. This has broad and serious implications for human health, and the biosphere in general. Regulatory activity to control these emissions is being taken at state, national and international levels.

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

1. While the rules have no impact on the general public, the statute will have an impact because certain products containing CFCs and halons will no longer be sold. Alternative products not containing these stratospheric ozone depleting chemicals are either currently available, or being developed, in response to an international agreement to reduce their use. The potential impact on wholesalers and retailers who violate the statute is significant because of the amendments to the enforcement rules.

2. Photographic or electronics hobbyists will be affected when the product sales prohibitions in the statute go into effect in July 1990. Again, alternative products are, or soon will be, available. People who do their own auto repair will not be able to purchase small containers of CFC-12 to recharge auto air conditioners,

and will likely go to repair shops where it will cost more for the repair.

3. Auto repair facilities will be most affected by the recycling rules. They will be required to invest in new equipment in order to continue servicing air conditioner systems. While the equipment will pay for itself in most cases through cost savings on CFC purchases, the initial expenditure may cause some shops to stop doing this type of work.

4. There is some ambiguity in the statute which affects the applicability of the proposed rules. By saying "no person engaging in the business of installing. . . " the law implies that only commercial entities are covered by the requirement. However, the Legislative findings, and the definition of "person" commonly used in ORS 468, suggest that other entities should be included. The Department is interpreting "no person engaging in the business of installing. . . " to include Federal, State, and Local government agencies.

PROGRAM CONSIDERATIONS:

The statute allows the Department to establish a program to implement and enforce these rules, but provides no funding. As existing resources allow, the Department will provide information to the general public and to the regulated community, and will implement and enforce the rules. If necessary, funding may be sought from the Environmental Protection Agency (EPA) to provide temporary enforcement support.

Since selling certain CFC and Halon-containing products at wholesale will be prohibited beginning July 1, 1990, it is desirable to have enforcement procedures in place at that time.

DESCRIPTION OF PROPOSED REGULATIONS AND ALTERNATIVES CONSIDERED:

The proposed rules will require persons who install, service, repair, dispose of, or otherwise treat automobile air conditioners to recover and recycle CFC-12 coolant using approved equipment and procedures. These rules (according to statute) will become effective for larger repair facilities one year after the Commission determines that such equipment is available and affordable. Smaller facilities are given an additional year to comply. Also proposed are rules specifying the classification of violations of CFC statutes and rules.

The Department is proposing that the Commission determine that equipment for the recovery and recycling of automobile air conditioner coolant is available and affordable (Attachment C).

The alternatives for the Commission to consider are:

1. The Commission can determine that equipment is available and affordable based on information provided solely by the Department today, without public comment, and authorize rulemaking hearings on the proposed rules. The proposed rules, if adopted, would then go into effect one year from this date.

2. The Commission can authorize rulemaking hearings on the proposed rules and accept public comment on the determination that equipment is available and affordable at the same time. The determination would then become part of the rule, and the recycling requirements would go into effect one year from rule adoption.

3. The Commission can withhold authorization of rulemaking hearings on the proposed rules, ask for public comment on the determination of "available and affordable", and make that determination at a later date.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that public comment be accepted on the determination of "available and affordable" during the public comment period on the proposed rules. Although not required by the statute, it ties the determination together with the proposed rules and allows affected parties and the general public an opportunity to provide additional information and participate in the determination process. It will only delay the effective date of these recycling rules by about two months and does not exceed any deadlines established by the statute.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The proposed rules are consistent with Legislative policy as specifically embodied in ORS 468.614, and more generally in the Toxics Use Reduction and Hazardous Waste Reduction Act of 1989 (ORS 465.003 through 037). They are also consistent with agency policy and with the strategic plan, to encourage pollution prevention and waste minimization.

ISSUE FOR COMMISSION TO RESOLVE:

Should the Commission establish standards for recycling equipment, and make the determination of equipment availability and affordability at the same time, or in separate steps?

INTENDED FOLLOWUP ACTIONS:

- o File public hearing notice with the Secretary of State.
- o Hold a public hearing.
- o Evaluate and respond to oral and written testimony and revise proposed rules as appropriate.
- o Submit final rules to Commission for adoption at the June 1990 meeting.

Approved:

Section: _____

Division: _____

Director: _____

Report Prepared By: Gregg E. Lande

Phone: 229-6411

Date Prepared: March 20, 1990

GEL:a
PLAN\AH3051
3/20/90

CHAPTER 340, DIVISION 22
CONTROL OF OZONE DEPLETING CHEMICALS

PURPOSE AND APPLICABILITY

340-22-405 The purpose of these rules is to reduce the use of stratospheric ozone depleting chemicals, to recycle those chemicals already in use, and to encourage the use of less dangerous chemicals. The Environmental Quality Commission having determined that equipment for the recovery and recycling of chlorofluorocarbons from automobile air conditioners is affordable and available, intends that these rules apply to persons handling automobile air conditioners.

DEFINITIONS

340-22-410 As used in these rules, unless otherwise required by context:

(1) "Automobile" means any self-propelled motor vehicle used for transporting persons or commodities on public roads.

(2) "Chlorofluorocarbons (CFC)" includes:

(a) CFC-11 (trichlorofluoromethane);

(b) CFC-12 (dichlorodifluoromethane);

(c) CFC-113 (trichlorotrifluoroethane);

(d) CFC-114 (dichlorotetrafluoroethane); and

(e) CFC-115 ((mono)chloropentafluoroethane).

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

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

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

(6) "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.

REQUIREMENT FOR RECYCLING AUTOMOBILE AIR CONDITIONING COOLANT

340-22-415 (1) Except as provided in section (2) no person shall engage in the business of installing, servicing, repairing, disposing of, or otherwise treating automobile air conditioners after June 30, 1991 without recovering and recycling CFC.

(2) Any automobile repair shop that has

(a) fewer than four employees; or

(b) fewer than three covered bays shall comply with the provisions of section (1) after June 30, 1992.

(3) Only recovery and recycling equipment that is certified by Underwriters Laboratory (UL) as meeting the requirements and specifications of UL1963 and the Society of Automotive Engineers (SAE) standards, J1990 and J1991, or other requirements and specifications determined by the Department as being equivalent, shall be used.

(4) All recovery and recycling equipment shall be operated and maintained at full efficiency and effectiveness according to the manufacturer's directions and guidelines contained in SAE standard J1989.

CHAPTER 340, DIVISION 12

ENFORCEMENT PROCEDURE AND CIVIL PENALTY

(The amount of any civil penalty for the following violations, related to air quality statutes and rules, shall be determined through the use of the $10,000 matrix in conjunction with the formula contained in OAR 340-12-045.)

AIR QUALITY CLASSIFICATION OF VIOLATIONS
340-12-050 (2) Class Two:

(a) Allowing discharges of a magnitude that, though not actually likely to cause an ambient air violation, may have endangered citizens;

(b) Exceeding emission limitations in permits or rules;

(c) Exceeding opacity limitations in permits or rules;

(d) Violating standards for fugitive emissions, particulate deposition, or odors in permits or rules;

(e) Illegal open burning, including stack burning, which poses a moderate risk of harm to public health or the environment;

(f) Failure to report upset or breakdown of air pollution control equipment, or an emission limit violation;

(g) Violation of a work practice requirement for asbestos abatement projects which are not likely to result in public exposure to asbestos or release of asbestos into the environment;

(h) Improper storage of friable asbestos material or asbestos-containing waste material from an asbestos abatement projects which is not likely to result in public exposure to asbestos or release of asbestos into the environment;

(i) Violation of a disposal requirement for asbestos-containing waste material which is not likely to result in public exposure to asbestos or release of asbestos into the environment;

(j) Conduct of an asbestos abatement project by a contractor not licensed as an asbestos abatement contractor;

(k) Failure to provide notification of an asbestos abatement project;

(l) Failure to display permanent labels on a certified woodstove;

(m) Alteration of a certified woodstove permanent label;

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

(o) Failure to file a Notice of Construction or permit application;

(p) Failure to submit a report or plan as required by permit;

(q) Failure to actively extinguish all flames and major smoke sources from open field burning when prohibition conditions are imposed by the Department or when instructed to do so by an agent or employe of the Department;

(r) Causing or allowing a propane flaming operation to be conducted in a manner which causes or allows open flame to be sustained;

(s) ~~[Any other violation related to air quality which poses a moderate risk of harm to public health or the environment.]~~ Installing, servicing, repairing, disposing of or otherwise treating automobile air conditioners without recovering and recycling chlorofluorocarbons using approved recovery and recycling equipment.

(t) Selling, or offering to sell, or giving as a sales inducement any aerosol spray product which contains as a propellant any compound prohibited under ORS 468.605.

(u) Selling any chlorofluorocarbon or halon containing product prohibited under ORS 468.616.

(v) Any other violation related to air quality which poses a moderate risk of harm to public health or the environment.

PLAN\AH3046
3/16/90

STATEMENT OF NEED FOR RULEMAKING

Legal Authority

ORS 468.600 to 621: Chlorofluorocarbons (CFC) and Halon Control

OAR 340-12: Enforcement Procedure and Civil Penalties

Need for the Rule

The 1989 Legislature, finding that chlorofluorocarbons and halons are being unnecessarily released to the atmosphere and destroying the Earth's protective ozone layer, directed the Commission to determine if equipment for the recovery and recycling of chlorofluorocarbons used in automobile air conditioners is available and affordable. If so, the Commission is to establish by rule standards for approved equipment for use in recovering these stratospheric ozone destroying substances, and to enforce these rules as well as prohibitions on the sale of certain products containing CFC and halons.

Principle Documents Relied Upon

ORS 468.612 to 621 CHLOROFLUOROCARBON AND HALON CONTROL

Fiscal Impact Statement

Impact on State Agencies: No additional funding was provided by the Legislature to implement or enforce these rules. Implementation of some funded programs will only be slightly delayed in order to allow implementation of Chlorofluorocarbon and Halon control.

Impact on Local Agencies: None

Impact on General Public: The prohibition on sale of some products (contained in the statute) will mean that consumers will not be able to service their own automobile air conditioners. Servicing at businesses with the required recycling and recovery equipment may be more expensive in some cases, although it will be difficult to adequately identify this effect since the cost of the coolant is rapidly rising.

Current cost for do-it-yourself coolant recharge	$ 4.50
1991 est. cost for do-it-yourself coolant recharge	$ 5.50
Current cost for coolant recharge at a shop	$40- 50
1991 est. cost for coolant recharge at a shop with recycling equipment	$40-75

Impact on Affected Businesses: The initial cost of purchasing required recycling and recovery equipment will range from $2400 to $7000. Operation and maintenance costs are estimated to be about 10% of this amount. This may cause about 40% of the businesses to evaluate whether they will continue to offer automobile air conditioner service.

Recycling of CFC-12 coolant provides a means for recovering the cost of purchase and maintenance of this equipment. With an average coolant cost per job of $20, repair shops doing over 100 jobs a year will save money. Smaller shops will recover their equipment cost to lesser degrees through coolant recycling and about 10% may be forced to pass this cost (as much as a $25 increase) on to the consumer.

Land Use Consistency Statement

The proposed rules have no impact on, and are consistent with, land use plans.

PLAN\AH3045
3/16/90

DETERMINATION OF AVAILABILITY AND AFFORDABILITY AUTOMOBILE AIR CONDITIONER COOLANT RECYCLING EQUIPMENT

ISSUE:

ORS 468.612 to 621 requires a determination by the Environmental Quality Commission that automobile air conditioner coolant recovery and recycling equipment is "available and affordable". This determination is the trigger which initiates the Department's major responsibilities under the statute, i.e. rules specifying the standards for this equipment and its use, and a program for implementation and enforcement.

BACKGROUND INFORMATION:

Recycling Equipment Standards

Developments at the national level have provided much of the information necessary to make this determination. A task force made up of the Automobile Manufacturer's Association, the Environmental Protection Agency, and the Mobile Air Conditioning Society (MACS) agreed on standards for cleanliness for recycled coolant. Based on this agreement the Society of Automotive Engineers (SAE) adopted J1989 which provides service guidelines for technicians, J1990 which provides equipment specifications for the CFC-12 coolant recycling machines, and J1991 which provides specifications for the purity of recycled CFC-12. These purity standards are:

Moisture	15 ppm by weight
Refrigerant Oil	4000 ppm by weight
Non-condensable gases(air)	330 ppm by weight

The task force gave the Underwriter's Laboratory (UL) the task of testing recycling machines to determine if the cleaned coolant met the SAE J1991 standards, and also if the machines were built to SAE specifications. UL incorporated the SAE requirements along with standard safety requirements into a document (Subject 1963) which outlines procedures for testing the recycling equipment. The Department is prepared to consider equipment that meets UL Subject 1963 as acceptable for recycling CFC-12 coolant in Oregon.

Availability

To date the Department is aware of four manufacturers, and seven models, which have received UL approval for auto air conditioner coolant recycling equipment as shown below.

Manufacturer	Model #	Suggested Retail Price	Back Order
Murray	Air Tune 5000	$7000	1 week
	Air Tune 1100	$2400	2 weeks
Robinair	Model 17300	$3395	in stock
	Model 17350	$3595	in stock
	Model 17400 (available mid-May)	$3095	4 weeks
White	Model 01050	$2933	30 weeks
Draf	Model 1400	$3295	8 weeks

This equipment is available through distributors in Oregon or can be obtained directly from the manufacturer. Some of the major car manufacturers have required their dealerships to purchase this equipment. The Department's survey indicates that in the Portland area over 50% of the dealerships already have units.

There has been some concern that demand for this equipment on a nationwide scale may make it difficult to obtain within the required one year period. The current back order status of each model demonstrates that there is ample time for a shop to make a decision, place an order, and receive delivery within a year. As other States and the Federal government adopt requirements for this equipment demand will increase significantly. The sooner businesses in Oregon begin to purchase this equipment the less likely delivery times will be a problem.

Affordability

One significant, and complicating factor, in this determination is that the cost of CFC will be rising: first, because production will level off and then decline as a result of the international agreement; and second, because of new Federal taxes. Many businesses will be adversely impacted by this effect which may possibly stop their air conditioner repair activity, even without requirements for recycling equipment.

CFC-12 coolant prices were obtained from two of the largest jobbers for air conditioner supplies in Portland and are shown below.

Outlet	Spring 88		Spring 89		Winter 90	
	15#	30#	15#	30#	15#	30#
Johnstone Supply	---	---	---	---	$63.60	$114.60
Grainger WW Inc.	$24.44	$36.34	$28.12	$44.65	$72.94	$128.90

The price per pound of CFC-12, in the 30 pound containers, at Grainger WW Inc. increased from $1.21 in 1988 to a current price of $4.29. As discussed previously, this price increase likely occurred from two sources. Beginning in August 1989 a 15-20% cut back in production of CFC occurred when EPA imposed the requirements of the Montreal Protocol. This cut in supply was anticipated by suppliers who raised their prices by 23% between 1988 and 1989. These price increases led to the imposition of a Federal "windfall profits" tax on CFC of $1.37 beginning on January 1, 1990 under the Omnibus Budget Reconciliation Act of 1989 which raised the price further.

The future of CFC-12 pricing is all "up". The Federal tax is scheduled to go up to $1.67 in 1992 and to $2.65 in 1993 or 1994. After 1994 the tax will increase by $0.45/year. In 1993, a 20% cut back in CFC production from current levels is scheduled. A conservative cost projection based on only a 20% increase per year above tax increases is shown below.

Year	Cost per Pound
Current	$4.29
1991	$5.10
1992	$6.42
1993	$8.70

Other factors which must be considered in determining if recycling equipment is affordable include: cost and expected life of the machines; number of air conditioner jobs done by the shop; size of the repair market and elasticity of the cost to the consumer.

Sie Oulouhojian, spokes-person for the Mobile Air Conditioning Society (MACS) indicated that the expected machine life was 3-5 years and that newer models would probably make older ones obsolete in 3 years. For calculation purposes a conservative machine life of 3 years was used.

As the table of available models shows, the cost of the equipment ranges from $2400 to $7000. The most expensive model provides electronic diagnostics on the air conditioner being serviced, while the least expensive simply recovers and cleans the coolant for later reuse. Eliminating the highest priced model, because of its added features, results in an average cost for the basic equipment of about $3200. Adding 10% per year for maintenance brings the cost over the 3 years to about $4200.

Use of this equipment will reduce the cost of purchasing increasingly expensive CFC. Therefore, the number and type of jobs done by a shop will have a major impact on the affordability of this equipment. The Department's survey of shops working on automobile air conditioners indicates that a variety of businesses are involved in this work and that the number of jobs done can vary considerably. This makes it necessary to consider several classes of repair shops when determining affordability.

Several assumptions are common to all the calculations:

Equipment purchased by July 1991
Useful life of equipment is 3 years
Equipment Cost of $4200
Average coolant used per vehicle of 3 pounds
Average CFC-12 cost of $6.74 per pound

Using these values it is estimated that a shop would need to do about 200 jobs to get complete payback on the equipment within its useful lifetime (assuming no price increases for service).

Category 1 - Shops doing more than 100 jobs a year.

Based on the survey data 80% of the specialty auto air conditioner shops, 30% of the dealerships, and a small percentage of other shops will fall in this category. These businesses will pay for the equipment in about two years and profit from their reduced purchase of CFC-12. Capital outlay should not be significant.

Category 2 - Shops doing between 50 and 100 jobs a year.

The remaining specialty shops, 40% of the dealerships, and 20-30% of the service station and small shops fall into this category. These businesses will probably not profit from recycling coolant but will probably pay for the machine over its useful life. They may easily defer purchase of newer models. The initial capital outlay should not cause significant economic hardship for these businesses.

Category 3 - Shops doing less than 50 jobs a year.

About one-third of the dealership shops and two-thirds of the non-dealership shops and service stations appear to fall into this category. Thirty to forty percent of these smaller shops simply recharge coolant. All of these businesses would need to raise their prices to recover the added expense of the equipment. In some cases the initial capital outlay may be significant.

Two scenarios can be considered. In larger markets competition would prevent raising prices to pay for the equipment and cause these some shops to stop doing this work, while others could make up the loss in other aspects of the business. In smaller markets price increases may be possible and the equipment costs would then be passed on to the consumer.

The impact this might have on consumer prices was then estimated. About 20% of the shops surveyed do less than 20 jobs a year. In three years they would recover only about $1200 in CFC purchase costs.

20 jobs/yr x CFC @ $20/job x 3 years = $1200

To pay the $4200 equipment cost they would have to charge an additional $50 for each job.

20 jobs/yr x $50/job x 3 years = $3000

As part of its survey the Department gathered information on the cost of various types of automobile air conditioner repairs. About 50% of the jobs being done are relatively minor, either flushing or routine maintenance. These repairs cost on the order of $50 to $100 dollars. Adding $50 to the cost of this type of repair is clearly significant. Whether this level of cost increase will be accepted by the consumer is unknown.

Tax Credits

Both the Department of Environmental Quality and the Department of Energy (DOE) have tax credit programs available to help these small businesses recover some of the cost of this equipment. The DOE program provides a tax credit of 30% of the cost of recycling equipment. The full credit applies to the year of purchase, without reductions for any savings the equipment might provide. However, DOE's program has limited funding and DEQ would have to petition DOE to place automobile air conditioner coolant recycling machines on their list of qualifying equipment.

Automobile air conditioner coolant recycling equipment can be considered for the DEQ tax credit program either through Air Quality, as air pollution control, or through Hazardous Waste, as recycling. Both programs offer a 50% tax credit with reduction for any cost savings provided by the machines. Credits would be apportioned annually over the useful life of the equipment. The Department's Management Service Division has tentatively approved considering this equipment under the Hazardous Waste recovery and reuse program.

It is estimated that by applying this 50% credit to the calculated price increases shown above the cost to the consumer could be halved.

CONCLUSION:

The information presented demonstrates that equipment for the recovery and recycling of automobile air conditioner coolant is available. This equipment can be purchased from at least four manufacturers. Several of the major car manufacturers' dealerships in Oregon are already purchasing this equipment. Delivery can be accomplished within a matter of weeks for most models.

Equipment currently on the market is affordable, ranging in price from $2400 to $7000. Recycling of CFC-12 coolant provides a means for recovering the cost of purchase and maintenance of this equipment. Repair shops doing over 100 jobs a year will save money. Smaller shops will recover their equipment cost to lesser degrees through coolant recycling and some may be forced to pass this cost on to the consumer.

In considering the effect of tax credit availability it is estimated that over 60% of the businesses currently servicing automobile air conditioners will recover equipment costs through savings on CFC purchases. An additional 30% will recover their costs utilizing the tax credit. The remainder may need to increase the costs to their customers by as much as $25 for routine services currently costing $50 to $100.

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468.565 Compliance with state standards required; hearing; notice. (1) The commission may require that necessary corrective measures be undertaken within a reasonable time if, after hearing, it finds that:

(a) A regional authority has failed to establish an adequate air quality control program within a reasonable time after its formation; or

(b) An air quality control program in force in the territory of a regional authority is being administered in a manner inconsistent with the requirements 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.

(2) Notice of the hearing required under subsection (1) of this section shall be sent to the regional authority not less than 30 days prior to the hearing.

(3) If the regional authority fails to take the necessary corrective measures within the time required, the commission shall undertake a program of administration and enforcement of the air quality control program in the territory of the regional authority. The program instituted by the commission shall supersede all rules, standards and orders of the regional authority.

(4) If, in the judgment of the commission, a regional authority is able to requalify to exercise the functions authorized in ORS 468.535, the commission shall restore those functions to the regional authority and shall not exercise the same functions in the territory of the regional authority. [Formerly 449.905]

468.570 Payment of costs of services to authority by state. Any consultation and services provided to regional authorities or local air quality control programs by the commission may be paid for either from funds appropriated to the commission or under agreements between the parties on a reimbursable basis. [Formerly 449.915]

468.575 State aid. (1) Subject to the availability of funds therefor:

(a) Any air quality control program conforming to the rules of the commission and operated by not more than one unit of local government shall be eligible for state aid in an amount not to exceed 30 percent of the locally funded annual operating cost thereof, not including any federal funds to which the program may be entitled.

(b) Any air quality control program exercising functions operated by a regional authority shall be eligible for state aid in an amount not to exceed 50 percent of the locally funded annual operating cost thereof, not including any federal funds to which the program may be entitled.

(2) Applications for state funds shall be made to the commission and funds shall be made available under subsection (1) of this section according to the determination of the commission. In making its determination, the commission shall consider:

(a) The adequacy and effectiveness of the air quality control program.

(b) The geographic and demographic factors in the territory under the program.

(c) The particular problems of the territory under the program.

(3) In order to qualify for any state aid and subject to the availability of funds therefor, the local government or the regional authority must submit all applications for federal financial assistance to the commission before submitting them to the Federal Government.

(4) When certified by the commission, claims for state aid shall be presented for payment in the manner that other claims against the state are paid. [Formerly 449.920]

468.580 Payment of certain court costs not required. A regional authority shall not be required to pay any filing, service or other fees or furnish any bond or undertaking upon appeal or otherwise in any action or proceedings in any court in this state in which it is a party or interested. [Formerly 449.923]

AEROSOL SPRAY CONTROL

468.600 Findings. The Legislative Assembly finds that:

(1) Scientific studies have revealed that certain chlorofluorocarbon compounds used in aerosol sprays may be destroying the ozone layer in the earth's stratosphere;

(2) The ozone layer is vital to life on earth, preventing approximately 99 percent of the sun's mid-ultraviolet radiation from reaching the earth's surface;

(3) Increased intensity of ultraviolet radiation poses a serious threat to life on earth including increased occurrences of skin cancer, damage to food crops, damage to phytoplankton which is vital to the production of oxygen and to the food chain, and unpredictable and irreversible global climatic changes;

(4) It has been estimated that production of ozone destroying chemicals is increasing at a rate of 10 percent per year, at which rate the ozone layer will be reduced 13 percent by the year 2014;

(5) It has been estimated that there has already been one-half to one percent depletion of the ozone layer;

(6) It has been estimated that an immediate halt to production of ozone destroying chemicals would still result in an approximate three and one-half percent reduction in ozone by 1990; and

(7) There is substantial evidence to believe that inhalation of aerosol sprays is a significant hazard to human health. [1975 c.366 §1]

Note: 468.600 and 468.605 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.

468.605 Prohibition on sale or promotion; exemption from medical use. (1) Unless otherwise provided by law, after March 1, 1977, no person shall sell or offer to sell or give as a sales inducement in this state any aerosol spray which contains as a propellant trichloromonofluoromethane, difluorodichloromethane or any other saturated chlorofluorocarbon compound not containing hydrogen.

(2) Nothing in this section prohibits the sale of any aerosol spray containing any propellant described in subsection (1) of this section if such aerosol spray is intended to be used for a legitimate medical purpose in the treatment of asthma or any respiratory disorder; or such aerosol spray is intended to be used for a legitimate medical purpose and the State Board of Pharmacy determines by administrative rule that the use of the aerosol spray is essential to such intended use. [1975 c.366 §2; 1977 c.18 §1; 1977 c.206 §1; 1983 c.148 §1]

Note: See note under 468.600.

468.610 Wholesale transactions permitted. Nothing in ORS 468.605 shall prevent wholesale transactions, including but not limited to the transportation, warehousing, sale, and delivery of any aerosol spray described in ORS 468.605 (1). [1977 c.206 §4]

CHLOROFLUOROCARBONS AND HALON CONTROL

468.612 Definitions for ORS 468.614 to 468.621. As used in ORS 468.614 to 468.621:

(1) "Chlorofluorocarbons" includes:

(a) CFC-11 (trichlorofluoromethane);

(b) CFC-12 (dichlorodifluoromethane);

(c) CFC-113 (trichlorotrifluoroethane);

(d) CFC-114 (dichlorotetrafluoroethane); and

(e) CFC-115 ((mono)chloropentafluoroethane).

(2) "Halon" includes:

(a) Halon-1211 (bromochlorodifluoroethane)

(b) Halon-1301 (bromotrifluoroethane); and

(c) Halon-2402 (dibromotetrafluoroethane). [1989 c.903 §2]

468.614 Legislative findings. (1) The Legislative Assembly finds and declares that chlorofluorocarbons and halons are being unnecessarily released into the atmosphere, destroying the Earth's protective ozone layer and causing damage to all life.

(2) It is therefore declared to be the policy of the State of Oregon to:

(a) Reduce the use of these compounds;

(b) Recycle these compounds in use; and

(c) Encourage the substitution of less dangerous substances. [1989 c.903 §3]

468.615 [1977 c.206 §2; repealed by 1987 c.414 §172]

468.616 Restrictions on sale, installation and repairing of items containing chlorofluorocarbons and halon. (1) After July 1, 1990, no person shall sell at wholesale, and after January 1, 1991, no person shall sell any of the following:

(a) Chlorofluorocarbon coolant for motor vehicles in containers with a total weight of less than 15 pounds.

(b) Hand-held halon fire extinguishers for residential use.

(c) Party streamers and noisemakers that contain chlorofluorocarbons.

(d) Electronic equipment cleaners, photographic equipment cleaners and disposable containers of chilling agents that contain chlorofluorocarbons and that are used for noncommercial or nonmedical purposes.

(e) Food containers or other food packaging that is made of polystyrene foam that contains chlorofluorocarbons.

(2)(a) One year after the Environmental Quality Commission determines that equipment for the recovery and recycling of chlorofluorocarbons used in automobile air conditioners is affordable and available, no person shall engage in the business of installing, servicing, repairing, disposing of or otherwise treating automobile air conditioners without recovering and recycling chlorofluorocarbons with approved recovery and recycling equipment.

(b) Until one year after the operative date of paragraph (a) of this subsection, the provisions of paragraph (a) of this subsection shall not apply to:

(A) Any automobile repair shop that has fewer than four employees; or

(B) Any automobile repair shop that has fewer than three covered bays.

(3) The Environmental Quality Commission shall establish by rule standards for ap-

proved equipment for use in recovering and recycling chlorofluorocarbons in automobile air conditioners. [1989 c.903 §4]

468.618 Department program to reduce use of and recycle compounds. Subject to available funding, the Department of Environmental Quality may establish a program to carry out the purposes of ORS 468.612 to 468.621, including enforcement of the provisions of ORS 468.616. [1989 c.903 §5]

468.620 [1977 c.206 §3; repealed by 1987 c.414 §172]

468.621 State Fire Marshal; program; halons; guidelines. The State Fire Marshal shall establish a program to minimize the unnecessary release of halons into the environment by providing guidelines for alternatives to full-scale dump testing procedures for industrial halon-based fire extinguishing systems. [1989 c.903 §6]

WOODSTOVE EMISSIONS CONTROL

468.630 Policy. In the interest of the public health and welfare it is declared to be the public policy of the state to control, reduce and prevent air pollution caused by woodstove emissions. The Legislative Assembly declares it to be the public policy of the state to reduce woodstove emissions by encouraging the Department of Environmental Quality to continue efforts to educate the public about the effects of woodstove emissions and the desirability of achieving better woodstove emission performance and heating efficiency. [1983 c.333 §4]

468.635 Prohibited acts relating to uncertified and unlabeled woodstove. On and after July 1, 1986, a person may not advertise to sell, offer to sell or sell a new woodstove in Oregon unless:

(1) The woodstove has been tested to determine its emission performance and heating efficiency;

(2) The woodstove is certified by the department under the program established under ORS 468.655 (1); and

(3) An emission performance and heating efficiency label is attached to the woodstove. [1983 c.333 §8]

468.640 Evaluation of woodstove emission performance; fee. (1) After July 1, 1984, a woodstove manufacturer or dealer may request the department to evaluate the emission performance of a new woodstove.

(2) The commission shall establish by rule the amount of the fee that a manufacturer or dealer must submit to the department with each request to evaluate a woodstove.

(3) A new woodstove may be certified at the conclusion of an evaluation and before July 1, 1986, if:

(a) The department finds that the emission levels of the woodstove comply with the emission standards established by the commission; and

(b) The woodstove manufacturer or dealer submits the application for certification fee established by the commission under ORS 468.655 (1).

(4) As used in this section, "evaluate" means to review a woodstove's emission levels as determined by an independent testing laboratory, and compare the emission levels of the woodstove to the emission standards established by the commission under ORS 468.655 (1). [1983 c.333 §7]

468.645 Used woodstoves exempt from prohibition on sale. (1) The provisions of ORS 468.275, 468.290 and 468.630 to 468.655 do not apply to a used woodstove.

(2) As used in this section, "used woodstove" means any woodstove that has been sold, bargained, exchanged, given away or has had its ownership transferred from the person who first acquired the woodstove from the manufacturer or the manufacturer's dealer or agency, and so used to have become what is commonly known as "second hand" within the ordinary meaning of that term. [1983 c.333 §9]

468.650 Use of net emission reductions in airshed. The commission shall use a portion of the net emission reductions in an airshed achieved by the woodstove certification program to provide room in the airshed for emissions associated with commercial and industrial growth. [1983 c.333 §10]

468.655 Standards and certification program; fee; advisory committee. (1) Before July 1, 1984, the commission shall establish by rule:

(a) Emission performance standards for new woodstoves;

(b) Criteria and procedures for testing a new woodstove for compliance with the emission performance standards;

(c) A program administered by the department to certify a new woodstove that complies with the emission performance standards when tested by an independent testing laboratory, according to the criteria and procedures established in paragraph (b) of this subsection;

(d) A program, including testing criteria and procedures to rate the heating efficiency of a new woodstove;

STRATOSPHERIC OZONE DEPLETION

BACKGROUND DOCUMENT

SENATE BILL 1100

REDUCTION OF CFC/HALON EMISSIONS

(ORS 468.612 to 621 CHLOROFLUOROCARBONS AND HALON CONTROL)

Department of Environmental Quality
Air Quality Division
March 1990

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APPENDIX - REPAIR SHOP SURVEY RESULTS

I. THE OZONE DEPLETION PROBLEM

Introduction

The first "fully halogenated" hydrocarbon was developed by Thomas Midgley Jr, a Frigidaire employee, in 1930 as a non-toxic replacement coolant for refrigerators. It was dichlorodifluoromethane (CFC-12). Commercial production of the chemical began in 1931 by E. I. Du Pont de Nemours & Company. It was Du Pont that at this time provided the trade name "Freon" which is now used universally to represent a CFC-based refrigerant. Only three years later Du Pont began producing CFC-11. Other CFCs were added later, including CFC-113 which became the solvent of choice for the booming computer industry in the 1970s.

Today, five "fully halogenated" hydrocarbons are on the market: CFC-11, CFC-12, CFC-113, CFC-114, and CFC-115. "Fully halogenated" means that what were simple hydrogen and carbon containing compounds have had all of their hydrogen atoms replaced by either chlorine or fluorine atoms. The lack of hydrogen decreases the tendency of these molecules to break apart after they are released to the atmosphere. Halons are also fully halogenated hydrocarbons but differ from CFC in that one of the bonded halogens is bromine. Halons are used primarily in fire prevention, while CFC have a variety of applications.

Initial concern about the deterioration of the ozone in the stratosphere began in about 1970 with questions about release of nitrogen oxides into the stratosphere resulting from the development of supersonic jetliners. In 1971 the U.S Congress voted to terminate subsidies for the development of an American "SST". France, England and the Soviet Union eventually produced only a small number of the supersonic aircraft.

The ozone depletion issue died down until 1973 when Prof. F. Sherwood Rowland and Dr. Mario J. Molina published their research in Nature hypothesizing that CFC have a built-in transport mechanism to enter the stratosphere because of their relative inertness. Once in the stratosphere they are impacted with minimally filtered ultra-violet light. The CFC/Halons are split releasing chlorine atoms which act as a catalyst to destroy stratospheric ozone. Eventually these reactive chlorine atoms will react with other gases (principally methane) forming hydrogen chloride and will drift down and be washed to earth with rain.

The atmospheric lifetime of the CFC and Halons is quite long, as shown in the Table below, meaning that the benefits from emission reductions will not occur immediately.

Compound	Atmospheric Lifetime (Years)
CFC-11	64
CFC-12	108
CFC-113	88
CFC-114	185
CFC-115	380
Halon 1211	25
Halon 1301	110

(Stones in a Glass House, p. 37)

In May 1985 an article in Nature (Farman) provided evidence that stratospheric ozone levels over the Antarctic declined by approximately 40 percent from the late 1970s. The Environmental Protection Agency subsequently presented evidence (Federal Register Vol. 52, No. 239, December 14, 1987) that total ozone depletion of 3 to 5 percent has occurred over the past six years. But EPA believes that this evidence is preliminary and must yet be adequately reviewed and analyzed by the scientific community.

EPA projected that, based on a mid-range estimate of future emission trends, total column ozone would decline by 3.9 percent by 2025 and by 39.9 percent by 2075 (p47493). According to EPA (p47494) any decrease in total column ozone will lead to increased penetration of damaging ultraviolet radiation to the Earth's surface. This increase in ultraviolet radiation is expected to have the following health and environmental effects:

1. Increase of 153 million cases of nonmelanoma skin cancers resulting in 1.5-4.5 million deaths in the U.S. through the year 2075.

2. Increase of 782,100 cases of melanoma skin cancer leading to an increase in fatalities of 187,000 in the U.S. through the year 2075.

3. Increase in the number of cases of cataracts in the U.S. by 18.2 million through the year 2075.

4. Suppression of the immune system leading to potential increases in effect of a wide range of diseases.

5. Damages to plants. Tests have shown that a 25 percent ozone depletion will reduce crop yields up to 25 percent.

6. Damage to aquatic organisms. Increased exposure to UV-B radiation could adversely affect aquatic organisms and potentially disrupt the aquatic food chain. A case study showed that a 10 percent ozone depletion would lead to a 6 percent loss in the larval anchovy population.

7. Accelerated weathering of outdoor plastics.

8. Increased formation of ground level ozone. Ground level ozone would form earlier in the day and nearer to population centers yielding substantial harm to human health and welfare and some impacts on crop loss.

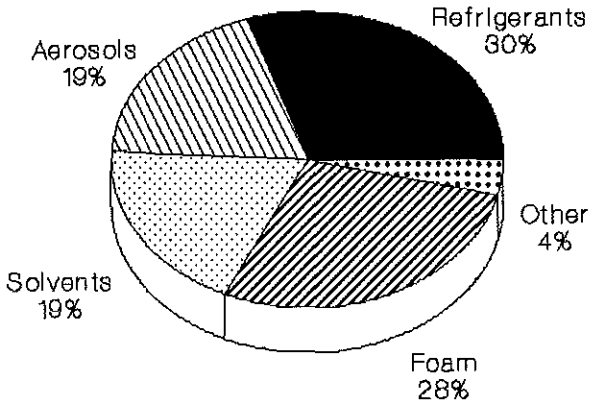
9. Increased greenhouse effects. The resulting ambient temperature increases could affect water resources, agricultural productivity, forests and endangered species.

Production and Use of CFC and Halons

Figure 1 shows World use of CFC and Halons in 1988 as compared to U.S. consumption. The major distinction being the larger percentage of CFC used as aerosols outside the U.S. This is due to the 1978 Federal ban on the use of CFC in all but essential applications (43FR11301, March 17, 1978; 43FR11318, March 17, 1978) which has reduced this CFC application by 95%. During the early 1970s, CFC use as a propellant constituted over 50% of the total CFC consumption in the United States. Oregon led the way in banning CFC propellants in 1977.

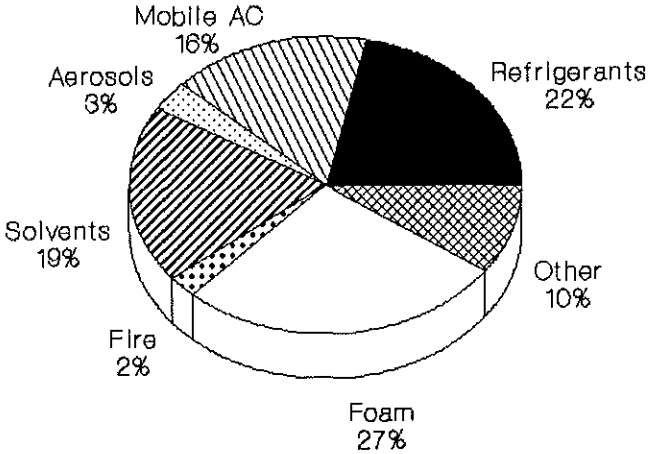
Figure 2 shows use by chemical. Note that CFC-11, CFC-12 and CFC-113 are the dominant ones used. Although Halon use is relatively low, it is from 3-10 times more potent in reducing ozone than CFC-11. This issue of stratospheric ozone depleting potential is becoming an important issue as substitutes and alternatives are being sought. CFC-12 and CFC-114 are equivalent to CFC-11, while CFC-113 and CFC-115 are less potent. Figure 2 also compares the Global Warming potential for this same compounds. The table on the next page presents a more detailed breakdown of uses and chemicals.

World Consumption of CFC
by application



2510 Million pounds

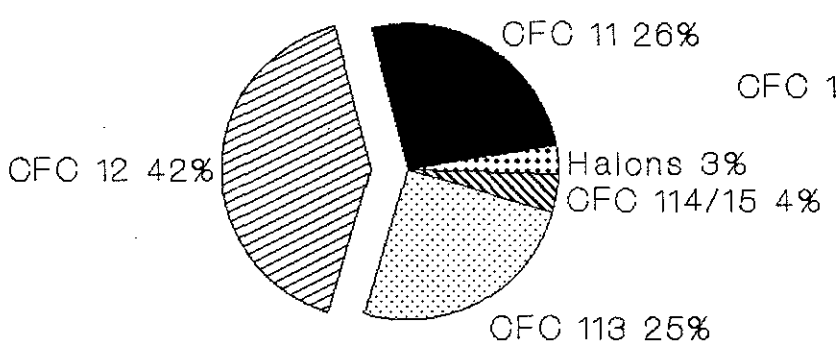
U.S. Consumption of CFC
by application



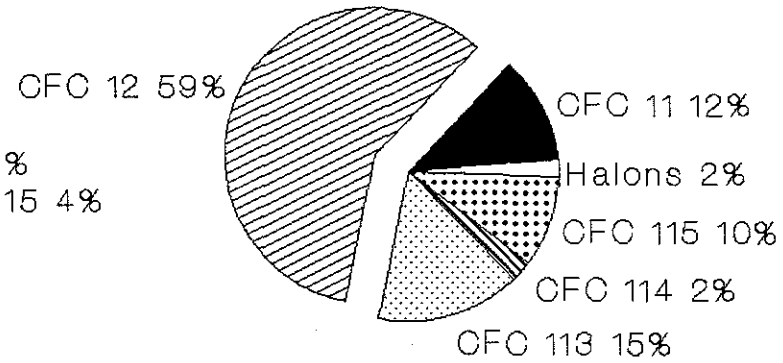
736 million pounds

1988 Usage

CFC and Halon Usage
Comparison of
Global Warming Potential



Usage by Weight



Global Warming Potential

1988 Inventory

Primary Uses of CFCs and Halons

Application	Primary Compound(s) Used and Amount Used in U.S. in 1985 (millions of pounds)		Where or How Used
Stationary air conditioning and refrigeration	CFC-12 CFC-11 CFC-115 CFC-114	68.5 14.5 9.9 2.2	o 45 million homes and most commercial buildings o 100 million refrigerators o 30 million freezers o 180,000 refrigerated o 27,000 refrigerated rail cars o 250,000 restaurants o 40,000 supermarkets o 160,000 other food stores
Mobile air conditioning	CFC-12	120.0	o 90 million cars and light-duty trucks
Plastic foams	CFC-11 CFC-12 CFC-114	150.7 48.2 6.6	o rigid insulation for homes, buildings and refrigerators o flexible foam cushioning o food trays and packaging
Solvents	CFC-113	150.7	o microelectronic circuitry, computers and high-performance air and spacecraft o dry cleaning
Sterilants	CFC-12	26.4	o medical/pharmaceutical
Aerosols	CFC-12 CFC-11	15.6 9.9	o essential uses in solvents, medicines and pesticides
Miscellaneous	CFC-12	22.0	o food freezants for shrimp, fish, fruit and vegetables
Fire extinguishment	Halon 1301 Halon 1211	7.7 6.2	o computer rooms, telephone exchanges storage vaults

Sources: Alliance for Responsible CFC Policy, Environmental Protection Agency and Rand Corp.

II. GOVERNMENT EFFORTS AT REDUCTION OF CFC AND HALONS

International

On September 16, 1987 the United State and 23 other nations signed the Montreal Protocol on Substances that Deplete the Ozone Layer. This agreement requires cutbacks in CFC use and production by the following schedule:

1988 - reduce to 1986 production levels;
1993 - reduce to 80% of 1986 production levels; and
1998 - reduce to 50% of 1986 production levels.

The Montreal Protocol also requires cutbacks in Halon production and use to 1986 levels beginning in 1992. (Federal Register Vol.52, No. 239 Monday, December 14, 1987.)

The Helsinki Declaration on the Protection of the Ozone Layer was signed by a total of 80 nations. Although the Declaration is not binding it does show the cooperative mind-set of many nations, and proposes significant reductions. The Declaration proposes to "phase out the production and the consumption of CFCs controlled by the Montreal Protocol as soon as possible but not later than the yearly 2000" while "taking due account of the special situation of developing countries". It was also agreed to "both phase out halons and control and reduce other ozone-depleting substances which contribute significantly to ozone depletion as soon as feasible." The next meeting is scheduled for April 1990. (Testimony of William Rosenberg, Assistant Administrator for Air and Radiation, U.S. Environmental Protection Agency, Before the Subcommittee on Environmental Protection Committee on Environment and Public Works, U. S. Senate May 19, 1989.)

National

On August 12, 1988 the EPA issued its final rule for implementing the Montreal Protocol (Federal Register Vol. 53, No. 156, Friday August 12, 1988). This action merely implemented the Protocol with little substantive additional actions.

On November 21, 1989 the Congress passed the Omnibus Budget Reconciliation Act of 1989. A small part of this bill was a provision to impose a tax on the sale and use by the manufacturer, producer, or importer of ozone depleting chemicals. The base taxation schedule was:

Year	Base Tax Amount per Pound
1990	$1.37
1992	$1.67
1993 or 1994	$2.65

After 1994 the tax will increase by an additional 45 cents per pound each year.

Amendments to the Clean Air Act currently being debated in the Congress contain some proposed major action for ozone depleting substances. (Summary of S. 1630, Clean Air Legislation as Reported by the Environment and Public Works Committee on November 16, 1989, pp.9-10). These include:

1) "Places the five most destructive CFCs on a production phase-down schedule that tracks the Montreal Protocol . . . and adds an additional step: virtual elimination by not later than 2000".

2) "Where the Protocol will only freeze production of the halons and does not regulate carbon tetrachloride at all, powerful ozone depleters, the provisions of this title puts these chemical on the same phase-out schedule as the most harmful CFCs"

3) "The Montreal Protocol will allow unlimited production and use of other, less potent ozone depleting chemicals such as methyl chloroform and HCFC and, in turn, continue the threat to the ozone layer, the Act will place a limit on the production and use of such chemicals. The text of this provision has been "reserved" and will be offered as a floor amendment.1 The provision will:

   (a) control the production and use of such chemicals to assure that such production and use will not:

      - contribute to an increase in peak chlorine loading;

      - reduce significantly the rate at which the atmospheric abundance of chlorine is projected to decrease on the basis of a year 2000 global phaseout of all halocarbon emissions (the base case); or

      - delay the date by which the average atmospheric concentration of chlorine is projected under the base case to return to a level of 2 parts per billion, the highest concentration at which repair of the Antarctic ozone hole may be possible;

   (b) recognize the fact that achieving the goal of eliminating the potent, long-lived CFCs as rapidly as possible is, to some extent, dependent of the continued availability of HCFC as intermediate substitutes, and

   (c) provide the regulated community with the certainty needed to make investment decisions;

4) Acknowledging that it would be very difficult to eliminate both production and use in the 2000 time frame, the Act requires certain recycling actions:

   (a) "the practice of venting or releasing these chemicals from refrigeration and air conditioning units into the environment will be prohibited as of January 1, 1992;"

   (b) "EPA must promulgate standards to control emissions to the lowest achievable rate, including recapture and recycling regulations by July 1, 1991 and safe disposal regulation by January 1, 1994"

   (c) "specific limitations and controls are prescribed for motor vehicle air conditioning systems", including mandatory recapture and recycling by January 1, 1992 and substitution of other coolants for CFC-12.

5) Twelve months after this Act becomes law, importation of the five most destructive CFCs, halons, and carbon tetrachloride in bulk, or in product, will be prohibited unless EPA certifies that the country of origin is a party to and in compliance with the Montreal Protocol; and persons subject to U.S. jurisdiction will be prohibited from transferring technology or investing in facilities to produce or expand the use of such substance in countries that have not been certified."

In summary, very dramatic actions are currently being considered by the U.S. Congress. The decisions made will significantly impact the actions already taken by Oregon. For instance, if the Federal government requires recycling of auto air conditioner coolant nationwide, then the two programs must be integrated so as not to duplicate or have conflicting activities. If the Federal program has provisions for enforcement, it could compensate for the Departments lack of funding and activity in this area.

Other States

Oregon is one of a large group of states that have imposed, or anticipate, restrictions in 1990 on production and use of CFC and other ozone depleting chemicals. They include:

California	Maryland	North Carolina
Colorado	Missouri	Ohio
Connecticut	Montana	Pennsylvania
Florida	Minnesota	Rhode Island
Iowa	New Jersey	Vermont
Maine	New York	Wisconsin

Restrictions which have been proposed or adopted include:

- Prohibiting sale of CFC for non-essential uses.
- Requiring Warning Labels.
- Prohibiting sale of polystyrene foam containing CFC.
- Prohibiting sale of CFC in small cans.
- Prohibiting sale of home fire extinguishers with halons.
- Requiring recycling equipment for automobile air conditioner coolant.
- Prohibiting registration of autos using CFC as air conditioner coolant.

It is clear that regulation of these substances at both the State and Federal level is rapidly accelerating. As changes occur there will be opportunities to develop programs which compliment and enhance the overall control of these substances. It will also be important to ensure that duplication of effort and conflicting regulations are kept to a minimum.

Oregon

Senate Bill 1100 (now ORS 468.612-21) passed by the 1989 Legislative Assembly declared it the policy of the state to reduce and recycle chlorofluorocarbons (CFC) and halons and encourage substitution of less dangerous substances. This Bill expanded upon the earlier Aerosol Spray prohibition (ORS 468.600-10, 1977) by addressing the problem of these stratospheric ozone depleting chemicals in two new ways.

First, it further reduces the use of CFC and halons by the general public. In order to encourage the substitution of alternative chemicals the statute prohibits, after July 1, 1990, wholesale selling, and after January 1, 1991, retail selling of certain products containing CFC and halons. This includes packaging foam blown with CFC, small residential use halon fire extinguishers, and CFC containing coolants and cleaners used in noncommercial or nonmedical applications.

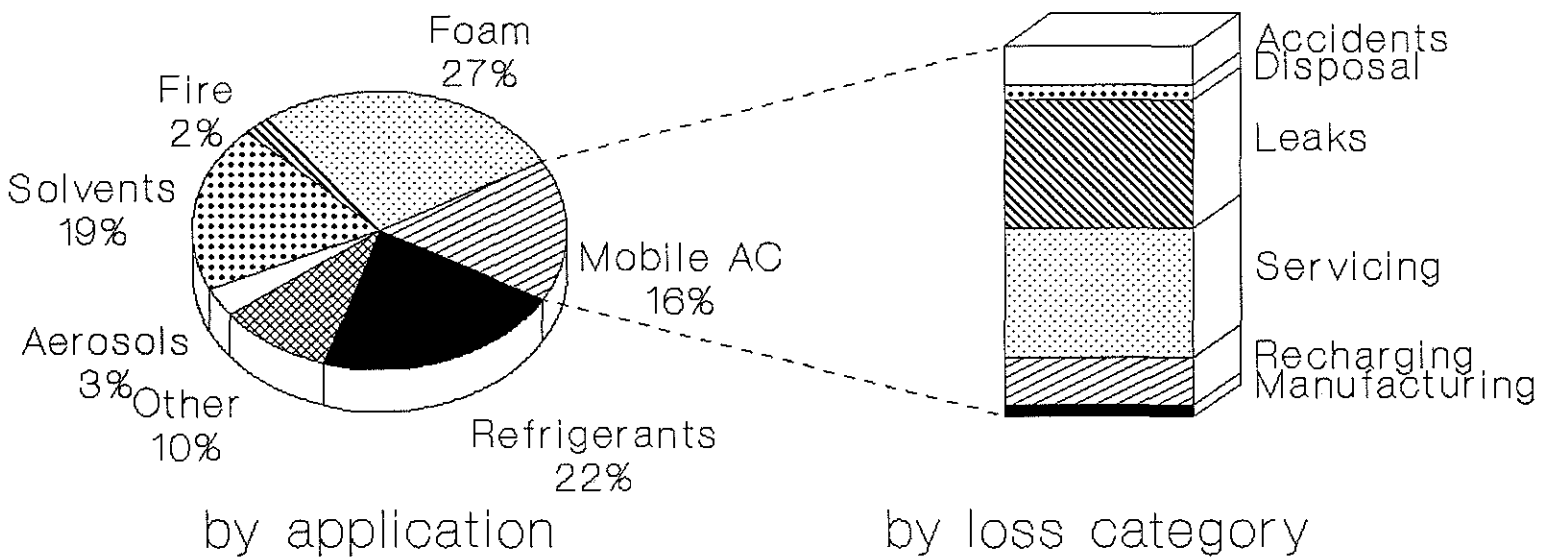
Second, it focuses control on one specific CFC application in order to reduce a significant fraction of the CFC released in Oregon. Emissions of CFC-12 from automobile air conditioners accounts for about 16% of the total CFC released. These emissions can be considerably reduced when the coolant is recovered and recycled during servicing, repair, and disposal.

The statute requires the Environmental Quality Commission to determine when equipment for the recovery and recycling of automobile air conditioner coolant (principally CFC-12) becomes "affordable and available". One year after this finding, with the exception of small repair shops which are given an additional year to comply, businesses would be prohibited from installing, servicing, repairing, disposing of, or otherwise treating automobile air conditioners without recovering and recycling the CFC coolant.

The Commission is required by the law to set standards for the recycling equipment and the Department of Environmental Quality is allowed to establish a program to enforce the Act, subject to available funding. The State Fire Marshal is required to establish guidelines to minimize the unnecessary release of halons in testing fire extinguishing systems and report to the next Legislative Assembly on the implementation of those guidelines.

No reliable source of Oregon emissions data for CFC and Halons has been found. An estimate of Oregon use data can be obtained by scaling national emission estimates according to population size. A breakdown of Oregon emissions is shown by application in Figure 3. The impact that SB 1100 is projected to have on CFC and Halon emissions is summarized in the table following. This table demonstrates the important role of recycling automobile air conditioner coolant in controlling emissions of these ozone depleting chemicals. (Note that CFC are no longer being used in producing polystyrene foam.)

Consumption of CFC
in Oregon
8.28 Million pounds



Estimated CFC and Halon Emissions Reduction Due to SB 1100

Provision of Bill	CFC/Halon Effected	Estimated Emission Reduction (million lbs / yr)
Ban sale of auto A/C coolant in cans less than 15 lbs	CFC-12	0.1
Ban sale of halon fire extinguishers for residential use	Halon 1211	0.01
Ban sale of electronic & photographic cleaners and chilling agents for non-commercial use	CFC-113 CFC-12	< 0.01 < 0.01
Ban sale of polystyrene food containers with CFC	CFC-11 CFC-12	0 0
Require recycling of auto A/C coolant	CFC-12	0.6

III. PUBLIC INVOLVEMENT

The Department has been in contact with the public and affected parties about the potential impact of Senate Bill 1100 since April 1989. At that time we spoke with the following groups to insure that they had a chance to comment on the Bill while it was still in committee:

Automotive Service Association - Joe Bernard
Oregon Auto Dealers Association - Rich Kiester
Motor Vehicle Manufacturer's Association - Jim Austin

About 20-30 auto repair shops that do air conditioner work were also contacted to inform them about the Bill and get an initial idea of its impact.

Since passage we have responded to many questions from the affected community regarding the new law. Many people in the business wanted to know just which machines were acceptable. Some wanted to know if they could start a Freon recycling business, going from shop to shop collecting coolant. A large number simply asked questions about the environmental impact of CFC and were interested to learn about their role in reducing that impact.

In January 1990 the law was discussed with a group of about 40 people who do auto air conditioner repair in Portland. Before our discussion representatives of White Industries gave a demonstration of their new recycling machine. The comments from the group were basically friendly, with anticipation that they could save money by recycling and that they were doing something good for the environment at the same time. There main concern was that complicated paperwork would not be required by the regulations.

As discussed earlier, several stores were also contacted regarding the impact of the ban on certain CFC containing items. Included were:

Sanderson Safety - regarding fire extinguishers
Radar Electric - regarding CFC solvents
Radio Shack - regarding CFC solvents
Fred Meyer - regarding CFC solvents
City of Portland - regarding polystyrene foam ban

Frequent contacts have also been made with two environmental groups: OSPIRG (who sponsored the Bill); and Save Our Stratosphere (in Corvallis). In December 1989 the Department made a presentation to 50 members of a combined group of the Sierra Club and Save Our Stratosphere in Corvallis. They showed considerable interest in what they could do personally to help implement and enforce the new law. Quincy Sugarman with OSPIRG was also there to explain the details of the legislative process on Senate Bill 1100.

Survey of Affected Industry

The Department performed a preliminary survey of the auto repair shops in the Portland area in March 1990 to determine the potential impact of the law on their business. The results are tabulated in the Appendix. The Automotive Service Association and the Gasoline Dealers Association have agreed to do a survey of their membership to gather more information, especially from outside the Portland area.

In the survey 110 businesses were called directly from Yellow Page listings of the following categories:

Service Stations (listed as doing repairs)
Auto Repair (dealership)
Auto Repair (other)
Auto Air Conditioning Repair

About two thirds of the shops contacted had heard of the requirements of SB 1100, with the most knowledgeable group being the dealership auto repair shops and the least knowledgeable being service stations.

Only shops specializing in auto air conditioner work were members of the Mobile Air Conditioning Society. This is significant because this organization worked with the EPA to establish recycling purity standards and is the only group both EPA and UL use to contact the affected business community..

Almost 20% of the shops already own and use coolant recycling equipment, and of the rest about half were currently considering buying a recycling machine; almost all of the shops listed as air conditioner repair shops were planning on the purchase. About two thirds of the shops said they do full service work, as opposed to doing only recharging of coolant, and almost all said they routinely did system leak checks before recharging.

Forty percent reported using only 14 oz CFC-12 cans to recharge air conditioners. This was unexpected. It had been previously thought that almost all shops in the repair business would be using the 15 or 30 pound canisters. The statute bans the sale of containers smaller than 15 pounds, and this will cause those shops to use larger containers. (This change alone will considerably reduce emissions of CFC-12. The small container has no control on release and once started all the coolant is discharged. This means that if a car's air conditioner is full before the container is empty the rest of the coolant is released to the air. Containers 15 pounds and larger have valves which allow a controlled release of coolant, and reduce waste.)

Service stations were generally found to use the small containers, and in general service stations reported the smallest use rates. They reported using between 20 pounds and 2000 pounds of CFC-12 a year. The number of jobs done per year also ranged widely, from 5 to over 900. Non-dealership auto repair shops and service stations did the smallest number and would be the most impacted financially by the law. Shops specializing in this work did the most jobs, used the most coolant, and would likely stand to benefit directly financially with the purchase of a recycling machine.

IV. IMPLEMENTATION AND ENFORCEMENT

ORS 468.618 states, "Subject to available funding, the Department of Environmental Quality may establish a program to carry out the purposes of ORS 468.612 to 621, including enforcement of the provisions of ORS 468.616." The Department asked for $437,950 in 1989-91 and $486,300 in 1991-91 to implement and enforce the Act but no funds were allocated based on the belief that enforcement would be minimal.

In November 1989 the Department requested $34,000 from the Emergency Board for pamphlets, literature, news releases and mailings to announce the various components of the law but did not receive any funds. As a result, the only plans for news releases

or public information at this time are bulletins in the Air Quality Division, Vehicle Inspection Program's newsletter which goes to service stations and repair shops across the state.

No enforcement of the wholesale ban, which goes into effect July 1, 1990, is being considered because this provision is primarily a way to prepare retail outlets for the termination of retail sales 6 months hence.

The ban on retail sales starts on January 1, 1990. It is anticipated that press releases will be used to alert retailers in advance of the deadline. After the ban, the Department plans spot checks of retail outlets, and in response to complaints, to insure compliance.

The requirement for auto air conditioner coolant recycling equipment will become effective about July 1, 1991. Because of the large capital expenditure involved and the lead time needed to purchase a machine, several announcements will be made to the industry prior to the effective date of this provision. Again, enforcement will be limited to spot checks and complaint investigations unless funding for enforcement activities can be obtained.

Civil Penalties

Based on the many contacts the Department has had with the regulated community, it believes that compliance with the statute and rules will be accomplished with little need of enforcement. However, it is important to consider what level of enforcement would be appropriate at the same time that the rules are being discussed.

The findings of the Legislature, included in the statute, make it clear that the release of stratospheric ozone depleting chemicals is a serious air pollution problem affecting both public health and the environment. As such, the Department believes that the $10,000 matrix of Civil Penalties should apply to violations of the product prohibitions contained in the statute and the recycling equipment requirements contained in the rules. This is consistent with other violations of air quality statutes and rules.

Determining the proper Class of these violations is more difficult. Although, individually, small releases of CFC and Halons do not pose an immediate threat to public health or the environment, in aggregate, and over time, their threat is considerable and irreversible. The Department believes that violations of both the product sale provisions and the recycling equipment rules should be considered Class Two.

In addition, the Department has found that there is currently no agency enforcing the Aerosol Spray bans adopted by both the State and Federal governments some years ago. Enforcement of these laws can easily be done in junction with the new ones, and the Department recommends that these violations be included in OAR Chapter 340, Division 12, and also be considered Class Two.

APPENDIX

REPAIR SHOP SURVEY RESULTS

Summary of All Types Auto Repair Shops

Question	Response
Familiar with SB 1100?	no- 35% yes- 65%
Member of MACS?	no- 97% yes- 3%
Currently own a recycle machine?	no- 81% yes- 19%
Buying a recycle machine?	no- 46% yes- 54%
Type of A/C work done.	full service- 74%
	recharge only- 26%
Do a leak check on A/C?	no- 4% yes- 96%
Size of coolant container.	14oz- 40% 15lb- 0%
	30lb- 59% 125lb- 1%
How much coolant used/yr?	<50lb- 36% 51-100lb- 13%
	101-150lb-27% 151-200lb-5%
	201-300lb- 7% 301+lb- 12%
Number of A/C jobs/yr.	<21- 22% 21-50- 33%
	51-100- 28% 101-150- 1%
	151-200- 6% 200-300- 6%
	300-500- 1% 500+- 3%
Number of employees	<4- 57% =>4- 43%
Number of covered bays	<3- 45% =>3- 55%
Shop size for purpose of SB1100	small- 60% large- 40%

Summary of Shops Listed as Auto Repair Shops (Dealerships)

Question	Response
Familiar with SB 1100?	no- 20% yes- 80%
Member of MACS?	no- 100% yes- 0%
Currently own a recycle machine?	no- 43% yes- 57%
Buying a recycle machine?	no- 50% yes- 50%
Type of A/C work done.	full service- 100%
	recharge only- 0%
Do a leak check on A/C?	no- 0% yes- 100%
Size of coolant container.	14oz- 20% 15lb- 0%
	30lb- 80% 125lb- 0%
How much coolant used/yr?	<50lb- 0% 51-100lb- 33%
	101-150lb-33% 151-200lb-17%
	201-300lb- 0% 301+lb- 17%
Number of A/C jobs/yr.	<21- 0% 21-50- 30%
	51-100- 40% 101-150- 0%
	151-200- 10% 200-300- 20%
	300-500- 0% 500+- 0%
Number of employees	<4- 40% =>4- 60%
Number of covered bays	<3- 40% =>3- 60%
Shop size for purpose of SB1100	small- 40% large- 60%

Summary of Shops Listed as Auto Repair Shops (non-dealership)

Question	Response
Familiar with SB 1100?	no- 37% yes- 64%
Member of MACS?	no- 100% yes- 0%
Currently own a recycle machine?	no- 87% yes- 13%
Buying a recycle machine?	no- 48% yes- 52%
Type of A/C work done.	full service- 60%
	recharge only- 40%
Do a leak check on A/C?	no- 16% yes- 84%
Size of coolant container.	14oz- 36% 15lb- 0%
	30lb- 60% 125lb- 4%
How much coolant used/yr?	<50lb- 25% 51-100lb- 10%
	101-150lb- 45% 151-200lb- 5%
	201-300lb- 0% 301+lb- 15%
Number of A/C jobs/yr.	<21- 16% 21-50- 53%
	51-100- 21% 101-150- 0%
	151-200- 0% 200-300- 5%
	300-500- 5% 500+- 0%
Number of employees	<4- 50% =>4 50%
Number of covered bays	<3-77% =>3-23%
Shop size for purpose of SB1100	small- 52 large- 48

Summary of Shops Listed as Service Stations Doing Repairs

Question	Response
Familiar with SB 1100?	no- 40% yes- 60%
Member of MACS?	no- 100% yes- 0%
Currently own a recycle machine?	no- 85% yes- 15%
Buying a recycle machine?	no- 50% yes- 50%
Type of A/C work done.	full service- 70%
	recharge only- 30%
Do a leak check on A/C?	no- 0% yes- 100%
Size of coolant container.	14oz- 49% 15lb- 0%
	30lb- 51% 125lb- 0%
How much coolant used/yr?	<50lb- 50% 51-100lb- 14%
	101-150lb-14% 151-200lb-3%
	201-300lb- 14% 301+lb- 5%
Number of A/C jobs/yr.	<21- 34% 21-50- 29%
	51-100- 29% 101-150- 3%
	151-200- 5% 200-300- 0%
	300-500- 0% 500+- 0%
Number of employees	<4- 66% =>4- 34%
Number of covered bays	<3- 29% =>3- 71%
Shop size for purpose of SB1100	small- 72 large- 28

Summary of Shops Listed as Air Conditioner Repair Shops

Question	Response
Familiar with SB 1100?	no- 27% yes- 73%
Member of MACS?	no- 73% yes- 27%
Currently own a recycle machine?	no- 80% yes- 20%
Buying a recycle machine?	no- 18% yes- 82%
Type of A/C work done.	full service- 92% recharge only- 8%
Do a leak check on A/C?	no- 0% yes- 100%
Size of coolant container.	14oz- 27% 15lb- 0% 30lb- 73% 125lb- 0%
How much coolant used/yr?	<50lb- 20% 51-100lb- 0% 101-150lb-40% 151-200lb- 0% 201-300lb- 0% 301+lb- 40%
Number of A/C jobs/yr.	<21- 0% 21-50- 0% 51-100- 20% 101-150- 0% 151-200- 20% 200-300- 20% 300-500- 0% 500+- 40%
Number of employees	<4- 45% =>4- 55%
Number of covered bays	<3- 45% =>3- 55%
Shop size for purpose of SB1100	small- 55% large- 45%

PLAN\AH3044
3/16/90

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: April 6, 1990
Agenda Item: J
Division: HSW
Section: Waste Reduction

SUBJECT:

Used Oil/Road Oiling: Proposed Rules (SB 166)

PURPOSE:

Set standards for the use of used oil for dust suppression, as an herbicide, or other direct uses in the environment.

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 D
Fiscal and Economic Impact Statement — Attachment D
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:

Authorization is requested to conduct a public hearing on proposed rules to regulate the direct application of used oil in the environment. These proposed rules are to implement the requirements of Senate Bill (SB) 166 (Chapter 268, Oregon Laws 1989). SB 166 was introduced in the Oregon Legislature at the request of the Department of Environmental Quality (DEQ, Department).

SB 166 gives the Environmental Quality Commission (Commission) broad authority to adopt rules and issue orders relating to the use and management of used oil but specifically requires the Commission to adopt rules relating to dust control no later than one year after the October 2, 1989 effective date of the Act. The rules proposed here relate mainly to dust suppression.

Federal rules (40 CFR 266.23) previously adopted by reference by the Commission prohibit the use of used oil for dust control or road treatment if the used oil has been "contaminated with dioxin or any other hazardous waste (other than a waste identified solely on the basis of ignitability)." The rules proposed here go further than federal rules by setting specific standards and testing requirements for used oil.

The proposed rules explicitly prohibit application of used oil as a dust suppressant or pesticide, or otherwise spreading used oil directly in the environment, if the level of lead or other contaminants exceeds the levels set as standards in the rules, or if the used oil has not been tested. Most of the standards proposed are based on the level of heavy metals that would cause a liquid to be considered a characteristic hazardous waste by federal rule 40 CFR 261.24, previously adopted by reference by the Commission. The heavy metals and organic compounds for which standards are proposed here are the metals and compounds identified by the Environmental Protection Agency as contaminants of concern for used oil. A separate standard is added for volatile aromatic organic compounds (which would include compounds such as benzene, xylene, and toluene), as the Department believes that existing federal rules do not adequately address contamination due to these toxic materials.

Almost all used oil from automotive sources contains sufficient amounts of lead to be classified as hazardous waste. This oil is not regulated as hazardous waste under either federal or EQC rules if it is recycled into lubricating oil or is burned for energy recovery. If, however, used oil is disposed or "used in a manner

constituting disposal" (see 40 CFR 266.20 in Attachment B) the oil is regulated as hazardous waste. Thus, implicitly under federal rules and explicitly under these proposed rules, almost all automotive oil will be prohibited from use as a dust suppressant.

SB 166 contains an exclusion related to people who apply their own used oil for dust control on their own property, or on immediately adjacent property. Under SB 166, the Commission cannot regulate this specific application of used oil any more strictly than it is regulated under federal law or rules. The proposed rules therefore do not apply to persons who use their own used oil on their own property or immediately adjacent property. The phrase "immediately adjacent to" was not defined in SB 166. The Department is proposing a definition for this phrase that would limit the application of used oil under this exemption to within 300 feet of the property owned by the person who generated the oil. This definition is being reviewed by the Attorney General's office.

SB 166 also provides for civil penalties not to exceed $10,000 per occurrence for violation of used oil rules or orders. Amendments are proposed to OAR 340 Division 12 (enforcement rules) that would classify the spreading of more than 50 gallons of untested or contaminated used oil as a Class 1 violation, failure to notify as a Class 2 violation, and other minor violations as Class 3 violations.

AUTHORITY/NEED FOR ACTION:

x	Required by Statute: SB 166 (ORS 468.869) Enactment Date: 1989 session	Attachment C
___	Statutory Authority: _____	Attachment ___
___	Pursuant to Rule: _____	Attachment ___
x	Pursuant to Federal Law/Rule: 40 CFR 266.23	Attachment B
___	Other:	Attachment ___
x	Time Constraints: (explain) Rules related to dust suppression are required by statute to be adopted no later than October 1990.	

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 DEQ fact sheet on used oil used for dust control	Attachment E

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

Most companies that applied used oil as a dust suppressant in the past discontinued the practice in the early 1980s due to concern about potential liability involved in spreading used oil that might contain hazardous contaminants. There still are at least two small companies known to the Department that collect used oil from service stations and other businesses, and spread the used oil for dust control without testing the oil for contamination. These companies have indicated to the Department that they will discontinue applying used oil for dust control at the time rules adopted under SB 166 go into effect. The Department believes that the existing used oil fuel and oil rerefining markets will be able to take all oil that is presently being used for dust control.

The Department will be seeking comments from a special advisory group prior to the public hearings on proposed rules. The advisory group will consist of representatives of groups affected by or having interest in the proposed rules, and persons with expertise in used oil and public safety issues.

PROGRAM CONSIDERATIONS:

The Department intends to promote proper management of used oil by service stations and others through articles in Department newsletters such as Beyond Waste, Tankline, and the Vehicle Inspection Program newsletter, as well as press releases to trade newsletters. Enforcement would be done using existing DEQ mechanisms such as hazardous waste generator inspections and responses to complaints.

The Department believes that few if any businesses or individuals will notify the Department of the intent to test and use used oil for dust suppression, since most used oil will fail to meet the proposed standards and since the liability in spreading used oil is high. Therefore, the Department believes that minor staff resources will be required to process reports and other paperwork required from road oilers.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Propose rules as shown in Attachment A, which are more stringent than federal requirements because of proposed standards and testing.

2. Propose rules that are equivalent to federal requirements and do not set standards and testing requirements.

3. Include regulations beyond dust suppression, such as additional regulation on burning of used oil or a prohibition on disposal of used oil in solid waste landfills.

4. Set standards more stringent than federal standards for persons who apply large quantities of their own used oil to their own property.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends Alternative 1, authorization of a public hearing on the proposed rules and rule amendments shown in Attachment A. These rules, if adopted, could significantly reduce the likelihood of damage to the environment or threat to public safety caused by spreading contaminated oil in the environment. The Department believes in particular that the strict testing requirement of the rules proposed here is necessary for ensuring that contaminated oil is not spread in the environment. Testing of used oil by the Environmental Protection Agency (EPA) and others has turned up significant amounts of chlorinated solvents, polychlorinated biphenyls (PCBs), heavy metals, and other hazardous materials in used oil. Road oiling with dioxin-contaminated oil was responsible for one of the most famous Superfund cleanup sites - the entire town of Times Beach, Missouri. A serious incident was luckily avoided in Jackson County, Oregon in 1984, when an EPA investigation found 40,000 parts per million of PCBs in a tank holding used oil intended for road oiling.

Although alternatives 2 and 3 are not recommended, the Department does believe that further regulation of used oil would be valuable for protecting public health and the environment. In particular, the Department believes that limits should be set on the levels of heavy metals allowed in used oil burned by industrial boilers and furnaces (currently there is no limitation on these burning devices), and that either a ban or tighter restrictions on disposal of used oil in solid waste landfills would be valuable. However, both Congress and the EPA are debating further regulation of used oil, and the Department believes that a decision on the direction to be taken by the federal government for used oil regulation will be forthcoming later this year. Therefore, the Department believes it is prudent to postpone rulemaking on these matters. The Department believes that new rules should be adopted at this time only for used oil issues related to dust suppression where there is a high immediate potential for environmental damage and potentially high cleanup costs.

Although Alternative 4 was considered, the Department believes that the statutory exemption in SB 166 prohibits the Commission from following this alternative. Persons applying their own oil to their own property would continue to be regulated under 40 CFR 266.20 to 266.23.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

Rule adoption relating to dust control is required by SB 166 (Chapter 268, Oregon Laws 1989), a bill passed at the request of the Department.

ISSUES FOR COMMISSION TO RESOLVE:

1. Should new rules be adopted on issues other than dust control, such as restricting or banning disposal of oil in solid waste landfills or limiting the heavy metal levels allowed in used oil fuel burned in industrial boilers and furnaces?

2. Should the Department not adopt any rule relating to dust control that is more stringent than existing federal rules?

INTENDED FOLLOWUP ACTIONS:

If authorized by the Commission, the Department intends to hold two public hearings, one on May 23, 1990 in Portland and one on May 25, 1990 in Pendleton, on the proposed rules and rule amendments, and to propose adoption of final rules at the August 10, 1990 EQC meeting.

Approved:

Section: David Rydell

Division: Stephanie Hallock

Director: Fred Hansen

Report Prepared By: Peter Spendelow
Phone: 229-5253
Date Prepared: March 19, 1990

Spendelow
WORDP\RORULE.D04

Proposing new rules 340-111-010 to 040, 340-101-006, 340-12-072, and proposing amendments to rule 340-12-042.

New rules 340-111-010 to 340-111-040 and 340-101-006, relating to direct use of used oil in the environment, are proposed to be adopted as follows:

Purpose, scope, and applicability
340-111-010

(1) The purpose of rules OAR 340-111-010 to 340-111-040 is to provide standards and controls for the use or application of used oil on the ground or directly in the environment. (Comment: Persons should also consult 40 CFR Parts 260-266, 270, and 124, which are incorporated by reference in rule 340-100-002, and 40 CFR Part 761, to determine all applicable management requirements. In particular, 40 CFR 266.20 to 266.23 set specific requirements for the use of hazardous waste, including used oil mixed with or showing a characteristic of hazardous waste, for dust suppression or in other manners constituting disposal).

(2) Any provision of rules OAR 340-111-010 to 340-111-040 relating to the use of used oil for dust suppression or as an herbicide that is more stringent than 40 CFR Parts 260-266, 270, 124, and 761 shall not apply to used oil that is generated by a business or industry and does not contain polychlorinated biphenyls, or contain or show a characteristic of hazardous waste as set forth in OAR 340 Division 101, or is generated by a household, provided that the used oil is:

(a) used on the property owned by the person who generated the used oil; or
(b) generated and used on property leased by the person who generated the used oil or used on property immediately adjacent to property owned or leased by the person who generated the used oil with written approval of the property owner on whose property the oil is to be applied.

Definitions
340-111-020

(1) "Asphalt fraction" means black, tar-like material that is solid at room temperature and that is a residual product from refining used oil.

(2) "Person" means the United States, the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity.

(3) "Property immediately adjacent to" means that portion of any single lot, or set of contiguous lots with common ownership, that shares a common boundary with the property on which the used oil is generated, and that lies within 300 feet of the boundary of the property on which the used oil is generated.

(4) "Used oil" means a petroleum based oil which through use, storage, or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

Prohibitions
340-111-030

(1) Unless permitted pursuant to ORS 468.740, no person shall dispose of used oil by discharge into sewers, drainage systems, or waters of this state as defined by ORS 468.700(8). (statutory requirement of ORS 468.865)

(2) Except as allowed in Sections 3 of this rule, used oil, including products made from used oil, shall not be used as a dust suppressant or pesticide, or otherwise spread directly in the environment, unless:
(a) the used oil has not been mixed with hazardous waste, other than a hazardous waste identified solely due to the characteristic of ignitability; and
(b) the used oil has been tested and does not exceed the following levels for each of the following materials:
- (A) Lead: 5 milligrams per liter;
- (B) Cadmium: 1 milligram per liter;
- (C) Chromium: 5 milligrams per liter;
- (D) Arsenic: 5 milligrams per liter;
- (E) Polychlorinated biphenyls: none detectable, with a testing detection limit of 1 milligram per liter or less;
- (F) Total halogens (chlorine, bromine, and iodine): 1000 milligrams per liter, unless it is demonstrated that the sum of the concentrations of halogenated solvents and other halogenated molecules identified as hazardous waste in 40 CFR Part 261 does not exceed 200 milligrams per liter; and
- (G) Total volatile aromatic organic compounds: 5000 milligrams per liter.

(3) The standards, prohibition, and requirements set forth in Section 2 of this rule and in OAR 340-111-040 shall not apply to:
(a) the asphalt fraction derived from refining used oil, provided that the asphalt fraction is not identified as a listed hazardous waste or does not show a characteristic of hazardous waste, as set forth in 40 CFR Part 261 or OAR 340-101-033;
(b) disposal of used oil at a permitted hazardous waste disposal facility pursuant to OAR 340 Divisions 100 to 106; or
(c) disposal of less than twenty-five (25) gallons of liquid used oil at a solid waste landfill permitted under OAR 340 Division 61, or greater amounts at a solid waste landfill if authorized by the Department.

Notification, testing, and record-keeping requirements
340-111-040

Any person, except as excluded under OAR 340-111-010, who markets or uses used oil or used oil products for dust control or as a pesticide, or who otherwise spreads used oil directly in the environment, is subject to the following requirements:

(1) Notification to the Department stating the location and general description of used oil management activities, on forms provided by the Department.

(2) Used oil that has been tested and found to not exceed the limits set forth in OAR 340-111-030 (2) shall be stored separately from other used oil prior to use. If untested used oil is added to a tank or other storage container containing tested used oil, the entire tank or container shall be retested and determined to not exceed the limits set forth in OAR 340-111-030 (2) prior to use as a dust suppressant or pesticide or otherwise being spread directly in the environment.

(3) The following records shall be produced and kept for a minimum of three years:

(a) Copies of testing results used to determine that used oil meets the specifications set in OAR 340-111-030 (2);
(b) Records on the quantity of oil in each tank or container tested, and quantity and geographic location where used oil was used directly in the environment, cross-referenced to the testing results used to determine that the used oil meets specifications;
(c) Copies of invoices stating the name, address, and EPA identification numbers of both the shipping and receiving facilities, the quantity of oil delivered, date of delivery, a copy of test results, and the following statement: "This used oil is subject to the requirements of Oregon Administrative Rules 340 Division 111" for all used oil shipments intended or destined to be spread directly in the environment.

(4) Any person, except as excluded under OAR 340-111-010, using used oil as a dust suppressant or pesticide or otherwise spreading used oil directly in the environment shall report to the Department on a quarterly basis on the use of used oil. Reports shall be filed with the Department within 45 days of the end of each calendar quarter. The quarterly report shall include:

(a) the name, address, and U.S. EPA/DEQ Identification Number of the person spreading used oil;
(b) the calendar quarter for which the report is being made;
(c) the quantity, location, and date that used oil was spread;
(d) if no used oil was spread, a statement to that effect; and
(e) test results for the used oil, cross-references to the date and location where the used oil was spread.

Used oil used in a manner constituting disposal
340-101-006

In addition to requirements set forth in 40 CFR 261.6 and 40 CFR Part 266, persons using used oil as a dust suppressant or pesticide or otherwise spreading used oil directly in the environment must meet the requirements set forth in OAR 340-111-010 to 340-111-040.

OAR 340-12-042 is proposed to be amended as follows:

CIVIL PENALTY SCHEDULE MATRICES
340-12-042
In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to the Commission's or Department's statutes, regulations, permits or orders by service of a written notice of assessment of civil penalty upon the respondent. The amount of any civil penalty shall be determined through the use of the following matrices in conjunction with the formula contained in OAR 340-12-045:

(1)

$10,000 Matrix
<——— Magnitude of Violation

Class of Violation	Major	Moderate	Minor
Class I	$5,000	$2,500	$1,000
Class II	$2,000	$1,000	$500
Class III	$500	$250	$100

No civil penalty issued by the Director pursuant to this matrix shall be less than fifty dollars ($50) or more than ten thousand dollars ($10,000) for each day of each violation. This matrix shall apply to the following types of violations:

(a) Any violation related to air quality statutes, rules, permits or orders, except for residential open burning [and field burning];

(b) Any violation related to of ORS 468.875 to 468.899 relating to asbestos abatement projects;

(c) water quality statutes, rules, permits or orders, except for violations of ORS 164.785(1) relating to the placement of offensive substances into waters of the state and violations of ORS 468.825 and 468.827 and rules adopted thereunder relating to financial assurance requirements for ships transporting hazardous materials and oil;

(d) Any violation related to underground storage tanks statutes,

rules, permits or orders, except for failure to pay a fee due and owing under ORS 466.785 and 466.795;

(e) Any violation related to hazardous waste management statutes, rules, permits or orders, except for violations of ORS 466.890 related to damage to wildlife;

(f) Any violation related to oil and hazardous material spill and release statutes, rules and orders, except for negligent or intentional oil spills;

(g) Any violation related to polychlorinated biphenyls management and disposal statutes; [and]

(h) Any violation ORS 466.540 to 466.590 related to environmental cleanup statutes, rules, agreements or orders[.]; and

(i) Any violation related to used oil management statutes, rules and orders under ORS 468.869.

(2) Persons causing oil spills through an intentional or negligent act shall incur a civil penalty of not less then one hundred dollars ($100) or more than twenty thousand dollars ($20,000). The amount of the penalty shall be determined by doubling the values contained in the matrix in subsection (a) of this rule in conjunction with the formula contained in 340-12-045.

(3)

$500 Matrix

<——— Magnitude of Violation

Class of Violation ↑

	Major	Moderate	Minor
Class I	$400	$300	$200
Class II	$300	$200	$100
Class III	$200	$100	$50

No civil penalty issued by the Director pursuant to this matrix shall be less than fifty dollars ($50) or more than five hundred dollars ($500) for each day of each violation. This matrix shall apply to the following types of violations:

(a) Any violation related to residential open burning;

(b) Any violation related to noise control statutes, rules, permits and orders;

(c) Any violation related to on-site sewage disposal statutes, rules, permits, licenses and orders;

(d) Any violation related to solid waste statutes, rules, permits and orders; and

(e) Any violation related to waste tire statutes, rules, permits and orders;

(f) Any violation of ORS 164.785 relating to the placement of offensive substances into the waters of the state or on to land;

(g) Any violation of ORS 468.825 and 468.827 and rules adopted thereunder relating to the financial assurance requirements for ships transporting hazardous materials and oil.

(Statutory Authority: ORS Ch. 454, 459, 466, 467 & 468)

New rule OAR 340-12-072 is proposed to be adopted as follows:

USED OIL MANAGEMENT
340-12-072

Violations pertaining to the management of used oil shall be classified as follows:

(1) Class One:

(a) using used oil as a dust suppressant or pesticide, or otherwise spreading used oil directly in the environment, if the quantity of oil spread exceeds 50 gallons per event;

(b) spreading used oil contaminated with hazardous waste or failing to meet the limits for materials set in OAR 340-111-030.

(c) any other violation that poses a major risk of harm to public health or the environment.

(2) Class Two:

(a) failure to notify the Department of activities relating to spreading used oil;

(b) any other violation that poses a moderate risk of harm to public health or the environment.

(3) Any other violation related to the use of used oil that poses a minor risk of harm to public health or the environment is a Class Three violation.

(Statutory Authority: ORS Ch. 466 & 468)

Federal Rules 40 CFR 266.20 to 266.23
Recyclable Hazardous Waste Used in a Manner Constituting Disposal

Subpart C—Recyclable Materials Used in a Manner Constituting Disposal

§ 266.20 Applicability.

(a) The regulations of this subpart apply to recyclable materials that are applied to or placed on the land:

(1) Without mixing with any other substance(s); or

(2) After mixing or conmbination with any other substance(s). These materials will be referred to throughout this subpart as "materials used in a manner that constitutes disposal."

(b) Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if the recyclable materials have undergone a chemical reaction in the course of producing the product so as to become inseparable by physical means. Commercial fertilizers that are produced for the general public's use that contain recyclable materials also are not presently subject to regulation.

§ 266.21 Standards applicable to generators and transporters of materials used in a manner that constitute disposal.

Generators and transporters of materials that are used in a manner that constitutes disposal are subject to the applicable requirements of Parts 262 and 263 of this chapter, and the notification requirement under section 3010 of RCRA.

§ 266.22 Standards applicable to storers of materials that are to be used in a manner that constitutes disposal who are not the ultimate users.

Owners or operators of facilities that store recyclable materials that are to be used in a manner that constitutes disposal, but who are not the ultimate users of the materials, are regulated under all applicable provisions of Subparts A through L of Parts 264 and 265 and Parts 270 and 124 of this chapter and the notification requirement under section 3010 of RCRA.

§ 266.23 Standards applicable to users of materials that are used in a manner that constitutes disposal.

(a) Owners or operators of facilities that use recyclable materials in a manner that constitutes disposal are regulated under all applicable provisions of Subparts A through N of Parts 264 and 265 and Parts 270 and 124 of this chapter and the notification requirement under section 3010 of RCRA. (These requirements do not apply to products which contain these recyclable materials under the provisions of § 266.20(b) of this chapter.)

(b) The use of waste or used oil or other material, which is contaminated with dioxin or any other hazardous waste (other than a waste identified solely on the basis of ignitability), for dust suppression or road treatment is prohibited.

[50 FR 666, Jan. 4, 1985, as amended at 50 FR 28750, July 15, 1985]

Federal Rule 261.24
Hazardous Waste Characteristic of EP Toxicity

§ 261.24 Characteristic of EP toxicity.

(a) A solid waste exhibits the characteristic of EP toxicity if, using the test methods described in Appendix II or equivalent methods approved by the Administrator under the procedures set forth in §§ 260.20 and 260.21, the extract from a representative sample of the waste contains any of the contaminants listed in Table I at a concentration equal to or greater than the respective value given in that Table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering, is considered to be the extract for the purposes of this section.

(b) A solid waste that exhibits the characteristic of EP toxicity, but is not listed as a hazardous waste in Subpart D, has the EPA Hazardous Waste Number specified in Table I which corresponds to the toxic contaminant causing it to be hazardous.

TABLE I—MAXIMUM CONCENTRATION OF CONTAMINANTS FOR CHARACTERISTIC OF EP TOXICITY

EPA hazardous waste number	Contaminant	Maximum concentration (milligrams per liter)
D004	Arsenic	5.0
D005	Barium	100.0
D006	Cadmium	1.0
D007	Chromium	5.0
D008	Lead	5.0
D009	Mercury	0.2
D010	Selenium	1.0
D011	Silver	5.0
D012	Endrin (1,2,3,4,10,10-hexachloro-1,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-1,4-endo, endo-5,8-dimethano-naphthalene.	0.02
D013	Lindane (1,2,3,4,5,6-hexa- chlorocyclohexane, gamma isomer.	0.4
D014	Methoxychlor (1,1,1-Trichloro-2,2-bis [p-methoxyphenyl]ethane).	10.0
D015	Toxaphene ($C_{10}H_{10}Cl_8$, Technical chlorinated camphene, 67–69 percent chlorine).	0.5
D016	2,4-D, (2,4-Dichlorophenoxyacetic acid).	10.0
D017	2,4,5-TP Silvex (2,4,5-Trichlorophenoxypropionic acid).	1.0

Attachment C
Agenda Item J
4/6/90, EQC Meeting

SB 166 (1989 Session)

CHAPTER 266

AN ACT SB 166

Relating to used oil; creating new provisions; and amending ORS 468.140.

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

SECTION 1. Sections 2 and 3 of this Act are added to and made a part of ORS 468.850 to 468.871.

SECTION 2. The Environmental Quality Commission shall adopt rules and issue orders relating to the use, management, disposal of and resource recovery from used oil. The rules shall include but need not be limited to performance standards and other requirements necessary to protect the public health, safety and environment, and a provision prohibiting the use of untested used oil for dust suppression. The commission shall insure that the rules do not discourage the recovery or recycling of used oil in a manner that is consistent with the protection of human health, safety and the environment.

SECTION 3. Except to the extent that a use of used oil is prohibited or regulated by federal law, the rules adopted under section 2 of this 1989 Act shall not prohibit or regulate the use of used oil for dust suppression or as an herbicide if the used oil is generated by a business or industry and does not contain polychlorinated biphenyls, or contain or show a characteristic of hazardous waste as defined in ORS 466.005 or is generated by a household and is:

(1) Used on property owned by the generator; or

(2) Generated and used on property leased by the generator or used on property immediately adjacent to property owned or leased by the generator with the written approval of the property owner on whose property the oil is to be applied.

SECTION 4. ORS 468.140 is amended to read:

468.140. (1) In addition to any other penalty provided by law, any person who violates any of the following shall incur a civil penalty for each day of violation in the amount prescribed by the schedule adopted under ORS 468.130:

(a) The terms or conditions of any permit required or authorized by law and issued by the department or a regional air quality control authority.

(b) Any provision of ORS 164.785, 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745, ORS chapter 467 and this chapter.

(c) Any rule or standard or order of the commission adopted or issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745, ORS chapter 467 and this chapter.

(d) Any term or condition of a variance granted by the commission or department pursuant to ORS 467.060.

(e) Any rule or standard or order of a regional authority adopted or issued under authority of ORS 468.535 (1).

(2) Each day of violation under subsection (1) of this section constitutes a separate offense.

(3)(a) In addition to any other penalty provided by law, any person who intentionally or negligently causes or permits the discharge of oil into the waters of the state shall incur a civil penalty not to exceed the amount of $20,000 for each violation.

(b) In addition to any other penalty provided by law, [*any person who violates the terms or conditions of a permit authorizing waste discharge into the air or waters of the state or violates any law, rule, order or standard in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter relating to air or water pollution*] **the following persons** shall incur a civil penalty not to exceed the amount of $10,000 for each day of violation: [.]

(A) Any person who violates the terms or conditions of a permit authorizing waste discharge into the air or waters of the state.

(B) Any person who violates any law, rule, order or standard in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter relating to air or water pollution.

(C) Any person who violates the provisions of a rule adopted or an order issued under section 2 of this 1989 Act.

(4) Paragraphs (c) and (e) of subsection (1) of this section do not apply to violations of motor vehicle emission standards which are not violations of standards for control of noise emissions.

(5) Notwithstanding the limits of ORS 468.130 (1) and in addition to any other penalty provided by law, any person who intentionally or negligently causes or permits open field burning contrary to the provisions of ORS 468.450, 468.455 to 468.480, 476.380 and 478.960 shall be assessed by the department a civil penalty of at least $20 but not more than $40 for each acre so burned. Any fines collected by the department pursuant to this subsection shall be deposited with the State Treasurer to the credit of the General Fund and shall be available for general governmental expense.

SECTION 5. No later than 12 months after the effective date of this Act, the Environmental Quality Commission shall adopt rules under section 2 of this Act relating to dust suppression.

Approved by the Governor June 4, 1989
Filed in the office of Secretary of State June 5, 1989

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Proposed Rules: Used Oil for Dust Control

DRAFT
Hearing Dates: May 23-25, 1990
Comments Due: May 25, 1990

WHO IS AFFECTED: Persons who use used oil as a dust suppressant or herbicide or who otherwise use, spread or dispose used oil directly on the ground or in the environment.

WHAT IS PROPOSED: New rules are proposed to implement SB 166 (1989 session) relating to the management and use of used oil. The proposed rules relate just to the use of used oil for dust suppression or other direct use or spreading of used oil in the environment. Rules proposed here do not affect the rerefining or burning of used oil.

WHAT ARE THE HIGHLIGHTS: Persons would be required to test used oil for contamination before the used oil could be used for dust suppression or otherwise used or spread directly in the environment. Used oil that fails to meet the standards proposed in these rules would be prohibited from being spread. Penalties are proposed for violators of these proposed rules.

HOW TO COMMENT: Copies of the proposed rule package may be obtained from the Hazardous and Solid Waste Division, 811 S.W. Sixth, Portland, Oregon 97204. Oral and written comments will be accepted at two public hearings:

Wednesday, May 23, 1990 2 p.m. DEQ Conference Room 4A 811 S.W. Sixth Portland, Oregon	Friday, May 25, 1990 Pendleton, Oregon (exact time and place to be announced in final notice)

Written comments should be sent to Peter Spendelow of the DEQ Waste Reduction Program, Hazardous and Solid Waste Division, 811 S.W. Sixth, Portland, OR 97204, and must be received by 5 pm, May 23rd. For further information contact Peter Spendelow at (503) 229-5253, or toll-free within Oregon at 1-800-452-4011.

WHAT IS THE NEXT STEP: After the public hearing, the Environmental Quality Commission may adopt rules identical to the proposed rules, adopt modified rules on the same subject matter, or decline to act. The Commission's deliberation should come during the regularly scheduled Commission meeting in August 1990.

A Statement of Need, Fiscal and Economic Impact Statement, and Land Use Consistency Statement are attached to this notice.

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

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.

Before the Environmental Quality Commission
of the State of Oregon

In the Matter of Adoption of Rules and Amendments for Used Oil: New Rules OAR 340-xx-010 to 040, and OAR 340-12-070, and Amending 340-12-042	))))	Statement of Need for Rules for Use of Used Oil in the Environment

1. Statutory Authority

The proposed used oil rules and amendments are proposed under authority of SB 166 (Chapter 268, Oregon Laws of 1989) codified under ORS 468.850 to 468.871 and ORS 468.140, and under ORS Chapter 466 and ORS Chapter 459.

2. Statement of Need

The proposed rules are needed to carry out the requirements set by the 1989 Legislature through passage of SB 166. That law requires the Environmental Quality Commission (EQC) to adopt rules generally prohibiting the use of untested used oil for dust suppression or as an herbicide, and directs EQC to adopt rules and performance standards for used oil management and use as needed to protect the public health, safety, and the environment.

3. Principal Documents Relied Upon

a. ORS Chapter 468, as amended by SB 166 (Chapter 268, Oregon Laws 1989)
b. ORS Chapter 459 (solid waste management statutes)
c. ORS Chapter 466 (hazardous waste management statutes)
d. 40 CFR parts 266 and 261 (federal hazardous waste identification and recycling rules)

4. Fiscal and Economic Impact

No new fees or changes in fee structure are proposed. Individuals presently using used oil for dust control may need to either switch to other material for dust control purposes, pay for testing the used oil, or find other markets for used oil. Some individuals presently in the business of dust control with used oil may go out of business. Alternative materials for dust control are more expensive than used oil, which can generally be collected for free.

5. Land Use Consistency Statement

The proposed rules appear to not affect land use, and appear to be consistent with the Statewide Planning Goals.

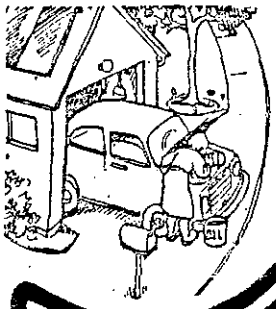
With regard to Goal 6 (air, water, and land resources quality) the rules are designed to enhance and preserve land, water, and air resources and are considered consistent with the goal.

The proposed rules do not appear to related to or in conflict with Goal 11, relating to public facilities and services, or with any other goal.

Public comment on any land use issue involved is welcome and may be submitted in the same fashions as are indicated for testimony in this notice.

It is requested that local, state, and federal agencies review the proposed action and comment on possible conflicts with their programs affecting land use and with Statewide Planning Goals within their expertise and jurisdiction.

The Department of Environmental Quality intends to ask the Department of Land Conservation and Development to mediate any apparent conflict brought to our attention by local, state, or federal authorities.



Used Oil for Dust Suppression

Proposed rules and potential liabilities

March 1987

In 1984, Congress specifically banned road oiling or dust suppression with used oil that is contaminated with dioxin or other hazardous waste. Since used oil frequently contains toxic organic compounds and heavy metals picked up through use, the Environmental Protection Agency proposed strong regulations in 1985 to list oil as hazardous waste, set management standards for recycled oil, and ban road oiling with used oil. EPA recently announced it is not adopting these rules, but will propose new rules by 1988. The new rules will also likely ban road oiling with used oil. In addition to the Federal law and proposed rules, Oregon State law prohibits the spreading or dumping of oil if it pollutes waters of the state.

Until the time that EPA actually adopts rules, road oiling with used oil is still legal in certain limited circumstances. These circumstances are 1) that the oil has not been mixed with hazardous waste or contain PCBs, 2) that the oil has not picked up contaminants such as heavy metals that result in the oil showing one of the characteristics of hazardous waste (other than the characteristic of ignitability), and 3) that the oil is not applied in such a way that any oil will contaminate water (including runoff into streams, lakes, storm sewers, or groundwater).

For both liability and environmental reasons, the Department of Environmental Quality strongly discourages the use of untested used oil for road oiling. Levels of oil in water as low as 300 parts per million has toxic effects on fish, and levels as low as 1 part per million will cause odor and taste problems in drinking water.

If oil spread on roads is found to contain hazardous waste, all of the following would be liable for cleanup costs:

1) the persons who spread the oil;
2) the persons on whose property oil was spread; and
3) the persons who generated the contaminated oil used for dust suppression.

Until the EPA acts on its proposed rules, it is advisable at minimum to test the oil for PCBs, total chlorine (or total halogen), EP toxicity for lead, chromium, arsenic, and cadmium, and any other materials that could feasibly have become mixed with the oil. The oil may not be used if any PCBs or other hazardous waste is detected, if the level for EP toxicity of any of the heavy metals is exceeded, or if the total chlorine level exceeds 1,000 parts per million. The costs for this set of chemical analyses usually range from $250 to $350.

-- over --

Oregon Department of Environmental Quality
Solid Waste Division

deq

Printed on Recycled Paper

Attachment E
Agenda Item
4/6/90, EQC Meeting

Dust Suppression Agents

A number of alternatives to used oil are commercially available for dust suppression purposes. The more commonly used alternatives are listed below. The Department of Environmental Quality does not endorse any specific product, nor warrant any specific claim made by the manufacturer of a product listed. This list is only intended as a starting point for persons interested in using alternatives to used oil for dust suppression.

Magnesium chloride.

The hygroscopic quality of this salt allows the surface of the road to maintain moisture and to bind dust particles together. It should not be used on previously oiled surfaces, and it may cause slight damage to row crops within a few feet of treated roads. The salt is mined in Utah and California, and distributed by Telfer Tank Lines of Martinez, California under the name "Dust-Off". Quoted local costs including spreading range from $0.33 to $0.50 per gallon, with one or two applications per year being sufficient.

Oil-water emulsions.

"Coherex" is the trade name of an oil-water emulsion from Witco Chemical of Bakersfield CA. It is mixed with water on a 4:1 to 10:1 basis, depending on surface qualities. Under average conditions, Witco recommends a 4:1 dilution applied at 1 1/2 gallons per square yard. The first application should be good for 4 - 6 months, with subsequent applications being good for a year.

Sodium Lignin Sulfonate.

This forestry by-product produced by ITT Rainier contains lignin and sugars, that act as a "glue" to hold dust particles together and to fill small spaces between particles. Care must be taken to grade the road so that water does not stand on the road surface, causing the lignin and sugars to leach away. A local firm will apply this product for the same price as "Dust-Off" magnesium chloride.

Heavy oils and asphalt emulsions.

These are sold under a variety of product names including DO-4, DO-5, DO-6, DO-8, and CSS-1. The DO products are heavy virgin oil products similar to bunker fuel, while CSS-1 is an asphalt emulsion.

For more information on suppliers of these products in Oregon or on used oil recycling, contact Peter Spendelow at 229-5253 (Portland area) or 1-800-452-4011 (toll-free statewide) or write Used Oil Recycling Program, Department of Environmental Quality, Box 1760, Portland, OR 97207.

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: April 6, 1990
Agenda Item: K
Division: HSW
Section: Waste Reduction

SUBJECT:

Waste Reduction: Proposed Rules for Waste Reduction Plans (SB 855)

PURPOSE:

Set criteria for approval of solid waste reduction programs. Waste reduction programs are required under ORS 459.055 for jurisdictions which send more than 75,000 tons of waste per year to a landfill that is located in an exclusive farm use zone, and under ORS 468.220 (6) for local government units receiving loans and grants from the Pollution Control Bond Fund for solid waste management planning and assistance.

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 D
Fiscal and Economic Impact Statement	Attachment D
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:

Authorization is requested to conduct a public hearing to amend rules for waste reduction programs required under ORS 459.055, as amended by SB 855 (Chapter 541, Oregon Laws 1989).

ORS 459.055, as originally adopted in 1979, required jurisdictions siting a landfill to adopt and carry out a waste reduction program if the landfill was sited as a conditional use in an exclusive farm use zone. This requirement fell upon only jurisdictions actually involved in siting the new landfill, and not on other jurisdictions subsequently using the landfill. Senate Bill (SB) 855, passed in 1989, changed this by requiring waste reduction programs for all jurisdictions sending more than 75,000 tons of waste per year to a farm-use-zone landfill (established after 1979), but exempting from waste reduction program requirements all jurisdictions sending less than 75,000 tons of waste per year to the landfill.

The original rules for waste reduction programs were designed mainly as a planning guide for developing a waste reduction program, and therefore lack specificity. The Department of Environmental Quality (Department) now feels that much more is known about successful waste reduction strategies than was known when the original waste reduction rules were adopted in 1980. Therefore, the Department is now proposing requirements for specific elements that must be included in a waste reduction program. Some examples of requirements in proposed rule 340-60-092 include:

- o techniques for promotion, education, and public involvement;
- o techniques for salvage of building material and reusable items;
- o the use of containers and other techniques to enhance source-separation of recyclable material;
- o composting programs for source-separated yard debris;
- o fees and rate structures that promote source separation and recovery of material;
- o procurement requirements;

- o assistance and consultation with businesses on waste reduction; and
- o programs to keep prohibited material such as hazardous waste and lead-acid batteries out of the waste destined for disposal.

Many of the specific requirements proposed here are derived from activities presently being successfully carried out by the Portland Metropolitan Service District (Metro) and other jurisdictions.

The existing waste reduction program rules are located in OAR 340 Division 61, along with other general solid waste rules. The existing recycling and certification rules are located in OAR 340 Division 60. For compatibility of subject matter, the Department is proposing to place all regulations on recycling and waste reduction programs in OAR 340 Division 60.

Waste reduction programs are also required under ORS 468.220 for local government units receiving loans or grants for solid waste disposal facilities or planning for such facilities. Many jurisdictions that may request financial assistance are small or rural jurisdictions not expected to produce more than 75,000 tons of waste per year. The proposed rules recognize that certain waste reduction measures are not appropriate for small or rural jurisdictions.

AUTHORITY/NEED FOR ACTION:

x	Required by Statute: SB 855	Attachment C
	Enactment Date: 1989 session	
x	Statutory Authority: ORS 459.055, 468.220	Attachment C
___	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 ___
x	Other Related Reports/Rules/Statutes:	
	OAR 340-61-100 to 110 (existing rules)	Attachment B
___	Supplemental Background Information	Attachment ___

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

ORS 459.055 (as amended by SB 855) affects all landfills established since 1979 as a conditional use in an exclusive farm use zone that receive more than 75,000 tons per year from a single jurisdiction. The Arlington Landfill in Gilliam County and the proposed Finley Buttes landfill in Morrow County are the only landfills in Oregon that presently fall under these requirements. The Portland area Metropolitan Service District is presently the only Oregon jurisdiction sending more than 75,000 tons of waste per year to one of these landfills. Seattle, Snohomish County, and Clark County are three Washington jurisdictions that are seriously considering sending more than 75,000 tons of waste per year to the Arlington or Finley Buttes landfill.

Jurisdictions sending less than 75,000 tons of waste per year to the Arlington or Finley Buttes landfill are not required by SB 855 to adopt and carry out a full waste reduction program, but are required to be certified as providing an opportunity to recycle equivalent to the requirements of the Recycling Opportunity Act (SB 405, 1983 session) in Oregon. All Oregon jurisdictions are already required to provide this opportunity to recycle. Kennewick, Washington is the only jurisdiction outside Oregon presently sending solid waste to the Arlington or Finley Buttes landfill. Kennewick will be required to be certified as providing a sufficient opportunity to recycle by July 1, 1990, under both existing and proposed rules.

Some officials from out-of-state jurisdictions have indicated informally that the requirements of SB 855 will not influence their decision regarding sending waste to landfills in Oregon or other states, as they believe their present waste reduction program will meet any reasonable requirement set by the Environmental Quality Commission (Commission). Other jurisdictions considering sending wastes to Oregon do not have waste reduction programs strong enough to meet the criteria proposed here. If the rules and amendments proposed here are adopted, these jurisdictions would have to either strengthen their waste reduction programs or find other alternatives for disposal of their garbage. The law does give the Department clear authority to prohibit affected landfills from receiving wastes from a jurisdiction if the Department does not approve the jurisdiction's waste reduction program, or if the Department determines that the waste reduction program is not being implemented.

Waste crossing state boundaries has been held by the courts as being a commodity subject to the Interstate Commerce

Clause of the Constitution. The new rules and amendments proposed here have been designed to be no more strict on out-of-state waste than on Oregon-generated waste, so as to not restrict the flow of material across state boundaries.

Jurisdictions receiving state funds for development or planning for solid waste disposal facilities also have been required since 1979 to adopt and implement waste reduction programs under ORS 468.220. The Department has not had requests for such funding assistance since 1985. However, some local jurisdictions may request financial assistance for closing landfills and developing transfer systems due to new landfill standards proposed by the Environmental Protection Agency under the Resource Conservation and Recovery Act Subtitle D, and thus will be required to adopt and implement a waste reduction program. Since some waste reduction requirements for large jurisdictions under ORS 459.055 are not appropriate for smaller jurisdictions under ORS 468.220, the proposed rules specify less strict waste reduction requirements for jurisdictions that produce less than 75,000 tons of waste per year.

The proposed rules and amendments were reviewed by the Department's Solid Waste Reduction Advisory Committee on March 9, 1990. No amendments were proposed. However, the Oregon Sanitary Service Institute did recommend clarifying requirements with regard to ORS 468.220, which has been done in Section 340-60-092 (3) of the rule.

PROGRAM CONSIDERATIONS:

Reviewing waste reduction and recycling programs will have an impact on staff resources. Estimates for the number of out-of-state jurisdictions requiring either approval of waste reduction programs or recycling certification range from 6 to 15 in the next 2 to 3 years. The 1989 Legislature did not provide additional resources to conduct the necessary reviews. The Legislature did provide for the Commission to adopt a special fee for regional landfills that would reimburse the Department for administrative costs of accepting out-of-state wastes. The effective date of the fee can be no earlier than January 1, 1991. The costs of waste reduction program review and recycling certification are costs that could be covered by this special fee. The Department intends to propose rules regarding this special fee later this year.

No requests for financial assistance for developing solid waste facilities are expected this biennium, and thus the

Department does not expect to review any waste reduction programs under ORS 468.220 until after then next legislative session.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Adopt rules and rule amendments proposed here, which add specific requirements and criteria to the existing waste reduction program rules as well as incorporate amendments required by SB 855. Place all regulations on recycling and waste reduction programs in OAR 340 Division 60.

2. Adopt just the minimum requirements, related to changed tonnage limits, to make the existing waste reduction program rules consistent with SB 855.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission authorize a public hearing on the proposed rules and rule amendments shown in Attachment A. The Department is concerned that existing waste reduction program rules (OAR 340-61-100 to 110) do not provide specific requirements or criteria for waste reduction programs. The Department believes that much more is known about what constitutes an effective waste reduction program than was known in 1980. Therefore, the proposed rules and amendments reflect that knowledge by stating specific requirements for effective waste reduction programs.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The proposed rules and rule amendments fulfill the requirements of ORS 459.055 and ORS 459.305, as amended by SB 855 (1989 session), are consistent with the policy requirements of ORS 459.015, and with the Department's Strategic Plan.

ISSUES FOR COMMISSION TO RESOLVE:

How strong should the requirements for waste reduction programs be? Should they be strong requirements that drive waste reduction efforts in affected jurisdictions, or should they be less strong so as to minimize the potential of legal challenge?

INTENDED FOLLOWUP ACTIONS:

If authorized by the Commission, the Department intends to hold a public hearing May 16, 1990 on the proposed rules and rule amendments, and to propose adoption of final rules at the June 1990 EQC meeting.

Approved:

Section: David Ball

Division: Stephanie Hallock

Director: Fred Hansen

Report Prepared By: Peter Spendelow
Phone: 229-5253
Date Prepared: March 20, 1990

Spendelow
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New rules OAR 340-60-091, 340-60-092, and 340-60-093 are proposed to be adopted, rules OAR 340-60-090, 340-60-095, and 340-82-030 are proposed to be amended, and rules OAR 340-61-100 and 340-61-110 are proposed to be deleted, as follows:

Proposed amended rule 340-60-090:

Policy for Certification and Waste Reduction Programs
340-60-090

(1) The Commission's purpose in adopting rules OAR 340-60-090 through 340-60-110 for waste reduction programs pursuant to ORS 459.055 and ORS 468.220 and for certifying that a sufficient opportunity to recycle is provided pursuant to ORS 459.305 is to:

(a) conserve valuable landfill space by insuring that the persons who generate the garbage going to a disposal site have the opportunity to recycle, and that the amount of recyclable material being disposed is reduced as much as is practical;

(b) protect groundwater resources and the environment and preserve public health by reducing the waste going to landfills; and

(c) conserve energy and natural resources by promoting the reuse and recycling of materials as a preferred alternative to disposal.

(2) The purpose as stated in section 1 of this rule is to apply regardless of the state or jurisdiction in which the waste was generated.

(3) The Department shall not have enforcement authority regarding the requirements of ORS 459.165 to 459.200 and 459.250, or rules adopted under these statutory requirements, for out-of-state local government units other than the ability to certify and decertify the local government units under OAR 340-60-[210]100, and the ability to accept or reject waste reduction programs and determine whether or not waste reduction programs are being implemented, thus restricting the disposal of wastes in a regional landfill when an adequate opportunity to recycle has not been provided to the generators of the wastes, or where an approved waste reduction program is not being implemented in the area where the waste is generated.

(4) 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.

Proposed new rule 340-60-091:

Applicability for Certification and Waste Reduction Programs
340-60-091

(1) A waste reduction plan approved by the Department under OAR 340-60-093 shall be required before:

(a) issuance of a permit for a landfill under ORS 459.047 through 459.055 for landfills expected to accept more than 75,000 tons of waste per year from a local government unit,

(b) issuance of Pollution Control Bond Fund monies to local government, or

(c) acceptance of more than 75,000 tons per year of wastes from a local government unit by a landfill established after October 3, 1979 as a conditional use in an area zoned for exclusive farm use.

(2) For a local government unit not required to implement a waste reduction program under ORS 459.055, or not otherwise exempt under OAR 340-60-095 (5), certification under OAR 340-60-095 shall be required before waste from the local government unit may be accepted for disposal by a regional disposal site.

Proposed new rule 340-60-092:

Standards for Waste Reduction Programs
OAR 340-60-092

(1) To be approved by the Department, a waste reduction program shall fulfill the following requirements:

(a) include the latest proven methods for reducing waste, as set forth in section (2) of this rule;

(b) be designed to meet all waste reduction standards and goals adopted by the Commission;

(c) include an opportunity to recycle that meets or exceeds the requirements of ORS 459.165 to 459.200 and 459.250;

(d) address waste reduction for each separate waste stream generated within the local government unit that is to be sent to the disposal site, including but not limited to:

(A) household waste

(B) commercial waste

(C) industrial waste

(D) yard debris

(E) demolition material

(F) hazardous material;

(e) meet all criteria set forth in ORS 459.055; and

(f) continue for as long as a waste reduction program is required under OAR 340-60-091.

(2) The Department shall maintain a list of proven methods for reducing waste. Waste reduction programs shall include those proven methods that are feasible to implement within a local government unit. The list shall include, but need not be limited to the following:

(a) techniques for promotion, education, and public involvement

(b) promotion of reduction and reuse of materials and items

(c) techniques for salvage of building materials and reusable items for reuse,

(d) the use of containers and other techniques to enhance source-separation of recyclable materials,

(e) composting programs for source-separated yard debris

(f) segregation of high-grade loads of mixed waste for material recovery

(g) segregation of recyclable material, wood, and inert material from demolition debris and drop box waste,

(h) technical assistance and consultation to businesses on methods of waste reduction and recycling

(i) fees and rate structures that promote the source-separation, recycling, and recovery of material,

(j) adoption of a procurement policy that favors the use of paper products and other items made from recycled material as a way to further assist the markets for material,

(k) promotion and assistance to local businesses and residents to encourage or require the use of items made from recycled material,

(l) programs to keep prohibited material such as hazardous waste and lead acid batteries out of the waste destined for disposal at the disposal site, and

(m) programs for measuring the results of the waste reduction efforts and determining further steps necessary to reduce waste.

(3) For local government units that produce less than 75,000 tons of waste per year that are requesting financial assistance for development or planning for solid waste facilities under ORS 468.220, the Department shall identify those proven methods listed in accordance with Section 2 of this rule that are appropriate to be considered and included in a waste reduction program for a smaller local government unit. In making this determination, the Department shall take into account:

(a) the type and volume of wastes produced;

(b) the density and other appropriate characteristics of the population and commercial activity within the local government unit; and

(c) the distance of the local government unit from recycling markets.

Proposed new rule 340-60-093:

Submittals, Approval, and Amendments for Waste Reduction Programs
340-60-093

(1) For local government units within the State of Oregon, information required for approval of waste reduction programs shall be submitted by the local government unit.

(2) For local government units outside the State of Oregon, information required for approval of waste reduction programs shall be submitted, or caused to be submitted, by the disposal site permittee proposed to accept waste from the local government unit.

(3) Where more than one local government unit has jurisdiction, information submitted for approval shall cover all affected local government units.

(4) At minimum, the following information must be submitted before the Department will approve a waste reduction program:

(a) an initial recycling report containing the information and meeting the criteria set forth in OAR 340-60-105 (1) for recycling certification;

(b) a copy of each ordinance or similar enforceable legal document that sets forth the elements of the waste reduction program, and that demonstrates the commitment by the local government unit to reduce the volume of waste that would otherwise be disposed of in a landfill through techniques such as source reduction, recycling, reuse and resource recovery;

(c) a list and description of the programs, techniques, requirements, and activities that comprise the waste reduction program;

(d) a list and description of the resources committed to the waste reduction program, including funding level, source of funds, staff, and other governmental resources plus, if necessary to demonstrate that the program will be implemented, the private resources to be used to implement the program.

(e) a timetable indicating the starting date and duration for each activity or portion of the waste reduction program;

(f) if any proven methods identified by the Department pursuant to OAR 340-60-092 (2) are not used, information on why it is not feasible to implement the proven methods, or why other methods proposed are more feasible and will result in at least as much waste reduction, energy efficiency, reduced pollution, and use of waste materials for their highest and best use as the proven methods identified by the Department;

(g) information on the volume and composition of waste generated in the area, and the volume and composition of waste proposed to be landfilled in Oregon landfills;

(h) a copy of any contract or agreement to dispose of waste in an Oregon landfill;

(i) a list and description of information to be reported to the Department, in addition to the information required under OAR 340-60-105, that is sufficient to demonstrate continued implementation of the waste reduction program; and

(j) any other documents or information that may be necessary to fully describe the waste reduction program and to demonstrate the legal, technical, and economic feasibility of the program.

(5) The Department shall review the material submitted in accordance with this rule, and shall approve the waste reduction program within 60 days of completed submittal if sufficient evidence is provided that the criteria set forth in ORS 459.055, as further defined in OAR 340-60-092, are met.

(6) If the Department does not approve the waste reduction programs, the Department shall notify the disposal site that is to receive the waste and the persons who participated in preparing the submittal material, based on written findings. The procedure for review of this decision or correction of deficiencies shall be the same as the procedure for decertification and recertification set forth in OAR 340-60-100.

(7) In order to demonstrate continued implementation of the waste reduction program, by February 15th of each year, information required in OAR 340-60-105 (3) as well as information described in the submittal pursuant to in subparagraph (4)(i) of this rule must be submitted for the preceding calendar year.

(8) If a local government unit amends a waste reduction program, any changes in the information previously reported under this rule shall be reported to the Department. The Department shall approve the amended program provided that the criteria set forth in ORS 459.055 as further defined in OAR 340-60-092 are met.

Proposed amended rule 340-60-095:

Recycling Certification
340-60-095

(1) A local government unit shall be considered certified if it has not been decertified under OAR 340-60-100 and if:

(a) The permittee of the regional disposal site has submitted or caused to be submitted an initial recycling report covering the local government unit, and containing the information required in OAR 340-60-105 (1), and the Department has approved or conditionally approved the report; or

(b) The Department has approved or conditionally approved a recycling report submitted under OAR 340-60-045 for the wastesheds or parts of wastesheds that include the entire local government unit.

(2) The date of certification shall be considered to be the date that the recycling report was first approved, or conditionally approved, by the Department for the wastesheds or areas that include the entire local government unit.

(3) For each initial recycling report submitted to fulfill the requirements of section (1) of this rule, the Department must respond by 60 days after receipt of a completed initial recycling report or by July 1, 1989, whichever is later, by either certifying the local government unit or by indicating what deficiencies exist in providing the opportunity to recycle. If the Department does not respond within this time limit, the local government unit shall be considered to be certified under OAR 340-60-095.

(4) Except as otherwise provided in section (5) of this rule, after July 1, 1988, a regional disposal site may not accept any solid waste generated from any local government unit within or outside the State of Oregon unless the Department has certified that the recycling programs offered within the local government unit provide an opportunity to recycle that meets the requirements of ORS 459.165 to 459.200 and 459.250.

(5) A regional disposal site may accept wastes for disposal that are generated from a local government unit outside the State of Oregon without certification required under section (4) of this rule, if:

(a) the local government unit is implementing a waste reduction program under ORS 459.055 that is approved by the Department, and that provides an opportunity to recycle that meets the requirements of ORS 459.165 to 459.200 and 459.250; or

(b) the wastes were transported to the regional disposal site on or before July 1, 1990; or

[(b)](c) the regional disposal site accepts no more than 1,000 tons per year of wastes generated within any single local government unit. This 1,000 ton per year exemption shall apply separately to each incorporated city or town or similar local government unit, and to the unincorporated area of each county or similar local government unit, but not to other smaller geographic units referred to in section (6) of this rule.

(6) For the purposes of OAR 340-60-090 to 110, the term "local government unit" shall include smaller geographic units such as individual franchise or contract areas if a regional disposal site requests that the Department certify the recycling programs in the smaller geographic unit.

The Department will certify the recycling programs in the smaller geographic unit if it determines that the opportunity to recycle is provided to all residents and businesses within the unit, as provided in section (1) of this rule, and that the boundaries of the unit were not drawn for the purpose of excluding potential recycling opportunities or otherwise reducing recycling requirements.

Proposed amended rule 340-82-030 (relating to financial assistance for solid waste facilities under ORS 468.220, updating the statutory reference):

Application Documents
340-82-030

The representative of an agency wishing to apply for state financial assistance under these regulations shall submit to the Department three signed copies of each of the following completed documents:

(1) Department Solid Waste Management Projects Grant-Loan application form currently in use by the Department at the time of the application for state financial assistance. This form will be provided by the Department upon request.

(2) All applications for federal financial assistance to the solid waste projects for which state financial assistance is being requested.

(3) Resolution of the agency's governing body authorizing an official of the agency to apply for state and federal financial assistance and to act in behalf of the agency in all matters pertaining to any agreements which may be consummated with the Department or with EPA or other federal agencies.

(4) Five year projection of the agency's estimated revenues and expenses related to the project (on forms provided by the Department).

(5) An ordinance or resolution of the agency's governing body establishing solid waste disposal user rates, and other charges for the facilities to be constructed.

(6) A legal opinion of the agency's attorney establishing the legal authority of the agency to enter into a financial assistance agreement together with copies of applicable agency ordinance and charter sections.

(7) A waste reduction plan which is consistent with ORS [459.055(2)(a) through (e)] 459.055(3)(a) through (f).

An application is not deemed to be completed until any additional information requested by the Department is submitted by the agency.

Applications for financial assistance for planning under ORS 468.220(1)(e) shall be on special forms provided by the Department and shall be accompanied by a resolution of the agency's governing body.

Proposed deletion of existing rules OAR 340-61-100 and 340-61-110:

Copies of these two rules proposed to be deleted are included in this staff report as Attachment B.

CHAPTER 340, DIVISION 61 - DEPARTMENT OF ENVIRONMENTAL QUALITY

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 represent minimum reasonable effort to comply with the criteria and are not meant to limit the scope of potential programs:

(1) Submittals regarding commitment to reduce waste volume:

(a) A record of the official local government approval, adoption and inclusion of the waste reduction program into the adopted solid waste management plan, including a statement of commitment to the short and long-term goals, policies and objectives for a waste reduction program, and including a statement of commitment to provide the resources to implement the waste reduction program;

(b) A statement of the following:

(A) The techniques for waste reduction considered and those chosen for use in the program,

(B) The resources committed to achieve the actions, including dollars, staff time and other staff and government resources,

(C) The required waste reduction activities that are part of a governmentally regulated or funded collection, recycling, reuse, resource recovery or disposal of solid waste and answers to the following questions: Which requirements were considered as part of the waste reduction program? What are the reasons for acceptance or rejection of the requirements? What is the duration of time of the imposed requirements?

(c) Where more than one local government unit has jurisdiction, the statement shall include all such jurisdictions.

(2) Submittals regarding an implementing timetable: A statement indicating:

(a) A starting date and duration of each portion of the program;

(b) How the program timetable is consistent with other activities and permits dealing with solid waste management in the affected area. The minimum acceptable duration for any activity shall be the length of time for any permit or funding requested;

(c) If a phased-in program is to be used, the statement should include a timetable and explanation of the need for the use of phase-in approach.

(3) Submittals regarding energy efficient, cost-effective approaches: An identification of the highest and best use of solid waste materials:

(a) Cost effectiveness analysis, including:

(A) The markets and market values of solid waste materials,

(B) The value of diverting solid waste from landfills,

(C) The value of potential energy savings through waste reduction alternatives considered,

(D) The dollar/cost/savings of different alternatives considered.

(b) Energy efficiency analysis including a net energy analysis of the different waste reduction alternatives considered;

(c) Materials savings and the effects on resource depletion;

(d) Reduction of pollution from disposal sites and industrial processing.

(4) Submittals regarding commensurate procedures:

(a) A statement indicating the following:

(A) The type and volume of waste generated in the area, including composition data,

(B) Any special geographic conditions which have an impact on waste reduction efforts,

(C) Efforts made to work joint programs with other localities or as part of a regional effort and answers to the following questions: At what level, regional or local, are the solid waste management efforts centered? At what level will the waste reduction plan be centered?

(b) A statement describing and tabulating results of public hearings and meetings and written testimony from the public on the local waste reduction program.

(5) Submittals regarding legal, technical and economical feasibility:

(a) A statement indicating the following:

(A) The legal, technical and economic efforts which are necessary and have been undertaken to make waste reduction alternatives feasible,

(B) A statement of what is considered "feasible" and why,

(C) A statement of the actions which will be taken to assure the flow of materials to make waste reduction alternatives feasible.

(b) A statement of examples which may include, but are not limited to, flow control of solid waste for one or more uses, prohibiting the theft or unauthorized taking of materials under flow control, market development, price supports and others.

Stat. Auth.: ORS Ch. 459
Hist.: DEQ 25-1980, f. & ef. 10-2-80; DEQ 30-1980, f. & ef. 11-10-80

Senate Bill 855
(Chapter 541, Oregon Laws 1989)
and ORS 468.220 (6)

Relating to solid waste control; amending ORS 459.015, 459.055 and 459.305.

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

SECTION 1. ORS 459.015 is amended to read:

459.015. (1) The Legislative Assembly finds and declares that:

(a) The planning, development and operation of recycling programs is a matter of state-wide concern.

(b) The opportunity to recycle should be provided to every person in Oregon.

(c) There is a shortage of appropriate sites for landfills in Oregon.

(d) It is in the best interests of the people of Oregon to extend the useful life of existing solid waste disposal sites by encouraging recycling and reuse of materials whenever recycling is economically feasible, **and by requiring solid waste to undergo volume reduction through recycling and reuse measures before disposal in landfills to the maximum extent feasible. Implementation of recycling and reuse measures will not only increase the useful life of solid waste disposal sites, but also decrease the potential public health and safety impacts associated with landfill operation.**

(2) In the interest of the public health, safety and welfare and in order to conserve energy and natural resources, it is the policy of the State of Oregon to establish a comprehensive state-wide program for solid waste management which will:

(a) After consideration of technical and economic feasibility, establish priority in methods of managing solid waste in Oregon as follows:

(A) First, to reduce the amount of solid waste generated;

(B) Second, to reuse material for the purpose for which it was originally intended;

(C) Third, to recycle material that cannot be reused;

(D) Fourth, to recover energy from solid waste that cannot be reused or recycled, so long as the energy recovery facility preserves the quality of air, water and land resources; and

(E) Fifth, to dispose of solid waste that cannot be reused, recycled or from which energy cannot be recovered by landfilling or other method approved by the department.

(b) Clearly express the Legislative Assembly's previous delegation of authority to cities and counties for collection service franchising and regulation and the extension of that authority under the provisions of ORS 459.005, 459.015, 459.035, 459.165 to 459.200, 459.250, 459.992 and 459.995.

(c) Retain primary responsibility for management of adequate solid waste management programs with local government units, reserving to the state those functions necessary to assure effective programs, cooperation among local government units and coordination of solid waste management programs throughout the state.

(d) Promote research, surveys and demonstration projects to encourage resource recovery.

(e) Promote research, surveys and demonstration projects to aid in developing more sanitary, efficient and economical methods of solid waste management.

(f) Provide advisory technical assistance and planning assistance to local government units and other affected persons in the planning, development and implementation of solid waste management programs.

(g) Develop, in coordination with federal, state and local agencies and other affected persons, long-range plans including regional approaches to promote reuse, to provide land reclamation in sparsely populated areas, and in urban areas necessary disposal facilities for resource recovery.

(h) Provide for the adoption and enforcement of minimum performance standards necessary for safe, economic and proper solid waste management.

(i) Provide authority for counties to establish a coordinated program for solid waste management, to regulate solid waste management and to license or franchise the providing of service in the field of solid waste management.

(j) Encourage utilization of the capabilities and expertise of private industry in accomplishing the purposes of ORS 459.005 to 459.105, 459.205 to 459.245 and 459.255 to 459.285.

(k) Promote means of preventing or reducing at the source, materials which otherwise would constitute solid waste.

(L) Promote application of resource recovery systems which preserve and enhance the quality of air, water and land resources.

SECTION 2. ORS 459.055 is amended to read:

459.055. (1) Before issuing a permit for a landfill disposal site to be established after October 3, 1979, in any area zoned for exclusive farm use, the department shall determine that the site can and will be reclaimed for uses permissible in the exclusive farm use zone. A permit issued for a disposal site in such an area shall contain requirements that:

(a) Assure rehabilitation of the site to a condition comparable to its original use at the termination of the use for solid waste disposal;

(b) Protect the public health and safety and the environment;

(c) Minimize the impact of the facility on adjacent property;

(d) Minimize traffic; and

(e) Minimize rodent and vector production and sustenance.

[*(2) Before issuing a permit for a landfill disposal site established under ORS 459.047 or 459.049, or for a disposal site established as a conditional use in an area zoned for exclusive farm use, the department shall require the local government unit responsible for solid waste disposal pursuant to statute or agreement between governmental units to prepare a waste reduction program and shall review that program in the manner provided in subsection (5) of this section. Such program shall provide for:*]

(2) Before issuing a permit for a landfill disposal site established under ORS 459.047 or

459.049, or for a disposal site established after October 3, 1979, as a conditional use in an area zoned for exclusive farm use, the department shall require:

(a) The local government unit responsible for solid waste disposal pursuant to statute or agreement between governmental units that sends more than 75,000 tons of solid waste a year to the disposal site to prepare a waste reduction program accepted by the department; and

(b) That any contract or agreement to dispose of more than 75,000 tons of out-of-state solid waste a year in an Oregon disposal site established under ORS 459.047 or 459.049 provides for a waste reduction program accepted by the department.

(3) A disposal site permitted under the provisions of subsection (2) of this section may not accept solid waste from a local government that does not have a waste reduction program or a contract accepted by the department. The department shall review the local government programs and the contract programs in the manner provided in subsection (6) of this section. Such programs shall provide for:

(a) A commitment by the local government unit to reduce the volume of waste that would otherwise be disposed of in a landfill through techniques such as source reduction, recycling, reuse and resource recovery;

(b) An opportunity to recycle that meets or exceeds the requirements of ORS 459.165 to 459.200 and 459.250;

[*(b)*] (c) A timetable for implementing each portion of the waste reduction program;

[*(c)*] (d) Energy efficient, cost-effective approaches for waste reduction;

[*(d)*] (e) Procedures commensurate with the type and volume of solid waste generated in the area; and

[*(e)*] (f) Legal, technical and economical feasibility.

[*(3) If a local government unit has failed to implement the waste reduction program required*]

(4) If the waste reduction program required pursuant to this section is not implemented, the commission may, by order, direct such implementation, or may prohibit the disposal site from accepting waste from that local government unit.

[*(4)*] (5) The department shall report to each Legislative Assembly on the use made of this section, the level of compliance with waste reduction programs and recommendations for further legislation.

[*(5)*] (6) A waste reduction program prepared under subsection (2) of this section shall be reviewed by the department and shall be accepted by the department if it meets the criteria prescribed therein.

[*(6)*] (7) Notwithstanding ORS 459.245 (1), if the department fails to act on an application subject to the requirements of this section within 60 days, the application shall not be considered granted.

(8) No contract or agreement between an owner or operator of a disposal site and local government unit shall affect the authority of the commission to establish or modify the requirements of an acceptable waste reduction program under subsection (2) of this section.

SECTION 3. ORS 459.305 is amended to read:

459.305. (1) Except as otherwise provided by rules adopted by the Environmental Quality Commission under subsection (3) of this section, after July 1, 1988, a regional disposal site may not accept solid waste generated from any local or regional government unit within or outside the State of Oregon unless the Department of Environmental Quality certifies that the government unit has implemented an opportunity to recycle that meets the requirements of ORS 459.165 to 459.200 and 459.250.

(2) The Environmental Quality Commission shall adopt rules to establish a program for certification of recycling programs established by local or regional governments in order to comply with the requirement of subsection (1) of this section. No contract or agreement between an owner or operator of a disposal site and a local government unit shall affect the authority of the commission to establish or modify the requirements of an acceptable opportunity to recycle under ORS 459.165 to 459.200 and 459.250.

(3) Not later than July 1, 1988, the commission shall establish by rule the amount of solid waste that may be accepted from an out-of-state local or regional government before the local or regional government must comply with the requirement set forth in subsection (1) of this section. Such rule shall not become effective until July 1, 1990.

(4) Subject to review of the Executive Department and the prior approval of the appropriate legislative review agency, the department may establish a certification fee in accordance with ORS 468.065.

(5) After July 1, 1988, if the metropolitan service district sends solid waste generated within the boundary of the metropolitan service district to a regional disposal site, the metropolitan service district shall:

(a) At least semiannually operate or cause to be operated a collection system or site for receiving household hazardous waste;

(b) Provide residential recycling containers, as a pilot project implemented not later than July 1, 1989; and

(c) Provide an educational program to increase participation in recycling and household hazardous materials collection programs.

(6) The certification requirement under subsection (1) of this section shall not apply to a local government unit implementing a waste reduction program under ORS 459.055.

Approved by the Governor June 29, 1989
Filed in the office of Secretary of State June 30, 1989

ORS 468.220 (6)

(6) Before making a loan or grant to or acquiring general obligation bonds or other obligations of a municipal corporation, city, county or agency for facilities for the disposal of solid waste or planning for such facilities, the department shall require the applicant to demonstrate that it has adopted a solid waste management plan that has been approved by the department. The plan must include a waste reduction program.

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Proposed Solid Waste Recycling Program Rules and Amendments
OAR 340-60-090 to 095 and 340-82-030, and deleting OAR 340-61-100 to 110

Hearing Date: May 16, 1990
Comments Due: May 16, 1990

WHO IS AFFECTED:

Local and regional government units located within and outside of Oregon who are considering sending more than 75,000 tons of solid waste per year to a landfill established since 1979 as a conditional use in an exclusive farm use zone, regional disposal site owners and operators, owners and operators of local solid waste and recycling collection services within the local government units considering sending their waste to a regional disposal site, local governments requesting financial assistance for solid waste facilities, and citizens in these affected areas.

WHAT IS PROPOSED:

DEQ proposes to amend rules for solid waste reduction programs. ORS 459.055 requires that new landfill located in exclusive farm use zones, such as the new Oregon Waste Systems landfill in Gilliam County and the Finley Buttes landfill in Morrow County, may not accept more than 75,000 tons of waste from local government units located within or outside of Oregon unless the government units adopt and implement a waste reduction program approved by DEQ. The proposed rule amendments set requirements that waste reduction programs must meet to be approved by DEQ.

WHAT ARE THE HIGHLIGHTS:

The proposed rules require waste reduction programs to address reduction for each separate waste stream generated, including household waste, commercial waste, industrial waste, yard debris, and demolition material. DEQ will be required to maintain a list of proven methods for reducing waste, and local waste reduction programs will be required to include those methods in their adopted program, or else provide evidence that alternative waste reduction methods proposed or in place are as effective as the methods designated by DEQ, or else that special conditions precludes implementation of the methods designated by DEQ.

- OVER -

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

FOR FURTHER INFORMATION:

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

11/1/86

HOW TO COMMENT:

Copies of the proposed rule package may be obtained from the Hazardous and Solid Waste Division, 811 S.W. Sixth, Portland, Oregon 97204. Oral and written comments will be accepted at the public hearing:

3:00 p.m.
Wednesday, May 16, 1990
DEQ Conference Room 3A
811 S.W. Sixth
Portland, Oregon

Written comments should be sent to Peter Spendelow of the DEQ Waste Reduction Program, Hazardous and Solid Waste Division, 811 S.W. Sixth, Portland, OR 97204, and must be received by 5 pm, May 16th. For further information contact Peter Spendelow at (503) 229-5253, or toll-free within Oregon at 1-800-452-4011.

WHAT IS THE NEXT STEP:

After the public hearing, the Environmental Quality Commission may adopt rules identical to the proposed rules, adopt modified rules on the same subject matter, or decline to act. The Commission's deliberation should come during the regularly scheduled Commission meeting in June 1990.

A Statement of Need, Fiscal and Economic Impact Statement, and Land Use Consistency Statement are attached to this notice.

WRRULE-D.D04

Before the Environmental Quality Commission
of the State of Oregon

In the Matter of Adoption of Rules and Amendments for Waste Reduction Programs, OAR 340-60-090 to 095 and 340-82-030, and deleting OAR 340-61-100 to 110	))))	Statement of Need for Rules for Waste Reduction Programs

1. Statutory Authority

The proposed waste reduction program rules and amendments are proposed under authority of SB 855 (Chapter 541, Oregon Laws of 1989) codified under ORS 459.055 and 459.305.

2. Statement of Need

The proposed rules are needed to carry out the program mandated by the 1989 Legislature by passage of SB 855. That law prohibits a landfill disposal site located as a conditional use in an exclusive farm use zone and established after October 3, 1979 from accepting more than 75,000 tons of waste per year from a local government unit located within or outside of Oregon unless the local government unit is implementing a waste reduction program approved by the Department of Environmental Quality. The proposed rules prescribe the criteria to be used by the Department in approving waste reduction program.

3. Principal Documents Relied Upon

a. OAR 340-60-005 to 125, Rules for Recycling and Waste Reduction, and OAR 340-61-100 to 110, existing Waste Reduction Program Rules.
b. ORS Chapter 459, as amended by Chapter 541, Oregon Laws 1989 (SB 855)

4. Fiscal and Economic Impact

No new fees or changes in fee structure are proposed. Jurisdictions both within and outside the state of Oregon that send 75,000 tons or more of waste per year to an Oregon landfill disposal site established after 1979 as a conditional use in an exclusive farm use zone may incur significant expenses in implementing the required waste reduction program. Due to amendments of ORS 459.055 passed as part of SB 855, the requirements of ORS 459.055 for implementing a waste reduction program will no longer apply to jurisdictions generating less than 75,000 tons of waste per year, although providing a sufficient opportunity to recycle under ORS 459.305 may still be required.

5. Land Use Consistency Statement

The proposed rules appear to affect land use and appears to be consistent with the Statewide Planning Goals.

With regard to Goal 6 (air, water, and land resources quality) the rules are designed to enhance and preserve land resources in the affected area and are considered consistent with the goal.

With regard to Goal 11 (public facilities and services), the rules are designed to extend the life of solid waste disposal facilities through requiring that comprehensive waste reduction programs be implemented. The rules do not appear to conflict with other goals.

Public comment on any land use issue involved is welcome and may be submitted in the same fashions as are indicated for testimony in this notice.

It is requested that local, state, and federal agencies review the proposed action and comment on possible conflicts with their programs affecting land use and with Statewide Planning Goals within their expertise and jurisdiction.

The Department of Environmental Quality intends to ask the Department of Land Conservation and Development to mediate any apparent conflict brought to our attention by local, state, or federal authorities.

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

INFORMATION ITEM

Meeting Date: April 6, 1990
Agenda Item: L
Division: Water Quality
Section: Surface Water

SUBJECT:

Tualatin Basin: Preliminary Evaluation of USA Program Plan, Stormwater Component.

PURPOSE:

These preliminary comments are offered as an example of the process to be used by Department of Environmental Quality (DEQ) staff in reviewing the various nonpoint source (NPS) management plans submitted by Tualatin Basin jurisdictions and designated management agencies.

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 _A_

DESCRIPTION OF REQUESTED ACTION:

The Commission is requested to examine the review report format and schedule proposed by staff.

AUTHORITY/NEED FOR ACTION:

___	Required by Statute: _____ Enactment Date: _____	Attachment ___
___	Statutory Authority: _____	Attachment ___
_X_	Pursuant to Rule: OAR 340-41-470(3)(i)	Attachment ___
___	Pursuant to Federal Law/Rule: _____	Attachment ___
___	Other:	Attachment ___
_X_	Time Constraints: (explain)	

The rule cited above requires the Commission to approve or reject each of the Tualatin Basin NPS watershed management plans by July 7, 1990. DEQ staff will review the plans during the months of April and May, and will evaluate the plans in staff reports presented to the Commission at its May 25 meeting.

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 watershed management plans subject to review are required by OAR 340-41-470(3)(g, h). Preparation of these plans represents a major commitment of effort and resources by the designated management agencies. Full and timely implementation of effective plans will be critical to successful achievement of Total Maximum Daily Load targets in the Tualatin Basin.

PROGRAM CONSIDERATIONS:

As noted above, DEQ staff will review the NPS plans during the months of April and May, and will evaluate the plans in staff reports presented to the Commission at its May 25 meeting. The review of eight Tualatin Basin plans and preparation of the resulting staff reports will occupy most of the NPS staff's time during April and May.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

The topical framework for plan reviews was established by the Guidance for Nonpoint Source Watershed Management Plans, published by DEQ in December, 1988, and distributed to designated management agencies in the Tualatin Basin to help guide their development of NPS plans. The format for the sample report (Attachment A) is inspired by the Guidance document and is intended to make different sections of the review easily accessible. One alternative would add a "recommendation" comment following the "review" comment on each element of a plan.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

1. Because the review in Attachment A is preliminary only, no recommendations for the Commission's consideration are included.
2. Suggestions from the Commission for refining the report format or schedule will be appreciated by staff.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

As noted above, the plan review process is mandated by EQC rule. Also, continued progress in pollution control efforts in the Tualatin Basin are consistent with the "Critical River Basins" component of the State\EPA Agreement for fiscal year 1990.

ISSUES FOR COMMISSION TO RESOLVE:

1. Details of the review report format and the review process are subject to Commission review and modification.
2. The timing of the plan reviews by staff and of staff report consideration by the Commission are potential topics for Commission deliberation.

INTENDED FOLLOWUP ACTIONS:

As noted above, DEQ staff will review the plans during the months of April and May, and will evaluate the plans in staff reports presented to the Commission at its May 25 meeting.

Approved:

Section: _____

Division: _____

Director: _____

Report Prepared By: Roger Wood

Phone: 229-6893

Date Prepared: March 20, 1990

RW:crw
SW\WC6343
3-26-90

Attachment A

PRELIMINARY STAFF REVIEW
TUALATIN BASIN URBAN AREA SURFACE WATER MANAGEMENT PLAN

PLANS RECEIVED TO DATE

Nonpoint source (NPS) watershed management plans for the Tualatin Basin have been received from:

- Clackamas County
- Lake Oswego
- Oregon Department of Agriculture
- Oregon Department of Forestry
- Portland
- The Unified Sewerage Agency (on behalf of Banks, Beaverton, Cornelius, Durham, Forest Grove, Hillsboro, King City, North Plains, Sherwood, Tigard, Tualatin, and Washington County).
- West Linn

A plan is also expected from the City of Gaston, but has not been received to date.

PLAN REVIEWS BY DEQ

The Environmental Quality Commission must approve or reject each of the Tualatin Basin NPS watershed management plans by July 7, 1990 (OAR 340-41-470(3)(i)). DEQ staff will review the plans (a total of eight) during the months of April and May, and will evaluate the plans in staff reports presented to the Commission at its May 25 meeting.

The subject headings shown below constitute the basic framework for the DEQ staff review. This framework was established by the Guidance for Nonpoint Source Watershed Management Plans, published by DEQ in December, 1988, and distributed to designated management agencies in the Tualatin Basin to help guide their development of NPS plans. The USA plan closely follows this framework.

Preliminary comments on the Unified Sewerage Agency's (USA's) Surface Water Management Plan have been included here to simulate a typical review product. In summary, the plan deserves high marks in many categories. Its overall strength is moderated principally (1) by the incomplete but crucial section on NPS control management measures (also referred to as best management practices, or BMPs) and (2) by the fact that BMPs have not yet been prescribed for specific sites in the basin. For many aspects

of the plan, DEQ's review and analysis is incomplete at this point. Consequently, comments may be brief and should be considered as preliminary and subject to change or further development.

PRELIMINARY REVIEW OF USA's SURFACE WATER MANAGEMENT PLAN

I. INTRODUCTION

Purpose: This section should answer two questions:

1) Why is this plan being produced?
2) What is the plan expected to accomplish?

It should also provide a brief "road map to the format and organization of the document and where to find important discussion items.

Review: Well done, particularly the table showing the section titles and page numbers where information asked for in the DEQ "Guidance" may be found.

II. PROBLEM STATEMENT

Purpose: The purpose of this section is to provide the reader a clear understanding of the water quality problem(s), its source(s) and how it impacts the environment. It should describe the physical setting of the watershed, the water quality problem(s), the institutional infrastructure of the basin, and the time period in which to achieve the goal of compliance.

Review: Thoroughly and accurately described.

III. CONTROL STATEMENT

Purpose: This section is the "heart" of the management plan. It needs to clearly describe the goals, objectives, and program strategy for achieving the correction of the current water quality problem and prevention of future problems.

Review: The main components of the control statement are described and reviewed below.

A. Goal Statement

Purpose: The goal statement is a general statement that should describe the desired result when plan implementation is complete. The effectiveness of the plan strategy will be judged against this goal.

Review: Thorough, well stated, easy to find in the plan.

B. Objectives

Purpose: Objectives are specific statements of what is to be accomplished. They include a measurable end result. They should communicate the plan's measurable results by (1) describing what needs to happen, (2) the time line for implementation, (3) what the measurable result will be, (4) who is responsible for the effort, and (5) if appropriate, the funding and staffing resources necessary.

Review: The statements listed as "Program Objectives" in the plan only describe what needs to happen. As "sub-goals" they do a very good job of more fully describing the overall program goal, but they lack the remaining elements of true objectives. The plan's true objectives are its "management measures" (see "BMPs" below). USA refers to these measures in one part of their discussion of objectives, but should do so more overtly.

C. Strategy

Purpose: The strategy is the specific program of action that defines use of the available resources to attain the stated objectives and in turn, the plan goal(s). The program of action should describe what "tools" are available, which tools will be used, who will use them, in what time frame and at what costs. This part of the plan brings together the implementation process, the use of BMP's and/or permits, the schedule and the costs.

Review: Individual elements of USA's NPS strategy are reviewed below.

Available control options: Extremely well described. The plan discusses specific pollution sources and control concepts, exploring underlying issues, jurisdictional responsibilities, fundamental management principles, and individual control measures. These various elements are displayed in several tables and matrices which clearly show interrelationships and linkages to the plan's "Program Objectives."

Process for selecting options: Adequately described in several sections of the plan.

Description of BMPs to be used: Good, as far as the plan goes, but significantly incomplete, and the principal inadequacy in the plan. The selection and general description of numerous "management measures" is very good. The linking of these BMPs with various program elements and objectives is very good. The format and detailed content of the BMP/management measure descriptions in the plan's "workbook" section is exemplary, and may become the standard against which other plan's BMP descriptions are measured. Unfortunately, the full collection of such detailed BMP descriptions has not yet been incorporated in the plan. Because these descriptions constitute the plan's true objectives, DEQ will urge that these descriptions be completed and incorporated as soon as possible. Also, BMPs have not yet been prescribed for specific sites. As a result, the pollution load reductions estimated in the plan are based on the application of only four (out of over 100) BMPs, and the estimates do not take site specific variables into consideration. USA's timeline and action plan for program implementation includes both the development of additional BMP descriptions and the application of BMPs to specific sites. DEQ staff will continue to discuss with USA ways to expedite these processes.

Responsibilities for implementing: Adequately addressed in several sections of the plan. Of particular importance in terms of detailing responsibilities are (1) the proposed implementation agreements (offered in the plan but not yet signed), and (2) the detailed descriptions of BMP/management measures. Those management measure descriptions included in the plan to date do not specify responsible parties, but note that responsibilities will "be determined upon adoption of interlocal agreements."

Monitoring and evaluation: The importance of monitoring and data evaluation are well established in the plan, and USA's commitment to these program elements is unequivocal. In fact, USA has already initiated an expanded monitoring program in advance of the deadlines mandated by EQC rules. The management measures "workbook" section lists four critical monitoring objectives and describes strategies to meet these objectives. Unfortunately, the BMP/measure descriptions for this section have not yet been completed, so details cannot be appraised.

Public information and education: The plan proposes nearly a score of management measures addressing this need. The general discussion of these measures in Chapter 7 is very good. Unfortunately, the BMP/measure descriptions for this section of the "workbook" have not yet been completed, so details cannot be appraised.

Periodic plan review and adjustment: Adequately addressed by the plan. The plan proposes an annual review and re-writing of USA's action plan for program implementation. Also, the plan identifies a management measure for "Management Plan Update" that calls for a comprehensive plan review every five years to complement the yearly reviews. The detailed description of this measure has not yet been added to the "workbook."

Implementation schedule: General information on scheduling is adequate and is incorporated into several sections of the plan. Approximate time lines specific to individual management measures are shown graphically in the "workbook" section. The most detailed scheduling information is included in the detailed management measure descriptions, most of which have not yet been added to the plan.

IV. PUBLIC INVOLVEMENT

Purpose: To describe opportunities for public involvement in development, implementation, review, and refinement of the plan.

Review: Public involvement in plan development, including the involvement of representatives of public agencies and interest groups, has been excellent. Several concerns most frequently raised are addressed in a brief "responsiveness summary" in an appendix. As noted under "Public information and education" above, ambitious plans are being made for public outreach of various kinds, but detailed objectives in the form of management measures have not yet been added to the plan.

V. AUTHORITY TO IMPLEMENT

Purpose: A description of the federal, state or local laws providing the agencies responsible for the watershed management plan with adequate authority to implement the plan is needed, or, if there is not adequate authority, a list of such additional authorities as will be necessary to implement the plan.

Review: Necessary authorities are adequately addressed.

VI. BUDGET

Purpose: The known or estimated costs of implementing the program must be identified. The budget discussion should address the sources of funding that might be available and what the process will be to obtain the necessary funding.

Review: Alternative funding approaches are described very well. The general discussion of the program budget is adequate. The management measure "workbook" presents approximate costs for each measure, and the detailed measure descriptions will, when added to the plan, estimate costs with a greater level of detail and certainty. USA has a clear picture of the approximate revenues and expenditures necessary to implement the plan.

One interesting detail is USA's request that DEQ "petition the legislature to establish a grant, loan, or trust fund" to be used by designated management agencies for NPS "management, programming, and implementation." This is a policy choice requiring further review before staff can make a recommendation to the Commission. If adopted, this policy will require preparation of a legislative initiative by the Department.

VII. REPORTING IMPLEMENTATION AND RESULTS

Purpose: Responsible agencies must periodically report on implementation of the specific objectives of the plan, the results of monitoring, progress in achieving relevant TMDLs, and any adjustments that have been or should be made to the plan.

Review: The plan calls for at least one annual report, and additional reports may be required by specific management measures or by interagency agreements. This is adequate,

VIII. IMPLEMENTATION AGREEMENTS

Purpose: To facilitate interagency cooperation and the overall implementation of the plan.

Review: The agreements proposed in the plan are adequate, and other agreements may be developed as necessary.

1989 YOUTH COMMISSION

OREGON DEPT. OF FISH and WILDLIFE

Oregon Fish and Wildlife

YOUTH COMMISSION

The concept for development of a Youth Commission was formulated in May, 1988. The idea of agency director, Randy Fisher, and others within the department was to continue the "futuring" process that was already underway with several adult groups. The view was that no planning for the future of Oregon's fish and wildlife resources was complete without also allowing our young people to participate in the process. They are, afterall, the ones who will live longest with decisions made over the next decade.

This was an entirely new approach, at least for the department. From the beginning, the program was considered experimental. However at the close of the process, both department and Youth Commission participants considered the effort a success. All parties concurred that the concept should be continued, in some form, through the coming years.

The Findings ("As We See It") of the Youth Commission contained in this report reflect the consensus of the group. The choice of subject and wording of the recommendations were determined by the commission members. The role of Department of Fish and Wildlife participants was to provide logistical support, facilitate group discussions, and provide information when requested.

This report by the Youth Commission and additional information about the process are presented here for your consideration.

Application Process

All Oregon high school principals were notified of an opportunity for their students to be involved as youth commissioners in June 1988. Each principal was asked to send a return postcard to the Department indicating their desire to be included in a September mailing of application information. A cover letter outlining what the Youth Commission was all about and a nomination form was subsequently mailed again to all Oregon high school principals in early September.

Students could be nominated by any school staff member and each completed application was to be signed by the nominator, school principal and parent or guardian.

Selection Criteria

Over 75 nominations were received statewide. Participants were selected to represent the Department's seven administrative regions, the Portland metropolitan area and Oregon's Native American population. In

addition the following criteria were considered in selecting students for the Youth Commission:

- Cumulative grade-point average - sufficient to ensure no hardship due to class absences related to YC activities
- School activities - demonstrating leadership, variety of experiences
- Answers to application questions
- Strength of reference given student by nominator
- General assessment of student's communication skills

Activity Timeline

Sept 30	Application deadline to Oregon Department of Fish and Wildlife
October 21	Notification of successful applicants
Dec. 5-7	Youth Commission convenes at Silver Falls Conference Center
Jan.- Mar.	Field activities with department (minimum of two outings)
Apr. 10-12	Youth Commission re-convenes to prepare report
May 12&15	Representatives of the Youth Commission report to Fish and Wildlife Commission, the Governor and the Legislature

YOUTH COMMISSION

Laura Armstrong of Medford attends North Medford High School. She is involved in Writer's Club and works on the newspaper and magazine staffs. Laura is the daughter of Glen and Cheryl Armstrong.

Edward Bartell of Sprague River attends Bonanza High School. He is involved in Future Farmers of America. Edward is the son of Robert and Darla Bartell.

Mike Beaver of Cannon Beach attends Seaside High School. He is involved in swimming and golf. Mike is the son of Del and Ruth Beaver.

Rod Carpenter of John Day attends Grant Union High School. He is involved in football and wrestling. Rod is the son of Blair and Ineta Carpenter.

Casey Casad of Nyssa attends Nyssa High School. He is involved in Key Club, the Science Club and Swing Choir. Casey is the son of Jim and Kimi Casad.

Kreg Coggins of Enterprise attends Enterprise High School. He is involved in football, track and FFA. Kreg is the son of Vic and Vickie Coggins.

Darren Craig of Scappoose attends Scappoose High School. He is involved in sports and student government. Darren is the son of David and Narlene Craig.

Katherine Hayhurst of Culver attends Culver High School. She is involved in outdoor sports and showing animals. Katherine is the daughter of John and Marilyn Hayhurst.

Wren Hedine of Portland attends Cleveland High School. She is involved in swimming, rowing and the foreign language club. Wren is the daughter of Sharon Hedine.

Ken Kirkland of Gasquet, California attends Illinois Valley High School. He is involved in varsity sports, the Honor Society and Math Team. Ken is the son of Larry and Jerri Kirkland

John Krieg of Portland attends Parkrose High School. He is involved in sports, the Spanish Club and debating. John is the son of Barry and Diane Krieg.

Jennifer Lanfranco of Lake Oswego attends Lakeridge High School. She is involved in service clubs, journalism and the Honor Society. Jennifer is the daughter of Len and Mardell Lanfranco.

Matt Langer of Sherwood attends Sherwood High School. He is involved in Future Business Leaders and baseball. Matt is the son of Clarence and Pam Langer.

Amy Larsen of Sweet Home attends Sweet Home High School. She is involved in swimming, the French Club and 4H. Amy is the daughter of Dave and Sandy Larsen.

Lisa Montgomery of Summerville attends Imbler High School. She is involved in student government and sports. Lisa is the daughter of Patric and Therese Montgomery.

John Norris of Medford attends South Medford High School. He is involved in football, wrestling and 4H. John is the son of John and Dianne Norris.

Dan Padilla, Jr. of Hillsboro attends Hillsboro High School. He is involved in theatre and NW Steelheaders. Dan is the son of Dan and Gilda Padilla.

John Powell of Siletz attends Toledo High School. He is involved in outdoor sports and study of primitive cultures. John is the son of Kathryn Powell.

Darin Rilatos of Siletz attends Toledo High School. He is involved in Indian drum and dance, softball and basketball. Darin is the son of Manuel and Clarice Rilatos.

Raul Torres of Salem attends McKay High School. He is involved in basketball, speech and the Japanese Club. Raul is the son of J. Rogelio and Carmen Torres.

Derek Whitney of Springfield attends Thurston High School. He is involved in the theatre program. Derek is the son of Jason Whitney and Mary Lee Malone.

Kurtis Woods of Aumsville attends Cascade Union High School. He is involved in football, golf and the NW Steelheaders. Kurtis is the son of Tom and Pat Woods.

Tom Woods of Sutherlin attends Sutherlin High School. He is involved in student government and sports. Tom is the son of Thomas and Deborah Woods.

Sarah Zenke of North Bend attends North Bend High School. She is involved in volleyball, the Ski Club, Hauser Youth Group, and is a representative to Girl's State for 1989. Sarah is the daughter of Tim and Juli Zenke.

As We See It

Findings of the 1988-89 Oregon
Fish and Wildlife Youth Commission

Introduction

Last winter, we identified more than 70 separate issues or concerns regarding Oregon's wildlife resources. This spring, following three months of field activities, we met again to refine those concerns and draft a report.

The following value statements and specific recommendations are a product of our group discussions and reflect our views on:

- Education
- Game Law Enforcement
- Pollution
- Habitat Management
- Preservation of Species and Habitats

Youth Commission Report

Education

People need to be more informed about fish and wildlife management.

This is a public resource, and human actions will directly affect the future. We recommend that the Department of Fish and Wildlife increase efforts to educate the public. This could include both adult and youth education programs.

Adult Education

Adults need education to make proper wildlife decisions on current issues ensuring future resources. To accomplish this, we recommend the following:

- Increase quantity and quality of fair and show exhibits
- Use fish and wildlife-related T.V. programs and public service announcements
- Have more publicity concerning information and issues before and after public meetings
- Youth Commissioners make presentations to community service groups

Youth Education

Young people need to be educated at a early age on wildlife issues so they will be able to make responsible management decisions as adults. To accomplish this, we recommend the following:

- Collaborate with other state and federal agencies and community groups to sponsor summer outdoor programs
- Integrate fish and wildlife topics into school curriculum
- Use more volunteers and department retirees as guest speakers in schools

- Encourage wildlife clubs in schools
- Youth Commissioners make presentations to younger students
- Continue the Youth Commission program
- Create a Department of Fish and Wildlife mascot to relate to young children (i.e. Smokey the Bear, Woodsy Owl)

Game Law Enforcement

If the public understood how and why laws operated, they would be more likely to comply with them. In order to achieve this goal, we recommend the following options:

- A mandatory fishing and hunting education program that would allow people to understand their environment and how to protect it better. The following approaches could be used to operate this program:
    1. Use of teaching manuals similar to driver education booklets
    2. Classes similar to current hunter education program
- Other methods of checking competence could include:
    1. Mandatory tests before purchase of fishing or hunting licenses
    2. Required signing of a contract stating that the license buyer understands the fish and wildlife regulations and agrees to abide by them
- Public education such as media spots and informational meetings would be beneficial

Effective game enforcement extends from officers in the field to judges on the bench. Therefore, we propose:

- An increase in officer numbers and use of volunteers
- Training wildlife biologists to more actively enforce wildlife regulations
- Establishing a separate judicial system dealing with fish and wildlife offenses. In present-day courts, these offenses are not taken seriously enough and adequate punishments are not being administered. Specialized judges or presiding officers would eliminate this from occurring.
- Judges and attorneys should continually be instructed in current fish and wildlife regulations
- In place of the fluctuating degree of penalties accessed, mandatory sentences should be set
- Due to current problems such as jail over-crowding; use alternative sentencing. Public apologies through the media and community service work could be among these.
- Focus should be put on repeat offenders to prevent future violations

Funding for our proposals could be derived from the fines received from violators and a state tax on items such as fishing and hunting equipment. Funds generated should be directly awarded to the Game Division of the Oregon State Police.

Pollution

One of the major concerns of the ODFW Youth Commission is pollution, because of the interrelated effects it has on our ecosystem. For instance, one form of pollution we are concerned about is systemic insecticide use. It not only kills insects, but it also affects game animals and their habitats.

We are equally concerned about other types of pollution such as lead poisoning, toxic waste, agricultural run-off, noise pollution, etc. Our generation has a particular concern about the transporting of nuclear waste across our state because of the possibility of accidents.

We, as a representation of youth in Oregon, want to see:

- The Department of Fish and Wildlife work for more enforcement and exposure of law breakers
- Higher fines for pollution violators
- Better public education about the effects of pollution on wildlife
- Increased monitoring of pollution
- Tighter restrictions on the use of insecticides/herbicides that affect wildlife
- A switch to recyclable products to reduce pollutants
- An effort to develop biological problem-solving methods instead of chemical ones
- Tighter controls on business polluting our lands and waterways

As a commission, we are willing to re-evaluate our priorities as related to pollution because we know that something has to be done now about our "throw-away" society, and the solution has to start with us.

We believe that state agencies have not taken an active enough role in the solution of this problem, and we would like to see them join us in this effort.

Habitat

We, the Youth Commission, find it necessary to responsibly manage today's habitat for future generations. We must take immediate action in order to resolve the issues that threaten these habitats. In order to achieve productive and positive results, it is extremely important for all of today's businesses, environmental groups, government and related organizations to cooperate.

To expand our current natural resources, we must enhance them and protect the unused. Managing these resources is very important because we must consider the needs of everyone. In addition to immediate protection of habitat, the public must be educated in order to gain their involvement in environmental issues. To achieve these objectives, we recommend the following:

Immediate action--

- The Oregon Department of Fish and Wildlife must take immediate action to protect and preserve fish and wildlife now. They must stand their ground on controversial issues and not rest until the parties involved have equal settlement.

Cooperation--

- The department must make all efforts to cooperate with other agencies, but not to the point where wildlife resources are being damaged. In every instance, non-cooperation will lead to poor decisions and ultimately poor results in the future.
- The department must work to enhance resources being used today, such as timber, and work to protect it for the future. It is essential that the department provide information on unused resources as well. A solid base of information will provide for positive results in the future.

The future--

- We must preserve old growth for spotted owls and cover for other species.
- Timber harvest must also be continued on public lands. Timber harvest provides food for many animals, helps prevent forest fires and is very important to the economy.
- Grazing also should be continued on public lands. Grazing helps prevent forest fires, and spreads fertilizer and seeds through manure. But timber harvest and grazing must be managed properly so they are not doing damage to the habitat.
- Towns and sub-divisions must not be allowed to spread into important habitat areas.
- Fish habitat is decreasing rapidly because of dams and poor water quality; thus we must ask the Department of Fish and Wildlife to work to protect the aquatic environment.

Preservation

Preserving our lands and waters is important to future maintenance of fish and wildlife populations. To accomplish this we recommend the following:

- Maintain old-growth timber at close to the current levels to protect the economy, ecology, wildlife species and tourism of Oregon. We propose that the Fish and Wildlife Commission make a resolution to the Bureau of Land Management and the U.S. Forest Service supporting this position.
- Fish runs are being affected by dams and inadequate fish ladders; thus, we feel that energy source alternatives and improvements in downstream migration must be pursued. We ask the department to research methods of protecting downstream migration of salmon and steelhead and investigate other sources of energy.
- We encourage the department to pay more attention to endangered species, other than the spotted owl, that will be affected by habitat alteration. This can be accomplished by providing public education and more research on non-game and endangered species.
- We feel the department should encourage recycling to save renewable and non-renewable resources, and to reduce the need for land fills.
- We encourage development of alternative logging methods on selective habitats to aid in their preservation
- Predators are being affected by human intervention; therefore, we must intervene again to control populations at levels compatible for

all species. We encourage the department to leave options open for predator control as necessary.

YOUTH COMMISSION

FIELD ACTIVITIES

Youth Commissioners were encouraged to "find out what fish and wildlife management was all about" by participating with department field biologists in on-going management activities. Department staff provided logistical support and coordination to the Youth Commissioners allowing them to participate in activities such as:

Management Activities

Bald eagle survey
- Cascades **
- E. Ore **

Steelhead spawning *
STEP project *
Kokanee scale analysis
Elk winter feeding
Coho fry transport
Big game survey
- deer spotlight route ***
- elk herd comp (helicopter)
- deer herd comp ***
- antelope
- big horn sheep
- elk

Plankton sampling
Shorebird survey(Coast)****
Elk trapping
Big horn sheep medication
Duck hunter check **
Wild turkey release
Red-legged partridge release
Turkey trapping
Lake water quality analysis
Big horn sheep radio collaring
Fish passage assessment
Pheasant survey
Fish spawning *
Wildlife mgmt area operation
Elk trapping (Jewell)**
Aerial angler survey(Columbia R)*
Basin mgmt planning
Wood duck nest box construction

Visitation/Observations

Regional Staff meeting *
Commission meeting*
ODFW Lab - EOSC
Summer Lake WMA***
Klamath Refuge
Lower Columbia Compact mtg
Big game regs public meetings*
Murder's Creek WMA
Fish hatcheries***
Bald Eagle Conference(K Falls)
Gerber Reservoir
Sportsmen's Show (ODFW Booth)

Speaking Engagements

Issak Walton League
Kiwanis
Pheasants Forever
Volunteer Firemen

* additional Commissioner participation

Youth Commissioners Evaluate Their Experience

(Selected from evaluation sheets filled out at their final meeting in April)

"I think you did a great job in selecting people for this and organizing it. You have made it an experience I will never forget and treasure forever."

"I can't explain my new understanding of wildlife. I DON'T WANT THIS TO END."

"I'll remember this until the day I die. I learned a great deal and met a bunch of neat people in the process."

"Such an experience will, and has, affected my life. I've learned valuable lessons and become open when I express my thoughts. Before the commission I was very quiet and unexpressive. Now I feel that I can confidently express any thought I may have."

"This was the best opportunity I've ever had to talk with people involved in evnironmental issues. I feel like we have actually made a difference in the way things will be run."

"I had a wonderful experience which I will never forget. The program broadened by viewpoints and shed some light on other problems. I made new friends from across the state and I am satisfied."

"My Youth Commission experience was one of great learning and an educational eye-opening....I also learned more about what I could do to get things done and change policies."

"I was able to do so many things in four months, that the average person doesn't get to do in a lifetime....I was exposed to new issues and the other sides of old issues, that someday will greatly affect my lifestyle."

"As I sit here knowing that these are the last hours I will see some of these people (or I should say friends) I realize what a great time I've had and how wonderful an opportunity this was for me. It was an unbelievable learning experience."

"Through this commission, I was able to meet and interact with others who have the same interests as I do in this. I have expanded and broadened my interests and had the fringe benefits of making some great friends."

"We are a lucky group of kids."

DRAFT

M E M O R A N D U M

TO : Environmental Quality Commission

FROM: Bill Hutchison

SUBJ: Work Session Item 2 -- Discussion of Options for Public Input

DATE: April 16, 1990

****

With apologies for the lateness of this submission, here are my quick thoughts on this topic.

1. Consideration of this issue should be wrapped up with a discussion of our relationship to the public, how the public has access to us, the relationship between the Commission and the Department as it relates to the Commission's statutory charge to formulate policy, how we run our meetings, and how we review department decisions. A copy of my February 21 letter to the director is attached, together with an E-Mail memorandum from Robert Danko. You have previously received Michael Huston's "third-party appeals of permits" memorandum and the Director's "options for public input" memorandum;

2. We need to relate to the public holistically; I think we should resist the temptation to divide the public into regulated community and interested community;

3. Our process needs to be accessible to the public; from my experience, public participation is difficult; that does not mean we should make our conduct of business cumbersome to accommodate it, but it does mean that we should facilitate and accommodate it;

4. To a certain extent, the Department may look at the EQC as a component of its workload and an aspect to be managed as a part of its program; our effort needs to be aimed at giving the Commission a chance to formulate policy and to participate in the "fun" of regulating for environmental quality;

5. We need to think of who we are; we are part of the public; we represent the public; we are a court of appeal; we are facilitators between the Department and the public (both regulated and interested).

6. We cannot use the most recent WTD permit issue as a rationale for restricting public ~~assets~~ access; it essentially came to us "out of order"; we have learned from that, and I think it is

safe to say that we do have opportunities to channel public input and organize our meetings such that the tail does not wag the dog;

7. Our efforts need to be aimed at fulfilling our statutory charge to lead the Department in a formulation of policy; in my view we have been only partially successful to date; there is much to be done; delegation of additional functions by the Commission to the Department should follow our attainment of our policy formulation responsibility; if too much delegation comes too early, it may only lead to a less effective policy formulating capability.

My comprehensive overview, then, of these various components is roughly as follows:

1. **Public Access/Input to the EQC**

-- If we have delegated a public hearing, then the DEQ post-public hearing recommendations should be released to the Commission and the public a minimum of ten (10) days prior to the EQC meeting; if these are released too late, then we may be faced with a need to

reschedule in some instances, or to modify the recommended meeting format which follows;

-- Assuming the foregoing, public comment before the EQC will be limited to a reaction to the staff recommendation to the extent it is different than the recommendation of the DEQ on which the hearing was held;

-- ~~on~~ Major items, controversial issues or issues which have involved an advisory committee which may also have a split of authority recommendation that differs from that reflected in the public hearing record may best be handled in our "representative group panel discussion" format where we specially schedule consideration of a major rule or topic for panel discussion consideration.

2. **DEQ to EQC Policy Formulation Opportunities**

-- This ~~not~~ ought to be viewed as part of our new strategic thinking approach;

-- Issues on the horizon like gold mining ought to come to the Commission early for policy guidance;

-- Work sessions can be used more effectively to ~~advise~~ interact with the Department on upcoming issues;

-- Work sessions may afford an opportunity for the Commission to sit around the table with division administrators and the director to get up to date on current events and current questions that might be presented.

-- The meeting format might include a report from the director that keeps us in the loop;

-- A consent agenda could be utilized to authorize non-controversial rulemaking hearings or those in which the Department has no question of options, for example, for the Commission to consider; it could include simple rule adoptions, tax credits, and the aforementioned report from the director; any of the items could be bumped from the consent agenda to require fuller consideration by the request of any commissioner or at the recommendation of the director, or at the request of public participants who have submitted a request in advance.

3. Along the foregoing lines, we have an opportunity to overhaul the EQC agenda to design it to better focus on policy formulation; this would afford us a chance to plow a deeper furrow and perhaps lighten the load on staff to report to us too often or more than is necessary in the rulemaking process.

4. The policy formulation function could be enhanced by further overhaul of staff reports that focus staff on the policy issues and more precisely set forth the policy debate and the staff reaction to it;

5. To enhance the ability of the Commission to interface with the Department, individual Commission members may want to assume an emphasis relationship with the various divisions; the idea would be that these respective commissioners would plow an even deeper furrow in their area of emphasis and lead the commission effort in asking questions and formulating recommendations.

Third-Party Appeals -- As a commission that fosters and encourages public input/access, and in light of the delegation of the permitting process to the Department, I believe we should follow the lead of the Division of State Lands, Board of Forestry

and Water Resources Commission in allowing for the participation in the agency appeal process of the public as well as the permittee. The spectre of abuse is outweighed in my view by the advantage of an in-house second look and an opportunity to create an adequate record without a trip to circuit court for a trial de novo.

Subject to requirements of standing, I would hope the Commission would favorably consider some means of accommodating so-called third-party participation in the appeal to the Commission of the directors' permitting decisions. The balanced middle course which commends itself under all the circumstances and in the context of EQC delegation to the DEQ, I would suggest is as follows:

1. Tri-annually EQC performs policy review of permitting process within each affected division.

-- This should reduce appeals;

-- This would be an open process in which the public could participate and would let us set trends and directions to which the specific permitting decisions would presumably be subject;

2. Option No. 2 from the Huston March 21 letter is the alternative that I think would work the best; this would permit adversely affected or aggrieved members of the public or a group of ten or more from a public interest group who would have to demonstrate a substantial question of public interest;

3. We could either provide outright for a contested case hearing to occur before the Commission in the event of an appeal, or we might ask Michael Huston if we could provide for argument on the request with prior written submissions and allow the Commission to decide whether or not a full contested case hearing or a more limited argument on the record would occur;

4. We should consider adopting contested case hearing procedural rules such as those referenced in Michael Huston's March 21 letter:

-- The positions of those similarly situated should be consolidated;

-- We should focus issues in the prehearing conference format so as to reduce the actual time involved in a contested case hearing;

-- We should consider requiring pre-filing of written testimony and limit actual testimony to any matters of clarification and cross-examination;

4. We could give this a trial period perhaps of one year to three years and see what our experience indicates; if this process proved overly burdensome, we would be free to impose further constraints such as increasing the burden to demonstrate standing to appeal.

Since the EQC has delegated permitting to the DEQ, this is another means of letting interested and affected persons perform some self-monitoring; this avoids the burdensome circuit court hearing de novo, and affords the EQC a chance to cure perceived deficiencies without having a court be involved. With the possibility for further delegation in the rulemaking function, the appeals from permits should not overload the Commission or staff.

WPH/jml

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

December 1, 1989

John Pointer
Terry Jenkins
Dale Sherbourne

Re: WQ-Multnomah Co.
Columbia Blvd. STP
Permit No. 3881-J

Messrs. Pointer, Jenkins and Sherbourne:

On September 13, 1989 you submitted written questions and positions for my review. At that time Tom Bispham also recorded a number of additional questions you wished to have addressed. The Department reviewed your questions and your positions and I have met with staff to discuss each of the technical and environmental items.

Before going into your questions and our responses, I would like to state that I and the Department share your concerns about sludge and compost management and water quality. Several of the areas where you have concerns are also areas of on-going concern for the Department, and our policies and rules are likely to be reviewed in the future as we work to better develop our Water Quality Program in Oregon.

The questions recorded by Tom Bispham are repeated below, followed by our response.

1. "DEQ has only responded to sludge questions, not compost. We believe compost is just another name for sludge and should fall under sludge requirements. If they are different, how so?"

Response: The Department considers sludge and compost to be different. Staff believe compost is acceptable for use by the general public; staff also believe it is not necessary to manage compost in the same way as sludge. The Federal Environmental Protection Agency (EPA) intends to propose new rules for sludge and compost management in the future. Staff will review EPA's proposed rules, and may recommend revisions to the Department's sludge rules at that time.

2. "DEQ has never addressed the large pits on the south side of the road nor the compost dumped adjacent to the pits."

Response: Staff are not certain what site this refers to. You are requested to provide a clear map or diagram of the location in question by December 31, 1989. If the site has not already been investigated, an investigation will be made. If the site has already been investigated, no further action will be taken. In either case, you will receive a written response. If a clear map or diagram is not provided by December 31, 1989, we will consider this matter closed.

3. "Compost use is not tracked like sludge."

Response: That is correct, see answer to No. 1, above.

4. "Is marketed compost required to have a product safety data sheet? If so, who is responsible?"

Response: A product safety data sheet is not required by DEQ, nor by the Occupational Safety and Health Administration (OSHA).

5. "Condition G10 of the permit talks about cost efficiency of composting, is this being regulated?"

Response: General Condition G10 does not refer to cost efficiency, but refers to the operation of equipment and processes in a manner that results in efficient treatment of waste water to achieve compliance with the terms and conditions of the permit. Operation of the composter is not addressed by the permit, nor is operation of the composter necessary to meet the terms and conditions of the permit. Nevertheless, staff have reviewed composter operation and are satisfied that it is being operated properly and efficiently.

6. "The City has reduced the composting cycle and is now producing "shit and sticks", is this allowed?"

Response: Staff have reviewed composter operation and have determined that composter operation and the finished compost product are satisfactory.

7. "Sludge and compost management at the site is in violation, sloppy and doesn't meet sludge requirements."

Response: Staff do not believe that sludge and compost management at the Columbia Treatment Plant is sloppy, and staff have addressed all areas of concern to the Department.

8. "The sludge storage building has a drain to the slough and has created a delta."

Response: Sludge is not stored in a building; however, sludge is handled in the Sludge Processing Building. It is assumed that this item refers to the Sludge Processing Building.

Staff reviewed the drainage system in and near the Sludge Processing Building. All drains in the Sludge Processing Building and in the truck unloading breezeway are routed to a sump in the building. From the sump, the drainage is pumped into the plant influent and is treated. In addition, the City has plans to revise the plant storm drain system. Storm drains in those areas of the plant that are most likely to have spills will be routed to a pump station, and the drainage will be pumped into the treatment system. We do not believe further action on this matter is needed.

9. "Oil slick in slough from same drain on Martin Luther King Day."

Response: Staff have no information regarding an oil slick in the slough from the plant storm drain. City staff also had no information regarding an oil slick in the slough. No further investigation of this item will be made.

10. "Do they test for PCBs in effluent?"

Response: Monitoring of PCBs is not required by the City's NPDES permit.

11. "We are still waiting for Quan's report on chlorine."

Response: Work on the chlorine report has been suspended because of need to work on other projects that the Department considers higher priorities. Staff will review this situation, and you will be informed in writing if and when work on the chlorine report will be continued.

At the end of your summary report you stated your position in eight items. Of these eight items, I have elected to respond only to those that involve technical/environmental issues. These items are repeated below, followed by our response.

A. "The City should have a hearing on the bases of the violations as to revoking the NPDES permit."

Response: Violations will be addressed through normal enforcement procedures. As a practical matter, the Department and Commission will not revoke the City's NPDES permit. A hearing is not considered necessary.

C. "The Sludge sites should be required to be thoroughly cleaned up at Hayden Island pit sites, Delta Park site, Old Western Auto site, the slough between the Columbia Treatment Plant and Triangle Lake, the domestic well site at Scappoose and survey all Parks Bureau locations where composted sludge could have entered the water ways or food chain crops."

Response: Hayden Island: Staff consider the City to have taken adequate corrective measures at this site. This item is considered resolved, unless new information is provided that leads staff to believe that unresolved issues remain. If no new information is provided by December 31, 1989, this matter will be considered closed.

Delta Park: No violations were found to exist at this site in 1986. A recent review of the site has determined that no environmental hazard exists, and no action is required.

Old Western Auto: Staff have evaluated this site and believe no adverse environmental impacts are occurring; however, staff will continue to monitor the site.

Slough, between the Columbia Treatment Plant and Triangle Lake: See Response to Item 8, above.

Domestic well site at Scappoose: Staff required the City to have all sludge removed from within a 200 foot radius of the well, and the area spread with lime. No further action is required.

Parks Bureau locations where composted sludge may have been used: Staff consider the use of compost to be environmentally acceptable. No action will be taken on this item.

D. "The corrections made at both Sullivan and Ankeny Pumping Stations regarding controls and emergency power."

Response: Backup power is available at Ankeny Pump Station, and the City is proceeding with a project to provide backup power at Sullivan Pump Station. Control systems at both of these pump stations include manual overrides for use in the event of controller failures.

E. "The restoration of all employees to their former positions at the treatment plant with seniority and back pay who have testified in this committee. This in accordance with the Clean Water Act."

Response: This is not for the Department or the Commission to decide.

G. "From Exhibit #17 investigating the City of Portland's enforcement action as well as the high levels of contamination in the sludge."

Response: The Department and EPA will continue to require improvements in the City's Pretreatment Program. The Commission will not make or require a special investigation.

H. "Investigation of the sewage spills and the nonrecording of these spills in their spill report log and the notices of violation/noncompliance issued."

Response: The Department does not require the City to maintain a spill log. The City's NPDES permit requires that spills be reported to the Department. Staff have no reason to believe that spills are not being reported as required. The Commission will not make or require a special investigation.

I believe this resolves the issues you have raised. I would like to reiterate that I and the Department share your concerns about sludge and compost management and protection of water quality. The Department has an on-going concern about the lower Willamette River, and the City of Portland has proposed a study that would assist us as we consider revising our rules and standards to obtain an overall improvement in water quality. The Department will also be reviewing EPA's proposed sludge and compost management rules, and may propose changes to our rules and guidelines in this area. Both of these activities would involve opportunities for public participation, and your input on these issues would be appreciated.

Sincerely,

William Hutchison
Chairman

cc: Office of the Director
Water Quality Division
Regional Operations
Northwest Region
City of Portland, BES

A REPORT OF CORRUPTION AND A PLEA FOR HELP TO THE OREGON ENVIRONMENTAL QUALITY COMMISSION

BY HARRY DEMARAY, APRIL 17, 1990

My name is Harry Demaray. I have lived and worked in Oregon off and on for most of my 69 years. I have been employed by the DEQ for the past 16 years to help enforce Oregon's anti-pollution laws and rules.

Before that I worked in the Forest Products Industry in Oregon and California for 12 years following graduation from Oregon State College, School of Forestry in 1958, served as a naval aviator in the U.S. Marine Corps for 12 years, worked summers in Alaska between semesters at Linfield College from 1939-1942, grew up in Dayton, Oregon where my parents settled after 15 years in the Klondike.

I offer this background to provide some standing for what I have to say and ask.

I chose to work for DEQ because I wanted to help clean up and correct the mess that my generation and the pioneers made of Oregon. If you've ever swam or fished in an Oregon river in the 30's downstream of a slaughterhouse or a papermill you would have soon realized that something was terribly wrong with the way we were living. But then, as now, jobs and greed took precedence over people and nature.

Now for the present. Last week I was summarily fired from my job as Open Burning Coordinator, discharged by Fred Hansen and cohorts; Adair, Loewy, Bispham, Woods and Davis for enforcing the rules that you adopted to help clean up Oregon's air. While Congress and the President debate ways to tighten-up the Clean Air Act your Director is squandering taxpayers dollars to pervert Oregon's clean air rules.

I have twice appealed Hansen's corruptions to the Oregon Supreme Court and once I whistled directly in Governor Goldschmidt's ear only to find that corruption and abuse of power does not stop with Hansen and friends.

I ask you, the Environmental Quality Commission, to intercede to eliminate these corruptions and remove those responsible. I ask you to reinstate me to continue the enforcement work that I have underway and to complete the 16 documented open burning violations that are expiring on my desk.

I am prepared to provide you with any documents you want to support what I have said.

Thank you for hearing me.

Are there any questions?

NEIL GOLDSCHMIDT
GOVERNOR

Department of Environmental Quality

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

March 26, 1990

Harry M. Demaray
576 Welcome Way S.E.
Salem, OR 97302

CERTIFIED MAIL
P 125 100 191

Dear Mr. Demaray:

Being employed in the Regional Operations Division, Northwest Region of the Department of Environmental Quality, in the classification of Environmental Technician 3, you are notified of the following:

ACTION: Dismissal

EFFECTIVE DATE: March 30, 1990

STATUTORY GROUNDS: Insubordination, misconduct and/or other unfitness to render effective service. (ORS 240.555.)

SUPPORTING FACTS:

Background:

Oral and written instructions have been provided to you on a number of occasions about following instructions and direction of your supervisor. Over the years there have been several prior work improvement plans regarding your performance in addition to a reprimand, salary reduction and demotion. The grounds for prior disciplinary actions included insubordination, misconduct, and other unfitness to render service as an Environmental Specialist, the position from which you were demoted to your present position.

Facts Causing the Action to be Taken:

In January 1990 your supervisor, George Davis, met with you to discuss seven (7) Notices of Noncompliance (NON) drafted by you. The NONs discussed are listed below:

		Date of Violation:
1.	David Harmon	November 27, 1989
2.	E. Kida	November 11, 1989
3.	D&D Bennet Co.	May 2 & 15, 1989
4.	Erik Somirs (Burns Bros. Truck Stop)	May 4, 1989
5.	Francis Cox	December 6, 1989

6.	Lloyd Duyck (Lloy-Dene Farms)	October 5 & 27, 1989
7.	Kenneth Park	June 14 & 18, 1989

Mr. Davis made changes to the NONs and sent them to word processing for corrections. In mid-January you discussed your objections to his changes with Mr. Davis. Mr. Davis then ordered you to send the NONs out as modified by him.

On February 8, 1990, Mr. Davis reviewed several of the NONs discussed with you in January. You changed four of the NONs contrary to the changes made by Mr. Davis and contrary to his instructions to you. You changed the following NONs:

A. The NON to D&D Bennet (3) did not include Mr. Davis' revisions. It was dated February 1, 1990.

B. The NON to Erik Somirs (4) did not include Mr. Davis' revisions. You had revised the NON to state that automobile parts were burned; the original NON had cited only the burning of land clearing debris. It was dated February 7, 1990.

C. The NON to Lloyd Duyck (6) did not include Mr. Davis' revisions. In particular, Mr. Davis had removed your statement in the NON that the violation cited in the NON is subject to a fine of $25,000 per day and imprisonment for one year; the NON still contained that statement, contrary to Mr. Davis' directions given to you in a memorandum dated January 5, 1990, and to you orally on or about January 22 and 24, 1990, by Mr. Davis. The NON was dated February 7, 1990.

D. The NON to Kenneth Park (7) did not include Mr. Davis' revisions. It was dated February 1, 1990.

You signed the NONs, prepared and presented them for mailing.

Severity of Discipline:

Your actions in January and February clearly demonstrate your continued failure and refusal to follow the instructions and direction of your supervisor. You have once again acted contrary to the written and oral instructions of your supervisor. Continuous efforts by management over the years to improve your performance have resulted in no change in your conduct or performance . When you disagree with your supervisor, you simply do as you please despite his directions. As a result, management must constantly monitor your

performance to insure that you follow even the simplest directions. Management cannot rely on you to carry out your duties as instructed. Your conduct shows fault for your dismissal.

Mitigating Factors:

You and your representative Cecil Tibbetts, Executive Director of AFSCME, appeared at the predismissal meeting on March 6, 1990. Management has considered the information you presented at the meeting but has determined that dismissal is appropriate under all the circumstances.

Appeal Rights:

This action may be appealed to the Employment Relations Board (ERB). Such appeal must be filed within ten (10) days after the effective date of this action. You are entitled to legal counsel at your own expense. I also advise you to discuss this with your bargaining unit; if you so desire, for its advice and counsel.

If you have any questions on this matter, please call me at 229-5379. A copy of this notice of dismissal is being mailed to Mr. Tibbets.

Sincerely,

Donny R. Adair
Human Resources Manager

cc: Fred Hansen
Tom Bispham
Karen Roach
Ed Woods
George Davis
Josephine Hawthorne
Cecil Tibbets

Leonard Stark testimony

TUESDAY APRIL 17, 1990

LEONARD GEORGE STARK
5050 S.W. [illegible] ROAD
LAKE OSWEGO, OREGON 97035
639-2807

ENVIRONMENTAL QUALITY COMMISSION
EXECUTIVE BUILDING - ROOM 3-A
811 SW. 6TH AVENUE PORTLAND OR

TUALATIN RIVER

DEAR COMMISSION:
ONE AND ALL INVOLVED.

I WILL MAKE MY PART SHORT FOR REFERENCE CHECK BACK MY INVOLVEMENT WITH D.E.Q. WITH TUALATIN RIVER AND S.W.M. OVER THE PAST YEARS OF MY ATTENDANCE AND WRITTEN COMMENT TOO.

THIS ALSO INCLUDES WASHINGTON COUNTY TOO ON WATER ISSUES E.Q.C., METRO, BOUNDARY BOARD, AND OTHERS TOO INCLUDING LAKE OSWEGO

MY BIG ISSUE ALL ALONG (SEEMS TO BE RIVER WOMB FOR WHAT [illegible] HAS COME OUT SO [illegible])

I HAVE SAID EVERY BODY IN THE TUALATIN RIVER WITH SAID BASIN SHOULD HELP PAY FOR PROJECT THAT ARE AFFECTED. I MEAN RICH AND EVERYONE AND SOURCE ACT ON THAT

THEN THE DAMS IN PATTON VALLEY DROP AT LOOK FOR OTHER SOURCES

THANKS - GOD BLESS Leonard G Stark

Gary E. Newkirk
2234 SE 53rd Ave.
Portland, OR 97215
April 17, 1990

Environmental Quality Commission
State of Oregon
811 SW 6th Ave.
Portland, OR 97204

SUBJECT: DEQ Abrogation of Responsibility for Protection of Users of Sewer Systems under its Control and Jurisdiction.

Commission Members:

BACKGROUND:

DEQ mandated in 1978 that a sewer system for the Barview area be constructed.

The Twin Rocks Sanitary District, under the authority of DEQ, was selected to build and operate the mandated system.

DEQ reviewed and approved the sewer system plans.

DEQ monitored, inspected and approved the construction of this system.

In designing the system, there were basic design flaws that caused the sewer system to flood my house and property whenever there was a malfunction anyplace in the Barview area.

My house is a listed National Historic Building constructed by the United States Lifesaving Service in 1902 as the second station on the Oregon coast. Congress later changed the name to the United States Coast Guard.

Since Twin Rocks constructed the sewer system in 1980, it has flooded my house seven times and my yard eight times.

I first appealed for help to the Tillamook County Health Department. They said it was not an area of their jurisdiction and referred me to the State Health Department.

The State of Oregon Health Department on at least six different occasions stated they had no control over health problems stemming from sewer system backups in individual residences. They only deal in area or regional health

We sued for ten counts of damage and one of inverse condemnation.

We suffered several setbacks on interpretation of points of law. Even though the basic cause of the sewer flooding was the sames, the design flaws, the Court rules that only the immediate cause of the backups could be considered and that they could not be combined. Also on the damage part of the suit for the fifth backup, we could only claim damages that had not already been caused by the first, second, third and fourth sewer flood.

We could win on inverse condemnation only if we could not enjoy any possible, practical use of the property.

We had a great deal of trouble with witnesses refusing to testify against the sewer district. One scheduled elective surgery after getting his summons and then moved the date up twice after his court times had been moved up. Some people just didn't show up and said later they were sick.

We presented contractors sworn repair quotations that totaled $62,000.

The sewer district kept hitting on several points: during the four years since the fifth backup I had stayed overnight in the house eleven times. On one occasion, a friend came along to help with a repair. He brought along his two children. The Sewer District considered that use and enjoyment.

So did the Jury. Only two of the twelve held out for inverse condemnation. The other ten agreed unanimously on all ten damage points. The Jury decided the additional damage caused by the fifth sewer backup not caused by the first four was $29,500. They awarded nothing for lost rent.

Because the Twin Rocks Sanitary District is a public body, by State of Oregon Statute we could not collect attorney fees. Our total legal expenses came to over $36,000.

I spent four years pursuing the course dictated by the Environmental Quality Commission. I won the case but have lost thousand of dollars on just the case. My remodeling loans, some dating back to the 70s, on this house exceed $25,000. My lost enjoyment and lost equity are incalculable.

Twin Rocks Sanitary District has insurance that covered both the damage award and their attorney fees. Their cost was the policy deductible.

Tillamook County last fall completed a reappraisal of the property. After previous decreases in value, they

reduced the house from $26,120 to zero and the land from $26,010 to $5,000.

The sewer has backed up three times since the time for which I sued.

Commissioners, what is your recommendation now on how I can get justice.

REQUEST:

Adopt as a goal of your Strategic Plan, the protection of individuals being served by sewer systems. Assume the authority to mandate repairs to both systems and damages caused by sewer systems. With all the new people being connected to sewer systems in Washington County and east Multnomah County, these procedures are needed more than ever.

Gary E Newkirk

Gary E. Newkirk
2234 SE 53rd Ave.
Portland, OR 97215
April 17, 1990

Environmental Quality Commission
State of Oregon
811 SW 6th Ave.
Portland, OR 97204

SUBJECT: Request for Enforcement Action
Twin Rocks Sanitary District
File # 90578

Commission Members:

BACKGROUND:

Raw sewage from the Twin Rocks Sanitary District has backed up from toilets and showers to flood my house at Barview seven times. Raw sewage was observed overflowing the manhole in front of my house six specific times and there is evidence that it probably overflowed three additional times, but there is not direct proof of these three. All incidents were reported to the Twin Rocks Sanitary District.

The summer of 1985 I spent many hours checking all DEQ records for reports of backups by the Twin Rocks Sewer District. They had NOT reported a single incident.

After my research, I protested directly to Fred Hansen that these incidents had not been reported and requested that he instruct Twin Rocks Sanitary District to report all future incidents.

When nothing had been written to the Sewer District by September 1985, I left a message for Mr. Hansen requesting action. I was not able to contact him directly - nor did I receive a message from him.

On December 11, 1987 and July 8, 1988 I presented to this Environmental Quality Commission my objections, among other items, of the failure to enforce reporting of raw sewage incidents.

When I discovered a sewer backup into my house on August 28, 1987, I was able to contact Mr. McCormick, the plant operator, directly. I stated that if a report was not made, I would file a complaint against him personally. His report on August 31, 1987 is the only one the Sewer District has ever made to DEQ regarding all these incidents.

In August 1989, Mr. J. R. Bekebrede of 15385 Lakeside Drive reported directly to Mr. McCormick, plant operator, that raw sewage had backed up into his bathroom.

The week of September 11th 1989, I reported to the office of the Twin Rocks Sanitary District that raw sewage had again overflowed the manhole in front of my property and flooded my driveway and yard with raw sewage.

Neither of these last two incidents were reported to DEQ as DEQ had previously requested.

No one from DEQ has requested additional information or details from me.

DEQ has taken no action to enforce reporting. It has also taken no punitive measures for failure to report occurrences even though DEQ has often requested notification of Twin Rocks Sanitary District.

Mr. Hansen said to me in his March 14, 1990 letter that DEQ could not determine the nature and cause of the September 1989 incident because I had waited five months to report it to DEQ. It is my responsibility to report raw sewage incidents to Twin Rocks Sanitary District. I did. It was Twin Rocks responsibility to report it to DEQ. They did not. And this once again has been to their advantage.

REQUEST:

I hereby request that DEQ levy fines against the Twin Rocks Sanitary District for repeated and direct violation of DEQ reporting requirements and DEQ repeated "requests" that raw sewage spills be reported.

Gary E Newkirk

Gary E. Newkirk
2234 SE 53rd Ave.
Portland, OR 97215
April 17, 1990

Environmental Quality Commission
State of Oregon
811 SW 6th Ave.
Portland, OR 97204

SUBJECT: DEQ Failure to Report
Raw Sewage Contamination
of Tillamook Bay.
Twin Rocks Sanitary District.
File # 90578.

Commission Members:

BACKGROUND:

The week of September 11th 1989, I reported to the offices of the Twin Rocks Sanitary District that raw sewage had overflowed the manhole in front of my driveway and yard.

The extent of this overflow was massive. It covered grass in the yard with raw sewage almost halfway to the house. I took measurements of the thickness of this sewage.

In the driveway area just east of the manhole, the "sludge" measured between 3/8 inch and slightly over 1/2 inch at various points tested. Mr. W. F. Perley, the engineer that designed the system for Twin Rocks Sanitary District, stated at their trial that solids comprised less than 1% of sewage. Using this figure, a minimum of 50 inches of raw sewage flowed over these points. Considering the sewage was flowing, it seems likely that much less than the full one percent would have settled out at any one point. Thus the real volume must be much more than four feet.

The manhole from which the raw sewage flowed is about 25 feet from the edge of Tillamook Bay. The ground is primarily sand. Tillamook Bay was undoubtedly contaminated by this raw sewage overflow.

Mr. Hansen stated that the Twin Rocks Sanitary District's NPDES permit is being renewed at this time.

REQUEST:

I request that a wide ranging and complete investigation be made of the operation of this Sewer District before the permit is renewed.

I request that the competency and fitness of the Board of Directors and operators be evaluated.

I particularly request that DEQ publish in the local newspaper a request for information about incidents and experiences from the public. An alternative could be a letter to all system users.

Gary E Newkirk

Comments on Oregon Highway Departments testimony on proposed indirect source permit fees for highway construction.

The Department does not agree with the highway division that indirect source permits are not needed for highways. While in the more recent past indirect source construction permits have become rather routine exercises this is principally attributed to the fact that there has been little major and controversial highway construction. This may change in the near future. For instance consideration is now being given to a westside bypass in the Portland area, a major bypass in the city of Bend and major highway construction on US 26 as a result of the proposed Mt. Hood Meadows ski resort expansion. In all these areas air quality is a major concern and highway projects potentially affecting it should be reviewed and subject to permit issuance. In addition with potential accelerated growth in the state because of improving economic conditions strains will be placed on existing highway sections necessitating possible consideration of major modifications. As a example vehicle miles travelled on the I5 freeway in Portland has increased well above expected growth in the last few years.

Highways are a significant contributor to localized carbon monoxide and regional ozone air quality problems and should be subject to review for all applicable pollutants. The fact that highway construction projects are required to perform an air quality analysis as a result of the national environmental policy act is not sufficient to obviate the need for an Indirect source permit as NEPA is only an assessment process not a go no go construction permit process with potential for mitigation requirements.

If I/S permits continue to be required for highways then the work performed by the Department should be compensated for by permit fee. The Lane Regional Air Pollution Authority through its indirect source permit program has been charging permit fees for highway projects for a few years now. It should be noted that only about one state highway project per year have been subject to Department I/S permits. This would result in only a $600 per year financial impact on the highway division based on the proposed permit fee schedule.

The Department would point out that smaller parking facilities do appear to be unnecessarily subject to I/S permits and it would be the Departments intent to propose revisions to the I/S rule within a year to exempt such facilities once the appropriate size cutoff is identified.

NEIL GOLDSCHMIDT
GOVERNOR

Department of Transportation
HIGHWAY DIVISION

In Reply Refer to
File No.:

April 2, 1990

ENV 3

Nick Nikkila, Division Administrator
Air Quality Division
Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, Oregon 97204

Proposed Amendment to Oregon Administrative Rule
Chapter 340, Division 20, Sections 115 and 165
Rules for Indirect Source Construction Permits

The Department of Transportation, Highway Division is required to obtain an Indirect Source Construction Permit for applicable highway projects under Oregon Administrative Rule Chapter 340, Division 20, Sections 115 and 165. The Environmental Section of the Highway Division has staff responsibility for the administration of this rule.

We are taking this opportunity to comment in opposition to the rule amendment which has been proposed to include filing and administrative fees in the Permit rules. Further, we would like to make additional recommendations for amendments to the Permit rules as they apply to highways. Briefly, our comments and concerns are outlined below.

It has been our concern for a number of years that the permit process has had little usefulness as it is applied to highway construction. Recommendations resulting from the issuance of a permit for highway projects are becoming routine. There are only a limited number of air quality improvment options which can be applied to highway construction.

Currently, DEQ takes information from the Transportation Improvement Program to assess areawide air quality for each Air Quality Maintenance Area. DEQ's areawide analysis utilizes all available information and is as complete a model of air quality for the entire AQMA as is possible. The areawide air quality analysis which we perform for the permit process is a redundant operation and is incomplete as it only models air quality within a small area around the project. Additionally, the analysis of total suspended particulate and lead for the permit is no longer required.

The National Environmental Policy Act and the Oregon Action Plan process requires that a local carbon monoxide analysis be performed for highway construction projects. This requirement makes the need for a similar requirement in the permit process unnecessary for most state highway construction projects.

The Federal Highway Administration and most other states have dropped the requirement for obtaining an indirect source construction permit.

The definition of applicable projects requiring a permit is ambiguous making it difficult to apply the rules responsibly.

Our recommendations to DEQ and the Environmental Quality Commission relative to the Indirect Source Construction Permit rules would be to do one of the following:

1. Delete the requirement that an Indirect Source Construction Permit be obtained for state highway projects, or

2. Re-write the rules regarding which highway projects require a permit, and only require a local CO air quality analysis for those projects requiring a permit.

If you have any questions, please contact myself, or Vince Carrow at 378-8486.

Sincerely,

Steve Lindland, Engineering Supervisor
Environmental Section
324 Capitol Street N.E.
Salem, Oregon 97310

VC:leb

cc: Eb Engelmann
David St. Louis, DEQ
Howard Harris, DEQ

NEIL GOLDSCHMIDT
GOVERNOR

Department of Environmental Quality

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

DATE: April 16,1990

TO: Environmental Quality Commission

FROM: Fred Hansen, Director

SUBJECT: Underground Storage Tank Cleanups

Last Commission meeting Henry raised concerns about the reasonableness of the cleanup standards for contamination from underground storage tank leaks. Other Commissioners expressed similar concerns. And while the context for that discussion revolved around the specified waste rules prohibiting many local landfills from accepting oil contaminated soils, the issue was a broader one.

As a result, I asked to have a memo prepared (attached) which gives a much fuller discussion of these issues. And while it does not give a comfort for those of us who want a solution, it explores the competing forces at work on this issue.

NEIL GOLDSCHMIDT
GOVERNOR

Department of Environmental Quality

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

TO: Fred Hansen, Director **DATE:** April 16, 1990

FROM: Richard Reiter, Manager, UST Compliance Section
Steve Greenwood, Manager, Solid Waste Section
Lon Revall, Manager, UST Cleanup Section

SUBJECT: Impact of Environmental Regulations on Rural Small Business - More specifically, Underground Storage Tank Compliance, Soil Matrix and Specified Waste Regulations.

INTRODUCTION:

Over the last several years the following federal/state environmental laws have spawned regulations that economically impact businesses, including small rural businesses, that own or operate underground storage tanks (USTs) containing petroleum products: the Resource Conservation and Recovery Act - Subtitle I, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and Oregon Revised Statutes Chapter 459 - Solid Waste Disposal Act.

The first of these regulations was triggered by the 1984 passage of Subtitle I of the Resource Conservation and Recovery Act wherein Congress directed the Environmental Protection Agency (EPA) to adopt technical standards for new and existing UST systems, corrective action (cleanup) standards for leaking USTs and financial responsibility (insurance) standards. This initial national law was supplemented with the creation of the Leaking Underground Storage Tank (LUST) Trust Fund as part of the Superfund Amendments and Reauthorization Act of 1986. The trust fund can be used to clean up petroleum contaminated sites in the absence of a responsible party or where there is a recalcitrant responsible party. Both laws contemplate extensive state involvement to carry out these national mandates. EPA can authorize state regulatory programs or financially support programs through grants and cooperative agreements.

Federal rules requiring tank registration were passed in late 1985. Proposed technical and financial responsibility standards

were passed in early 1987. Final technical standards were effective December 26, 1988. Final financial responsibility standards were effective January 26, 1989. Most recently, EPA recommended delaying the financial responsibility rules for category III businesses (13 to 99 tanks) until April 26, 1991 and for category IV businesses (1 to 12 tanks) until October 26, 1991.

In terms of long-term economic and financial impact on small business, however, the 1980 passage of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) may be more important. Embodied within that Federal legislation is the provision for joint and several liability which has dramatically altered legal responsibilities for past practices involving environmental contamination.

Lastly, in order to prevent leachate from solid waste disposal sites getting into groundwater, Oregon's design standards for landfills have been strengthened over the last several years. Furthermore, the number of landfills that can accept oil contaminated soils into unlined disposal trenches will be dramatically lowered as a result of the recent adoption of Oregon's specified waste rules for contaminated soils.

BACKGROUND:

Spills and leaks associated with underground storage tanks have been a historical problem in Oregon and the nation. Spills and releases have occurred due to tank overfills, sloppy fuel dispensing, improper installation resulting in leaking connections or pipe and tank failures and corrosion. Environmental and public safety problems include fumes and vapors leading to fire hazards, soil contamination, and surface and ground water contamination. While less serious but still a major problem, diesel fuel and heating oil present a potential fire hazard and taste and odor problem. These products are generally thought to have relatively low toxicity except at the highest concentrations.

Gasoline on the other hand is extremely volatile, hence it is a significant fire hazard. Furthermore, due to additives and components such as benzene which are toxic and readily dissolve in water, gasoline is also a significant health hazard.

Before federal laws and regulations were adopted, spills and releases of oil were handled on a case-by-case basis as any other hazardous material might be. Any free product was contained and collected for recycling, reuse, burned in hog fuel fired boilers or landfilled at a local landfill. Site cleanup standards were determined case-by-case considering factors such as proximity to people, depth to ground water, probability of migration, likelihood of biodegradation or bioaccumulation, etc.

Contaminated soils were most often hauled to the nearest local landfill.

EFFECTS OF SUBTITLE I:

Subtitle I mandated better equipment and installation to prevent spills and releases, sought early detection of leaks through tank tightness testing and inventory control, required reporting of releases, and mandated site cleanup through joint and several liability or the LUST Trust Fund.

Subtitle I in combination with CERCLA has had several other, probably unintended, effects. Insurance coverage, whether through general liability polices or specific pollution liability policies, evaporated virtually overnight for all but the most financially solvent businesses. The insurance industry claims that they don't have the reserves, and can't realistically build the reserves, to cleanup all the past contamination that is likely to be discovered at sites with existing USTs. Commercial lending institutions, because of their fear of becoming potentially responsible parties if they take the land as collateral on a loan and then need to foreclose, have stopped financing site improvements and land sales on property having underground tanks or evidence of other environmental contamination. Environmental audits are becoming as standard as a title search for sales of commercial and industrial property. Occasionally, environmental audits are even required for land undergoing development for single or multiple family residential housing. And, all but the most modern landfills have stopped taking petroleum-contaminated soil because of the fear of future environmental liability associated with potential releases from the landfill.

OREGON CLEANUP REQUIREMENTS:

In an effort to bring some sense of certainty to what otherwise might appear to be a hopeless situation, the Department has proposed and the Commission has adopted specific standards to properly manage oil contaminated sites and soils. The price of that certainty, however, leaves fewer local choices or alternatives on matters such as "how clean is clean" and disposal options.

For example, at the Department's request the Commission recently adopted the soil cleanup matrix standards for petroleum releases (see Attachment I). While in theory less flexible then the former site-by-site cleanup determination, the soil cleanup matrix identifies for potentially responsible parties, consultants, cleanup contractors, lenders and insurance companies the Department's minimum cleanup expectations. The soil cleanup matrix also recognizes that less stringent cleanup standards can be applied in low rainfall areas or those areas with greater depth

to groundwater. The typical cleanup level for gasoline contamination in Western Oregon is 40 parts per million (ppm), while in those areas in Eastern Oregon without a shallow ground water table the cleanup standard for gasoline can be 130 ppm. Average costs for completing a soil cleanup at a site with underground storage tanks varies from $7,500 to $15,000 in Oregon.

In lieu of using the soil matrix, each owner or operator undertaking a contaminated site cleanup can develop a site specific corrective action plan (CAP). As part of the CAP, cleanup levels can be proposed. However, to successfully apply this risk assessment approach requires a complete and thorough knowledge of the magnitude and extent of contamination, particularly where it is proposed to leave contamination in place. Substantial additional costs may be incurred to collect and test soil and groundwater samples to be able to support the CAP. Further, it is almost always necessary to have experts such as hydrogeologists, geologists, soil scientists and environmental engineers to interpret the data to insure that if left in place the pollutants will not cause future environmental contamination or public safety problems. Interestingly enough, average costs for completing a risk assessment at a site with underground storage tanks also varies between $7,500 and $15,000. In those cases where the CAP/risk assessment concludes that contaminated materials will need to be removed or treated, additional costs are incurred. It is because of the threat of these extra costs that many responsible parties proceed directly to cleanup rather than risk dramatically higher expenses and substantially longer disruptions to their business operations.

However, regardless of what the Department might accept, it must be understood that insurance companies may require more stringent cleanup standards before they will write a pollution liability policy for a site. That is also true of commercial lenders who may be asked to loan money on a formerly contaminated site. In both cases, these private interests may expect more cleanup then is required by the soil matrix cleanup levels.

DISPOSAL OF CONTAMINATED MATERIALS:

Once oil-contaminated soils have been excavated from a site they need to be treated and/or disposed of. New specified waste rules passed by the Commission on March 1, 1990, set minimum standards for disposal of these materials. While there are exceptions built into the rule, which will apply primarily in Eastern and Central Oregon, the minimum standards were developed to prevent the disposal of contaminated soils into unlined landfills, thus preventing the movement of contamination from one site to another. With relatively few landfills currently meeting the design standard, the rule is also intended to promote development of

treatment options for these wastes. These new minimum standards are likely to double or triple the disposal costs of contaminated soils in Oregon over the practice from years ago when they could go to any local landfill.

With or without the recently adopted specified waste rules, most privately-owned landfills and some publicly-owned landfills stopped taking oil contaminated soil out of long-term liability concerns. With the adoption of the specified waste rules, the Department has identified a limited number of landfills that should be able to accept oil contaminated debris without the fear of future pollution liability suits. More importantly, as the price of landfilling oil contaminated soils increases the likelihood of treatment options being developed improves. For instance, there are under consideration several proposals to thermally treat petroleum contaminated soils in devices similar to asphalt batch plants to rid them of hydrocarbons. Once free of contamination, the soils can be used locally for backfill. We do not believe such alternatives will be developed, however, if cheaper local landfill alternatives remain readily available.

Furthermore, it has been and continues to be possible to treat oil contaminated soils on-site or other authorized site through aeration. This requires, however, a fairly extensive area to stockpile the oil contaminated soil while the hydrocarbons escape. In addition, there may be odor problems for people who live immediately adjacent to such an aeration site. Aeration also results in the hydrocarbons becoming air pollutants which in certain areas will contribute to ozone pollution. And, this being a relatively slow process depending on the soil and oil types, it could be up to six months or a year that these aeration piles may sit on a site. Considering these inherent limitations, landfilling, even at a distant site and a high price, may be the only current reasonable alternative for many sites and responsible parties.

FINANCIAL ASSISTANCE:

It was in recognition of these costs that the Legislature included the cost of soil cleanup in the HB 3080 loan guarantee and interest rate subsidy programs for owners of existing motor fuel tanks. By including this work as a eligible cost in the financial assistance programs, allows the responsible party to finance this expense over time rather than immediately. These financial assistance programs, however, are limited to facilities that are planning to continue to use their underground storage tanks for the storage of motor fuels.

Under the auspices of HB 3515, the Legislature also provided authority for the Department to adopt financial assistance programs for responsible parties planning environmental cleanups,

provided certain financial need eligibility requirements could be met. The types of financial assistance include, but are not limited to loan guarantees, and the funds to back the program would come from the Hazardous Substance Remedial Action Fund (HSRAF). At this time, however, the Department has concluded that financial assistance to potentially responsible parties is a lower priority use of limited HSRAF funds.

WHAT'S IN THE FUTURE?

There is little question that cleanup standards may tighten as the years pass. This trend will be driven as much by insurance and lender concerns over liability as it will by the public's concern over public health and safety or environmental concerns. In the short run, disposal options may be limited to a few well engineered regional landfills. We expect, however, to see treatment options developed, as well as the use of on-site aeration in a few limited cases. Further on the horizon may be the development of treatment in place using biological microorganisms and nutrient additions.

We may also see legislative extension or enhancement of financial assistance programs such as the grant reimbursement, loan guarantee and interest rate subsidy programs authorized by HB 3080. For instance, increased financial assistance could be made available to close a site and clean up any contaminated soil or water even on sites with responsible parties. Further, assuming sufficient funds were to become available in HSRAF, a decision could be made to adopt administrative rules to use the financial assistance authority for cleanups provided in HB 3515. In limited cases, we are also seeing developers undertaking cleanups in order to make use of contaminated sites. The cost of cleanup becomes absorbed within the site development costs.

All this said, however, for some property or business owners the cost to cleanup a contaminated site can be very burdensome, even leading to bankruptcy.

cc: EQC Members
cc: Stephanie Hallock, Administrator, HSW
cc: Mike Downs, Administrator, ECD
cc: Tom Bispham, Administrator, RO

RPR: rr
(LORENZEN)

NUMERIC SOIL CLEANUP LEVELS FOR MOTOR FUEL AND HEATING OIL

OAR 340-122-305 to 340-122-360

OUTLINE OF RULES

340-122-305	Purpose
340-122-310	Definitions
340-122-315	Scope and Applicability
340-122-320	Soil Cleanup Options
340-122-325	Evaluation of Matrix Cleanup Levels
340-122-330	Evaluation Parameters
340-122-335	Numeric Soil Cleanup Standards
340-122-340	Sample Number and Location
340-122-345	Sample Collection Methods
340-122-350	Required Analytical Methods
340-122-355	Evaluation of Analytical Results
340-122-360	Reporting Requirements

340-122-305 Purpose

These rules establish numeric soil cleanup standards pursuant to ORS 466.745 and OAR 340-122-245 (1988) for the remediation of motor fuel and heating oil releases from underground storage tanks. The soil cleanup levels have been developed to facilitate the cleanup of these releases while maintaining a high degree of protection of public health, safety, welfare and the environment.

340-122-310 Definitions

Terms not defined in this section have the meanings set forth in ORS 466.540, ORS 466.705, and OAR 340-122-210. Additional terms are defined as follows unless the context requires otherwise:

(1) "Gasoline" means any petroleum distillate used primarily for motor fuel of which more than 50% of its components have hydrocarbon numbers of C10 or less.

(2) "Groundwater" means any water, except capillary moisture, beneath the land surface or beneath the bed of any stream, lake, reservoir or other body of surface water within the boundaries of the state, whatever may be the geological formation or structure in which such water stands, flows, percolates or otherwise moves.

(3) "Native soil" means the soil outside of the immediate boundaries of the pit that was originally excavated for the purpose of installing an underground storage tank.

(4) "Non-gasoline fraction" means diesel and any other petroleum distillate used for motor fuel or heating oil of which more than 50% of its components have hydrocarbon numbers of C11 or greater.

(5) "Soil" means any unconsolidated geologic materials including, but not limited to, clay, loam, loess, silt, sand, gravel, tills or any combination of these materials.

340-122-315 Scope and Applicability

(1) These rules shall apply to the cleanup of releases from UST systems containing motor fuel and heating oil.

(2) Matrix cleanup levels established by these rules are not applicable to the cleanup of petroleum releases which, due to their magnitude or complexity, are ordered by the Director to be conducted under OAR 340-122-010 through OAR 340-122-110.

340-122-320 Soil Cleanup Options

When using the numeric soil cleanup standards specified in these rules, the owner, permittee, or responsible person has the option of:

(1) Cleaning up the site as specified in these rules to the numeric soil cleanup standard defined as Level 1 in 340-122-335(2); or

(2) Evaluating the site as specified in 340-122-325 to determine the required Matrix cleanup level, and then cleaning up the site as specified in these rules to the numeric soil cleanup standard defined by that Matrix cleanup level.

340-122-325 Evaluation of Matrix Cleanup Level

(1) In order to determine a specific Matrix cleanup level, the site must first be evaluated by:

(a) Assigning a numerical score to each of the five site-specific parameters in 340-122-330(1)-(5); and

(b) Totaling the parameter scores to arrive at the Matrix Score.

(2) The Matrix Score shall then be used to select the appropriate numeric soil cleanup standard as specified in 340-122-335.

340-122-330 Evaluation Parameters

The site-specific parameters are to be scored as specified in this section. If any of the parameters in 340-122-330(1)-(5) is unknown, that parameter shall be given a score of 10.

(1) Depth to Groundwater: This is the vertical distance (rounded to the nearest foot) from the surface of the ground to the highest seasonal elevation of the saturated zone.

The score for this parameter is:

>100 feet	1
51 -100 feet	4
25 - 50 feet	7
< 25 feet	10

(2) Mean Annual Precipitation: This measurement may be obtained from the nearest appropriate weather station.

The score for this parameter is:

< 20 inches	1
20 - 40 inches	5
> 40 inches	10

(3) Native Soil Type:

The score for this parameter is:

Low permeability materials such as clays, compact tills, shales, and unfractured metamorphic and igneous rocks.	1
Moderate permeability materials such as sandy loams, loamy sands, silty clays, and clay loams; moderately permeable limestones, dolomites and sandstones; and moderately fractured igneous and metamorphic rocks.	5
High permeability materials such as fine and silty sands, sands and gravels, highly fractured igneous and metamorphic rocks, permeable basalts and lavas, and karst limestones and dolomites.	10

(4) Sensitivity of the Uppermost Aquifer: Due to the uncertainties involved in the Matrix evaluation process, this factor is included to add an extra margin of safety in situations where critical aquifers have the potential to be affected.

The score for this parameter is:

Unusable aquifer, either due to water quality conditions such as salinity, etc.; or due to hydrologic conditions such as extremely low yield.	1
Potable aquifer not currently used for drinking water, but the quality is such that it could be used for drinking water.	4
Potable aquifer currently used for drinking water; alternate unthreatened sources of water readily available.	7
Sole source aquifer currently used for drinking water; there are no alternate unthreatened sources of water readily available.	10

(5) Potential Receptors: The score for potential receptors is based on both the distance to the nearest well and also the number of people at risk. Each of these two components is to be evaluated using the descriptors defined in this section.

(a) The distance to the nearest well is measured from the area of contamination to the nearest well that draws water from the aquifer of concern. If a closer well exists which is known to draw water from a deeper aquifer, but there is no evidence that the deeper aquifer is completely isolated from the contaminated aquifer, then the distance must be measured to the closer, deeper well.

The distance descriptors are:

Near	< 1/2 mile
Medium	1/2 - 3 miles
Far	> 3 miles

(b) The number of people at risk is to include all people located within 3 miles of the contaminated area. This number is to include not only residents of the area, but also others who regularly enter the area such as employees in restaurants, motels, or campgrounds.

The number descriptors are:

Many	> 3000
Medium	100 - 3000
Few	< 100

(c) The score for this parameter is taken from the combination of the two descriptors using the following grid:

	Many	Medium	Few
Near	10	10	5
Medium	10	5	1
Far	5	1	1

(6) The Matrix Score for a site is the sum of the five parameter scores in 340-122-330(1)-(5).

340-122-335 Numeric Soil Cleanup Standards

(1) If the Matrix Score evaluated in 340-122-330 is:

(a) Greater than 40, the site must be cleaned up to at least the Level 1 standards listed in 340-122-335(2).

(b) From 25 to 40, inclusive, the site must be cleaned up to at least the Level 2 standards listed in 340-122-335(2).

(c) Less than 25, the site must be cleaned up to at least the Level 3 standards listed in 340-122-335(2).

(2) The following table contains the required numeric soil cleanup standards based on the level of Total Petroleum Hydrocarbons (TPH) as measured by the analytical methods specified in 340-122-350.

	Level 1	Level 2	Level 3
TPH (Gasoline)	40 ppm	80 ppm	130 ppm
TPH (Diesel)	100 ppm	500 ppm	1000 ppm

(3) The Gasoline TPH value shall be the target cleanup level for all sites unless a hydrocarbon identification (HCID) test clearly shows that the contaminant is Diesel or another non-gasoline fraction hydrocarbon as defined in 340-122-310(4). Under these conditions, the Diesel TPH value may be used as the target cleanup level.

340-122-340 Sample Number and Location

The collection and analysis of soil samples is required to verify that a site meets the requirements of these rules. These samples must represent the soils remaining at the site and shall be collected after contaminated soils have been removed or remediated. The number of soil samples required for a given site and the location at which the samples are to be collected are as follows:

(1) A minimum of two soil samples must be collected from the site:

(a) These samples must be taken from those areas where obviously stained or contaminated soils have been identified and removed or remediated.

(b) If there are two or more distinct areas of soil contamination, then a minimum of one sample must be collected from each of these areas.

(c) The samples must be taken from within the first foot of native soil directly beneath the areas where the contaminated soil has been removed, or from within the area where in-situ remediation has taken place.

(d) A field instrument sensitive to volatile organic compounds may be used to aid in identifying areas that should be sampled, but the field data may not be substituted for laboratory analyses of the soil samples.

(e) If there are no areas of obvious contamination, then samples must be collected from the locations specified in subsections (2) to (5) of this section which are most appropriate for the situation.

(2) If water is not present in the tank pit:

(a) Soil samples must be collected from the native soils located no more than two feet beneath the tank pit in areas where contamination is most likely to be found.

(b) For the removal of an individual tank, samples must be collected from beneath both ends of the tank. For the removal of multiple tanks from the same pit, a minimum of one sample must be collected for each 250 square feet of area in the pit.

(3) In situations where leaks have been found in the piping, or in which released product has preferentially followed the fill around the piping, samples are to be collected from the native soils directly beneath the areas where obvious contamination has been removed. Samples should be collected at 20 lateral foot intervals.

(4) If water is present in the tank pit, the Department must be notified of this fact. The owner, permittee, or responsible person shall then either continue the investigation under OAR 340-122-240, or do the following:

(a) Purge the water from the tank pit and dispose of it in accordance with all currently applicable requirements.

(b) If the pit remains dry for 24 hours, testing and cleanup may proceed according to the applicable sections of these soil cleanup rules. If water returns to the pit in less than 24 hours, a determination must be made as to whether contamination is likely to have affected the groundwater outside of the confines of the pit as indicated below:

(A) For the removal of an individual tank, soil samples are to be collected from the walls of the excavation next to the ends of the tank at the original soil/water interface. For the removal of multiple tanks from the same pit, a soil sample is to be collected from each of the four walls of the excavation at the original soil/water interface.

(B) At least one sample must be taken of the water in the pit.

(C) The soil samples must be analyzed for TPH and benzene, toluene, ethylbenzene and xylenes (BTEX), and the water sample must be analyzed for BTEX. These analyses must be made using the methods specified in 340-122-350. The results of these analyses must be submitted to the Department.

(D) The Department shall then determine how the cleanup shall proceed as specified in 340-122-355(3).

(5) In situations where tanks and lines are to remain in place in areas of suspected contamination, the owner, permittee or responsible person shall submit a specific soil sampling plan to the Department for its approval.

340-122-345 Sample Collection Methods

(1) The following information must be kept during the sampling events:

(a) A sketch of the site must be made which clearly shows all of the sample locations and identifies each location with a unique sample identification code.

(b) Each soil and water sample must be clearly labeled with its sample identification code. A written record must be maintained which includes, but is not limited to: the date, time and location of the sample collection; the name of the person collecting the sample; how the sample was collected; and any unusual or unexpected problems encountered during the sample collection which may have affected the sample integrity.

(c) Formal chain-of-custody records must be maintained for each sample.

(2) If soil samples cannot be safely collected from the excavation, a backhoe may be used to remove a bucket of native soil from each of the sample areas. The soil is to be brought rapidly to the surface where samples are to be immediately taken from the soil in the bucket.

(3) The following procedures must be used for the collection of soil samples from open pits or trenches:

(a) Just prior to collecting each soil sample, approximately three inches of soil must be rapidly scraped away from the surface of the sample location.

(b) To minimize the loss of volatile materials, it is recommended that samples be taken using a driven-tube type sampler. A clean brass or stainless steel tube of at least one inch in diameter and three inches in length may be used for this purpose. The tube should be driven into the soil with a suitable instrument such as a wooden mallet or hammer.

(c) The ends of the sample-filled tube must be immediately covered with clean aluminum foil. The foil must be held in place by plastic end caps which are then sealed onto the tube with a suitable tape.

(d) Alternatively, samples may be taken with a minimum amount of disturbance and packed in a clean wide-mouth glass jar leaving as little headspace as possible. The jar must then be immediately sealed with a teflon-lined screw cap.

(e) After the samples are properly sealed, they are to be immediately placed on ice and maintained at a temperature of no greater than 4 ^{o}C (39 ^{o}F) until being prepared for analysis by the laboratory. All samples must be analyzed within 14 days of collection.

(4) The following procedures must be used for the collection of water samples from the tank pit:

(a) After the water has been purged from the pit in accordance with 340-122-340(4)(a), it is not necessary to wait for the pit to refill to its original depth, only for sufficient water to return to properly use the sampling device.

(b) Samples are to be taken with a device designed to reduce the loss of volatile components. A bailer with a sampling port is suitable for this purpose.

(c) The water is to be transferred into a glass vial with as little agitation as possible and immediately sealed with a teflon-lined cap. The vial must be filled completely so that no air bubbles remain trapped inside.

(d) After the samples are properly sealed, they are to be immediately placed on ice and maintained at a temperature of no greater than 4 ^{o}C (39 ^{o}F) until being prepared for analysis in the laboratory. All samples must be analyzed within 14 days of collection.

(5) The Department may approve alternative sampling methods which have been clearly shown to be at least as effective with respect to minimizing the loss of volatile materials during sampling and storage as the methods listed in 340-122-345(1)-(4).

340-122-350 Required Analytical Methods

The following methods are to be used for the analysis of the soil and water samples, as applicable:

(1) Total Petroleum Hydrocarbons (TPH) shall be analyzed by means of EPA Method 418.1 using the sample extraction and preparation technique specified by the Department.

(2) Hydrocarbon Identification (HCID) shall be made, using the extract from EPA Method 418.1, by a gas chromatographic method capable of identifying, in terms of the number of carbon atoms, the range of hydrocarbons present in the sample.

(3) Benzene, Toluene, Ethylbenzene and Xylenes (BTEX) shall be analyzed by means of EPA Method 5030 in conjunction with either EPA Method 8020 or EPA Method 8240.

(4) The Department may approve alternative analytical methods which have been clearly shown to be applicable for the compounds of interest and which have detection limits at least as low the methods listed in 340-122-350(1)-(3).

(5) The Department shall review the effectiveness of the analytical methods delineated in 340-122-350(1)-(3) and report to the Commission within 15 months on the appropriateness of their use and, if necessary, recommend changes to the analytical methods and/or the cleanup standards delineated in subsection 340-122-335 of these rules.

340-122-355 Evaluation of Analytical Results

(1) The results of the soil analyses shall be interpreted as follows:

(a) If a sample has a concentration less than or equal to the required matrix level, the area represented by that sample shall have met the requirements of these rules.

(b) If a sample has a concentration exceeding the required matrix level by more than 10%, the area represented by that sample has not met the requirements of these rules. Further remediation, sampling and testing is necessary until the required level is attained.

(c) If a sample has a concentration exceeding the required matrix level by less than 10%, the responsible person has the option of collecting and analyzing two more samples from the same area and using the average of all three to determine if the standard has been met; or further remediating the area and then collecting and analyzing one new sample and using the concentration of the new sample to determine if the standard has been met.

(2) A site shall be considered sufficiently clean when all of the sampled areas have concentrations less than or equal to the required matrix cleanup level, and when the possibility of any human contact with the residual soil contamination remaining on the site has been precluded.

(3) If water is present in the tank pit, the Department shall decide if cleanup may proceed under these rules or if further action must be taken such as the installation of monitoring wells, or the development of a Corrective Action Plan under OAR 340-122-250. This decision shall be based on, but is not limited to:

(a) The apparent extent of the contamination;

(b) The likelihood that groundwater contamination exists beyond the boundaries of the tank pit;

(c) The likelihood that the BTEX concentrations in the water and the BTEX and TPH concentrations in the soil indicate a situation which poses a threat to public health, safety, welfare and the environment; and

(d) Any other site-specific factors deemed appropriate by the Department.

(4) If a pocket of contamination exceeding the required Matrix cleanup level is located under a building or other structure where further removal would endanger the structure or be prohibitively expensive, the Department must be notified of this situation. The Director shall then decide whether such contamination can remain without threatening human health, safety, and welfare and the environment. If not, the Department shall require further remediation.

340-122-360 Reporting Requirements

(1) An owner, permittee, or responsible person shall submit a final report to the Department for a site that has been cleaned up according to these rules, which report shall contain, but is not limited to:

(a) A list of the individual parameter and factor scores used to arrive at the Matrix score for the site;

(b) All of the sampling documentation required in 340-122-345(4);

(c) Copies of the laboratory reports for all of the samples collected at the site, including samples that were too high and which required further action under 340-122-355(1);

(d) A brief explanation of what was done in the case of any samples that initially exceeded the required cleanup levels;

(e) A summary of the concentrations measured in the final round of samples from each sampling location;

(f) An explanation of what was done with any contaminated soil that was removed from the site;

(g) In cases where groundwater was present in the pit, a summary of the data collected and the decision made by the Department under 340-122-355(3).

(h) In cases where pockets of excess contamination remain on site in accordance with 340-122-355(4), a description of this contamination including location, approximate volume and concentration.

(2) The owner, permittee, or responsible person shall retain a copy of the report submitted to the Department under this section until the time of first transfer of the property, plus 10 years.

DRAFT

Oregon Clean Sites

Concept Paper

Environmental Cleanup Division
Oregon Department of Environmental Quality
April 9, 1990

Introduction

This paper presents a proposal for a new public-private partnership in Oregon designed to provide owners and operators of contaminated sites an alternative fast-track path leading to successful cleanup of their property.

Due to a chronic shortage of resources in state government, DEQ is unable to provide technical oversight and assistance to most property owners and operators who wish to voluntarily investigate and clean up hazardous substances contamination at their facilities. An alternative process is needed to allow these cleanups to proceed in an expeditious manner that not only meets the development goals of the property owners, but ensures that public health and the environment are adequately protected.

Problem Statement

When the state superfund program was created by the 1987 Legislature, the main concern people were trying to address was the investigation and cleanup of sites with complex hazardous substances contamination of the soils and groundwater that represented a major threat to public health and/or the environment.

In response to this legislative direction, the Department established a cleanup program designed to work on the highest priority (greatest threat) sites first. What wasn't anticipated by the legislature or the Department was the large number of potentially responsible parties (PRPs) who would step forward voluntarily, requesting Department oversight and sign-off on the investigations and cleanups they wish to conduct on their contaminated property.

In 1987, it was felt that most parties wouldn't volunteer to have their property cleaned up, but rather would wait for DEQ to knock on their door indicating it was their turn to clean up. However, there were other major forces at work set in motion by the strict liability provisions of the federal Superfund statute (CERCLA) and the new state Superfund statute (SB 122).

Not only are owners and operators at the time of the contamination held strictly liable, but any subsequent owner or operator is also strictly liable if they knew or reasonably should have known of the contamination, even if they did not cause or contribute to the contamination. This also applies to banks who foreclose on contaminated property that is collateral for a loan. This broad liability net has dramatically changed the way financial institutions, land developers and prospective purchasers do business when property is involved.

It is common practice now for environmental assessments to be required before property is transferred or deemed fit for collateral. As a result, many contaminated sites are being discovered and the banks and prospective purchasers are demanding cleanup and DEQ sign-off before the transaction can be consummated.

Additionally, the legislature has directed the Department to develop and maintain an inventory of contaminated sites in Oregon for public information purposes. The combination of a site being on this list along with the strict liability provisions of the law has made property that is listed very difficult to sell or develop.

Thus, there is a very strong aversion by property owners to being listed on the Department's inventory of contaminated sites. This has created a powerful incentive for property owners to have their sites cleaned up in an effort to stay off the inventory, or to move quickly to clean up a site once it is listed, to see that it is removed from the inventory as quickly as possible. Again, the demand for Department oversight and technical assistance for these voluntary cleanups far exceeds currently available resources. In addition, some cleanups are proceeding without the oversight necessary to ensure public health and the environment are adequately protected.

In summary, there are powerful forces causing parties to voluntarily want to clean up their contaminated sites and inadequate Department resources to provide the desired technical assistance and oversight. This situation not only adversely affects economic development, but leaves protection of public health and the environment in question. What is needed is a win-win situation where cleanups can proceed expeditiously and the resulting benefits to protection of public health and the environment can be realized.

The traditional approach to such a problem would be to request an appropriate number of new positions be established at DEQ to handle the demand for oversight and technical assistance from the public. The revenue for these new positions could be derived from cost recovery from the parties requesting oversight under the state superfund statute. However, there are several problems with exclusive use of this traditional approach:

1. New state positions are very difficult to secure from the state legislature.
2. The exact size of the demand is unknown making it very hard to predict how many positions will be required.
3. The first two problems listed (1.& 2.), mean that most likely the positions received would be inadequate to meet the demand.
4. Securing additional positions to meet increasing demand is also difficult and time consuming.

5. State salaries are not competitive with the private sector in the hazardous waste field, making it difficult to recruit and retain qualified employees. This is especially true in the hazardous waste field where the number of qualified persons in the work-force is less than the current demand and the competition for those people is very great.

A second approach would be to hire a contractor or contractors to provide the requested oversight and technical assistance for the Department. This alternative would avoid most of the problems listed above for hiring state employees, but would still require some additional state employees to manage the contracts and audit the contractor's work. However, the use of environmental consultants for this activity presents another major problem not encountered with state employees. That problem is the potential conflict of interest contractors would have in working for both the state and the property owners whose work they are to oversee.

It is crucial that if the Department is to rely on private contractors to oversee the work of property owners that there be no question about where their loyalties lie. It must be clear that they are responsible only to the state, and that their decisions will not adversely affect any current or future work or financial relationship with a private party. If there is any doubt, then the process will fail.

It is felt that if the Department is to use environmental consultants to oversee facility investigations and cleanups, the consultant must agree to work on an exclusive basis for the Department; i.e. they would agree in the contract to only work for the Department for the term of the contract. It is not likely many reliable contractors would bid on such a contract.

Additionally, if the contractor is making decisions for the Department on cleanups it may take on liability for future cleanup activities if there is an error in their judgment. Whether consultants would be willing or able to accept such potential liability is unknown.

Clean Sites, Inc. Model

To avoid the problems discussed above regarding the two approaches of either adding state staff or hiring contractors, the Department looked for a different model that combined the flexibility of a private entity to add staff as necessary and pay competitive wages, with the organizational structure that would allow it to function as a non-profit, neutral third party that would not be too closely aligned with industry.

One model we have studied closely is an organization named Clean Sites, Inc. Clean Sites is a Washington, D.C. based non-

profit corporation that was established to assist with the cleanup of hazardous waste sites across the nation.

According to Clean Sites, Inc. 1989 Annual Report, it was established in 1984 as a national non-profit organization dedicated to solving America's hazardous waste problem. It is a Section 501(c)(3) non-profit corporation with an annual budget of $4.7 million. It has a 50-person staff of mediators, project managers, attorneys, engineers, policy analysts, financial managers, chemists, computer scientists and communication specialists.

The services provided by Clean sites, Inc. include:

1. Allocation of cleanup costs amongst potentially responsible parties (PRPs) at Superfund sites.

2. Dispute resolution between PRPs or between PRPs and EPA at Superfund sites.

3. Technical review of site studies, including remedial investigation/feasibility studies (RI/FS), done by consultants for PRPs to ensure technical adequacy and compliance with state and federal requirements.

4. Management of cleanups for PRPs at complex sites including contractor selection, coordinating responsibilities and communications among the various parties involved, and monitoring costs, schedules and contractor work.

5. Management of cleanup funds for PRPs including assessing and collecting funds from responsible parties, handling receipts and invoices, paying site cleanup bills, and issuing monthly reports on receipts and expenditures for each site.

6. Policy analysis of issues related to Superfund and hazardous waste programs performed for federal and state governments as well as foundations. Also provided is assistance to states in developing and implementing technical and regulatory programs for cleanup of hazardous substance sites.

7. Education and community assistance work including a series of seminars on alternate dispute resolution techniques, such as mediation and arbitration.

Funding for Clean Sites, Inc. came from the following sources in 1989:

1. 51% - reimbursement for services provided to PRPs, government agencies and others.

2. 32% - grants from the chemical industry.

3. 9% - contributions from other industry sectors.

4. 8% - grants from private foundations, government and individuals.

Clean Sites is managed by a President, who reports in turn to a Board of Directors. The Board of Directors has a cross-section of representatives from industry, environmental organizations, government agencies, and universities. The current Chairman is Russell E. Train, former administrator of the Environmental Protection Agency.

Additionally, Clean Sites has a Scientific and Technical Advisory Board to help ensure the organization's judgments are scientifically and technically sound. The current chairman is Gilbert S. Omenn, M.D., Ph.D., Dean of the School of Public Health and Community Medicine at the University of Washington.

Proposal

The Department proposes to establish an Oregon nonprofit corporation, Oregon Clean Sites (OCS), based upon the Clean Sites model, that could act as a neutral, third party to oversee voluntary preliminary assessments, remedial investigations, or cleanups of simple to medium complexity sites by responsible parties.

The purpose of the organization would be to encourage and foster voluntary cleanups of contaminated sites by responsible parties, and to ensure such investigations and cleanups are done according to Department guidance, are technically competent and meet state cleanup standards.

The specific activities proposed for Oregon Clean Sites include the following:

1. Technical oversight of voluntary preliminary assessments conducted by PRPs.

2. Technical oversight of cleanups performed by PRPs for the purpose of being delisted from the Confirmed Release List or Inventory.

3. Technical oversight of voluntary UST petroleum release cleanups, including those where incidental hazardous substance releases are encountered. Cleanups involved would include those where only soils are contaminated, using the soil matrix rules, as well as sites where minor groundwater contamination is encountered.

4. Technical oversight of voluntary hazardous substance investigations and cleanups, ranging in complexity from simple to moderately complex. The Department will develop specific soil cleanup standards to be followed in implementing these cleanups.

5. Implement a new property transfer program designed to ensure that all industrial property sold or transferred in the state is certified as being clean, or its specific contamination status and use limitations declared, prior to transfer or development. The Department will propose legislation to create such a program.

6. Provide other services to Oregon businesses similar to the services provided by Clean Sites, Inc. including: allocation of cleanup costs among PRPs; dispute resolution; management of cleanups for multi-party PRP sites; management of cleanup funds for multi-party PRP sites; policy analysis work for the Department; education and community assistance work.

The Department will randomly audit all of the PRP oversight activities to provide additional assurance they are being handled appropriately and competently by OCS. In addition, the Department will propose legislation to require reporting of all instances where PRPs discover or are aware of hazardous substance contamination on their property.

In this way, the Department will be aware of all investigations and cleanups occurring in the state and will be able to require them to proceed under Department oversight where that is deemed appropriate to ensure protection of public health and the environment. Thus, if the Department feels a site investigation or cleanup should not proceed without Department involvement and oversight, it would be in a position to require the PRPs to work with the Department rather than proceed under Oregon Clean Sites oversight or on their own.

Ideally, Oregon Clean Sites would be able to provide a certification of completion that could be relied upon equally by all parties, including the Department, responsible parties, financial institutions, public interest groups and site neighbors. To accomplish this, the organization must be technically competent and unaligned with any special interest. Key to making it a credible entity will be establishing adequate safeguards to ensure its continuing neutrality and technical competence.

The following are specific proposals for forming the Oregon Clean Sites organization:

1. It would be a nonprofit corporation organized under ORS Chapter 65. It would be formed as a "public benefit

corporation" pursuant to ORS 65.044 to 65.067. The concept of a nonprofit corporation formed and dedicated to fulfilling a public purpose is important in establishing the required neutrality and independence needed by the organization to perform its function with credibility.

Further, it will help to ensure that the people employed by the organization are not motivated by personal financial gain; i.e. they aren't rewarded in the same manner or to the same extent employees are in the private sector for increasing corporation sales or profits. Thus, even though the organization will be performing a service for PRPs it should be able to retain greater independence and objectivity than a private corporation could in the same situation.

2. It would have a Board of Directors vested with overall management of the affairs of the corporation. The articles of incorporation would set forth, among other things, the composition of the Board of Directors. It would have one or more representatives from the Department, industry, financial institutions, the environmental community and public interest groups to ensure it is balanced between competing viewpoints or special interests.

3. It would have a President who would, as prescribed in the corporation's bylaws, manage the day-to-day activities of the organization including hiring and managing the corporation's staff. The President is hired by and works for the Board of Directors.

4. It would have a Science & Technical Advisory Board (SAB) that is responsible to oversee and provide direction on technical work undertaken or overseen by the organization. The SAB would be balanced in the same fashion as the Board of Directors.

5. The corporation would be funded mainly by the responsible parties who request oversight of their cleanup activities, but there would also be a significant source of public funding (e.g. up to 25%) to avoid total reliance on PRP funding.

There are several options for providing public funding. One option is to increase the fees assessed on the possession of hazardous substances in the state to provide approximately $250,000 - $500,000 annually for the corporation. Another possible source could be funds from the state superfund. Ideally, there would be funding from numerous groups including DEQ, EPA, environmental/public interest organizations, foundations and industry.

Clean Sites, Inc. officials have indicated that they regret public funding wasn't secured for their organization when it was formed. Apparently EPA refused to provide funding, and as a result they were forced to seek commitments from industry to establish and maintain the organization. This has led to the perception that Clean Sites is aligned with industry, where the bulk of its funding is derived, and made it impossible to fully realize its mission. Some EPA officials agree with this assessment, and strongly recommend that a significant source of continuous public funding be developed for the proposed corporation.

6. The corporation's role should be limited to technical oversight and certification of work done by or for responsible parties. It would not make policy decisions on interpretation of agency guidelines or standards, or establish such guidelines or standards. Policy issues would be referred to DEQ for resolution.

7. It probably should not engage in performing investigations or cleanups either directly with its own staff or by employing contractors. Its role should be limited to oversight of work done or proposed to be done by others. The purpose of this organization is not to compete with private environmental consulting firms for the services they traditionally have provided Oregon businesses, but rather to supplement the services available from the Department.

8. It may need to carry pollution liability insurance or be indemnified by the state superfund up to a set amount (if that is possible and desirable) for the eventuality that a site certified as being in compliance with DEQ requirements turns out not to be in compliance.

9. DEQ must have post-certification review capability to provide random checks on some of the work performed, thereby confirming the adequacy of the work and the organization's credibility.

10. It would function as an independent entity without any long-term commitments (contracts) with any other organization except possibly the Department. It would perform oversight work for responsible parties on a fee basis designed to recover its oversight costs.

11. It would not be a state agency so that it would not be encumbered with the state civil service system, salary structure, etc. It is important that it be able to pay competitive salaries to attract and retain qualified and competent employees. Also it needs the ability to quickly increase or reduce staff to meet the demand from responsible parties for cleanup oversight.