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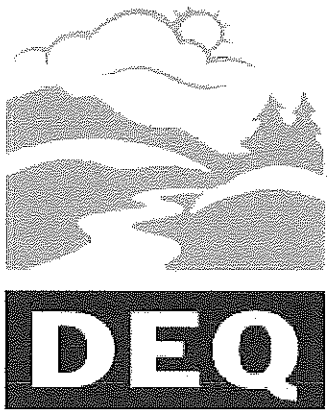
Part 1 of 2

OREGON

ENVIRONMENTAL QUALITY

COMMISSION MEETING

MATERIALS 03/01/1990



State of Oregon
Department of Environmental Quality

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State of Oregon
Environmental Quality Commission

AGENDA

WORK SESSION -- March 1, 1990

Blue Mountain Community College
Pioneer Hall, Room 148
Pendleton, Oregon

2:30 p.m. - 1. Triennial Review of Water Quality Standards: Background and Discussion.

3:00 p.m. - 2. In-Stream Water Rights: Background and Discussion of Potential for Rulemaking.

3:30 p.m. - 3. Dioxin and Total Chlorinated Organics:
- Short, Medium, and Long Range Strategies
- Options for Public Forum
- Status of Regulatory Actions
- Columbia River TMDL Progress Report

4:30 p.m. - 4. Strategic Plan: Review of Draft Document

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

SPECIAL PUBLIC FORUM -- March 1, 1990

Red Lion Inn at Indian Hills
Cayuse Room
304 S.E. Nye Avenue
Pendleton, Oregon

7:30 p.m. - Groundwater

Note: The purpose of this special public forum is to provide an opportunity to exchange information and views on the subject of groundwater quality and groundwater pollution control. The public is welcome to attend and will have the opportunity to present their views. A number of people who are known to have specific knowledge or interest in groundwater quality are being specifically invited to present their views to the Commission.

REGULAR MEETING -- March 2, 1990

Blue Mountain Community College
Pioneer Hall, Room 148
Pendleton, Oregon

Consent Items -- 8:30 a.m.

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

A. Minutes of the January 18-19, 1990, EQC work session and regular meeting.

B. Civil Penalties Settlements.

C. Approval of Tax Credit Applications.

D. Commission Member Reports:

- Pacific Northwest Hazardous Waste Advisory Council (Hutchison).
- Governor's Watershed Enhancement Board (Sage).

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.

E. Regional Managers Report

Action 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.

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.

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

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

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.

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

K. Tax Credit Program: Adoption of Proposed Rule Amendments.

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

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

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

Hearing Authorizations

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

O. 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.

P. Waste Reduction: Proposed Rules for Waste Reduction Plans.

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

R. Sewerage Works Construction Grants: Proposed Rule Modifications.

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

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

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

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, April 6, 1990. There will be a short work session prior to this meeting on the afternoon of Thursday, April 5, 1990.

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

Approved ____
Approved with corrections ____
Corrections made ____

MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

ENVIRONMENTAL QUALITY COMMISSION

Minutes of the Two Hundred and First Meeting
January 18-19, 1990

Work Session

Thursday, January 18, 1990

The Environmental Quality Commission (Commission) Work Session was convened at 2:05 p.m. in Room 4A of the Department of Environmental Quality (Department) offices at 811 S. W. 6th 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.

Item 1: Governor's Watershed Enhancement Board (GWEB): Brainstorming session for potential legislative concepts to present to GWEB staff.

Commissioner Sage opened the discussion by asking for guidance on the direction and priority projects the Commission would like her to promote for GWEB. **Andy Schaedel** and **Roger Wood**, who serve as DEQ staff support for GWEB, presented background information on GWEB's programs to date. They suggested three potential ideas for priorities that could be pursued either through legislation or funding:

1. A complete inventory of watersheds and an assessment of their condition is needed to support evaluation of applications for funding to assure that maximum benefit is received from the limited funding available.

2. Priorities are needed to direct the available funds. The Department, through the Clean Water Strategy, has identified priority water bodies needing attention to protect beneficial uses, based on an evaluation of available data. The Commission could urge that GWEB funding be directed to priority water bodies as reflected in the Clean Water Strategy.

3. Section 319 of the Federal Clean Water Act is a source of money for Non-Point Source activities, including watershed management. This source of funds can be coordinated with GWEB activities to accomplish more. Both programs are intended to leverage the available funds by requiring local project match.

Approved ____
Approved with corrections ____
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Commissioner Castle asked what makes a good project. Andy Schaedel responded that preferred projects emphasized a management approach rather than a structural approach, made use of local funds and volunteers, and was coordinated at the local level. Commissioner Sage noted that most initial projects have focused on enhancement of water quantity and fish habitat, not water quality. **Chairman Hutchison** indicated a need to solicit applications from DEQ areas of need to address non-point source problems. **Director Hansen** stated that there was a need to bridge the in-stream/out-of-stream conflict and establish a method of prioritization so that when there are enough projects on the table, DEQ priorities are considered.

Commissioner Wessinger asked how GWEB deals with federal lands. Andy Schaedel and Roger Wood responded that GWEB has been successful in putting together a consortium approach and in getting the federal agencies to fund projects on their land. Commissioner Sage noted that state/federal cooperation has been good.

Director Hansen noted that the Department has money for fish run enhancement. DEQ seeks to coordinate with the Department of Fish and Wildlife to get joint benefit. **Audrey Simmons**, representing Water Watch, urged that efforts stress maintaining and enhancing water in the stream rather than allowing it to be allocated for out of stream use.

In summary, the primary direction given was to pursue a system of priorities for GWEB that recognizes water bodies designated by DEQ as high priority in the Clean Water Strategy.

Item 2. Stage II Vapor Recovery: Continuation of 11-30-89 Work Session

Nick Nikkila, Air Quality Division Administrator, reminded the Commission that discussion of Stage II vapor recovery began at the work session on November 30, 1989. The Department had established two committees -- an external committee to consider options for implementing a Stage II program, and an internal committee to look at options for Department administration of a program. **Mitch Wolgamott**, of the Air Quality Division, chaired the internal committee and reported on its work. He noted the committee had surveyed other states implementing Stage II to determine number of service stations involved, inspection approach and frequency, enforcement approach used, and methods of funding. Based on information compiled, the Department estimated that 1 FTE (full time equivalent staff position) would be required for every 600-700 stations. For the tri-county area, 2 FTE and a budget of $125,000 per year would be required for a stand alone program. Costs could be reduced if a cooperative approach with the Department of Agriculture, Weights & Measures Division was utilized. An annual operating fee for each gasoline pump was recommended as the method for funding a program.

Director Hansen summarized the issue before the Commission as follows:

- Should Stage II be implemented? The Department recommended yes because it is the most cost effective increment for Volatile Organic Compound (VOC) reduction that can be pursued.

- How fast should a program be implemented? The Department recommended that underground piping for Stage II be required as tanks are replaced in the Tri-County area; that a program to require installation, operation, and inspection of the above ground components of Stage II Vapor Recovery be adopted soon after reauthorization of the Clean Air Act and that 1990 be established as a baseline in order to be able to take credit for VOC reductions resulting from Stage II installation.
- What should the boundaries be? Options include a statewide program, or a program limited to the Tri-County area. Rationale for a statewide approach would be to address air toxics emitted with gasoline vapors. The Department recommended the initial program apply to the Tri-County area.
- What should the basis for exemption from the requirement to install Stage II be? The Department recommended that the program apply to stations with a throughput greater than 10,000 gallons per month.
- What mechanism for funding the program should be pursued? The Department recommended that authority to assess an annual fee on each dispensing nozzle be pursued.

Upon Commission approval, the Department would return in the spring to obtain authorization for hearing on rules to implement initial portions of the program.

Nick Nikkila noted that Vancouver was already requiring underground piping for Stage II to be installed for new or replaced underground tanks. Commissioner Sage asked about the cost to an operator. Mr. Nikkila responded that costs were estimated to be about $0.006 per gallon pumped.

Jason Boe, representing the Oregon Petroleum Marketing Association and the Oil Heat Institute, noted that there are essentially three classes of stations: those operated by major oil companies that pump 400,000 to 1,000,000 gallons per month, the 1100 stations operated by jobbers or marketers, and the 600-700 stations operated by "mom and pop". He indicated that costs for a station with 12 hoses include $2200 per hose to install Stage II, and $1037 per hose per year to maintain it. Overall, it will cost the operator $1722/month for loan payment and maintenance. If the station pumps 30,000 gallons per month, the added cost per gallon will be $0.054. At 50,000 gallons per month, the added cost will be $0.034 per gallon. Most stations pump less than 30,000 gallons per month, and it would not be economical to install Stage II. Mr. Boe also stated there is no assurance that the federal government will require Stage II. He expressed concern that Stage I is not being implemented, and that Stage II will not work without effective Stage I. Finally, he indicated that on-board canisters are cheaper and better, and may become a federal requirement.

Nick Nikkila responded that even if on-board canisters are required, it will be 3-4 years before the first car so equipped comes off the assembly line, and another 10 years to effectively replace the fleet of operating vehicles. Thus, Stage II equipment, with a life of 15 years, would be wearing out at the time on-board controls became effective.

By consensus, the Commission agreed that the Department should proceed to develop rules to implement Stage II, that the program should be sensitive to the costs on small stations, that the

Department should continue to look for ways to mitigate costs, and that hearings should be held on proposed rules.

Item 3. Pulp Mill Issues: Updates (various) and Discussion of Policy Options and Potential Future Actions

Lydia Taylor, Water Quality Division Administrator, reported to the Commission on a variety of items including the following:

- All information the Department has on dioxin is being logged into a computerized index. The index will be accessible for electronic access through the State Library.
- The Department has established an internal review team, including air, water, hazardous and solid waste staff, to review broader issues associated with dioxin.
- The Department has requested an evaluation from the Health Division on consumption of fish from the Columbia River.
- The Department held three public information sessions in Corvallis, St. Helens, and Portland where information was presented and questions were answered on dioxin and pulp mills.
- The Department is proceeding to finalize permit modifications for three pulp mills to require implementation of individual control strategies to reduce dioxin discharges to meet standards.
- The Department is proceeding to develop a study plan for gathering additional data on dioxin levels in the Portland area. The possibility of assistance from the Department of Fish & Wildlife on data collection is being pursued. This study will be funded with a $25,000 grant from the City of Portland.
- The Department is gathering information from other states and countries on approaches for retrofitting pulp mills to reduce dioxins and total chlorinated organics.
- The Environmental Protection Agency (EPA) will go ahead with development of a TMDL (total maximum daily load) for the Columbia River. A discussion draft will be circulated to the states for comment. Comments will be due by January 26, 1990. The draft will then be available to the public and EPA will proceed to obtain public input.

Commissioner Lorenzen asked whether standards would be equivalent on both sides of the Columbia River. Lydia Taylor responded that EPA was proceeding using the 0.013 parts per quadrillion TCDD standard adopted by Oregon, and there was little risk of different standards between the states. Director Hansen noted that the federal Clean Water Act provides that any state can adopt more stringent standards than adjacent states if it so chooses. Ms. Taylor added that Oregon comments on the TMDL developed by EPA will address the equity of allocation.

Gene Foster, Water Quality Division, went over an information package on dioxin that was given to the Commission. A copy was made a part of the record of the meeting.

Lydia Taylor then reported in more detail on the status of the ICS (individual control strategy) permits. Three public hearings were held, and written comments are being received through January 19, 1990. Extensive \written comments have been received. The draft permit modifications include technology-based limits for AOX (adsorbable organic halides) and a reopener clause.

DEQ expects to complete evaluation of comments, finalize the permit modification, and submit them to EPA by February 4, 1990 -- on schedule. Director Hansen noted that the AOX limit is based on estimates of what technology can produce, and could be modified if actual operating data proves initial estimates to be in error.

The Commission then heard a report from **Roger Campbell**, Technical Manager of Pope & Talbot, regarding their recent trip to Scandinavia to review pulp mill technology and regulation. Mr. Campbell noted that Scandinavian mills have concentrated on in-plant approaches for reducing discharges whereas regulations in the U.S. have required primary emphasis on biological treatment. Specifically with respect to meeting limits on chlorinated organics, they have relied most heavily on chlorine dioxide substitution for free chlorine in the bleaching process. He also noted that most mills pulp a combination of hard and soft woods. The level of chlorinated organics produced in pulping and bleaching the various wood types differs. Limits are applied to the total mill, giving the ability to use the mix of wood types to achieve the stringent limits. Commissioner Lorenzen asked if Pope & Talbot looked at any mills using hydrogen peroxide for pulp bleaching. Mr. Campbell replied that they did not.

Chairman Hutchison then allowed brief comments from members of the audience.

John Bonine, representing Natural Resources Law Clinic, objected to being limited to 10 minutes to present scientific information when Pope & Talbot was allowed to take 40 minutes. He requested more time for experts to be able to present information on the proposed ICS permits. He expressed the view that DEQ does not have to submit permits to EPA by February 4.

Mary O'Brien, representing Northwest Coalition for Alternatives to Pesticides, stated that the Goal of the ICS permits should be to eliminate chlorine. She also stated that the proposed ICS permits do not address beneficial uses, particularly the bald eagle.

Alan Mick, representing Boise Cascade, will install best available control technology at its St. Helens mill by June 1992. He noted, however, that the company does not believe the proposed permit limits can be achieved with the best known technology.

Linda Williams, representing local 290 of the Plumbers and Steamfitters Union, stated that she had written to the Commission and Director asking to be placed on the agenda so that she could have experts present testimony. She had been advised by Mr. Sawyer that Dr. Malins would be allowed to present general information on toxicity of dioxin and total chlorinated organics during the work session but that information specific to the proposed ICS permits should be presented to the Department rather than the Commission. She objected to the process followed by the Commission which allowed Pope & Talbot and others to present information relating to the proposed ICS permits when she had been told her experts could not testify. She indicated that Dr. Malins was unable to attend to present expert information on aquatic toxicology. She specifically asked when she would be given time to present her information. Chairman Hutchison indicated that the Commission would be discussing options for further input on the issues later in the work session. Commissioner Lorenzen indicated he had reviewed the report provided to him by Dr. Malins and found it helpful. He felt written information was more helpful than oral testimony. He also noted

that the task before the Commission was a large one, and that the proposed ICS permits were only one step along the way.

Charles Sheketoff, representing the Columbia River Intertribal Fish Commission, suggested that the dioxin issue be addressed early on Friday so that people interested in that item wouldn't have to spend the entire day. Chairman Hutchison indicated he wasn't sure that would be possible.

The Commission decided to reconvene the work session at 8:00 a.m. on Friday morning. The Commission also decided no public input would be taken during the reconvened work session and that discussion would be between Commission members and staff.

Lydia Taylor reviewed alternatives that the Commission could consider in its discussion of future policy options as follows:

- Product Controls -- Should the Commission pursue options to control production of bleached paper through an incentive program as opposed to a regulatory program?
- Process Controls -- Should process controls be pursued, such as banning the use of chlorine? Statutory authority does not exist at present to do this, and the same result can be achieved through an effluent standard. This could be pursued as a policy matter rather than based on particular scientific information relating the use to environmental effects. Other ramifications include chlorine used to disinfect drinking water and sewage effluent to protect public health.
- Effluent Controls -- This is the approach currently being followed by the Department on dioxin. Should effluent controls be established for other parameters? Effluent standards that are geographic specific could also be pursued.

Ms. Taylor suggested that the Commission should also consider the process to be followed in pursuing any of the options it may choose.

Commissioner Sage asked about the role of the Commission in the ICS permit process. Lydia Taylor responded that the Department is pursuing issuance of the ICS permits consistent with existing standards and Commission direction as established by rules. If the Commission is considering changing any of the existing rules or policies, sources would like to know as soon as possible so that money is not spent on controls that would be made obsolete by a policy change. Director Hansen explained that the Department is proposing to issue permit modifications to incorporate ICS compliance schedules. The permittee has the right to appeal the Department issuance of the permit modification to the Commission. The Commission's decision on the permittee's appeal could be further appealed to the Court of Appeals. Commissioner Sage indicated she also wanted to know what the role of the Commission was earlier in the process. Lydia Taylor advised that the Commission has established the permit issuance process for the Department to follow and has adopted the water quality standards through the rulemaking process. The process and the standards can be modified by the Commission through that process.

Chairman Hutchison indicated he would like to discuss further the question of how the Commission projects policy on permits. He would also like to review the ability of third parties to appeal permits rather than going to court, and to design a process for public input that gives the option

for Commission policy early in the process. He would also like to discuss how the agency relates to federal requirements. He expressed concern that the agency is essentially on hold with respect to new or modified permits until some of these issues are addressed and clarified.

Commissioner Sage asked if there were any other options for resolving conflicts other than appeals and litigation. Director Hansen responded that the Department has used advisory committees as a means for facilitating resolution of conflicts in the rule development process. The Commission could pursue some form of regulatory negotiation or third party mediation on conflicts for specific permits.

Chairman Hutchison recessed the work session until Friday Morning at 8:00 a.m.

The work session was reconvened by Chairman Hutchison at 8:10 a.m. Lydia Taylor again went over the three basic policy categories that were summarized for the Commission prior to recessing the work session on Thursday.

Commissioner Lorenzen summarized his view of the current situation as follows:

- The ICSs are one small step along a long route that will take some time.
- The EQC and DEQ need to engage the EPA and the State of Washington in a cooperative approach to dioxin control.
- Industry appears to be focusing on technology and what technology can accomplish. Environmental organizations are focusing on health based standards and environmental protection. Neither is addressing the concerns of the other side. There are few solid facts to back up the claims of both sides.

Commissioner Lorenzen then listed areas of facts that we need to try to obtain to as follows:

- What can be expected from technology in efforts to further reduce chloro-organics if it is determined that chlorine bleaching should be retained?
- What are the economic ramifications of totally eliminating chlorine bleach?
- What are the sources of dioxin and chloro-organics in the Columbia River other than paper mills?
- What are the harmful effects of chloro-organics if best available technology is implemented and the river is brought into compliance with water quality standards?
- What are the other areas where chloro-organics are present and potentially harmful (air pollution, land disposal issues, etc.)?

Commissioner Lorenzen stated that these questions are easily stated, but difficult to answer. Perhaps the Columbia River is an ideal study area to evaluate the harmful impacts of chloro-organics. He urged a forum as a way to assemble and hear from the best experts on these issues. Finally, he encouraged the Department to think about ways to create a demand for unbleached pulp products including, but not limited to: regulation of purchases by state agencies, advertising campaigns to raise customer awareness, possible legislative restrictions on certain products, possible legislative requirements that unbleached products be carried on the shelves if bleached products

are carried, and a possible fee on the quantity of molecular chlorine used in the production process with revenues used for consumer education, advertising to inform consumers, research, etc.

Commissioner Lorenzen concluded that the ICSs are not the most important thing; the longer range issues are more important.

Commissioner Wessinger asked what the Commission should do about the ICSs, in light of requests for more time to comment. Director Hansen responded that since the Commission sets the policy and procedures for permit issuance (by rule), if the Commission directs, the Department would hold up issuance of the ICS permit modifications. He noted that some have urged that there is no problem missing the federal ICS submittal deadline of February 4. He suggested that one must consider the purpose of any delay. If the purpose is to debate the appropriateness of the existing adopted standard or to debate the strategies to get there, there is no benefit from any delay. However, if a different strategy is to be pursued such as a goal to accomplish phase out of all chlorine through the ICSs, then that is a significant policy choice, and would be a major change of direction that could justify delay.

Chairman Hutchison remarked that the mills could appeal the permits if they were dissatisfied with the requirements. Michael Huston reminded the Commission that the pulp mills have filed suits challenging the designation of the stream segments as water quality limiting for dioxin. Chairman Hutchison then asked how other interested parties could challenge the permits. Michael Huston noted that the statutes provide that the permittee, at a minimum, can request a contested case hearing on a permit. The Commission has chosen by rule to limit the ability to cause a contested case hearing to the permittee. When a permit applicant requests a contested case, other parties may intervene. The Commission can choose to broaden the opportunity to request a contested case either by rule or by specific order.

Chairman Hutchison then asked what would occur if sources were in compliance, and new information identifies problems that were not anticipated when the permits were issued. Director Hansen indicated that a re-opener clause would be included in the permit that allows the Department to propose modifications for cause to address new issues.

Commissioner Sage expressed the view that everyone desires certainty and that is at least one piece of common ground. She also noted the need for everyone to participate and understand the views of others.

Commissioner Lorenzen expressed the view that the ICSs are on a predetermined course and the Department should get on with issuance and implementation, then the Commission could focus on the next steps. Commissioner Wessinger and Chairman Hutchison expressed agreement. Commissioner Lorenzen indicated he had not yet formed a view on the issue of appeal rights. Commissioner Sage expressed a preference for some delay to formulate a longer term strategy so that a short term strategy including ICSs could be reviewed in light of the longer term strategy. Commissioner Wessinger felt there should be no delay in proceeding with the ICSs.

Chairman Hutchison then informally polled the Commission with results as follows:

- Should the ICSs be delayed? All except Commissioner Sage said no; Commissioner Sage felt delay was appropriate.
- On the appeal question? Commissioner Castle said he was not ready to decide. Others agreed.
- On the issue of leadership -- should DEQ take the lead among state agencies in interfacing with the federal government to try to drive the agenda in examining the dioxin issue? Commissioner Castle indicated the agency should take the lead, and should consider formation of a Science Advisory Board to help the process of bringing "digested" information back to the Commission. Chairman Hutchison suggested the staff come back in March with recommendations on how DEQ would take the lead, and the approach for a forum/symposium. Director Hansen noted that the Department could be back in March with some discussion on formation of a Science Advisory Board and approach for a forum. Additional time would be required to go into other issues.
- On the issues of federal strategy, the Columbia River, state issues, legislative agenda: The Commission indicated the staff should come back with ideas for future actions in these areas.

Chairman Hutchison adjourned the work session.

Regular Meeting

Friday, December 1, 1989

The Environmental Quality Commission meeting was convened immediately following the end of the reconvened work session in Room 4A of the Department of Environmental Quality offices at 811 S. W. 6th Avenue in Portland, Oregon. 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 with the announcement that Agenda Item K would be taken first, followed by the Public Forum, and then the remainder of the agenda would be taken in order. People wishing to testify on any item were requested to fill out witness registration forms.

Agenda Item K: Water Quality Rules: Authorization for Hearing on Proposed Rule Amendments to Clarify Requirements for Designation and Management of Water Quality Limited Streams.

The issue of potential rule amendments to the water quality rules to clarify requirements for designation and management of water quality limited streams was discussed during the November 30, 1989, work session. This item was a followup to that work session, and recommended that the Commission authorize the Department to conduct rulemaking hearings on alternative amendments presented in Attachment A of the staff report. The proposed rule amendments would add definitions for water quality limited and effluent limited stream segments. Three alternatives were also presented for clarifying the timing and conditions that must be met before the EQC and DEQ can take actions to approve requests for increased waste loads to water quality limited receiving streams. The Department proposed taking all option to hearing, and would return to the Commission with a single recommendation after the hearing process. Neil Mullane, Water Quality Planning Manager, then reviewed the details of the three options presented in the agenda item and responded to questions for clarification from the Commission.

Chairman Hutchison summarized that the issue before the Commission was:

- Should the package be authorized for hearing so that testimony can be received on the alternatives?
- Should other options be included?

Comments from those signed up to testify were then received. Chairman Hutchison asked that comments focus on how to improve upon the information presented to the public and should not go to the merits of particular options.

Nina Bell, representing Northwest Environmental Advocates, urged the Commission not to let the public perceive this as a dioxin rule. Secondly, she urged the Commission to make sure that any new rule goes hand in hand with enforcement against existing sources if they are in violation.

David Mann, representing Northwest Environmental Defense Center, stated that the Commission should not authorize the package for hearing. He urged another work session on the issue first. He also noted that the triennial review of water quality standards was being initiated, and will be reviewing rules that are proposed for modification in this package. He felt it would be more appropriate to tie this proposal into the longer triennial review process. He also felt that enforcement is a significant issue that is missing in the proposal. He indicated support for clarification of the rule but felt more time was needed.

Harry Smiskin, representing the Yakima Indian Nation Tribal Council Fish and Wildlife Law and Order Committee, expressed the view that the policy change reflected in the proposed rules is intended to allow a new pulp mill to be built, and that such a policy change would violate Indian treaty rights. He suggested that the proposed policy change is contrary to the recently adopted

resolution of the Yakima Indian Nation which calls for the pulp and paper industry to end chlorine bleaching of pulp and paper products within five years and begin supplying unbleached paper products. Mr. Smiskin noted Indians use all of fish, and that the treaty gives them the right to fish free of chemicals. He stressed that no toxic pollution can or should be allowed. Mr. Smiskin read the Yakima Indian Nation resolution for the record.

Tracy Maier, a Portland citizen, expressed concern about dumping of pollutants to rivers. He stated the view that the purpose of the proposed rule was to allow WTD to reopen the permitting process for their proposed new pulp mill on the Oregon side of the river. He stated that permits should be revoked if necessary to stop the dumping of dioxin into waterways.

Patrick Parenteau, a Portland attorney representing WTD, recognized that any action taken by the Commission may or may not be of any benefit to his client, and urged the Commission to send the proposed rule amendments to public hearing. He supported inviting the public to comment in a structured way on specific proposals for rule changes. He stated that he did not feel the options presented go far enough. He suggested that the options need to squarely address the issue of whether a proposed action will make the river "sicker" or "better". He suggested that an additional option should be added to the proposal that would allow new or increased discharges where the EQC affirmatively finds that parameters associated with the proposed discharge would have no significant effect (or a negligible effect) on water quality standards or the most environmentally sensitive receptor (e.g. the bald eagle) after application of highest and best technology. He suggested that such an option also be put out for public comment.

Chairman Hutchison asked if such an option could be added. Neil Mullane stated that an additional option could be structured and added to the package.

Whyte Loffe urged that caps be placed on the levels of toxics placed into public waterways.

Dale E. Sherbourne, representing Concerned Citizens for Wastewater Management, urged that public input be required when the Commission or Director consider exceptions under the rules.

Martha Odom commented on the logistics of a public hearing. She urged that a clear statement of stipulated and contested facts be presented to help the public in commenting on the issues. Hearings should be held at times and in locations where all interested people can attend, without losing time from work.

John Bonine, representing Western Natural Resources Law Clinic, stated that there are serious problems with the options. He reads the rule to state that if the standard for TCDD is met, one can forget about all other organo-chlorine compounds. He also stated that the Commission should bind itself to consider the data of others. He questioned why this was not in the triennial review process rather than a separate rule proposal. He suggested that the purpose of the rule out of order with the triennial review was to facilitate new chlorine based pulp mills. He also warned that WTD and Pope & Talbot face a long and unrewarding litigative and administrative process if they persist in trying to change the rules and add organo-chlorines to Oregon rivers.

Chairman Hutchison asked whether it was appropriate to handle this under the triennial review. Neil Mullane indicated that the triennial review was looking at water quality standards, whereas this policy proposal is looking at "process" options that would not normally be considered under the triennial review.

Chairman Hutchison then went through a list of potential changes in the proposal and obtained Commission concurrence on direction as follows:

- Should the word "significant" be added in paragraph (B) of the options to get comment -- Yes.
- Should the words "at the time of allocation" be added to (iv) on page A-6 -- Yes.
- Should the options be restructured and renumbered to do away with option 3 by adding the duty to produce a list to the other options -- Yes.
- Should the option suggested by Mr. Parenteau be added for consideration (as a new option 3) -- Yes
- Should a definition of reserve capacity be added to the rule -- Yes.

Commissioner Sage asked why this is being considered now rather than as part of the triennial review. Neil Mullane responded that the Commission asked the Department to bring forth these options, therefore the Department is responding to the request of the Commission. Further, the triennial review is looking at the numeric and narrative standards, rather than basic policy and procedure issues. He noted that the schedule for the triennial review and the potential schedule for this rule package would be similar, and they could be joined if the Commission preferred. Commissioner Lorenzen expressed concern that combining them would dilute the comment on this rule which he considered to be a high priority.

It was MOVED by Commissioner Lorenzen that the rule, incorporating the modifications outlined, be put out for public hearing. The motion was seconded by Commissioner Wessinger and approved on a 4-1 vote with Commissioner Sage voting no.

The meeting was then recessed for about 15 minutes.

The meeting was reconvened by the Chairman with the intent of moving rapidly through the rest of the agenda. In the interest of time, the Chairman asked that no more testimony be presented on the Columbia River or pulp and paper issues, that such testimony should be the part of other future processes.

Commissioner Lorenzen MOVED that the Commission authorize an order to allow non-permittees to appeal the provisions of final ICS permit modifications for the three pulp mills to the Commission. Michael Huston advised that he believed an order was appropriate in this case, and that a special meeting could be called to adopt a temporary rule if further review determined that an order was not the right way to go. The motion was seconded by Commissioner Castle. The motion was unanimously approved.

PUBLIC FORUM

Dale E. Sherbourne, representing Concerned Citizens for Wastewater Management, asked for a study on chlorine. He has made such a request before, and has been advised that no funds are available.

Steve Anderson, a consultant representing himself, talked about risk-based decisions. He urged that a forum be held where scientists from all sides of the issue could meet, argue the issues, and present majority and minority reports on the science of the issue to the policy makers in a way that is condensed and useful.

Quincy Sugarman, representing Oregon State Public Interest Research Group, urged the Commission to proceed with implementation of SB 1100 relating to reduction of CFC's (chlorofluorocarbons). She asked the Commission to make a finding that equipment is available for recycling and urged that the matter be considered at the April meeting. Nick Nikkila, Air Quality Division Administrator, indicated it would be on the agenda for April.

Nina Bell, representing Northwest Environmental Advocates, praised the Department for the Columbia River nomination package they prepared for the National Estuary Program. She urged the Commission to support the Department's continuing interest in that program or an alternative that looks similar. She urged the Commission to address a letter to the governors of the two states expressing that support. She further urged the Commission to support legislators in seeking changes to the program signed by both governors. She noted that appropriations will be a battle, but those appropriations could go through more smoothly if changes were made to the program. Finally, she urged the Commission to have the Department address the issue of what technology (pulp and paper) can achieve. The Commission, by consensus, authorized the Chairman to draft a letter to support a beefed-up interstate study and funding for a study.

William Sherlock, representing the Natural Resources Law Clinic, requested that the March EQC meeting be held in Albany or Eugene to allow more people who have an interest in the pulp mill issues to attend the meeting.

Wilbur Slockish, Jr., a Native American fisherman, asked that Indians be included in future meetings on these issues, and the views of the Indians be considered.

Chief Johnny Jackson, representing the Columbia River Tribal Chief's Council, expressed concern about what is happening to the Columbia River and the Fish.

CONSENT ITEMS

Agenda Item A: Minutes of the October 18-20, 1989 EQC meeting

Commissioner Sage noted that the word "no" was left out of the last line on page 9 which should read "... there should be no impact."

It was MOVED by Commissioner Lorenzen that the minutes be approved with the correction noted above. The motion was seconded by Commissioner Castle and passed unanimously.

Agenda Item B: Civil Penalties Settlements

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

a. Case No. WQ-WVR-89-105, Bohemia, Inc.
b. Case No. HW-NWR-89-46, Safety-Kleen Corp., Clackamas Facility
c. Case No. HW-WVR-89-86, Technical Images, Inc.
d. Case No. HW-WVR-89-104, Columbia Helicopters, Inc.
e. Case No. WQ-WVR-89-101, Roger DeJager

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

Agenda Item C: Approval of Tax Credit Applications

The Commission did not receive the package of Department recommendations on Tax Credit Applications, therefore the item was deferred until the next meeting.

Agenda Item D: Commission Member Reports

Commission Member Reports were not presented in the interests of time.

ACTION ITEMS

Agenda Item E: Unified Sewerage Agency: Progress Report on Compliance with Tualatin River Water Quality Requirements.

John Jackson, representing Unified Sewerage Agency, briefed the Commission on the Unified Sewerage Agency's 1990 facility plan status. He noted that the plan was a long term plan with short term elements, that it was moving away from concrete and into resource management, that they are stressing a partnership approach, and that the plan involves significant public involvement. Their goals include complying with the TMDL by June 1993; enhancing natural systems, Tualatin River uses, and a regional approach; recycling and reuse; and a holistic approach. The plan uses four basic strategies: keep pollutants out of the basin (phosphorous ban, recycling); keep pollutants out of wastewater (industrial pretreatment, public education); treatment and reuse (agricultural reuse, wetlands treatment); and in-stream management (flow augmentation, optimize winter releases). They expect to submit the draft plan by March 15, 1990.

The Commission commended the Unified Sewerage Agency for their efforts and their prevention-based approach.

Agenda Item F: North Albany Health Hazard Area: Approval of Alternative Plan for Alleviating Certified Health Hazard.

Director Fred Hansen introduced the item. He explained that the Department believes that the Alternative Plan to city annexation is a good plan that would finally resolve the long-standing on-site sewage disposal problems in North Albany. Construction Grants Section Manager **Martin Loring** further explained that the initial Alternative Plan being reviewed today, if approved, would be followed in six months by a more fully developed final Alternative Plan for the Commission to review and approve if deemed satisfactory.

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: Principal Recyclable Materials List: Review of List and Recommendations for Update.

The Commission did not receive the staff report for this agenda item in advance of the meeting but chose to act on it anyway. Director Hansen explained that the Department was not recommending any changes to the principal recyclable material lists since market prices have dropped dramatically. In addition, the Department does not want to delete items from the current lists.

Chairman Hutchison asked staff specific questions about the status of plastics recycling and why the Department was not recommending that plastics be added to the principal recyclable material lists. Staff replied that there are still problems with markets for plastics. Unlike yard debris, the markets are not in the local area which changes the economics. The collection end could be dealt with however. Staff cannot accurately predict whether or not plastics could be added next year due to market concerns. The plastics industry has still not taken plastics recycling seriously in that their are still few manufacturers of reclaimed plastic products (from post-consumer waste) especially in the northwest. There are manufacturers on the east coast and in the midwest, however those markets are so far away that it decreases the price that local reprocessors of plastics can pay to a refuse collector for plastic collected at the curb or at a depot. The price currently being paid is not enough to cover the cost of collection. Short of subsidizing the collection programs, staff does not see any way that plastics could be added to the principal recyclable materials lists at this time.

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

The Commission also requested that recycling be added as a work session topic sometime later in the year.

RULE ADOPTIONS

Agenda Item H: Asbestos Abatement Program: Rule Amendments.

This item recommended the Commission adopt amendments to the Asbestos Abatement rules as presented in Attachment A of the staff report. The proposed amendments were developed after more than a year's administrative experience with the current rules and are intended to reduce paperwork, increase program flexibility and enhance environmental protection. The Oregon Asbestos Advisory Board has been actively involved throughout the development of the proposed amendments.

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

Agenda Item I: Kraft Mill Regulations: Modifications to Correct Deficiencies, Add Opacity Standard for Recovery Boilers, Clarify Monitoring Requirements.

This agenda item proposed the adoption of amendments to the Kraft Pulp Mill regulations to comply with Federal Clean Water Act Section 110 and Section 111(d) for short term emission standards, control of total reduced sulfur (TRS) compounds, and correction of existing discrepancies. More stringent regulations were also proposed to limit opacity. Neutral Sulfite Semi-Chemical (NSSC) Pulp Mill regulations are required to adequately address emissions and unique operating conditions encountered with this source class. This item was deferred from the last meeting in order to resolve differences with the industry.

The Department recommended adoption of proposed rule amendments as presented in Attachment A of the staff report.

It was MOVED by Commissioner Wessinger that the Department recommendation be approved. The motion was seconded by Commissioner Castle and unanimously approved. (Note: See further action on this item at the end of the minutes.)

Agenda Item J: Waste Tires: Adoption of Rule Amendments Regarding Ocean Reefs, Beneficial Use Permits, Reimbursement for Demonstration Projects, Financial Assistance Criteria, and Other Housekeeping Amendments.

This item proposes adoption of rule amendments regarding ocean reefs, beneficial use permits, reimbursement for demonstration projects, financial assistance criteria, and other housekeeping amendments. The Department recommended adoption of rule amendments as presented in

Attachment A of the staff report.

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

At this point, Commissioner Wessinger had to leave.

HEARING AUTHORIZATIONS

Agenda Item L: Infectious Waste: Authorization for Hearing on Proposed Rules to Implement 1989 Legislation Limiting Disposal and Requiring Incineration or Other Sterilization Before Disposal.

This item recommends that the Commission authorize hearing on proposed rules to establish criteria for the Department to use in determining when pathological wastes may be sterilized through means other than incineration. The rules are required to implement a 1989 statute. **Steve Greenwood**, Manager of the Solid Waste Section, reviewed the Department's approach to the legislative direction. In response to questions, he indicated that the Waste Reduction Advisory Committee would review the matter and the Department would report back if any changes were recommended.

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

Agenda Item M: UST Rules: Authorization for Hearing on Proposed Adoption of Federal UST Technical Standards and Financial Responsibility Rules; and Local Program Delegation.

This item recommends that the Commission authorize a rulemaking hearing on proposed rules which would adopt federal UST technical standards and financial responsibility rules. In order to obtain state approval to regulate USTs in lieu of federal regulation, it is necessary to adopt technical and financial responsibility rules that are no less stringent than federal rules. The proposed rules also contain provisions for local program delegation.

Commissioner Lorenzen expressed concern about the cost of the UST program to small businesses. He wondered if it is necessary to clean up leaks in all cases, particularly those in remote areas where no harm would be done. Mike Downs, Administrator of the Environmental Cleanup Division, responded that the Commission has adopted a soil matrix which is intended to simplify the cleanup process in cases where groundwater is not affected.

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: Oil Contaminated Soil Cleanup Contractors: Authorization for Hearing on Amendments to Registration and Licensing Requirements for UST Service Providers to Add Certification and Licensing for Soil Cleanup Contractors and Supervisors (HB 3456).

This agenda item recommended that a rulemaking hearing be authorized on proposed rules to provide for certification and licensing of remedial action and soil cleanup contractors. It is proposed to add the requirements to existing licensing requirements for UST service providers. This proposal is in response to 1989 legislation that requires regulation of contractors providing cleanup services for leaking heating oil tanks.

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

Agenda Item O: Permit Public Notice Procedures: Authorization for Hearing on Proposed Rule Amendments.

This item recommended that a rulemaking hearing be authorized on rule amendments which would clarify items to be included in public notices for permit applications or permit modifications and cover additional items to be included in public notices for NPDES permits, Air Contaminant Discharge Permits, Water Quality General Permits, Solid Waste Permits, and Hazardous Waste Facilities Permits.

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

The Meeting was adjourned for Lunch.

The Meeting was reconvened to correct the earlier Kraft Mill rule adoption. This correction permitted the use of Continuous Emissions Monitors in addition to the EPA reference method for testing to determine Total Reduced Sulfur (TRS) compounds. Specifically, the Department recommended approval of a correction that would add the words "or continuous emission monitors" to the end of the first sentence in paragraph (d) on page A-13 of Attachment A of the staff report for agenda item I.

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

There was no further business and the meeting was adjourned.

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

WORK SESSION
REQUEST FOR EQC DISCUSSION

Meeting Date: 3/1/90
Agenda Item: Special Public Forum
Division: Water Quality
Section: Groundwater

SUBJECT:

Overview of the Groundwater Protection Act passed by the 1989 Legislature and the Groundwater Quality Protection Rules (OAR 340-40) adopted by the Commission October 27, 1989.

PURPOSE:

Presentation of upcoming and ongoing programs administered by the new Groundwater Section of the Water Quality Division. The presentation will provide a background for a public forum discussion on implementing the Groundwater Protection Act and Groundwater Quality Protection Rules.

ACTION REQUESTED:

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

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

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

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

DESCRIPTION OF REQUESTED ACTION:

No action required.

AUTHORITY/NEED FOR ACTION:

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

___ Other: — Attachment ___

___ Time Constraints: (explain)

DEVELOPMENTAL BACKGROUND:

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

House Bill 3515, Groundwater Protection Act of 1989
Sections 17 through 66 — Attachment A
Groundwater Protection Act Summary — Attachment B
OAR 340-40 Groundwater Quality Protection — Attachment C

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The Groundwater Protection Act and the Groundwater Quality Protection Rules have widespread impact on communities and industries throughout Oregon. In general, all activities which have the potential to create a significant adverse affect on groundwater quality, either directly or indirectly, will come under consideration by the Department's Water Quality Division, either through discharge permits or management plans.

PROGRAM CONSIDERATIONS:

The Department, with EPA's assistance, started a state-wide groundwater assessment project in 1985. The study revealed evidence of groundwater contamination by nitrates and pesticides at different locations around the state. Contamination of groundwater from point sources had also been documented throughout the state. As a result of this evidence the 1989 Oregon Legislature saw the protection of Oregon's groundwater quality as a major concern and expressed their desire to have this resource protected and managed properly by passing HB 3515 (The Groundwater Protection Act of 1989). Oregon's Groundwater Act requires state agencies to coordinate their efforts to provide for the protection of the groundwater resource and to conserve and restore groundwater for present and future beneficial uses. The pertinent sections of HB 3515 are attached as Attachment A and a summary of those sections is enclosed as Attachment B.

Contamination from point sources is also a concern and with the assistance of a citizens advisory group, public input, and other state agencies the Department developed rules to protect the groundwater resource. The Oregon Environmental Quality Commission adopted these rules in October of 1989 as Statewide Groundwater Quality Protection Rules (Attachment C). These rules provided the Department with an overall strategy for protecting groundwater quality and establish minimum groundwater quality protection requirements. The rules primarily address point source contamination and are implemented and work in conjunction with several other programs administered by the Department.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

Not Applicable

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

No action is required.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The Groundwater Protection Act and the Groundwater Quality Protection Rules are consistent with the Strategic Plan, agency policy, and legislative policy.

ISSUES FOR COMMISSION TO RESOLVE:

None.

INTENDED FOLLOWUP ACTIONS:

An internal committee has been formed to develop a guidance document for the implementation of the Groundwater Quality Protection Rules. The Groundwater Protection Act is being implemented by the Water Quality Division through a combination of citizens advisory groups and coordination with other state agencies.

Approved:

Section: Amy Patton (AGR)

Division: Neil Mullane for Lydia Taylor

Director:

Report Prepared By: Amy S. Patton

Phone: 229-5878

Date Prepared: 2/16/90

RJK:crw
PM\WC6215
2/16/90

HOUSE BILL 3515

SECTIONS 17 THROUGH 66

GROUNDWATER PROTECTION ACT OF 1989

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Commercial and industrial activities;

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

(C) Residential and sewage treatment activities; and

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

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

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

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

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

(A) Hydrogeologic characterizations;

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

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

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

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

available.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

536.100 to 536.150.

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

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

(a) A toxicologist;

(b) A health professional;

(c) A water purveyor;

(d) A biologist; and

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

(A) Citizens;

(B) Local governments;

(C) Environmental organizations;

(D) Industrial organizations; and

(E) Agricultural organizations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Any emerging ground water quality problems.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Evaluation and recommendations of alternative practices;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) A proposed time schedule for:

(a) Implementing the group's recommendations;

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

(c) Public review of the action plan;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 49. ORS 366.155 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 50. ORS 448.123 is amended to read:

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

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

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

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

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

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

SECTION 51. ORS 448.150 is amended to read:

448.150. (1) The division shall:

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

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

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

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

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

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

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

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

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

SECTION 52. ORS 536.120 is amended to read:

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

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

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

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

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

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

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

SECTION 53. ORS 536.220 is amended to read:

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

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

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

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

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

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

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

SECTION 54. ORS 536.340 is amended to read:

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

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

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

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

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

SECTION 55. ORS 536.410 is amended to read:

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

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

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

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

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

SECTION 56. ORS 537.525 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 57. ORS 537.545 is amended to read:

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

(a) Stockwatering purposes;

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

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

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

(e) Down-hole heat exchange purposes; or

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

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

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

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

SECTION 58. ORS 537.665 is amended to read:

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

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

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

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

SECTION 59. ORS 537.775 is amended to read:

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

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

SECTION 60. ORS 537.780 is amended to read:

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

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

(2) Enforce:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 61. ORS 540.610 is amended to read:

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

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

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

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

or which may hereafter be acquired.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 62. ORS 561.020 is amended to read:

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

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

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

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

SECTION 63. ORS 568.225 is amended to read:

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

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

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

SECTION 64. ORS 633.440 is amended to read:

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

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

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

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

SECTION 65. ORS 633.460 is amended to read:

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

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

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

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

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

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

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

due the department.

SECTION 66. ORS 634.016 is amended to read:

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

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

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

(4) The application for registration shall include:

(a) The name and address of the registrant.

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

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

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

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

(f) The total percentage of inert ingredients.

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

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

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

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

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

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

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

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

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

(D) Residual or delayed toxicity of the material.

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

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

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

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

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

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

SECTION 67. ORS 459.005 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Groundwater Protection Act Summary

HB 3515 Sections 17 through 66

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Appoint a local advisory committee.

2. Focus research and public education on area.

3. Provide for necessary monitoring.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The following represents the amended, renumbered rule language which replaces Oregon Administrative Rule (OAR) 340-41-029, effective October 27, 1989.

OREGON ADMINISTRATIVE RULES

DEPARTMENT OF ENVIRONMENTAL QUALITY

CHAPTER 340

DIVISION 40

GROUNDWATER QUALITY PROTECTION

PREFACE

340-40-001

The Rules within this Division establish the mandatory minimum groundwater quality protection requirements for federal and state agencies, cities, counties, industries, and citizens. Other federal, state, and local programs may contain additional or more stringent groundwater quality protection requirements. Unless specifically exempted by statute, groundwater quality protection requirements must meet or be equivalent to these rules. Removal and remedial actions subject to Oregon Revised Statutes (ORS) 466.540 to 466.590, 466.705 to 466.835 and 466.895 shall not be subject to the requirements of these Rules.

DEFINITIONS

340-40-010

Terms not defined in this section have the meanings set forth in OAR 340-41-006 unless otherwise noted. Unless otherwise required by context, as used in this Division:

(1) "Background Water Quality" means the quality of water immediately upgradient from a current or potential source of pollution that is unaffected by the source.

(2) "Compliance Point(s)" means the point or points where groundwater quality parameters must be at or below the permit-specific concentration limits or the concentration limit variance.

(3) "Concentration Limit" means the maximum acceptable concentration of a contaminant allowed in groundwater at a Department specified compliance point.

(4) "Concentration Limit Variance" means a groundwater quality concentration limit which is granted by the Director or the EQC on a case-by-case basis as an alternative to a permit-specific concentration limit established under Section (3) of OAR 340-40-030.

(5) "Contaminant" has the meaning set forth for "pollutant" as defined in OAR 340-45-010(13), and means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewerage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged to water, and includes any pollutant or other characteristic element which may result in pollution of the waters of the State.

(6) "Downgradient Detection Monitoring Point(s)" means the point or points at which groundwater quality is monitored to immediately determine whether a pollutant has been discharged to groundwater. The detection monitoring point is not necessarily the same as the compliance point.

(7) "Existing Facility" means any facility or activity operating under a Department approved permit on or before the effective date of OAR 340-40-030. Such facilities or activities shall include those facilities specifically exempted by statute from the permitting process.

(8) "Guidance Level" means the contaminant concentration level used to evaluate the significance of a particular contaminant in groundwater. A guidance level generally indicates when the quality of groundwater may not be suitable for use as drinking water due to its aesthetic characteristics.

(9) "Natural Water Quality" means the water quality that would exist as a result of conditions unaffected by human-caused pollution.

(10) "New Facility" means a facility or activity authorized to operate under a Department approved permit for the first time after the effective date of OAR 340-40-030. A new facility or activity includes changes in facility operation, disposal technique, or other alterations which justify new conditions to and necessitate major modifications of an existing permit.

(11) "Non-permitted Activity" means an activity which is not regulated through a Department-approved permit which could result in or has resulted in groundwater pollution. Unless specifically exempted by statute, such activities shall include but not be limited to spills, releases and past practices which either are not subject to a permit or are subject to a permit but were not permitted at the time of the release.

(12) "Nonpoint Sources" refers to diffuse or unconfined sources of pollution where contaminants can either enter into -- or be conveyed by the movement of water to -- public waters.

(13) "Permitted Operation" means any facility or activity which emits, discharges, or disposes of wastes or otherwise operates in accordance with specified limitations set forth in a written permit issued by the Department.

(14) "Point Source" means any confined or discrete source of pollution where contaminants can either enter into -- or be conveyed by the movement of water to -- public waters.

(15) "Pollution" has the meaning set forth for "pollution" as defined in the Water Pollution Control Statute ORS 468.700 (3) and means such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof.

(16) "Reference Level" means the contaminant concentration level used to evaluate the significance of a particular contaminant in groundwater. A reference level generally indicates when groundwater may not be suitable for human consumption.

(17) "Uppermost Aquifer" means the geologic formation, group of formations, or part of a formation that contains the uppermost potentiometric surface capable of yielding water to wells or springs, and may include fill material that is saturated.

(18) "Wastes" means sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive, or other substances which will or may cause pollution or tend to cause pollution of any water of the state.

(19) "Waste Management Area" means any area where waste, or material that could become waste if released to the environment, is located or has been located.

GENERAL POLICIES

340-40-020

(1) Groundwater is a critical natural resource providing domestic, industrial, and agricultural water supply; and other legitimate

beneficial uses; and also providing base flow for rivers, lakes, streams, and wetlands.

(2) Groundwater, once polluted, is difficult and sometimes impossible to clean up. Therefore, the EQC shall employ an anti-degradation policy to emphasize the prevention of groundwater pollution, and to control waste discharges to groundwater so that the highest possible water quality is maintained.

(3) All groundwaters of the state shall be protected from pollution that could impair existing or potential beneficial uses for which the natural water quality of the groundwater is adequate. Among the recognized beneficial uses of groundwater, domestic water supply is recognized as being the use that would usually require the highest level of water quality. Existing high quality groundwaters which exceed those levels necessary to support recognized and legitimate beneficial uses shall be maintained except as provided for in these Rules.

(4) Numerical groundwater quality reference levels and guidance levels are listed in Tables 1 through 3 of this Division. These levels have been obtained from the Safe Drinking Water Act, and indicate when groundwater may not be suitable for human consumption or when the aesthetic quality of groundwater may be impaired. They will be used by the Department and the public to evaluate the significance of a particular contaminant concentration, and will trigger necessary regulatory action. These levels should not be construed as acceptable groundwater quality goals because it is the policy of the EQC (OAR 340-41-026(1)(a)) to maintain and preserve the highest possible water quality.

(5) For pollutant parameters for which numerical groundwater quality reference levels or guidance levels have not been established, or for evaluating adverse impacts on beneficial uses other than human consumption, the Department shall make use of the most current and scientifically valid information available in determining at what levels pollutants may affect present or potential beneficial uses. Such information shall include, but not be limited to, values set forth in OAR Chapter 340, Division 41, Table 20.

(6) The Department shall develop, implement and conduct a comprehensive groundwater quality protection program. The program shall contain strategies and methods for problem prevention, problem abatement and the control of both point and nonpoint sources of groundwater pollution. The Department shall seek the assistance of federal, state, and local governments in implementing the program.

(7) In order to assure maximum reasonable protection of public health, the public shall be informed that groundwater, and most particularly local flow systems or water table aquifers, may not be suitable for human consumption due either to natural or human-caused pollution problems, and shall not be assumed to be safe for

domestic use unless quality testing demonstrates a safe supply. The Department shall work cooperatively with the Water Resources Department and the Health Division in identifying areas where groundwater pollution may affect beneficial uses.

(8) It is the policy of the EQC that groundwater quality be protected throughout the state. The Department will concentrate its groundwater quality protection implementation efforts in areas where practices and activities have the greatest potential for degrading groundwater quality, and where potential groundwater quality pollution would have the greatest adverse impact on beneficial uses.

(9) The Department, as lead agency for groundwater quality protection, shall work cooperatively with the Water Resources Department, the lead agency for groundwater quantity management, to characterize the physical and chemical characteristics of the aquifers of the state. The Department will seek the assistance and cooperation of the Water Resources Department to design an ambient monitoring program adequate to determine representative groundwater quality for significant groundwater flow systems. The Department shall assist and cooperate with the Water Resources Department in its groundwater studies. The Department shall also seek the advice, assistance, and cooperation of local, state, and federal agencies to identify and resolve groundwater quality problems.

(10) It is the intent of the EQC to see that groundwater problems associated with areawide on-site sewage disposal are corrected by developing and implementing areawide abatement plans. In order to accomplish this, all available and appropriate statutory and administrative authorities will be utilized, including but not limited to: permits, special permit conditions, penalties, fines, EQC orders, compliance schedules, moratoriums, Department orders, and geographic area rules (OAR 340-71-400). It is recognized, however, that in some cases the identification, evaluation and implementation of abatement measures may take time and that continued degradation may occur while the plan is being developed and implemented. The EQC may allow short-term continued degradation only if the beneficial uses, public health, and groundwater resources are not significantly affected, and only if the approved abatement plan is being implemented on a schedule approved by the Department.

(11) In order to minimize groundwater quality degradation potentially resulting from point source activities, point sources shall employ the highest and best practicable methods to prevent the movement of pollutants to groundwater. Among other factors, available technologies for treatment and waste reduction, cost effectiveness, site characteristics, pollutant toxicity and persistence, and state and federal regulations shall be considered in arriving at a case-by-case determination of highest and best practicable methods that protect public health and the environment.

(12) In regulating point source activities that could result in the disposal of wastes onto or into the ground in a manner which allows potential movement of pollutants to groundwater, the Department shall utilize all available and appropriate statutory and administrative authorities, including but not limited to: permits, fines, EQC orders, compliance schedules, moratoriums, Department orders, and geographic area rules. Groundwater quality protection requirements shall be implemented through the Department's Water Pollution Control program, Solid Waste Disposal program, On-Site Sewage Disposal System Construction program, Hazardous Waste Facility (RCRA) program, Underground Injection Control program, Emergency Spill Response program, or other programs, whichever is appropriate.

PERMITTED OPERATIONS

340-40-030

(1) Permits required by point sources shall specify appropriate groundwater quality protection requirements. Water Pollution Control Facility (WPCF) permits may be used in cases other than for those covered by Solid Waste Disposal Facility permits, NPDES permits, On-Site Sewage Disposal permits, or Hazardous Waste Facility permits.

(2) The Department shall review and evaluate appropriate technical information and reports submitted by permitted sources to determine the potential for adverse impacts to groundwater quality. Where the above technical information and reports indicate that there is a likely adverse groundwater quality impact, the Department shall require through the permits and rules referred to in OAR 340-40-020 (12), and other appropriate statutory and administrative authorities, the following groundwater quality protection program:

(a) **Groundwater Monitoring Requirements.** The permittee or permit applicant shall submit to the Department for approval a groundwater monitoring plan for the uppermost aquifer and any other potentially affected aquifers. The groundwater monitoring plan shall be capable of determining rate and direction of groundwater movement, and monitoring the groundwater quality immediately upgradient and downgradient from the waste management area. The plan shall include, but not be limited to, detailed information on the following:

(A) System Design:

(i) Well Locations.
(ii) Well Construction.
(iii) Background Monitoring Point(s).
(iv) Detection Monitoring Point(s).
(v) Water Quality Compliance Point(s).

(B) Sample Collection and Analysis:

(i) Parameters to be Sampled.
(ii) Sampling Frequency and Duration.
(iii) Sample Collection Methods.
(iv) Sample Handling and Chain of Custody
(v) Analytical Methods.
(vi) Acceptable Minimum Reporting Levels.
(vii) Quality Assurance and Quality Control Plan.

(C) Data Analysis Procedure:

(i) Statistical Analysis Method.
(ii) Frequency of Analysis.

(b) **Reporting Requirements.** The facility permit shall specify monitoring and assessment reporting requirements.

(c) **Background Monitoring Point(s) Requirements.** The permittee shall monitor the background water quality of the uppermost aquifer. The background monitoring point(s) shall be located where water quality is unaffected by facility operation.

(d) **Downgradient Detection Monitoring Point(s) Requirements.** The permittee shall monitor the aquifer directly downgradient from the waste management area to ensure immediate detection of waste released to groundwater. This shall be known as the downgradient detection monitoring point(s).

(e) **Compliance Point(s) Requirements.** The Department shall specify the location at which groundwater quality parameters must be at or below the permit-specific concentration limits. Unless otherwise specified by the Department, that location will be defined by a vertical plane located along the waste management area boundary. Any monitoring point on that plane is a compliance point. The compliance point(s) may not necessarily be the same as the downgradient detection monitoring point(s).

(3) **Concentration Limits.** The facility permit shall specify the maximum contaminant concentration allowed at the compliance point(s). Unless otherwise established according the variance procedure contained in Section (4) of this Rule, the Department shall set permit-specific concentration limits at new and existing facilities as established below.

(a) **Concentration Limit at Existing Facilities:** The concentration limit at existing facilities shall be established by the Department on a case-by-case basis. The concentration limit at these facilities may be established at any level between background water quality levels and the numerical groundwater quality reference levels or guidance levels as listed in Tables 1 through 3 of this Division

unless the background water quality is above those numerical levels. If the background water quality exceeds those numerical levels, then the concentration limit shall be established at the background level. When a contaminant of concern has no numerical level listed in Tables 1 through 3 of this Division, the permit-specific concentration limit shall not exceed background water quality levels.

(b) **Concentration Limit at New Facilities:** The permit-specific concentration limits at new facilities shall be established at the background water quality levels for all contaminants.

(4) **Concentration Limit Variance.**

(a) Upon request by the permittee, Department, or permit applicant, and after opportunity for public review and comment, a concentration limit variance may be granted as an alternative to the permit-specific concentration limits specified in Section (3) of this Rule provided an existing, permit-specific concentration limit has not been exceeded at a compliance point.

(b) The Director may grant such concentration limit variances for concentrations up to but not exceeding numerical groundwater quality reference levels contained in Tables 1 and 2 of this Division; concentrations up to and above numerical groundwater quality guidance levels contained in Table 3 of this Division; and concentrations for contaminants for which there are no reference or guidance levels in Tables 1 through 3 of this Division. Concentration limit variances in excess of a numerical groundwater quality reference level listed in Tables 1 and 2 of this Division may only be granted by the EQC.

(c) The EQC or Director, as specified in Subsection (4)(b) of this Section above, may grant on a case-by-case determination a concentration limit variance for a pollutant provided no substantial present or potential hazard to human health or the environment is posed at that level. The party requesting the concentration limit variance shall provide all data required for consideration of the variance, and shall identify where gaps exist in the data for the required analysis. In establishing concentration limit variances, the EQC or Director shall consider the effects on groundwater quality, interconnected surface water quality, and associated effects on beneficial uses. Among others, the following factors shall be considered:

(A) The physical and chemical characteristics of the pollutant and degradation products, including the potential for migration;

(B) The hydrogeologic characteristics at the facility and the surrounding area;

(C) The quantity of groundwater and the direction of groundwater flow.

(D) The proximity and withdrawal rates of groundwater users.

(E) The current and future uses of groundwater in the area.

(F) The existing quality of the groundwater, including other sources of pollution and their cumulative impact on water quality.

(G) The potential for health risks caused by exposure to the pollutant and its degradation products.

(H) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to the pollutant and its degradation products.

(I) The persistence and permanence of potential adverse effects of the contaminant and its degradation products.

(J) The proximity and interconnections with surface water in the area.

(K) The potential effect on interconnected surface water.

(L) The potential effect of the pollutant and its degradation products on ecosystems of the area.

(M) The comparative feasibility and cost of obtaining the permit-specific concentration limit and the concentration limit variance.

(5) **Action Requirements.**

(a) **Resampling:** If monitoring indicates a significant increase (increase or decrease for pH) in the value of a parameter monitored, the permittee shall immediately resample. If the resampling confirms the change in water quality the permittee shall: (A) report the results to the Department within 10 days of receipt of the laboratory data; and (B) prepare and submit to the Department within 30 days a plan for developing a preliminary assessment unless another time schedule is approved by the Department.

(b) **Preliminary Assessment Plan:** The preliminary assessment plan must provide for an assessment of the source, extent, and potential migration of the pollution; a time schedule for the implementation of the preliminary assessment plan activities; and an evaluation of whether or not action will be necessary

to remain within the concentration limit at the Department approved compliance point(s).

(c) **Preventive Action:** In order to prevent additional groundwater pollution from occurring, the Department shall require the utilization of all available and reasonable technology to decrease or prevent the release of additional contaminants when a significant change in water quality has occurred at a detection monitoring point.

(6) **Remedial Action Requirements.**

(a) If the monitoring indicates a concentration limit for a contaminant other than those listed in Table 3 of this Division is violated at a compliance point, the Department shall require a remedial investigation and feasibility study be conducted by the permittee pursuant to the requirements contained in OAR 340-40-040, and remedial action conducted pursuant to the requirements contained in OAR 340-40-050.

(b) If the monitoring indicates a concentration limit for a contaminant listed in Table 3 of this Division is violated at a compliance point and if the permittee demonstrates to the Director's satisfaction that beneficial uses are being protected, the permittee will not be required to conduct a remedial investigation and feasibility study in accordance with OAR 340-40-040, or to conduct remedial action pursuant to the requirements contained in OAR 340-40-050. However, if the Director determines that beneficial uses are not being protected, the Department shall require adequate remedial investigation necessary to characterize the extent of the pollution, and shall also require appropriate remedial action to protect beneficial uses.

REMEDIAL INVESTIGATION AND FEASIBILITY STUDY

340-40-040

(1) If, based upon the preliminary assessment or other information, the Director determines there is a substantial likelihood that remedial action will be necessary to maintain or restore groundwater quality to achieve a specified concentration limit, or to protect public health, safety, or welfare or the environment, the Director shall require a remedial investigation and/or feasibility study be performed to develop information to determine the need for and selection of a remedial action.

(2) The Department shall develop and maintain a list of all facilities currently developing remedial investigations and feasibility studies, and shall make such a list available to the public on request.

(3) The remedial investigation shall include but is not limited to characterization of pollution, characterization of the facility, and an endangerment assessment. In presenting the required information, a clear description of the data used as well as any data gaps encountered in the analysis shall be included.

(a) The characterization of the pollution as appropriate shall include but is not limited to information regarding:

(A) Extent to which the source can be adequately identified and characterized;

(B) Amount, form, concentration, toxicity, environmental fate and transport, and other significant characterization of present substances; and

(C) Extent to which the substances might be reused or recycled.

(b) The characterization of the facility as appropriate shall include but is not limited to information regarding:

(A) Contaminant substance mixtures present, media of occurrence, and interface zones between media;

(B) Hydrogeologic factors;

(C) Climatologic and meteorologic factors; and

(D) Type, location, and description of facilities, or activities that could have resulted in the pollution.

(c) The endangerment assessment as appropriate shall include but is not limited to information regarding:

(A) Potential routes of exposure and concentration;

(B) Characterization of toxic effects;

(C) Populations at risk;

(D) Potential or actual adverse impact on:

(i) Biological receptors,
(ii) Present and future uses of the groundwater,
(iii) Ecosystems and natural resources, and
(iv) Aesthetic characteristics of the environment;

(E) Extent to which substances have migrated or are expected to migrate and the threat such migration might pose to public health, safety and welfare or the environment; and

(F) Potential for release of any substances or treatment residuals that might remain after remedial action.

(4) The feasibility study shall include but is not limited to the development and evaluation of remedial action options.

(a) The development of remedial action options as appropriate shall include but is not limited to the following range of options:

(A) Remedial action attaining the specified concentration limit;

(B) Highest and best technology attaining the lowest concentration levels technically achievable if item (A) above is not technically achievable;

(C) Best practicable technology attaining the lowest concentration level that meets the requirements of OAR 340-40-050 (1)(b) and (2), and does not exceed a site-specific concentration level considered protective of public health, safety, and welfare and the environment;

(D) Other measures to supplement or substitute for cleanup technologies, including but not limited to engineering or institutional controls (e.g., environmental hazard notice, alternative drinking water supply, caps, security measures, etc.);

(E) Combinations of any of the above options; and

(F) No action option.

(b) (A) Remedial action options developed under Subsection (4)(a) of this Section shall be evaluated under the requirements, criteria, preferences, and factors set forth in OAR 340-40-050 and according to any other criteria determined by the Director to be relevant to selection of a remedial action under OAR 340-40-050.

(B) The evaluation of remedial action options developed under Subsection (4)(a) of this Section shall include an evaluation of the extent to which the option or combination of options complies with relevant state, local, and federal law, standards, and guidance.

SELECTION OF THE REMEDIAL ACTION:

340-40-050

(1) **Requirements:** After opportunity for public review and comment,

the Director shall select a remedial action. Such remedial action shall meet the following requirements:

(a) Be protective of present and future public health, safety, and welfare and the environment; and

(b) To the maximum extent practicable:

(A) be cost effective;

(B) use permanent solutions and alternative technologies or resource recovery technologies;

(C) be implementable; and

(D) be effective.

(2) **Remedial Action Concentration Limit:** The remedial action shall attain the concentration limit specified under OAR 340-40-030 (3) for permitted operations or OAR 340-40-060 (2) for non-permitted activities for the contaminant substances, unless the Director determines that the specified concentration limit does not satisfy the requirement set forth in Subsection (1)(b) of this Rule, in which case the Director shall select a remedial action that attains the lowest concentration level of the contaminant substances that satisfies the requirements set forth in Section (1) of this Rule.

(3) **Other Measures to Supplement Cleanup:** The Director may require other measures (e.g. institutional controls, environmental hazard notice, alternate drinking water supply, caps, security measures, etc.) to supplement cleanup of contaminant substances to the remedial action concentration limit in accordance with Section (2) of this Rule, where such supplementary measures are necessary to satisfy the requirements set forth in Section (1) of this Rule.

(4) **Other Measures to Substitute for Cleanup:** The Director may require other measures to substitute for cleanup of contaminant substances to the remedial action concentration limit under Section (2) of this Rule, provided that:

(a) The Director finds that there is no remedial action under Section (2) of this Rule, combined with supplementary measures under Section (3) of this Rule, that satisfies the requirements of Section (1) of this Rule;

(b) Any such substitute measures, as appropriate, include provision for long-term care and management, including monitoring and operation and maintenance, and periodic review to determine whether a remedial action satisfying the requirements of Section (1) of this Rule has become available;

(5) **Protection:**

(a) In determining whether a remedial action assures protection of the present and future public health, safety, and welfare and the environment under Subsection (1)(a) of this Rule, only the concentration limit specified under OAR 340-40-030 (3) for permitted operations or OAR 340-40-060 (2) for non-permitted activities shall be presumed to be protective. This presumption may be rebutted by information showing that a higher concentration level is also protective.

(b) In determining whether a concentration level higher than the specified concentration limit is protective, the Director shall consider:

(A) The characterization of contaminant substances and the facility, and the endangerment assessment;

(B) Other relevant cleanup or health standards, criteria, or guidance;

(C) Relevant and reasonably available scientific information; and

(D) Any other information relevant to the protectiveness of a remedial action.

(c) When comparing between potential concentration levels, a concentration level lower than another shall generally be considered to be more protective and preferable. This presumption may be rebutted by information showing that a higher concentration level is also protective.

(d) Any person responsible for undertaking the remedial action who proposes that the remedial action attain a concentration level higher than the specified concentration limit on the basis of protection shall have the burden of demonstrating to the Director that such concentration level is protective.

(6) **Cost-effectiveness:** In determining whether a remedial action is cost-effective under Subsection (1)(b) of this Rule, the Director may consider:

(a) Costs of the remedial action relative to the costs of another remedial action option, if any, that achieves the same concentration level;

(b) Extent to which the remedial action's incremental costs are proportionate to its incremental results;

(c) Extent to which the remedial action's total costs are proportionate to its total results; and

(d) Any other criterion relevant to cost-effectiveness of the remedial action.

(e) Costs that may be considered include but are not limited to:

(A) Capital costs;

(B) Operation and maintenance costs;

(C) Costs of periodic reviews, where required;

(D) Net present value of capital and operation and maintenance costs; and

(E) Potential future remedial action costs.

(7) **Permanent Solutions and Alternative or Resource Recovery Technologies:** In determining whether a remedial action uses a permanent solution and alternative or resource recovery technologies under Subsection (1)(b) of this Rule:

(a) Remedial action options that use permanent solutions shall be preferred over other remedies;

(b) Remedial action options in which resource recovery or alternative technology is a principal element shall be preferred over remedial action options not involving such technology;

(c) Subject to Subsection (7)(e) of this Section, the offsite transport and secure disposition of contaminated materials without treatment may be preferred where practicable alternative treatment technologies are not available;

(d) Subject to Subsections (7)(e) and (f) of this Section, and notwithstanding the availability of practicable alternative treatment technologies as provided in Subsection (7)(c) above, offsite transport and secure disposition of contaminated materials may be preferred when the disposal method would significantly expedite the cleanup or would achieve a total cleanup, especially at sites with contaminant materials of small quantity or low toxicity.

(e) The transport and secure disposition offsite of a hazardous waste under ORS 466.005 in a treatment, storage, or disposal facility shall meet the requirements of Section 3004(c) to (g), (m), (o), (p), (u) and (v) and 3005(c) of the federal Solid Waste Disposal Act, as amended, P.L. 96-482 and P.L. 98-616.

(f) The transport and secure disposition of contaminated materials, other than hazardous wastes, at an offsite facility may be allowed provided that the transport and

secure disposition of such contaminated materials, in the Director's determination, is adequate to protect the public health, safety, and welfare and the environment.

(8) **Implementability:** In determining whether a remedial action is implementable under Subsection (1)(b) of this Rule, the Director may consider:

(a) Degree of difficulty associated with implementing the technology;

(b) Expected operational reliability of the technology;

(c) Need to coordinate with and obtain necessary approvals or permits from other agencies;

(d) Availability of necessary equipment and specialists;

(e) Available capacity and location of needed treatment, storage, and disposal services; and

(f) Any other criterion relevant to implementability of the remedial action.

(9) **Effectiveness of the Remedial Action:** In determining whether a remedial action is effective under Subsection (1)(b) of this Rule, the Director shall consider the following unless immediate action is needed to protect public health, safety and welfare and the environment:

(a) Expected reduction in toxicity, mobility, and volume of the contaminant substances;

(b) Short-term risks that might be posed to community, workers, and the environment during implementation, including potential threats to human health and the environment associated with excavation, transport, and redisposal or containment;

(c) Length of time until full protection is achieved;

(d) Magnitude of residual risks in terms of amounts and concentrations of contaminant substances remaining following implementation of a remedial action, including consideration of the persistence, toxicity, mobility, and propensity to bioaccumulate of such contaminant substances and their constituents;

(e) Type and degree of long-term management required, including monitoring, operation and maintenance;

(f) Long-term potential for exposure of human and environmental receptors to remaining contaminants;

(g) Long-term reliability of engineering and institutional controls, including long-term uncertainties associated with land disposal, treated or untreated waste, and residuals;

(h) Potential for failure of the remedial action or potential need for replacement of the remedy; and

(i) Any other criterion relevant to effectiveness of the remedial action.

(10) Any person responsible for undertaking the remedial action who proposes one remedial action option over another on the basis of one or more of the elements of Subsection (1)(b) of this Rule shall have the burden of demonstrating to the Director that such remedial action option fulfills the requirements of Subsections (1)(a) and (b) of this Rule.

NON-PERMITTED ACTIVITIES

340-40-060

Non-permitted activities shall include, but not be limited to, spills, releases and past practices from activities that are not subject to a permit and activities that are subject to a permit but were not permitted at the time of the release.

(1) Except as provided otherwise under statutory or administrative authorities, when a non-permitted activity could result in or has resulted in the pollution of groundwater the Department may require the liable person to:

(a) Conduct a remedial investigation and feasibility study pursuant to OAR 340-40-040.

(b) Implement remedial action pursuant to OAR 340-40-050

(2) In conducting the remedial investigation and feasibility study, and selecting the remedial action under the requirements contained in OAR 340-40-040 and OAR 340-40-050, the concentration limits will be established at background water quality levels.

(3) Clean-up levels for non-permitted activities will be established by the procedures contained in OAR 340-40-040 and OAR 340-40-050 which include evaluations of practicability as contained in OAR 340-40-050 (1)(b).

ON-SITE SEWAGE DISPOSAL: AREA WIDE MANAGEMENT

340-40-070

(1) In areas where groundwater is being degraded as a result of on-site sewage disposal practices and an area wide solution is necessary, the Department may propose a rule for adoption by the EQC and incorporation into the appropriate basin section of the State Water Quality Management Plan (OAR 340 Division 41) which will:

(a) Recite the findings describing the problem and the aquifer impacted;

(b) Define the area where corrective action is required;

(c) Describe the problem correction and preventative measures to be ordered;

(d) Establish the schedule for required major increments of progress;

(e) Identify conditions under which new, modified, or repaired on-site sewage disposal systems may be installed in the interim while the area correction program is being implemented and is on schedule;

(f) Identify the conditions under which enforcement measures will be pursued if adequate progress to implement the corrective actions is not made. These measures may include but are not limited to measures authorized in ORS 454.235(2), 454.685, 454.645, and 454.317;

(g) Identify all known affected local governing bodies which the Department will notify by certified mail of the final rule adoption; and

(h) Accomplish any other objectives declared to be necessary by the EQC.

(2) The Department shall notify all known impacted or potentially affected local units of government of the opportunity to comment on the proposed rule at a scheduled public hearing and of their right to request a contested case hearing pursuant to ORS Chapter 183 prior to the EQC's final order adopting the rule.

NUMERICAL GROUNDWATER QUALITY REFERENCE LEVELS AND GUIDANCE LEVELS

340-40-080

(1) The numerical groundwater quality reference levels and guidance levels contained in Tables 1 through 3 of this Division are to be

considered by the Department and the public in weighing the significance of a particular chemical concentration, and in determining the level of remedial action necessary to restore contaminated groundwater for human consumption. They are not to be construed as acceptable groundwater quality management goals. They are to be used by the Director and the EQC in establishing permit-specific and remedial action concentration limits according to the requirements of OAR 340-40-030 through OAR 340-40-060.

(2) The Department shall periodically review information as it becomes available for establishing new numerical groundwater quality reference levels and guidance levels, and to ensure consistency with other statutorily mandated standards.

(3) Human consumption is recognized as the highest and best use of groundwater, and the use which usually requires the highest level of water quality. The numerical groundwater quality reference levels listed in Tables 1 and 2 of this Division reflect the suitability of groundwater for human consumption.

(4) The numerical groundwater quality guidance levels listed in Table 3 of this Division are for contaminants which do not adversely impact human health at the given concentrations. At considerably higher concentrations, human health implications may exist. These guidance levels are for contaminants that primarily affect the aesthetic qualities relating to the public acceptance of drinking water. The aesthetic degradation of groundwater may impair its beneficial use.

(5) For pollutant parameters for which numerical groundwater quality reference levels or guidance levels have not been established and listed in Tables 1 through 3, or for evaluating adverse impacts on beneficial uses other than human consumption, the Department shall make use of the most current and scientifically valid information available in determining at what levels pollutants may affect present or potential beneficial uses. Such information shall include, but not be limited to, values set forth in OAR Chapter 340, Division 41, Table 20.

TABLE 1

Numerical Groundwater Quality Reference Levels:[1]

Inorganic Contaminants	Reference Level (mg/L)
Arsenic	0.05
Barium	1.0
Cadmium	0.01
Chromium	0.05
Fluoride	4.0
Lead	0.05
Mercury	0.002
Nitrate-N	10.0
Selenium	0.01
Silver	0.05

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

TABLE 2

Numerical Groundwater Quality Reference Levels (Continued):[1]

Organic Contaminants	Reference Level (mg/L)
Benzene	0.005
Carbon Tetrachloride	0.005
p-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
1,1,1-Trichloroethane	0.200
Trichloroethylene	0.005
Total Trihalomethanes (the sum of concentrations bromodichloromethane, dibromochloromethane, tribromomethane (bromoform), and trichloromethane (chloroform))	0.100
Vinyl Chloride	0.002
2,4-D	0.100
Endrin	0.0002
Lindane	0.004
Methoxychlor	0.100
Toxaphene	0.005
2,4,5-TP Silvex	0.010

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

TABLE 3

Numerical Groundwater Quality Guidance Levels:[1]

Miscellaneous Contaminants	Guidance Level (mg/L)[2]
Chloride	250
Color	15 Color Units
Copper	1.0
Foaming agents	0.5
Iron	0.3
Manganese	0.05
Odor	3 Threshold odor number
pH	6.5-8.5
Sulfate	250
Total dissolved solids	500
Zinc	5.0

[1]All guidance levels except total dissolved solids and are for total (unfiltered) concentrations unless otherwise specified by the Department.

[2]Unless otherwise specified, except pH.

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WORK SESSION ITEM

Meeting Date: March 1, 1990
Agenda Item: Work Session #1
Division: Water Quality
Section: Standards & Assessment

SUBJECT:

Triennial Review of Water Quality Standards

PURPOSE:

This work session item provides the Commission with some background and the current status of the Department's triennial standards review. The Department reviews the water quality standards contained in Oregon Administrative Rules Chapter 340 Division 41 every three years to determine if revisions are needed to reflect current scientific data and information to 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 standards they may want specific 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.

ACTION REQUESTED:

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

___ Authorize Rulemaking Hearing
___ Adopt Rules

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

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

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

DESCRIPTION OF REQUESTED ACTION:

The Department is not requesting an action with this work session item. The purpose is to provide information and report on the status of the current triennial water quality standards review. ORS 468.735 provides that the Environmental Quality Commission, by rule, may establish standards of quality and purity for waters of the state. Present water quality standards contained in Oregon Administrative Rules (OAR Chapter 340 Division 41) were adopted in December 1976. The Commission adopted revisions to these standards in September 1979, July 1985, nuisance growth standards in March 1986, and mixing zone and toxic substance standards in August 1987.

The Clean Water Act (Public Law 92-500, as amended) requires the state to hold public hearings, at least once every three years, to review applicable water quality standards. To comply with provisions of the Act, the Department conducted statewide hearings in Spring 1986 to solicit comments on revision of antidegradation, mixing zone, and toxics substances standards. Based on the public testimony and updated scientific information, water quality standards for mixing zones and toxic substances were revised in August 1987.

The Department initiated the current triennial review in December 1989, requesting public comment on the specific standards the Department believed needed to be clarified and updated. In addition, the Department requested that the public suggest other standards that may need to be reviewed. The public comment period closed on 1/16/90. The Department has received 50 inquiries requesting a copy of the standards, 19 letters commenting on the standards, and 22 letters related to dioxin.

Currently, the Department is developing issue papers on each of the standards that are being considered for revision. These issue papers will be sent out for public review in late March or early April. After a round of public informational meetings in April, the Department will request hearing authorization on proposed rule changes.

AUTHORITY/NEED FOR ACTION:

___ Required by Statute: _____ Attachment ___
Enactment Date: _____
___ Statutory Authority: _____ Attachment ___
___ Pursuant to Rule: _____ Attachment ___
_X_ Pursuant to Federal Law/Rule: CWA Sec.303(c)(1) Attachment ___

___ Other: Attachment ___

___ Time Constraints: (explain)

DEVELOPMENTAL BACKGROUND:

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

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

All businesses, residents, industries, and local government in the state of Oregon.

PROGRAM CONSIDERATIONS:

The issues or standards listed below reflect some of the priorities identified by the Department, EPA, public comment, or other agencies during the previous and current triennial reviews. The Department is considering revision to the following rules for each of the river basins (***).

- 340-41-026 - Antidegradation Policy
- 340-41- (***)(2)(a) - Dissolved Oxygen
- 340-41- (***)(2)(b) - Temperature
- 340-41- (***)(2)(c) - Total Suspended Solids/Turbidity
- 340-41- (***)(2)(e) - Bacteria
- 340-41- (***)(2)(k) - Color
- 340-41- (***)(2)(o) - Total Dissolved Solids
- 340-41- (***)(2)(p) - Toxics
- 340-41- (***)(4) - Mixing Zones

The Department is also exploring standards that are biologically based, address sedimentation and sediment chemistry, and clarify the definition of wetlands as waters of the state.

As the issue papers are developed for these potential revisions, the Department will be identifying specific program considerations for those particular standards.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department plans to continue on its triennial review schedule and there are no recommended actions for Commission consideration at this time.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The triennial water quality standard review is consistent with the Department's Strategic Plan and is a requirement of the Clean Water Act.

ISSUES FOR COMMISSION TO RESOLVE:

The Department will identify specific issues for the Commission to address when the proposed standards are presented for hearing authorization and adoption. At this time we anticipate that the following issues will be before the Commission:

1. The method for implementing the antidegradation policy

2. Maintaining or modifying the current acceptable risk levels

INTENDED FOLLOWUP ACTIONS:

The Department is taking the following steps to assure full public participation in the review and revision of water quality standards.

1. **Public Comment on List of Revisions:** The Department sent out a list of rules for possible revision and invited the public to comment on the list, or suggest other rule for the Department to consider.

2. **Issue Papers:** The Department will develop issue papers on the list of standards for possible revision, discussing the need to clarify or update the language. The issue papers are reviewed within DEQ.

3. **Public Comment on Issue Papers:** The Department will send out copies of the issue papers and hold public workshops to explain the issues and to discuss possible rule amendments.

4. **Issue Paper Revision:** The Department will assemble and evaluate any public comments received on the issue papers or possible rule language.

5. **Rule Amendments:** The Department will prepare rule amendments to clarify the intent of the current rules and to incorporate newest scientific information available, and public comments received.

6. **Request Authorization for Hearing:** The Department will prepare a request for authorization to conduct public hearings on the proposed rule amendments.

7. **Public Hearings:** The Department conducts statewide public information meetings and hearings to accept public comment on the proposed rule amendments.

8. **Adoption:** The Department will incorporate public comments, and revise rules as needed, and submit to the Environmental Quality Commission for modification or adoption.

Approved:

Section: _____

Division: _____ NJM

Director: _____

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Phone: 229-5284

Date Prepared: 2/14/90

(NJM,EPF,KUW:NJM)
(Trirevie)
(2/14/90)

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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WORK SESSION
REQUEST FOR EQC DISCUSSION

Meeting Date: March 1, 1990
Agenda Item: #2
Division: Water Quality
Section: Standards and Assessments

SUBJECT:

Instream Water Rights: Background and Discussion of Potential for Rulemaking

PURPOSE:

The purpose of this work session agenda item is to provide the Environmental Quality Commission with an update on the Department's progress in identifying and making application for instream water rights for the protection of water quality. This item will provide a brief background on the instream water rights legislation and the rules developed by the Water Resources Department to implement the legislation. It also contains some information on the rules developed by the Department of Fish and Wildlife to guide their development of instream flows. Finally it will identify the steps the Department proposes to take to apply for instream rights and a tentative time schedule for achieving this.

ACTION REQUESTED:

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

___ Authorize Rulemaking Hearing
___ Adopt Rules

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

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

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

DESCRIPTION OF REQUESTED ACTION:

Review of the instream water rights program and the Department's proposed approach for determining instream rights for water quality protection. This is a general discussion item.

AUTHORITY/NEED FOR ACTION:

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

___ Other: Attachment ___

___ Time Constraints: (explain)

DEVELOPMENTAL BACKGROUND:

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

1. Instream Water Rights Statute Attachment A

2. Water Resource Department Administrative Rules for the instream water rights program Attachment B

3. Oregon Department of Fish and Wildlife Rules for determining instream flows	Attachment	C
4. Memorandum of Understanding between the Departments of Water Resources and Fish and Wildlife	Attachment	D
5. Department of Environmental Quality Report on Instream Water Rights to the Joint Water Policy Committee	Attachment	E
6. Information on Reservations of Water for Future Economic Development	Attachment	F
7. Memorandum from Water Resources Department outlining key points in instream program	Attachment	G

During the 1987 Legislative Session, a bill (Senate Bill 140, ORS 537.332 to 537.360, Attachment A) was passed which enabled the Departments of Environmental Quality, Fish and Wildlife and Parks to apply for instream water rights to maintain and support public uses within natural streams and lakes. Since its passage, the Departments of Fish and Wildlife and Parks have made application for instream water rights on several streams. The Department of Environmental Quality has not yet formally applied for instream water rights for water quality protection.

The Department has assembled some information for the Commission to review for the work session discussion on March 1, 1990. This information provides some background and the rules for the instream water rights program.

Attachment B contains the Oregon Administrative Rules under which the Water Resources Department operates the instream water rights program. OAR 690-77-000 sets forth the policies, procedures, criteria, standards, and definitions for establishing instream water rights. The General Provisions section (OAR 690-77-015) provide essential information on how the program is to function. The remaining sections set forth the procedures for applying for a right and the process for review and approval.

Only the Departments for Fish and Wildlife, Environmental Quality, and Parks are authorized by the legislation to submit instream water right applications. Until October 28, 1989 the agencies were allowed to submit applications under the legislation and Water Resource Department rules. After October 28, 1989 the submitting agencies were required to have their own rules describing their procedures and methodologies for determining instream rights.

Therefore, the Commission and Department need to develop and adopt administrative rules which set out the methods of determining instream flow needs before the Department can submit instream water right applications. The Department is in the process of developing methodologies. The purpose of this work session item today is to initiate the discussion on instream water rights and describe what the Department is currently doing to identify and establish instream rights to protect water quality. The Department may be back before the Commission in either May or June with a request for hearing authorization on proposed administrative rules. These rules will describe the Department's methodology for determining instream flow needs.

The Fish and Wildlife Commission and the Oregon Department of Fish and Wildlife have developed and adopted rules that describe the methodologies and definitions for their program to apply for instream rights for the conservation, maintenance and enhancement of aquatic and fish life, wildlife, and fish and wildlife habitat. These rules (OAR 635-400-000) are contained in Attachment C. The memorandum of understanding that the Departments of Fish and Wildlife and Water Resources have developed to foster implementation of the instream water right program is contained in Attachment D. The Commission and Department may want to consider a similar agreement with the Water Resources Department in the future.

The Department appeared before the Joint Water Policy Committee on November 28, 1989 to described what the Department has been doing to establish instream water rights for water quality protection. The Department's testimony for that meeting is contained in Attachment E. This testimony was submitted after the meeting and it contains answers to several questions raised by the Joint Water Policy Committee. The testimony and the response to the questions asked provides essential information on the Department's current approach.

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

This agenda item does not request an action which has an effect on the regulated community. The item is for informational and discussion purposes.

PROGRAM CONSIDERATIONS:

The establishment of instream water rights for water quality protection does provide the Commission and Department with an opportunity to identify the instream flows that are needed to assimilate wastewater discharges. This is of keen importance currently on water quality limited stream segments as we attempt to achieve water quality standards. It is of equal importance as we plan to accommodate future growth and development and resulting discharges to surface and groundwater.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Not to apply for instream water rights for water quality protection.

   The Department considered the approach where it would not apply for instream rights for water quality protection but instead rely on its current program to protect water quality. This approach requires dischargers to meet instream water quality standards regardless of flow levels. Under this approach as stream levels diminish the discharging sources would be required to achieve higher and higher levels of treatment in order to protect instream beneficial uses.

2. Apply for instream water rights in order to identify both current and future stream flow needs to assimilate waste discharges.

   The Department under this approach would identify what stream flows are needed to assimilate current and projected future wastewater discharges. This would provide some level of assurance that discharges would remain within standards and instream beneficial uses would be protected.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department has developed a brief outline of the steps needed to initiate a process for identifying and establishing instream water rights. The Commission is requested to review and discuss this approach at the March 1 work session.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The activity to establish instream water rights supports the strategic plan, and agency and legislative policy.

ISSUES FOR COMMISSION TO RESOLVE:

The Department has not at this time identified issues for the Commission to resolve.

INTENDED FOLLOW UP ACTIONS:

The Department proposes to implement the following steps:

1. Identify where instream water rights have been established at the request of the Departments of Fish and Wildlife and Parks. Obtain a list of these streams and the rights established. Also identify where the Water Resources Department has currently pending restrictions on instream appropriations.

2. Identify streams violating water quality standards and the stream flows needed to assimilate wastes and meet instream standards. This will be accomplished in several phases.

   A. Identify locations where there is an instream water quality monitoring station and water quantity gauge. Assemble and evaluate the data from these paired stations and determine at what flows there are violations of instream standards. This evaluation will take approximately two and a half months and will include an examination of established instream rights to determine if additional water is needed. Upon completion of this review a request for reservation of water under OAR 690-77-200 will be made to the Water Resources Department. This reservation process is described in Attachment F. The Department will also prepare applications for instream water rights that would follow the Department's methodology for determining instream flows. These applications would be submitted to the Water Resources Department upon adoption of the Departments rules for determining instream rights.

B. Identify the stream flows needed to protect water quality in the water quality limited streams on the Departments 303(d)(1) list. This will require the reexamination of the data assembled for the initial determination of interim TMDLs. The data will be evaluated to identify the flows needed to assimilate current and permitted waste loads. The flows needed will be compared against any existing instream rights that have been established for that waterbody. This work task will take approximately one month and will cause a delay of one month in the Department meeting its schedule for establishing TMDLs on the Pudding and Coquille Rivers and the Columbia Slough. Once flow levels are determined the Department will request a reservation of water under OAR 690-77-200 and also prepare applications for instream water rights on these streams to be submitted when the Department has adopted rules.

C. Identify those streams on the Departments 303(d)(3) water quality limited streams list which may need to have instream water quantity protected. This would include a basic examination of the water quality problems, whether these problems are related to flow, and whether it is necessary to maintain current flows while the Department conducts the studies necessary to determine flow requirements. This activity would not start until the Department has submitted it final 1990 305(b) report to EPA which will be in late May or June. This report would contain the Department's most up-to-date list of water quality limited stream segments. It will take approximately three months to complete this task and will delay the setting of TMDLs on the Pudding and Coquille Rivers and Columbia Slough. If flows need to be maintained the Department will request a reservation of water on these streams under OAR 690-77-200.

D. Identify the stream flows needed to implement the final TMDLs as they are established and submit instream water right applications to the Water Resources Department. It is anticipated that there would be at least two such applications per year and this activity would be integrated into the final TMDL process.

E. The Department will develop proposed rules that identify the methodology for determining instream water rights to protect water quality. It is currently projected that a request for authorization for a public hearing could be before the Commission at either the May or June meeting. The development of these rules from rule draft to final adoption however is estimated to take approximately three months. Funding for this activity was not provided by the Legislature. As of this report the staff time is not currently available to conduct this activity without substantial rescheduling and delays in prior committed work. The Commission may wish to discuss the consequences of delaying this activity.

Approved:

Section: _____

Division: _____

Director: _____

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Phone: 229- 5284

Date Prepared: 2/18/90

NMullane:crw
SA\WC6223
2/18/90

be appropriated, and upon any land lying between such point and the lower terminus of the proposed ditch, canal or flume of the person, for the purpose of examining the same and of locating and surveying the line of such ditch, canal or flume, together with the lines of necessary distributing ditches and feeders, and to locate and determine the site for reservoirs for storing water.

537.330 Disclosure required in real estate transaction involving water right for irrigation purposes; exception; delivery of available certificate; effect of failure to comply. (1) In any transaction for the conveyance of real estate that includes a surface water right for irrigation purposes, the seller of the real estate shall, upon accepting an offer to purchase that real estate, also inform the purchaser in writing whether or not a certificate or certificates of water rights are available and that the seller will deliver the certificate or certificates to the purchaser at closing, if the certificate or certificates are available.

(2) Upon closing and delivery of the instrument of conveyance in a real estate transaction involving the transfer of a surface water right for irrigation purposes, the seller shall also deliver to the purchaser the certificate of water rights if the certificate is available.

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

(4) This section does not apply to any transaction for the conveyance of real estate that includes a surface water right when the certificate of water rights is held in the name of a district or corporation formed pursuant to ORS chapter 545, 547, 552, 553 or 554.

(5) As used in this section, "certificate of water rights" means a certificate issued pursuant to ORS 537.250 (1) or 539.140. [1979 c.535 §4; 1981 c.448 §1]

IN-STREAM WATER RIGHTS

537.332 Definitions for ORS 537.332 to 537.360. As used in ORS 537.332 to 537.360:

(1) "In-stream" means within the natural stream channel or lake bed or place where water naturally flows or occurs.

(2) "In-stream water right" means a water right held in trust by the Water Resources Department for the benefit of the people of the State of Oregon to maintain water in-stream for public use. An in-stream water right does not require a diversion or any other means of physical control over the water.

(3) "Public benefit" means a benefit that accrues to the public at large rather than to a person, a small group of persons or to a private enterprise.

(4) "Public use" includes but is not limited to:

(a) Recreation;

(b) Conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values;

(c) Pollution abatement; or

(d) Navigation. [1987 c.859 §2]

537.334 Findings. The people of the State of Oregon find and declare that:

(1) Public uses are beneficial uses.

(2) The recognition of an in-stream water right under ORS 537.336 to 537.348 shall not diminish the public's rights in the ownership and control of the waters of this state or the public trust therein. The establishment of an in-stream water right under the provisions of ORS 537.332 to 537.360 shall not take away or impair any permitted, certificated or decreed right to any waters or to the use of any waters vested prior to the date the in-stream water right is established pursuant to the provisions of ORS 537.332 to 537.360. [1987 c.859 §3]

537.335 [Formerly 537.280; renumbered 537.390 in 1987]

537.336 State agencies authorized to request in-stream water rights. (1) The State Department of Fish and Wildlife may request the Water Resources Commission to issue water right certificates for in-stream water rights on the waters of this state in which there are public uses relating to the conservation, maintenance and enhancement of aquatic and fish life, wildlife and fish and wildlife habitat. The request shall be for the quantity of water necessary to support those public uses as recommended by the State Department of Fish and Wildlife.

(2) The Department of Environmental Quality may request the Water Resources Commission to issue water right certificates for in-stream water rights on the waters of this state to protect and maintain water quality standards established by the Environmental Quality Commission under ORS 468.735. The request shall be for the quantity of water necessary for pollution abatement as recommended by the Department of Environmental Quality.

(3) The State Parks and Recreation Department may request the Water Resources Commission to issue water right certificates for in-stream water rights on the waters of this state in which there are public uses relating to recreation and scenic attraction.

The request shall be for the quantity of water necessary to support those public uses as recommended by the State Parks and Recreation Department. [1987 c.859 §4; 1989 c.904 §68]

537.338 Rules for state agency request for in-stream water right. The Water Resources Commission by rule shall establish standards, criteria and procedures by which a state agency included under ORS 537.336 may request an in-stream water right to be issued under ORS 537.336. [1987 c.859 §5]

537.340 [Formerly 537.290; renumbered 537.395 in 1987]

537.341 Certificate for in-stream water right. Subject to the provisions of ORS 537.343, the Water Resources Commission shall issue a certificate for an in-stream water right. The in-stream water right shall date from the filing of the application with the commission. The certificate shall be in the name of the Water Resources Department as trustee for the people of the State of Oregon and shall be issued by the commission according to the procedures established under ORS 537.338. The commission shall forward a copy of each certificate issued under this section to the state agency requesting the in-stream water right. [1987 c.859 §6]

537.343 Hearing on request for in-stream water right; order. (1) If in the judgment of the Water Resources Commission, the issuance of a certificate for an in-stream water right may impair or be detrimental to the public interest, or upon petition by any person, the commission may hold a public hearing on the request received under ORS 537.336.

(2) A hearing required under subsection (1) of this section shall be conducted in accordance with ORS 537.170.

(3) After the public hearing under subsection (2) of this section, the commission shall enter an order which may include any condition the commission considers necessary, but which is consistent with the intent of ORS 537.332 to 537.360. The order may:

(a) Approve the in-stream water right for the quantity of water requested;

(b) Approve the requested in-stream water right for a lesser quantity of water; or

(c) Reject the requested in-stream water right.

(4) If the commission reduces or rejects the in-stream water right as requested, or conditions the in-stream water right, the commission shall include a statement of findings that sets forth the basis for the reduction, rejection or conditions. The commission shall be the final authority in determining the level of in-stream flow necessary to protect the public use.

(5) After the commission issues an order approving an in-stream water right, the commission shall issue a certificate for an in-stream water right according to the provisions of ORS 537.341. [1987 c.859 §7]

537.345 [Formerly 537.300; renumbered 537.400 in 1987]

537.346 Conversion of minimum perennial streamflows to in-stream water rights. All minimum perennial streamflows established on any waters of this state before September 27, 1987, shall be converted to in-stream water rights after the Water Resources Commission reviews the streamflows and issues a certificate for an in-stream water right in accordance with ORS 537.343 with the same priority date as the minimum perennial streamflow. The provisions of ORS 536.325 shall not apply to a review conducted under this section. [1987 c.859 §8]

537.348 Purchase, lease or gift of water right for conversion to in-stream water right; priority dates. (1) Any person may purchase or lease an existing water right or portion thereof or accept a gift of an existing water right or portion thereof for conversion to an in-stream water right. Any water right converted to an in-stream water right under this section shall retain the priority date of the water right purchased, leased or received as a gift. At the request of the person the Water Resources Commission shall issue a new certificate for the in-stream water right showing the original priority date of the purchased, gifted or leased water right. A person who transfers a water right by purchase, lease or gift under this subsection shall comply with the requirements for the transfer of a water right under ORS 540.510 to 540.530.

(2) Any person who has an existing water right may lease the existing water right or portion thereof for use as an in-stream water right for a specified period without the loss of the original priority date. During the term of such lease, the use of the water right as an in-stream water right shall be considered a beneficial use. [1987 c.859 §9]

537.350 Legal status of in-stream water right. (1) After the Water Resources Commission issues a certificate for an in-stream water right under ORS 537.341 to 537.348, the in-stream water right shall have the same legal status as any other water right for which a certificate has been issued.

(2) An in-stream water right is not subject to cancellation under ORS 537.260 or 537.410 to 537.450 but an in-stream water right may be canceled under ORS 540.610 to 540.650. [1987 c.859 §10]

537.352 Precedence of uses. Notwithstanding any provision of ORS 537.332 to 537.343 and 537.350, the right to the use of the waters of this state for a project for multipurpose storage or municipal uses or by a municipal applicant, as defined in ORS 537.282, for a hydroelectric project, shall take precedence over an in-stream water right when the commission conducts a review of the proposed project in accordance with ORS 537.170. The precedence given under this section shall not apply if the in-stream water right was established pursuant to ORS 537.346 or 537.348. [1987 c.859 §11]

537.354 In-stream water right subject to emergency water shortage provisions. An in-stream water right established under the provisions of ORS 537.332 to 537.360 shall be subject to the provisions of ORS 536.700 to 536.780. [1987 c.859 §12]

537.356 Request for reservation of unappropriated water for future economic development. Any state agency may request the Water Resources Commission to reserve unappropriated water for future economic development. [1987 c.859 §13]

537.358 Rules for reservation for future economic development. The Water Resources Commission shall adopt rules to carry out the provisions of ORS 537.356. The rules shall include a provision for a review under ORS 537.170 to be conducted:

(1) At the time a reservation for future economic development is made; and

(2) At the time the reserved water is applied to consumptive use or out-of-stream use. [1987 c.859 §14]

537.360 Relationship between application for in-stream water right and application for certain hydroelectric permits. If an application is pending under ORS chapter 537 for a water right permit to use water for hydroelectric purposes or under ORS 543.010 to 543.620 for a hydroelectric permit or license at the time the Water Resources Commission receives an application for an in-stream water right under ORS 537.336 for the same stream or reach of the stream, the commission shall not take any action on the application for an in-stream water right until the commission issues a final order approving or denying the pending hydroelectric application. [1987 c.859 §15]

MISCELLANEOUS

537.390 Valuation of water rights. In any valuation for rate-making purposes, or in any proceeding for the acquisition of rights to the use of water and the property used in connection therewith, under any license or statute of the United States or under the laws of Oregon, no value shall be recognized or allowed for such rights in excess of the actual cost to the owner of perfecting them in accordance with the provisions of the Water Rights Act. [Formerly 537.280; and then 537.335]

537.395 Public recapture of water power rights and properties; no recapture of other rights. (1) Any certificate issued for power purposes to a person other than the United States, or the State of Oregon or any municipality thereof, shall provide that after the expiration of 50 years from the granting of the certificate or at the expiration of any federal power license, and after not less than two years' notice in writing to the holder of the certificate, the State of Oregon, or any municipality thereof, may take over the dams, plants and other structures, and all appurtenances thereto, which have been constructed for the purpose of devoting to beneficial use the water rights specified in the certificate. The taking over shall be upon condition that before taking possession the state or municipality shall pay not to exceed the fair value of the property taken, plus such reasonable damages, if any, to valuable, serviceable and dependent property of the holder of the certificate, not taken over, as may be caused by the severance therefrom of the property taken.

(2) The fair value of the property taken and the severance damages, if any, shall be determined by agreement between the holder of the certificate and the state or municipality, or, in case they cannot agree, by proceedings in equity instituted by the state or municipality in the circuit court of the county in which the largest portion of the property is located.

(3) The right of the state or any municipality to take over, maintain and operate any property which has devoted to beneficial use water rights specified in the certificate, by condemnation proceedings upon payment of just compensation, is expressly reserved.

(4) The provision for the recapture of any rights other than for power purposes, as provided in this section, contained in any certificate issued before June 14, 1939, shall be of no force and effect and may be canceled from the records wherever recorded and a new certificate issued with the recapture clause eliminated.

(5) The owner of any certificate issued before June 14, 1939, for such rights may, upon surrendering the certificate, receive a new certificate therefor issued under and subject to the provisions of this section. [Formerly 537.290; and then 537.340]

537.400 Reservoir permits. (1) All applications for reservoir permits shall be sub-

OREGON ADMINISTRATIVE RULES
WATER RESOURCES DEPARTMENT
CHAPTER 690, DIVISION 77
INSTREAM WATER RIGHTS

PURPOSE
690-77-000

(1) These rules set the policy, procedures, criteria, standards and definitions for establishing instream water rights. Instream water rights provide for protection of public uses including, but not limited to recreation, scenic attraction, aquatic and fish life, wildlife habitat and ecological values, pollution abatement and navigation. The rules provide for conversion of existing minimum streamflows to instream water rights; for specified agencies to apply for new instream water rights; for purchase, gift or lease of existing water rights for use as instream water rights; and for enforcement of instream water rights which are held in trust by the Water Resources Department to protect the public uses. The rules also provide a procedure for state agencies to apply for reservations of water for future economic development.

(2) In 1987, the Legislature created a new type of water right called an instream water right. Instream water rights are established by certificate from the Water Resources Commission, pursuant to ORS 537.332 to 537.360, to maintain and support public uses within natural streams and lakes. They may also be established as a result of a water conservation project governed by OAR 690 Division 18. The instream water right differs from other water rights because it does not require any control or diversion of the water. It is held in trust by the Water Resources Department but is regulated and enforced like all other water rights. Instream water rights do not take away or impair any legally established right to the use of water having an earlier priority date than the instream right.

DEFINITIONS
690-77-010

As used in these rules:

(1) "Commission" means the Water Resources Commission.

(2) "DFW" means the State Department of Fish and Wildlife.

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

(4) "Department" means the Water Resources Department.

(5) "Director" means the director of the Water Resources Department.

(6) "Held in trust by the Water Resources Department" means that the water right must be enforced and protected for the public uses listed in the water

right. Actions by the Department affecting instream water rights are limited by public trust obligations.

(7) "Instream," as defined in ORS 537.332, means within the natural stream channel or lake bed or place where water naturally flows or occurs.

(8) "Instream water right," as defined in ORS 537.332, means a water right held in trust by the Water Resources Department for the benefit of the people of the state of Oregon to maintain water instream for public use. An instream water right does not require a diversion or any other means of physical control over the water.

(9) "Minimum streamflow," also "minimum perennial streamflow," means an administrative rule provision adopted in a basin program by the Water Resources Commission or its predecessors to implement ORS 536.235, 536.310(7) and 536.325 and support aquatic life, maintain recreation or minimize pollution.

(10) "Multipurpose storage project" means any storage project which is designed and operated to provide significant public benefits and provides for more than two beneficial uses and/or purposes.

(11) "Parks" means the Parks and Recreation Division of the Department of Transportation.

(12) "Public benefit," as defined in ORS 537.332, means a benefit that accrues to the public at large rather than to a person, a small group of persons or to a private enterprise.

(13) "Public use," as defined in ORS 537.332, includes but is not limited to:

(a) Recreation;
(b) Conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values;
(c) Pollution abatement; or
(d) Navigation.

(14) "Recreation" as a public use of water means any form of play relaxation, or amusement, mostly done during leisure, that occurs in or in conjunction with streams, lakes and reservoirs, including but not limited to boating, fishing, swimming, wading, and viewing scenic attractions.

(15) "Scenic attraction" means a picturesque natural feature or setting of a lake or stream, including but not limited to waterfalls, rapids, pools, springs, wetlands and islands that create viewer interest, fascination, admiration or attention.

(16) "Unappropriated water available" means water that exceeds the quantities required to meet existing water rights of record, minimum streamflows and instream water rights and for known and yet to be quantified Native American treaty rights.

(1) Instream water rights shall not take away or impair any permitted, certificated or decreed right to any waters or to the use of any waters vested prior to the date of the instream water right.

(2) The implementation of the instream water rights law is a means of achieving an equitable allocation of water between instream public uses and other water uses. When instream water rights are set at levels that exceed current unappropriated water available the water right not only protects remaining supplies from future appropriation but establishes a management objective for achieving the amounts of instream flows needed to satisfy the identified public uses.

(3) The amount of appropriation for out-of-stream purposes shall not be a factor in determining the amount of an instream water right.

(4) If natural streamflow or natural lake levels are the source for meeting instream water rights, the amount allowed during any identified time period for the water right shall not exceed the estimated average natural flow or level occurring from the drainage system, except where periodic flows that exceed the natural flow or level are significant for the public use applied for. An example of such an exception would be high flow events that allow for fish passage or migration over obstacles.

(5) If the source of water for an instream water right is other than natural flow such as storage releases or inter-basin transfer, the source shall be developed or a permit for development approved prior to or coincident in priority with the instream water right. The development of environmentally sound multipurpose storage projects that will provide instream water use along with other beneficial uses shall be supported.

(6) Instream water rights in rivers and streams shall, insofar as practical, be defined by reaches of the river rather than points on the river.

(7) When instream water rights are established through transfers of existing water rights, the certificate shall define the appropriate reach or reaches to which the new instream water right shall apply. Normally, a new instream water right shall be maintained downstream to the mouth of the affected stream; however, it may be maintained farther downstream if the amount of the instream water right is a measurable portion of the flow in the receiving stream.

(8) Instream water rights shall conform with state statutes and basin programs. All natural lakes and streams in the state shall be considered classified to allow all instream public uses unless specifically withdrawn from appropriation for such use.

(9) Instream water rights shall be approved only if the amount, timing and location serve a public use or uses.

(10) The combination of instream water rights, for the same reach or lake, shall not exceed the amount needed to provide increased public benefits and shall be consistent with (4) and (5) above.

(11) An Instream water right created through the conversion of a minimum perennial streamflow shall not take precedence over any rights having an earlier priority date, including storage rights except where an individual permit or water right specifies a subordination to future use or appropriations.

(12) An instream water right created through the conversion of a minimum perennial streamflow which consists in whole or part of waters released from storage are enforceable only as to the waters released to satisfy the instream water right.

(13) Instream water rights created through the conversion of minimum perennial streamflows shall carry with them any and all conditions, exceptions or exemptions attached to the minimum perennial streamflow, unless modified through hearing.

AGENCY APPLICATIONS FOR NEW INSTREAM WATER RIGHTS
690-77-020

(1) Only DFW, DEQ and Parks are authorized to submit applications to the Department to establish instream water rights. Applications may be submitted at any time.

(2) To promote coordination, DFW, DEQ and Parks shall notify each other of the proposed applications prior to submittal to the Department. The applying agency should notify the other agencies of its intent to develop an instream water right application on a specified stream or lake. Notice should be given as early as possible and the other agencies should respond as soon as possible if they would like to incorporate the public uses each is responsible for into the application.

(3) After October 28,1989, all applications for instream water rights shall be based on methods of determining instream flow needs that have been approved by administrative rule of the agencies submitting the applications.

(4) Applications to establish instream water rights shall be submitted in writing and shall include the following:

(a) Agency(ies) applying;
(b) Public uses to be supported;
(c) Stream or lake name;
(d) If a stream, the reach and stream to which it is tributary;
(e) The appropriate section of a Department basin map with the applicable lake or stream reach identified;
(f) Flow requested by month and year in cubic feet per second or acre-feet or lake elevation;

(g) Methods used to determine the requested amounts;
(h) Evidence of notification of other qualified applicant agencies;
(i) If a multi-agency request, the amounts and times requested for each category of public use.

(5) The applicant is encouraged to propose:

(a) A means and location for measuring the instream water right;
(b) The strategy and responsibility for monitoring flows for the instream right; and
(c) Any provisions needed for managing the water right to protect the public uses.

PROCESSING INSTREAM WATER RIGHT APPLICATIONS
690-77-025

(1) The Department shall establish a tentative date of priority for the instream water right as of the date the application is received at the Department.

(2) Applications which do not fulfill the requirements of OAR 690-77-020 shall be returned to the applicant to correct the deficiencies. The Department shall state a time within which the applicant must complete the application. The time allowed shall be at least thirty days but not more than one year from the date the application is returned to the applicant. If the applicant fails to return a complete application to the Department within the time specified, the tentative priority date is forfeited and the application may be rejected.

(3) The Director shall provide notice of each application received to the water rights public notice list created under OAR 690 Division 11 and to affected Indian tribes and cities.

(4) The Director may presume the proposed use is not precluded by the laws and regulations of any agency or tribe that does not respond within 30 days.

DIRECTOR REVIEW OF APPLICATIONS
690-77-030

(1) The Director shall review all completed applications and determine whether the proposed instream water right:

(a) Satisfies the provisions of Section 690-77-015; or,
(b) Is the subject of a request for review by a public agency or person within 30 days of notice.
(c) Does not raise any other issues that indicate that the issuance of a certificate for an instream water right may impair or be detrimental to the public interest.

(2) If (1)(a) and (c) is satisfied and if no timely petition for review under (b) above has been filed, the Director shall conclude that the application is in the public interest and shall issue the certificate.

(3) If (1)(a) or (c) is not satisfied or (b) applies the Director may work with the applicant and any person or agency who has filed a request for review to determine whether the issues can be resolved through mutually agreeable modifications or conditions, consistent with ORS 537.332 to 537.360 and OAR 690-77-015 and 045. If as a result of negotiation, the Director determines:

(a) The issues indicating that the application may impair or be detrimental to the public interest or may take away or impair any permitted, certificated or decreed right cannot be resolved through negotiation, the Director shall refer the application to the Commission with a recommendation to conduct a hearing under ORS 537.170.
(b) The negotiations have resulted in a mutually acceptable resolution of the issues, the Director may issue the certificate with appropriate conditions or modifications, or may submit the proposed certificate to the Commission for review prior to issuing the certificate.

COMMISSION ACTIONS
690-77-035

(1) When the Commission receives for review an application for a proposed certificate, it may:

(a) Without hearing, find that the use would not impair or be detrimental to the public interest or take away or impair any permitted, certificated or decreed right and instruct the Director to issue a certificate; or
(b) Without hearing, find that the use, appropriately conditioned in accordance with ORS 537.332 to 537.360 and OAR 690-77-015 and 030(3)(b), would not impair or be detrimental to the public interest and would not take away or impair any permitted, certificated or decreed right, and instruct the Director to issue a certificate with the appropriate conditions; or
(c) Find that the use may impair or be detrimental to the public interest or may take away or impair any permitted, certificated or decreed right and require a hearing under ORS 537.170.

(2) After the public hearing held under (1)(c) above, the Commission's final action shall be an order:

(a) To approve an instream right for the amount requested; or
(b) To approve an instream water right for a lesser quantity of water than requested and/or with conditions needed to protect the public interest or avoid taking away or impairing any permitted, certificated or decreed right; or

(c) To reject the instream water right if it would impair or be detrimental to the public interest or would take away or impair any permitted, certificated or decreed right.

REQUIREMENT OF STATEMENT OF FINDINGS
690-77-040

Any order or proposed order by the Director or Commission which reduces, conditions or rejects an instream water right shall include a statement of findings that sets forth the basis for the reduction, conditioning or rejection.

STANDARDS FOR REVIEW OF PROPOSED INSTREAM WATER RIGHTS
690-77-045

(1) When reviewing a proposed certificate the Director and the Commission shall issue the certificate as requested except as provided in (2) and (3) below.

(2) The Commission shall only modify or condition the proposed instream water right if it is found to be necessary to make the right conform with the general provisions in OAR 690-77-015 or ORS 537.170 as indicated by the following standards:

(a) The instream water right shall not take away or impair any permitted, certificated, or decreed right to any waters or to the use of any vested waters by altering the availability and timing of water to a user with an earlier priority date;
(b) An instream water right shall not preclude planned uses with a reasonable chance of being developed that would provide a greater benefit to the public from the use of the unappropriated water available;
(c) The cumulative total of instream water rights shall not exceed the amount needed to support public uses when the unappropriated water available could otherwise satisfy both the public uses and additional out of stream uses;
(d) An instream water right may be conditioned or modified to conserve water for a higher public purpose if the other purpose is expected to provide greater benefits to the public; and,
(e) An instream water right shall not exceed the estimated average natural flow or level if the source is from a natural streamflow or natural lake unless the higher amount is justified under OAR 690-77-015 (4).

(3) The Commission shall only reject a proposed instream water right if it finds:

(a) The instream water right is precluded by law; or,
(b) No significant public benefit can be gained for the intended public use; or,

(c) A greater benefit to the public will be gained by dedicating all of the unappropriated water to another use; or,
(d) No amount of instream water right, even with conditions, would be in the public interest.

CONVERSION OF MINIMUM PERENNIAL STREAMFLOWS TO INSTREAM WATER RIGHTS
690-77-050

(1) Within 21 days of the adoption of these rules, the Commission shall request publication in the Secretary of State's bulletin and shall mail to the appropriate Department mailing lists notice of proposed conversion, and a list of all existing minimum perennial streamflows established on any waters of this state prior to September 27, 1987 separated as follows:

(a) Those flows the Commission intends to convert without change to instream water rights;
(b) Those flows the Commission intends to condition with OAR 690-77-015(11) and schedule a hearing before converting to instream water rights;

(2) Any person or agency, including the Department, may request a hearing on any of the conversions proposed within 60 days of publication in the Secretary of State's bulletin or the mailing of notice.

(3) Requests for hearings shall be filed individually for specific minimum perennial streamflows and shall be substantiated by evidence that:

(a) The conversion will take away or impair permitted, certificated or decreed water rights to the same source of water and a statement of what conditions, if any, could be attached to the conversion to avoid the problems identified, or what clarifications are necessary; and/or
(b) The existing minimum perennial streamflow is not for a public use or exceeds the amounts necessary for the public use; and/or
(c) The conversion from a minimum streamflow to an instream water right would not be in the public interest.

(4) The Director shall issue an instream water right certificate for all minimum streamflows where no complete request for hearing was received. These instream water rights shall contain the priority date of the minimum streamflow from which they were created.

(5) The Director shall review all requests for hearings. The person making the request shall bear the burden of establishing the need for a hearing. After completing this review, the Director shall recommend to the Commission:

(a) To approve the conversion; or
(b) To conduct a hearing under ORS 537.170.

(6) The Commission shall act on the Director's recommendation in accordance with 690-77-045.

DISPOSITION OF MINIMUM PERENNIAL STREAMFLOWS
690-77-055

Following the conversion of a minimum streamflow, the Commission shall retain the original minimum streamflow until it determines through basin program amendment that no public benefit is derived by maintaining both an instream water right and a minimum streamflow.

PURCHASE, LEASE OR GIFTS OF EXISTING WATER RIGHTS FOR CONVERSION TO INSTREAM RIGHTS
690-77-070

(1) Any person may apply to the Commission to convert to an instream water right an existing right or a portion of a right which the applicant would acquire or has acquired through purchase, lease or gift.

(2) An application for conversion shall include the following information:

(a) Name of person requesting change, mailing address and phone number;
(b) Public use(s) for which the instream right is desired;
(c) Source of water for the existing water right including stream or lake name and county;
(d) Name of record on the certificate, decree or proof of appropriation;
(e) Name and page of decree and certificate number, if applicable;
(f) Permit number and certificate number, if applicable;
(g) Date of priority;
(h) The authorized existing use of water;
(i) Place of use, by location in the public land survey and by tax lot or by block, lot and tax lot (if applicable) in a platted subdivision;
(j) Name of deeded land owner/certificate owner and a notarized statement authorizing the transfer if the owner is not the applicant;
(k) Copy of the current recorded deed;
(l) If any encumbrances exist against the property to which the existing right is appurtenant, a notarized statement of no objection from each holder of an encumbrance;
(m) Description of the quantity of water to be transferred and map delineating the present point of diversion, the lands which are the subject of the transfer and lands if any, from the existing right that would not be subject to transfer;
(n) Recommendations, if any, for conditions on the instream water right that would avoid taking away or impairing existing permitted, certificated or decreed rights. Such conditions may include, but are not limited to the instream flow levels in cfs per month or total acre feet, the effective reach(es) or lake levels of the instream flow, measuring locations and the strategy for monitoring the instream flow or lake level;
(o) If the water right is acquired through lease, the specified period for the lease and the method of verifying that the original water right is not being used during the period of the lease;

(p) If an instream water right exists on the same reach(es) or lake, or on portions thereof, a statement of whether the proposed conversion is intended to add to the amounts of the existing instream water rights or to replace a later priority instream right, or portion thereof, with an earlier priority right.

(3) The Director may require additional information needed to complete the evaluation of the proposed conversion.

PROCESSING A TRANSFER
690-77-075

Processing of the proposed transfer of a water right to an instream water right shall be pursuant to the water rights transfer rules in OAR 690 Division 15 and the following provisions.

(1) The Director shall provide notice of the proposed conversion in the weekly mailing list established under OAR 690 Division 11 and to affected cities and Indian tribes. Additional notice shall be provided in accordance with OAR Division 15.

(2) The Director shall review all applications to determine whether:

(a) The amount and timing of the proposed instream flow is allowable within the limits and use, including return flows, of the original water right; and
(b) The proposed reach(es) is(are) appropriate considering:

(A) Instream water rights shall begin at the recorded point of diversion; and
(B) Locations of return flow. Where return flows occur at a definite point, a substantial distance below the point of diversion, an instream water right may be defined by more than one reach, for example one reach from the point of diversion to the location of the return flow and another from this point to the mouth of the stream; and
(C) The location of confluences with other streams downstream of the point of diversion, which shall be considered in accordance with OAR 690-77-015 (6); and
(D) Any known areas of natural loss of streamflow to the river bed. Where an instream water right passes through an area of known natural loss several reaches may be required to incorporate the reduced flows available, in accordance with (c)(B) below.

(c) The proposed flow(s) is (are) consistent with 690-77-015(5), (6) and (9), shall provide a public benefit for an instream use, and be appropriate considering:

(A) Return flows which shall be subtracted from the instream water right at the old point of diversion, unless the return flows occur at a definite point a substantial distance below the old point of

diversion, in which case up to the entire amount of the diversion may be allowed between the point of diversion and the point(s) of return flow; and,

(B) Where an instream water right passes through an area of known natural losses these losses shall be prorated between the instream water right and the balance of the available flow.

(3) If the Director's findings under subsection (2) above are affirmative and if no protests to the transfer are filed within 20 days of the last notice in the newspaper, the Director shall approve the transfer and issue a permanent certificate or a certificate with a specific date of expiration for the instream water right. A copy of the certificate shall be mailed to the applicant and to DFW, DEQ and Parks as appropriate. The Director shall also issue a new certificate for any remaining right for the existing use. If the instream water right is time-dated, the Director shall enter an order suspending the use of the original water right during the effective period of the instream water right.

(4) If any of the Director's findings under subsection (2) above are negative or if a protest has been filed, the applicant, Director and protestants, if any, may negotiate to develop a proposed instream water right that would be satisfactory to all. The Director shall issue a certificate in the manner provided in subsection (3) above for any negotiated instream water right transfer that satisfies all parties.

(5) If under subsection (4) above the applicant or protestant choose not to negotiate, or the parties fail to reach agreement, the Director shall submit the proposed transfer to the Commission with the Director's findings under subsection (2) and a copy of any protests. The Commission shall decide:

(a) To issue the certificate with conditions as needed to prevent harm to other water right holders; or

(b) To conduct a contested case hearing to determine whether the proposed instream water right should be denied, modified or conditioned to meet the legal requirements for transferring a water right under OAR 690 Division 15.

(6) Contested cases under (5)(b) shall be heard according to the provisions of OAR 690 Division 1 and 75.

CANCELLATION OR WAIVING OF AN INSTREAM WATER RIGHT
690-77-080

(1) An instream water right, or portion thereof, that has not been put to a public use for five successive years in which water was available shall be conclusively presumed to be abandoned and shall be processed as follows:

(a) Upon making a preliminary finding that the instream water right has been abandoned the Director shall notify DEQ, DFW, Parks, and those persons and agencies on the Division 11 mailing lists of the Departments findings and of its intent to cancel the instream water right. The Department shall also publish the notice in the Secretary

of State's bulletin once, and in a local newspaper one day a week for two weeks;

(b) Any person may file a protest within 60 days of publication in the Secretary of State's bulletin or the local news paper;

(c) If no protest is filed in the 60 day period, the Commission shall proceed with the process outlined in ORS 540.641 (1);

(d) If a protest is filed in the 60 day period, the Commission shall proceed with the process outlined in ORS 540.641 (2).

(2) An instream water right established under ORS 537.336 through 537.338 (OAR 690-77-020) may be cancelled pursuant to ORS 540.621 only upon the written certification from the original applicant agency(ies) that the instream water right has been abandoned. Proper notification of the public shall proceed as outlined in (1)(a) above.

(3) An instream water right shall not be subject to abandonment due to non-use when water was not available.

DROUGHT EMERGENCY PROVISIONS
690-77-090

An instream water right established under the provisions of ORS 537.332 to 537.360 shall be subject to the provisions of ORS 536.700 to 536.730.

PRECEDENCE OF FUTURE USES
690-77-100

(1) The applicants for a proposed multipurpose storage project may petition the Commission to establish precedence over an instream water right created through OAR 690-77-020.

(2) An applicant for a right to use water for municipal purposes may petition the Commission to establish precedence over an instream water right created through OAR 690-77-020.

(3) A municipal applicant, as defined in ORS 537.282, for a hydroelectric project, may petition the Commission to establish precedence over an instream water right created through OAR 690-77-020.

(4) Within six months of the receipt of the petition the Department shall conduct a public hearing in accordance with ORS 537.170. The hearing and decision on precedence may occur before the final decision on the permit.

(5) After the public hearing the Commission shall enter an order to:

(a) Approve the requested precedence; or,

(b) Approve the requested precedence conditionally; or,

(c) Deny the requested precedence.

(6) The Department shall also publish a statement of findings that explains the basis for the decision made in (5) above.

RESERVATIONS OF WATER FOR FUTURE ECONOMIC DEVELOPMENT
690-77-200

(1) Any state agency may request that the Commission establish a reservation of unappropriated water for future economic development. Reservations of water shall be established as a classification in a basin program and its priority shall be the date of amendment of the basin program by the Commission. The reservation shall set aside a quantity of water for specified uses which shall, when developed, have preference over all other water rights, including instream water rights, from the same source that are issued subsequent to the date the reservation is established.
(2) DFW, DEQ and Parks shall be notified within one month of the Departments receipt of the request. A member of the Commission shall conduct a public hearing on the proposed reservation in accordance with ORS 537.170 within six months of receipt of the request. The hearing shall be conducted in the basin of the proposed reservation.

(3) The Director shall review the hearing record based on the standards for making a public interest determination in OAR 690 Division 11. The Director shall prepare findings and a recommendation to the Commission on the proposed reservation. The recommendation may be to:

(a) Approve the proposed reservation through amendment of the basin program classification; or
(b) Approve a reservation through amendment of a basin program classification for a lesser amount than requested because the proposed reservation would impair or be detrimental to the public interest; or
(c) Reject the proposed reservation because it would impair or be detrimental to the public interest.

(4) The Commission shall make the final determination on proposed reservations. The Commission may include any conditions deemed necessary to protect and promote the public interest.

(5) Applications for the use of reserved water shall be reviewed under provisions of ORS 537.170 as provided in OAR 690 Division 11, and the Commission's decision shall be based on the standards in those rules and in OAR 690-77-045. In addition, the review shall consider the land use plans or policies of local jurisdictions and, if the reservation contemplates future development that is not foreseen in the plans, the Commission shall seek concurrence of the affected local jurisdiction(s) before making the reservation.

1032g

OREGON ADMINISTRATIVE RULES

OREGON DEPARTMENT OF FISH AND WILDLIFE

Instream Water Right Rules

Purpose

635-400-000

(1) These rules set the policy, procedures, criteria, standards, including flow methodologies, and definitions for instream water right applications by the Department of Fish and Wildlife to the Water Resources Department. Instream water rights provide for protection of public uses as defined in OAR 635-400-010. These rules provide for the Department of Fish and Wildlife to apply for instream water rights for the conservation, maintenance and enhancement of aquatic and fish life, wildlife, and fish and wildlife habitat. The rules set out: the internal procedures for application for and coordination of instream water rights, the criteria and standards for prioritizing waterways for application, the methodologies to be used in determining flow requirements and water surface elevations needed for the public uses, and the process assisting with transfers of regular water rights to instream water rights.

(2) In 1987, the Legislature created a new type of water right called an instream water right. Instream water rights are established by certificate from the Water Resources Commission, pursuant to ORS 537.332 to 537.360, to maintain and support public uses within natural water bodies. The instream water right is held in trust by the Water Resources Department but is regulated and enforced like all other water rights. The Water

Resources Department's procedures for establishing instream water rights are OAR 690-77-000 through 690-77-100. The Department of Fish and Wildlife may apply for instream water rights on any waters of the state that meet the definition set out in ORS 537.332 (1) and that provide for one or more of the public uses for which the Department is allowed to apply. Instream water rights allow the Department of Fish and Wildlife to manage fish and wildlife to provide the optimum recreational and aesthetic benefits for present and future generations of the citizens of this state.

Policy

635-400-005

It is the policy of the Oregon Fish and Wildlife Commission to apply for instream water rights on waterways of the state to conserve, maintain and enhance aquatic and fish life, wildlife, and fish and wildlife habitat to provide optimum recreational and aesthetic benefits for present and future generations of the citizens of this state. The long-term goal of this policy shall be to obtain an instream water right on every waterway exhibiting fish and wildlife values.

Definitions

635-400-010

As used in these rules:

(1) "Application" means an official instream water right application developed by the Water Resources Department.

(2) "Commission" means the Fish and Wildlife Commission.

(3) "Department" means the Department of Fish and Wildlife.

(4) "Deputy Director" means the deputy director of the Department.

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

(6) "Director" means the director of the Department of Fish and Wildlife.

(7) "Environmental Basin Investigation Reports" means reports on instream flow studies conducted by the OSGC between the mid-1960's and the mid-1970's.

(8) "Forest Service Method" means a methodology developed by the Pacific Northwest Region, USDA Forest Service, to determine instream flow requirements of salmonids (Swank, G. W. and Phillips, R. W. 1976. Instream flow methodology for the Forest Service in the Pacific Northwest Region. pp 334-343. In Proceedings of Symposium and Special Conference on Instream Flow Needs, Orsborn, J. F. and O. H. Allman, eds. Vol. II, American Fisheries Society, Bethesda, Maryland.)

(9) "Held in trust by the Water Resources Department", as defined in OAR 690-77-010 (8), means that the water right must be enforced and protected for the public uses listed in the water right. Actions by the Water Resources Department affecting instream water rights are limited by public trust obligations.

(10) "IFIM" means Instream Flow Incremental Methodology, a methodology to determine instream flows for fish and other aquatic life, developed by the U. S. Fish and Wildlife Service (Bovee, K. D. 1982. A guide to stream habitat analysis using the instream flow incremental methodology. Information Paper No. 12, U.S. Fish and Wildlife Service, FWS/OBS-82-26, Fort Collins, CO).

(11) "Instream Flow Requirement" means the amount of water required for aquatic and fish life, wildlife or fish and wildlife habitat. This requirement may be quantified as an amount of flow, such as in a stream or river, or a water surface elevation in a standing waterway.

(12) "Instream water right", as defined in ORS 537.332 (2), means a water right held in trust by the Water Resources Department for the benefit of the people of the State of Oregon to maintain water in stream for public use. An instream water right does not require a diversion or any other means of physical control over the water.

(13) "Oneflow Method" means a methodology to determine instream flow requirements for salmonid spawning areas based on the mean width, depth and velocity of water in a stream channel at one measured flow (Sams, R. E. and L. S. Pearson. 1963. A study to develop methods for determining spawning flows for anadromous salmonids. Unpublished report, Oregon Fish Commission, Portland, Oregon. 56 pp.).

(14) "Oregon Method" means a methodology to determine instream flow requirements for fish, developed by the OSGC

(Thompson, K. E. 1972. Determining streamflows for fish life. Pp. 31-50. In Proceedings of the Instream Flow Requirement Workshop, Pacific N. W. River Basins Commission. Portland, OR.

(15) "OSGC" means Oregon State Game Commission (a predecessor to the Department).

(16) "Parks" means the Parks and Recreation Division of the Department of Transportation.

(17) "Public use", as defined in ORS 537.332 (4), includes but is not limited to:

(a) Recreation;

(b) Conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values;

(c) Pollution abatement; or

(d) Navigation.

(18) "State sensitive and state or federally listed threatened or endangered species" means those species defined in ORS 496.004 and OAR 635-100-001 and determined through ORS 496.172 through 496.176 or through the federal process.

(19) "Stream order" means a widely accepted system of classifying streams. First order streams have no tributaries and are often called headwater streams. When two first order streams meet they form a second order stream. The joining of two second order streams form a third order stream and so on. When two streams of the same order meet the next higher order is formed.

(20) "Waterway" means a stream, lake or place where water naturally occurs.

(20) "WRD" means the Water Resources Department.

Determination Of Instream Flow Measurement Methodologies

635-400-015

(1) Instream flow requirements requested in Department instream water right applications shall be based on the methodologies and standards in this section.

(2) Discussion of and guidelines for implementing the rules in this section are provided in the Oregon Department of Fish and Wildlife Guidelines for Instream Flow Methodologies (1989).

(3) Habitat requirements for conservation, maintenance or enhancement of fish and wildlife migration, spawning, nesting brooding, egg incubation, larval or juvenile development, juvenile and adult rearing and aquatic life shall all be considered when developing an instream flow requirement.

(4) Fish and wildlife species plans, basin and subbasin plans, management objectives, statutes, administrative rules and Commission policies shall be used to assist in determining the required instream flows for conserving, maintaining or enhancing fish or wildlife habitat or populations.

(5) Instream flow requirements shall be defined by either month or half-month intervals, depending on the temporal duration of particular fish and wildlife life stages.

(6) The instream flow requirement shall be based on habitat criteria recommended by one of the following technical sources:

(a) IFIM habitat suitability curves published in a series of technical reports by the U. S. Fish and Wildlife Service.

(b) The Oregon Method.

(c) The Forest Service Method.

(7) An instream flow requirement shall be specified as a quantity of water or water surface elevation as determined by the methodologies in this section and dependent upon other habitat factors, fish or wildlife species plans, basin or subbasin plans, management objectives or other Commission policies for the waterway.

(8) The instream flow requirement for any specified period shall be no less than the highest instream flow or water surface elevation required by any of the fish or wildlife species of management interest during that period.

(a) Fish and wildlife species of management interest shall be determined by fish and wildlife species plans, basin and sub-basin plans, management objectives, statutes, administrative rules and Commission policies.

(9) Site-specific studies may be needed to determine flows necessary for flushing of sediment deposits, gravel recruitment, stimulating upstream migration of fish species, maintaining passage for fish migration or other specific requirements.

(10) If hydrological estimates or gaging data can be obtained, the instream flow requirements shall be compared

against the range of naturally occurring stream flows or water surface elevations.

(a) Instream flow requirements greater than 70 percent or less than 30 percent of the naturally occurring stream flows or water surface elevations for any given time period shall be evaluated for appropriateness of the requirement in relation to naturally occurring stream flows or water surface elevations.

(11) An instream flow requirement shall be specific to a stream reach or a particular standing body of water.

(a) The length of stream reach shall be determined according to biological and hydrological factors.

(b) A stream reach shall extend from the upstream end to a downstream point where either:

(A) Species use of the stream changes;

(B) Streamflow diminishes by at least 30%; or

(C) Stream order changes.

(12) Whenever possible, actual measurements of stream flow or water surface elevation shall be made at or near the required instream flows or water surface elevations. Preferably these measurements shall be made at times when the waterway is occupied by the fish or wildlife life stages to be protected.

(13) Instream flow requirements in the OSGC Environmental Basin Investigation Reports shall be used to apply for instream water rights for waterways listed in the reports.

(a) If the physical conditions of the waterway have changed since the instream flow requirements were established, such as

construction of a dam, reservoir or major channel changes, one of the methods in (14) in this section shall be used to determine the instream flow requirements.

(14) The acceptable methodologies for determining new instream flow requirements for aquatic and fish life, wildlife and their habitats shall be the following:

(a) On large lower reaches of main stem rivers, instream flow requirements shall be determined through an IFIM study by an interagency interdisciplinary team drawn from specialists in hydrology, water quality, water resources planning, fish and wildlife biology, limnology, recreational planning and any other related field.

(A) Besides fish and wildlife biology, three or more of the above specialties may be represented on a team.

(b) On principal tributaries to main stem rivers, either the IFIM or the Oregon Method shall be used.

(c) On secondary tributaries to main stem rivers, either the IFIM, Oregon Method or the Oneflow Method may be used.

(A) The IFIM shall be used before the Oregon Method if Department resources are available.

(B) The Oneflow Method may be used only when there is not enough time to conduct the IFIM or Oregon Method. Optimum spawning discharge shall be estimated using this technique. Corresponding incubation, rearing and migration instream flows shall be based on OSGC or Department streamflow requirement conversion factors.

(C) Instream flow requirements estimated through use of the Oneflow Method and conversion factors shall be verified through measurement of actual streamflows during the next spawning season and next low flow rearing conditions.

(d) Minor tributaries are second or third order streams and may include headwater streams, minor direct tributaries to the ocean, estuaries or main stem rivers.

(A) Instream flow requirements may be determined by either direct measurement of flow or surface water elevation during each critical fish or wildlife life history stage or by IFIM, Oregon Method or One-flow Method.

(B) Direct measurement may be used to determine lake, pond or wetland water surface elevations or volumes needed to maintain fish, wildlife or their habitats.

Standards For Selection Of Streams Or Stream Reaches For Instream Water Right Applications

635-400-020

(1) When applying for instream water rights the Department shall use the following resources and standards for prioritizing waterways:

(a) Fish and wildlife species plans, basin and subbasin plans, management objectives, statutes, administrative rules and Commission policies shall be used to determine the waterway priority for applying for instream water rights.

(b) Highest priority waterways for instream water right applications shall have one or more of the following conditions existing at the time of application:

(A) State or federal sensitive, threatened or endangered fish or wildlife species, or important populations of native resident or anadromous fish, as defined by fish species plans, basin and subbasin plans, management objectives, other Commission policies, statutes, administrative rules, treaties or other legal agreements.

(B) Important populations of native wildlife species, as defined by wildlife species plans, management objectives, other Commission policies, statutes, administrative rules, treaties or other legal agreements.

(C) Court, Legislature or Commission mandated priorities, including all protected areas as defined by the Northwest Power Planning Council's protected area designations as adopted in August 1988.

(D) State Scenic Waterways or federal Wild and Scenic Rivers.

(E) One of the conditions in (1) (b) (A) through (D) in this section exists and a potential threat to the fish or wildlife resource is identified, including the threat to aquatic and fish life, wildlife and fish and wildlife habitat by cumulative impacts from out-of-stream uses of water.

(c) An instream water right application may also be requested to conserve, maintain or enhance one or more of the

following fish or wildlife habitats or functions of a waterway by protecting instream flows or water surface elevations that provide for:

(A) Passage of adult or juvenile fish.

(B) Access to important spawning or rearing areas.

(C) High quality critical rearing areas.

(D) Protection of incubating fish eggs and alevins.

(E) Flushing stream systems of sediment and for gravel transport and recruitment.

(F) Populations of aquatic organisms and other aquatic life to provide sufficient food for fish and wildlife.

(G) Breeding or wintering migratory bird habitat, fur-bearing mammal habitat, and other wildlife habitats.

(H) Maintenance of riparian and wetland habitats.

(I) Water quality for fish or wildlife, including, but not limited to, factors such as limiting or diluting sediment loads, maintaining correct water temperature and increasing dissolved oxygen levels.

(J) Protection of inflow to standing water and to maintain lake, wetland and other standing water surface elevations.

(K) Protection of habitat improvement investments and potential sites for habitat improvements.

(L) Special habitat features within and adjacent to the waterway which may be critical to fish or wildlife species life cycles.

(M) The fish and wildlife values for which a state Scenic Waterway or federal Wild and Scenic River was established.

(d) The Department shall conserve, maintain or enhance angling, hunting and nonconsumptive recreational uses of fish and wildlife by requesting instream water right applications through Parks (see OAR 635-400-040).

Responsibilities To WRD

635-400-025

(1) The Department shall coordinate with WRD on prioritizing instream water rights for monitoring of flows.

(a) The Department shall coordinate with WRD Watermasters to develop monitoring plans for instream water rights. Monitoring plans may include:

(A) Locations and methods of instream flow measurement. The downstream end of each instream water right reach shall be considered the best flow measurement location, unless conditions do not allow measurement at this location.

(B) Use of volunteers and Department personnel to conduct monitoring.

(C) The frequency of monitoring.

(D) A system for reporting and enforcing violations of instream water rights.

(b) The Department shall work with WRD to revise the existing Memorandum of Understanding between the Department and

WRD to include issues related to instream water rights, such as measuring, monitoring and enforcement of instream water rights.

Internal Process For Instream Water Right Applications

635-400-030

(1) Instream water right requests shall be initiated by Department Field Operations staff or Fish, Wildlife or Habitat Conservation Division staff. The Commission, Director or Deputy Director may also initiate instream water right requests.

(a) Department staff shall submit completed draft instream water right applications to the Department Instream Water Right Coordinator.

(A) Prior to sending the draft applications to the Department Instream Water Right Coordinator, the draft instream water right applications shall be reviewed within seven working days by the Department Regional Supervisor or Assistant Regional Supervisor for consistency with regional direction and other Commission policies. A response shall be sent within the same seven day time frame by the Department Regional Supervisor or Assistant Regional Supervisor to the Department person originating the request. The response shall either approve or deny the request for an instream water right application.

(B) Draft applications may be hand-written or typed, and shall contain all information required on the application, as set forth in OAR 690-77-020.

(C) Information in the draft application shall follow the standards set out in OAR 635-400-020.

(D) Draft instream water right applications submitted to the Department Instream Water Right Coordinator shall be based on the priorities set out in OAR 635-400-020. However, a lower priority waterway with readily available flow or water surface elevation information may be submitted before a higher priority waterway having no available flow or water surface elevation information.

(b) Within 30 days the Department Instream Water Right Coordinator shall review the draft applications and send approved draft applications to Department Fish, Wildlife, and Habitat Conservation Division representatives for review and to DEQ and Parks as set forth in OAR 690-77-020 (2).

(A) Draft applications needing more information or corrections prior to review by Department Divisions and coordination with agencies may be sent back to the initiator of the application.

(B) Review and response by Department Divisions shall not exceed 30 days from the date the review was requested.

(C) Review by Department Divisions shall determine if the draft application conforms with Commission policy and program direction for the waterway listed in the draft instream water right application.

(D) Any suggested change or correction to the draft application by the Department Divisions shall be reviewed by the

Department Instream Water Right Coordinator and coordinated with the initiator of the draft application.

(E) Changes or corrections to the draft application suggested by DEQ and Parks through OAR 690-77-020 shall be reviewed for consistency with Department rules, policy and available information. These suggested changes or corrections may be made if they are consistent with Department rules, policy and available information.

(F) DEQ or Parks, or both may incorporate the public uses for which they are responsible into a Department application for instream water rights in accordance with OAR 690-77-020.

(G) The final application shall have all changes and corrections consistent with Department rules, policy, and information available.

(c) The final application shall be signed by the Director or the Director's designated representative.

(A) If DEQ or Parks, or both are combining their applications for an instream water right with the Department's application, the application must be signed by representatives of DEQ or Parks, or both.

(B) All completed signed applications on which the Department is the sole signatory shall be submitted immediately to the WRD for processing.

(d) If an application is returned by the WRD because of deficiencies in fulfilling requirements of OAR 690-77-020, the Department Instream Water Rights Coordinator shall correct those

deficiencies within the required time period or withdraw the application. A request may be made of the WRD for an extension to correct the deficiencies.

(e) The Department Habitat Conservation Division shall be responsible for monitoring the application through the application process.

(A) If a petition for review is received by the WRD, in accordance with OAR 690-77-030, and the WRD Director determines that OAR 690-77-030 is not satisfied, the Department Habitat Conservation Division shall work with the WRD and the petitioner to resolve the concerns.

(B) If an application is referred to the Water Resources Commission for review in accordance with OAR 690-77-030, the Department Habitat Conservation Division shall work with the Water Resources Commission, the WRD and the petitioner to seek approval of the application.

(C) If the Water Resources Commission requires a public hearing (as set forth in OAR 690-77-035), the Department shall become a party to the hearing and provide evidence to support approval of the application.

(D) In (1) (e) (A) - (C) of this section, the Department shall seek to have applications certified for the quantity of water needed to support the public uses applied for.

(E) Not withstanding (1) (e) (A) - (D) of this section, the Department, at any time in the application process, may withdraw an application on which it is the sole signatory. If the

Department is a co-applicant with Parks or DEQ or both, the Department may withdraw its portion of the application.

(2) The Department shall maintain a complete, up-to-date and accessible file of all instream water rights applications and certifications.

(a) Certified instream water rights shall be recorded on the Department computerized database for water rights and on the Department habitat database.

(b) Copies of the certificates and pending applications shall be readily accessible to Department staff, other agencies and members of the public.

(A) Copies of the certificates shall be maintained in the Department Habitat Conservation Division on microfiche, the Department Engineering Section and the appropriate Department Fish or Wildlife District.

(B) The Department Habitat Conservation Division shall provide the appropriate Department Fish or Wildlife District, Region and Divisions with information regarding certification of recent instream water rights.

Purchase, Lease Or Gift Of Water Rights For Instream Water Rights

635-400-035

(1) The Department shall buy, lease, and accept as gifts water rights for the purpose of transferring the water right to

an instream water right for the public uses and purposes set forth in OAR 635-400-000 through 635-400-035.

(a) Donors of gifts shall be recognized through a formal Commission process.

(b) Water rights that may be transferred to instream water rights shall be reviewed for potential benefits and adverse impacts to fish and wildlife or their habitats, angling, hunting, trapping or nonconsumptive uses of fish or wildlife.

(A) Standards set out in OAR 635-400-020 shall apply to prioritize water rights that are to be bought or leased.

(B) Gifts of water rights shall be accepted regardless of priorities set out in OAR 635-400-020, if the transfer does not harm fish or wildlife or their habitats, angling, hunting, trapping or nonconsumptive uses of fish or wildlife.

Public Involvement

OAR 635-400-037

(1) Any individual, organization or public agency may request the Department apply for an instream water right on a waterway.

(a) The Department Instream Water Right Coordinator shall review the request with the appropriate Department District and Region to determine the Department priority of the waterway requested.

(b) If the request is determined to be for a high priority waterway, as defined by OAR 635-400-020, the Department Instream

Water Right Coordinator may apply for the instream water right, after determining the instream flow requirement in accordance with OAR 635-400-015.

Review And Coordination Of Instream Water Right Applications Submitted By Other Agencies

635-400-040

(1) Within 30 days of receipt, the Department Habitat Conservation Division shall review and return comments on all draft instream water right applications from other agencies, in accordance with OAR 690-77-020, for potential adverse impacts or benefits to fish and wildlife populations or their habitats, angling, hunting, trapping and nonconsumptive uses of fish and wildlife.

(a) Every effort shall be made by the Department to resolve conflicts with draft applications, identified in (1) of this section, before the applications are submitted to WRD by other agencies.

(b) The Department Instream Water Right Coordinator shall track the WRD process for instream water right applications submitted by other agencies in which the Department has an interest.

(2) The following standards will be used to determine the level of Department participation in the application and certification process.

(a) The Department shall support and shall provide staff assistance, if needed, to the agency making an instream water right application if the following standards apply:

(A) State sensitive or state or federally listed threatened or endangered fish or wildlife or their habitats are involved.

(B) The requested instream water right is beneficial to conserving, maintaining or enhancing significant native fish and wildlife populations or habitat.

(C) The requested instream water right is beneficial to conserving, maintaining or enhancing Department fish and wildlife management objectives for commercial harvest, angling, hunting, trapping or nonconsumptive uses of fish or wildlife.

(D) Requested instream water right is in a state Scenic Waterway or federal Wild and Scenic River.

(b) The Department shall support but may elect not to provide staff assistance to an agency making application if the following standards apply:

(A) An adequate instream water right for fish and wildlife populations or their habitats already exists.

(B) The application is for a waterway that provides no identified benefits for fish or wildlife populations or their habitats.

(C) The application is for general recreation or esthetics.

(D) The waterway does not meet priorities and standards established in OAR 635-400-020.

(c) The Department shall oppose draft instream water right applications submitted by agencies if such applications cause one or more of the following problems:

(A) Increased instream flows provided by storage are greater than the natural or traditional instream flows occurring during any time period and cause adverse impacts to fish and wildlife populations or habitats, commercial harvest, angling, hunting, trapping or nonconsumptive uses of fish and wildlife.

(B) Decreased lake or reservoir water surface elevations occur that are lower than the natural or traditional water surface elevations during any time period and cause losses to fish or wildlife populations or their habitats, commercial harvest, angling, hunting, trapping or nonconsumptive uses of fish and wildlife.

(C) Any proposed storage releases or reservoir filling schedules that are required to meet the instream water right and adversely affect Commission policies and program direction established for that waterway or other affected waterways.

Adopted 10-13-89

Effective 10-28-89

MEMORANDUM OF UNDERSTANDING

WATER RIGHTS PUBLIC INTEREST REVIEW PROCEDURES

BETWEEN

OREGON DEPARTMENT OF FISH AND WILDLIFE

AND

OREGON WATER RESOURCES DEPARTMENT

JANUARY 1990

MEMORANDUM OF UNDERSTANDING
Between
Oregon Department of Fish & Wildlife
And
Oregon Water Resources Department

This MEMORANDUM OF UNDERSTANDING (MOU) is intended to coordinate the activities of the Oregon Water Resources Department (WRD) and the Oregon Department of Fish and Wildlife (ODFW) in the review and processing of water right applications as provided by OAR 690-11-080.

INTERAGENCY CONTACT

As used in this MOU, official contacts between the two agencies will be made through the Habitat Conservation Division in the Portland office of ODFW and the Applications and Permits Section of WRD in Salem.

APPLICATION PROCESSING

1. WRD will send to ODFW, along with the weekly Public Notice of water rights applications, copies of all reservoir applications, and any surface water applications for the use of a quantity of water equal to or greater than 0.1 cfs.

2. If needed, ODFW will request further information on any other applications listed on the Public Notice.

3. ODFW will have 30 days from the date of the Public Notice to respond in writing to any application.

4. If ODFW requires more than 30 days to complete its review, additional time may be requested by ODFW in writing within the said 30 day period.

NEGOTIATION/CONFERENCE PROCESS

1. If ODFW identifies potential conflicts between the proposed appropriation and the requirements for management or protection of fish and wildlife habitat, WRD may propose to the applicant a draft permit which contains a condition(s) to eliminate those conflicts.

2. If the applicant does not accept the draft permit, WRD may suggest a meeting between the applicant and representatives of ODFW and WRD to negotiate mutually-acceptable permit conditions.

3. If all parties agree to the conditioning of the draft permit, WRD will issue the permit with those conditions.

4. If ODFW and the applicant cannot agree to the conditions, WRD will refer the issue to the Water Resources Commission

with a recommendation to hold a contested case hearing in accordance with OAR 690-11-080.

APPLICATION DISPOSITION

1. WRD will send copies to ODFW of any permit issued or other disposition of any application on which ODFW comments were received.

2. WRD will provide ODFW with titles of and drafts of WRD staff reports to the Water Resources Commission on water right application issues as soon as they are available.

3. If ODFW has concerns or recommendations on WRD staff reports to be considered, ODFW will respond in writing to WRD within one week after receipt of the WRD draft staff report.

PROCEDURE MODIFICATION

If at any time new statutes, rules, policies or special circumstances in the review of a particular application require or suggest modification of these procedures, the Directors of WRD and ODFW may, by mutual consent, affect such modifications to this MOU.

IN WITNESS WHEREOF, we have hereunto set our hands this 2nd day of February, 1990.

William H. Young
William H. Young, Director
Water Resources Department

Randy Fisher, Director
Department of Fish & Wildlife

Teodolinda Parra
TEODOLINDA PARRA
NOTARY PUBLIC - OREGON
My Commission Expires 1-6-92

STATEMENT TO THE JOINT WATER POLICY COMMITTEE

PROGRESS ON SB 140: INSTREAM WATER RIGHTS

by the
Oregon Department of Environmental Quality
November 28, 1989

My name is Krystyna Wolniakowski and I am the Acting Manager of the Planning and Monitoring Section of the Water quality Division. I am here today on behalf of the Department of Environmental Quality to give you an update on the status of implementing Senate Bill 140: Instream Water Rights. At this time, the Department has not applied for instream water rights for pollution abatement to meet the stautory deadline of October 1989. The Department did contact the Water Resources Department on July 31, 1989, to indicate which streams in the Willamette and Sandy Basins are candidates for instream water rights to assure adequate flows for pollution abatement (Attachment 1). However, the Department's obligations under a legal mandate to evaluate waterbodies not currently meeting water quality standards and establishing Total Maximum Daily Loads (TMDL) of pollutants has dictated that we complete those activities before taking on the applications for the instream water rights. A summary of the TMDL process and the proposed approach to implement the requirements of SB 140 for the Department follows.

BACKGROUND

SB 140 authorizes the Department to request the Water Resources Commission to issue water certificates for instream water rights on waters of the state to protect and maintain water quality standards established by the Environmental Quality Commission. The request is for the quantity of water necessary for pollution abatement.

The ability of the stream to achieve and maintain standards is directly linked to the amount of water available to assimilate wastes entering the receiving streams. For point sources, the amounts and concentrations of wastes entering the receiving streams have been controlled through NPDES permits that require the use of best available technology. The permit combined with the Department's existing dilution rule that requires that enough water be present in the receiving streams and the treatment level be high enough, assures that water quality standards will be met. For nonpoint sources, the use of best management practices is required to minimize the amount of pollutant runoff into the receiving streams.

WATER QUALITY ASSESSMENTS

Even with the application of best available technology and best management practices, the water quality in several waterbodies in the state violate water quality standards. A lawsuit filed by

Northwest Environmental Defense Center against EPA in 1986 directed EPA to improve water quality in those waterbodies to meet the standards. This was to be accomplished by establishing and implementing TMDL's for those pollutant parameters contributing either directly or indirectly to the violation of the standards. The eleven waterbodies confirmed to be violating water quality standards and named in the lawsuit are referred to as "water quality limited" under Section 303(d)(1) of the Clean Water Act. Seventeen other waterbodies needing a more definitive determination as to whether or not they were violating water quality standards were also identified in the consent decree. See Attachment 2 for more details about the lawsuit and consent decree.

PROCESS FOR SETTING TMDL'S

The process for establishing the TMDL's is outlined in Attachment 2. Essentially, once the assimilative capacity of the waterbody is identified, the total pollutant load is determined. The pollutant load that can enter the waterbody is dependent and proportional to the instream flows available, and is allocated to permitted point sources and to nonpoint sources. If pollutant loads from point and nonpoint sources are reduced and the allocations met, an improvement in water quality will result and standards will be met. A reserve capacity and a background load are also calculated as part of the TMDL process for future growth. To establish a TMDL requires an extensive amount of water quality data and complex modeling using this monitoring data to calibrate the components, identify the sources and calculate the loads.

As each of the Section 303(d)(1) receiving streams are evaluated, information on flows and assimilative capacity is used to set the TMDL. The waste load allocations for point sources and the load allocations for nonpoint sources are directly related to instream flow. Higher flows generally result in greater assimilative capacity and the potential for higher load allocations. On the other hand, reduced flow conditions result in smaller load allocations for both point and nonpoint source dischargers. These lower limits may greatly increase costs to communities when they try to meet the load allocations.

The Tualatin River is the first waterbody to have a TMDL established. The Tualatin has been removed from further appropriation and rules have been adopted by the Environmental Quality Commission that specify the process for determining and achieving TMDL's. The TMDL's must be achieved regardless of flows, but the less flow available, the higher and more stringent the wastewater treatment must be, which will likely be more costly, in order to meet the instream water quality standards.

In applying for instream water rights for pollution abatement, the Department will use the TMDL process. As TMDL's are established, and flows needed to meet those TMDL's identified, the Department will request those flows on a waterbody specific basis and include rules for identifying methodology and implementation. The

Department is commited to implementing SB 140, but must do so within the TMDL process, and as resources allow.

The Department also recognizes that many waterbodies are currently overappropriated. Instream water rights need to be established as management targets, even though they may not be currently available.

The Department to date has not drafted specific rules on methodologies for applying for instream water rights. Until the TMDL's are established, the Department will continue to use the dilution rule and appropriate modeling as needed for pollution abatement.

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FOLLOWUP QUESTIONS AND REQUESTS FOR INFORMATION

TMDL's: At the Joint Water Policy Committee Hearing, several questions were asked regarding the TMDL process. Legislators requested background information on the lawsuit and consent decree. Additional information is attached to this report.

GWEB: Questions were asked regarding the Department's coordination with GWEB to improve watershed management. The Department responded that it works very closely with GWEB and through implementation of projects sponsored by GWEB, in addition, to other nonpoint source control efforts, better watershed management should result that will assist in retaining more flows in the streams year round.

MORATORIUM ON APPROPRIATIONS: The Department was asked if it had formally requested Water Resources Department to deny any further water appropriations on those waterbodies listed as Section 303(d)(1) receiving streams, in order to assure flows to meet the TMDL requirements. The Department has not requested for a moratorium on further appropriation in those waterbodies. The Committee requested that the Department explores that option. In addition, the Committee requested that the Department write a temporary or "placeholder" rule to allow the Department to apply for instream water rights at the earliest possible time.

****

The Department is reviewing the following options for implementing the requirements of SB 140:

1. The Department will gather information available on those waterbodies where both flow gauge information and ambient water quality monitoring information is available to determine if flows are adequate to protect beneficial uses including pollution abatement.

2. The Department will calculate the flows needed to meet the current preliminary TMDL's. If the needed flows do not exist, then set those required flows as a target. The

Department may consider requesting the Water Resources Department to implement a moratorium on further appropriations of water until TMDL's are achieved, or until water flows reach the target.

3. For non Section 303(d)(1) receiving streams, the Department will estimate the flows needed to maintain and protect the existing water quality taking into consideration potential growth and additional future waste loads.

4. The Department will continue to work with GWEB and increase instream flows through enhanced watershed management that would minimize erosion and restore the water retention capacity of the stream banks.

5. The Department will propose a general or temporary rule to provide the opportunity to apply for instream water rights in priority waterbodies for pollution abatement, and will describe the methodology to be used to quantify and document those amounts. This rule may serve as a placeholder to discourage further appropriation of water in cricial waterbodies until more information is known through the TMDL process.

6. As TMDL's are established in the next few years, the Department will apply for instream water rights for those TMDL receiving streams for pollution abatement.

7. The Department will continue to work with ODFW and Parks to assure that instream water rights for fish, wildlife and recreational uses, include water quality and quantity considerations to protect those uses.

NEIL GOLDSCHMIDT
GOVERNOR

Department of Environmental Quality

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

July 31, 1989

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

Re: Instream Water Rights

Dear Mr. Young:

This is in response to your letter of May 1, 1989 asking if our agency would be interested in instream water rights or reservation in the Willamette or Sandy Basins and, if so, to bring our interests to you by June 30, 1989. Our water quality staff have contacted Steve Brutscher of your office by phone and stated our interest for instream water rights in lieu of being able to get this formal written request to you by that date. Your staff indicated this was acceptable and requested that a preliminary list be provided by August 11, 1989.

On July 20, 1989, staff members from the Departments of Environmental Quality, Fish and Wildlife, and Parks met with representatives of your staff to discuss instream water rights issues. During this meeting it was requested that the Department provide a list of streams in the Willamette and Sandy Basins for which instream water rights may be applied for at some future date. Our understanding was that your Department did not require actual estimates of instream water right requests at this time.

The following is a list of the streams the Department would be interested in applying for instream water rights to alleviate existing or potential water quality concerns. The attached Appendix A 1988 Basin Status Summary provides additional information describing the existing or potential water quality concerns for most of these streams statewide. Please call Bob Baumgartner at 229-5877 if there are questions regarding the streams that we have identified.

Sincerely,

Fred Hansen
Fred Hansen
Director

FH:rb:kjc
PM\WJ2011
Enclosure

DEPARTMENT OF ENVIRONMENTAL QUALITY
Potential Streams for Instream Water Right Application
Willamette and Sandy Basins

Contact: Ed Quan (229-6978) or Bob Baumgartner (229-5877)

Willamette Basin:

Willamette River
Coast Fork Willamette River
McKenzie River (below River Mile 17)
Amazon Creek
Long Tom River
Booneville Channel
Mary's River
Oak Creek (Mary's System)
Oak Creek (Calapooyia system)
Calapooyia River
Cox Creek
Conser Slough
Truax Creek
Luckiamutte River
Rickreal Creek
Bashaw Creek
South Santiam River
Santiam River
Yamhill River
North Yamhill River
South Yamhill River
Willamina Creek
Mill Creek
Deer Creek
Salt Creek
Pudding River
Bear Creek (Pudding system)
Tualatin River
Gales Creek
McKay Creek
Dairy Creek
Beaverton Creek
Rock Creek
Springbrook Creek
Johnson Creek (Willamette)
Columbia Slough

Sandy Basin:

Hood River

PM\WJ2011

From: 305(b) WQ Assessment Report, 1988

5.2 Water Quality Limited/Total Maximum Daily Loads

The water quality management program in Oregon has undergone considerable change in the last two years. The major program change has been the agency's shift from technology based permit decisions to water quality based permit decisions. In other words, the emphasis has shifted and will continue to shift from the discharging facility to the receiving water, from facility treatment processes to the overall chemical, physical, and biological health of the receiving waterbody. Moving from an emphasis on the traditional organic pollutants, such as Biological Oxygen Demand (BOD), to an emphasis on a wider range of pollutants including nutrients, metals, and toxics. The key influence on this change has been the need to establish total maximum daily loads (TMDLs) for identified "water quality limited" stream segments in Oregon.

Historically, the DEQ has implemented water quality control activities in accordance with a general management plan. This plan sets forth an overall program to preserve and enhance water quality statewide and to provide for the beneficial uses of the water resource. The plan is intended to fulfill the policy of the State of Oregon regarding water pollution control as expressed in the Oregon statutes. This management plan is also designed to satisfy water quality planning and management activities identified in the Federal Clean Water Act (CWA) of 1972.

Section 303 of the CWA contains the basic federal requirements for water quality management planning. This section deals specifically with water quality standards and implementation plans, and introduces the concept of TMDLs. According to the CWA, TMDLs are to be developed on those waters where minimum treatment controls for point sources are not stringent enough to meet the established water quality standards. These waters are said to be "water quality limited". Water quality limited stream segments are reaches that do not meet standards, in either numerical or narrative form, even after technology based limitations have been applied.

A TMDL has several components. These components are defined in federal regulations as follows:

- *Loading Capacity (LC):* The greatest amount of loading that a water can receive without violating water quality standards.
- *Load Allocation (LA):* The portion of a receiving water's loading capacity that is attributed either to one of its existing or future nonpoint sources of pollution or to natural background sources.
- *Wasteload Allocation (WLA):* The portion of a receiving waters loading capacity that is allocated to one of its existing or future point sources of pollution. WLA constitute a water quality-based effluent limitation.
- *Total Maximum Daily Load (TMDL):* The sum of the individual WLAs for point sources and LAs for nonpoint sources and background. If a receiving water has only one point source discharger, the TMDL is the sum of that

point source WLA plus the LAs for any nonpoint sources of pollution and natural background sources, tributaries, or adjacent segments. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure.

A TMDL is basically equivalent to the loading capacity of a waterbody. The loading capacity is the greatest amount of pollutant loading that a waterbody can receive without violating water quality standards.

The loading capacity (LC) is equal to the assimilative capacity of a stream for a particular parameter. Assimilation is the process of self purification. This process is dependent on the physical and biological nature of the stream. As assimilation occurs, the ability of a stream to accept pollutant loadings is regenerated. For example, dissolved oxygen is added to a stream by reaeration. The decay of ammonia removes oxygen from a stream. When the ammonia demand for oxygen exceeds the oxygen supplied by reaeration, instream oxygen is depleted. When decay and reaeration rates are equal, the instream oxygen concentration remains stable. After the ammonia has decayed, reaeration replaces the lost oxygen. The capacity of the stream to receive ammonia loads has been regenerated and assimilation has occurred.

Some parameters will not be assimilated by a stream. These parameters, such as dissolved solids, are termed conservative. For conservative parameters, the mass loadings to a stream can simply be added. Other parameters, such as ammonia and phosphorus, may be assimilated by a stream and are termed non-conservative. For non-conservation parameters, the loading capacity of a stream may be regenerated due to instream assimilation. This dynamic process needs to be accounted for in establishing the TMDL.

On December 12, 1986, the Northwest Environmental Defense Center (NEDC) filed suit in the Federal District Court of Oregon against Lee Thomas, Administrator of EPA, to require him to ensure that TMDLs were established and implemented for waters within Oregon identified as being "water quality limited". That suit specifically identified the Tualatin River and generally other streams in Oregon designated as water quality limited. Subsequently, NEDC filed a "Notice of Intent" to sue, naming 27 other waterbodies requiring TMDLs.

The lawsuit contended that Section 303 requires EPA to establish TMDLs on "water quality limited" stream segments and that this is a non-discretionary function. Therefore, EPA was obligated by statute to establish TMDLs. The Department reviewed the suit with the State Attorney General's office to establish a legal position. Essentially, the Department had two alternatives:

1. Develop the TMDLs/WLAs/LAs consistent with a state developed process and available resources, or
2. Have EPA develop the TMDLs/WLAs/LAs.

The Department believed that establishing TMDLs and, particularly, WLAs, would be quite controversial. There would be discussion over the loads given to different sources and there would be a number of different alternatives for achieving the WLAs including flow augmentation, modified treatment method, no discharge, land application, or a combination of these or other alternatives. Because of this, a process had to be developed that would involve as much public participation as practicable, so that all potential alternative WLAs/LAs and potential implementation strategies would be given appropriate evaluation. EPA's approach, as established by Federal Guidance and regulation, would not allow for more than minimal public participation.

The Department felt that it would be more consistent with the overall approach of the state's environmental control program that the Department take the lead in establishing TMDLs/WLAs/LAs. Therefore, it actively participated in the negotiations between EPA and NEDC to develop an acceptable approach to settle the suit.

On February 10, 1987, the Department met with the U.S. Justice Department and EPA to finalize a settlement proposal. The Justice Department and EPA presented the proposal developed to NEDC on February 11, 1987.

The proposed approach consisted of the following key elements:

1. Identify the water quality limited stream segments on which TMDLs/-WLAs/LAs would be developed and describe how other waterbodies will be assessed and additional "water quality limited" segments would be identified, ranked, and addressed in the future.
2. Describe how TMDLs/WLAs/LAs would be developed.
3. Establish a generic process to be used by the Department to develop and adopt the TMDLs/WLAs/LAs for each "water quality limited" segment.
4. Describe how the Department would address applications for discharge permits during the period from the time a water quality limited segment is identified and the time TMDLs/WLAs/LAs are adopted.
5. Describe the basic procedure for developing strategies which would be used to implement the TMDLs/WLAs/LAs through the NPDES permit process.

As negotiation continued between EPA/NEDC/U.S. Justice Department, the Department proceeded to implement this approach. Department staff evaluated the 1986 305(b) report, the NEDC suit, and the NEDC "Notice of Intent" to file suit to determine the "water quality limited" segments due to point source discharges. The segments identified as the most appropriate waterbodies for the initial TMDL efforts are listed below:

- Tualatin River
- Yamhill River
- Bear Creek

- South Umpqua River
- Coquille River
- Pudding River
- Garrison Lake
- Klamath River
- Umatilla River
- Calapooia River
- Grande Ronde River

In addition to these eleven (11) waterbodies, the Department identified seventeen (17) waterbodies where further study was necessary before a decision could be made as to whether these waterbodies were point source limited or nonpoint source limited. These seventeen (17) waterbodies include:

- Neacoxie Creek
- Necanicum River
- Nestucca River and Nestucca Bay
- Schooner Creek and Siletz Bay
- Yaquina River and Yaquina Bay
- North Florence Groundwater Aquifer
- Calapooya Creek
- Coast Fork Willamette River
- Mary's River
- Columbia Slough
- Deschutes River
- Crooked River
- John Day River
- Powder River
- Malheur River
- Owyhee River
- Willamette River

The Department then put together an approach on how to proceed with the development of TMDLs/WLAs/LAs for the eleven "water quality limited" segments. The process was divided into four phases as follows:

- **Phase 1:** Department staff develops interim TMDLs and they are placed on public notice for comment. Public comment is reviewed and appropriate changes are made in the TMDLs.
- **Phase 2:** Department establishes local advisory committees to review the TMDLs and consider various alternatives to achieve TMDLs; conducts detailed water quality study of the segment; prepares staff report proposing final TMDLs and requests authorization to hold public hearing and holds public hearing.
- **Phase 3:** Department evaluates public testimony, prepares final staff report and recommends rule adoption for TMDLs/WLAs/LAs to be established by the EQC.
- **Phase 4:** Department implements rules adopted.

The Department developed this process in February 1987. In March 1987, the EQC approved this process. As the settlement negotiations continued, it was decided that the Department would proceed to implement the TMDL process on the Tualatin River and it was decided that in subsequent years, the annual State/EPA Agreement (SEA) would be used to identify what TMDL work would be conducted in that year. The final consent decree was signed on June 3, 1987.

DEQ has completed Phase 1 of its process on all eleven of the water quality limited segments by June 1988 (Technical Appendix T-C—not attached).

DEQ is now working to complete all phases of its process on twenty percent (20%) of the water quality limited segments, but not less than 2, each year.

DEQ completed the water quality limited status determination on the remaining waterbodies by August 1988 (Technical Appendix T-D—not attached—contains these reports).

The 1988 Water Quality Status Assessment Report evaluates the data collected since the 1986 report. Appendix A identifies those waterbodies which are water quality limited at the current time. Appendix B identifies the criteria used to place a waterbody on the Appendix A lists and Appendix D contains a revision to the State's Continuing Planning Process which describes the process the Department will use to address waterbodies on the water quality limited list in Appendix A.

NEIL GOLDSCHMIDT
GOVERNOR

Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310 PHONE 378-3671

February 5, 1990

Neil Mullane
Department of Environmental Quality
811 S.W. Sixth
Portland, OR 97204

Dear Neil,

As promised at our meeting Monday morning, here is the list of information requirements for reservations of water. The cover letter to the Department of Agriculture is included for the additional explanation it provides.

Obviously, these requirements are aimed at future consumptive diversions of water. Some of them may seem extraneous to your interest in protecting flows for future instream water rights. I believe a case can be made for applying most of them to the issue of flow protection.

The Department has never dealt with a reservation request under the current rules. The process is bound to have some pitfalls. We would like to discuss this whole issue in detail with you. Preferably, this would occur prior to DEQ submitting a series of reservation requests.

For your information, I am also sending these items on reservations:

* ORS 537.356 and 537.358
* OAR 690-77-200, Reservations of Water for Future Economic Development
* Agenda Item L, November 17, 1989 Water Resources Commission Meeting: Informational Report: Reservations of Water for Future Economic Development

Please call me if you have any questions about these materials.

Sincerely,

Steven C. Brutscher

Steven C. Brutscher
Resource Management Division

Enclosures

NEIL GOLDSCHMIDT
GOVERNOR

Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310 PHONE 378-3671

June 16, 1989

Bruce Andrews, Director
Department of Agriculture
635 Capitol Street N.E.
Salem, OR 97310

Dear Bruce:

In late April, you received a letter from us inquiring about your agency's interest in reservations of water for future economic development. Our inquiry was made specific to the current planning effort in the Willamette and Sandy Basins. Since then, members of my staff have had several conversations about this with Ed Weber of your Soil and Water Conservation Division. Most recently, Ed has inquired about the form and content of a reservation request. Lacking a standard application form at this time, my staff has put together a list of information requirements that should accompany a reservation request. The list is attached to this letter.

I'd like to offer some background on this reservation tool now in hopes of avoiding confusion later on. As you recall, reservations of water for future economic development came out of SB 140 in the 1987 legislative session. SB 140 is probably best remembered as the in-stream water rights bill.

The statutes on reservations (ORS 537.356, 537.358) do little more than create this tool and direct the Water Resources Commission to adopt implementing rules. Processing reservation requests is included with the instream water rights provisions in our Division 77 rules. Unfortunately, the reservation rules offer only basic direction. They do, however, prescribe a time period in which the Commission must act on a reservation request. This time period requires a public hearing to be held on a reservation request within six months of its receipt. Therein lies the rub.

Public hearings on draft rules for the Willamette and Sandy Basins are not scheduled until the April/ May time period in 1990. Final rule adoption is not likely to occur until August of 1990.

Our earlier letter was intended to extract agencies expressions of interest in this tool rather than formal applications under Division 77 rules. Our planning staff could then evaluate concurrent reservation proposals as a group and make recommendations to establish, modify or reject them in the new rules being developed for

the Willamette and Sandy Basins. This seemed to be the Commission's intent that we tried to described in our earlier letter and position statement on water allocation.

By rule, receiving a formal reservation request now would require the Commission to hold a basin hearing by December 1989, and possibly amend the basin program. In light of the basin planning activity going on now, the scheduling of an interim reservation hearing and the resultant program amendments could be cumbersome. We believe the same end can be accomplished within the existing planning schedule in a much smoother manner. The opportunity to work with you and your staff on this would be welcomed.

If you have questions or concerns, we would be happy to meet with you and or your staff to discuss this further.

Sincerely,

Bill

William H. Young
Director

WHY:SCB:rgs

cc: Phil Ward
Ed Weber

Enclosures

STATE OF OREGON WATER RESOURCES DEPARTMENT

Reservations of Water for Future Economic Development

Information Requirements

1. Agency Name and Address
Give the name and address of the agency requesting the reservation of water for future economic development. If other than the agency director, provide the name and phone number of a contact person authorized to coordinate the request with the Water Resources Department.

2. Purpose of Reservation
Describe the nature of the intended use of water. If a specific project is planned, describe the project.

3. Amount of Water
State the amount of water to be reserved in terms of rate, expressed in cubic feet per second (cfs), and volume (duty) expressed in acre feet per year (af), if the rate is not continuous. Explain the basis or provide information supporting the quantities of water being requested for the described use.

4. Source of Water
Identify the source(s) of water to be reserved. Specify if the source is surface water or ground water. If surface water is the intended source, identify the river, stream, lake or other water body by name and location.

5. Natural Flow or Storage
Describe if the reservation is intended as a claim for natural flow or stored water. If for natural flow or ground water, explain what evidence suggests water is available to meet this request. If for stored water, indicate if the storage is in an existing facility or one to be constructed. If stored water from an existing facility is to be used, provide evidence that the water can be obtained for the intended use.

6. Season of Use
Indicate how use of the reserved water would be distributed throughout the day, week, month, and /or year. For example, would the use be seasonal, year round, continuous, intermittent?

7. Place of Use
Describe the expected location of future development including current land use, zoning, and land use designation.

8. Developer
Describe who is expected to make use of the reservation. For example, is it a federal, state, or local agency, organization, corporation, special district, individual, or other entity?

9. Term of Reservation
How long is this reservation expected to stand before it is exercised? The term should reflect the size and nature of development and the intended/expected developer. For example, a reservation for a food processing plant to be developed by a local cooperative may have a term of two to five years. An irrigation district development may have a reservation term of five to ten years. In any case 20 years is expected to be a maximum period for which water would be reserved.

10. Schedule of Development
What is are the anticipated timing for the development? Will the development be constructed in phases? If so, describe. What major factors will determine whether development proceeds as anticipated? Provide any evidence available that supports the expectation that this development is likely to occur if the water is reserved.

11. Economic Benefits
Describe the types of economic benefits expected from the use of water being proposed in this reservation request. For example will the development create new jobs, increase production, introduce new products? What is the value of these benefits expressed in dollars?

12. Land Use Compatibility
Describe the land use impacts associated with the proposed development. Will the development be compatible with other land use in the area? Is the development compatible with local comprehensive plan designation and zoning where this development would occur? What local government actions are needed to permit the development as proposed? What contact has been made with and input received from local planning officials?

13. Alternatives
What are the alternative water sources for this reservation? Is the expected development likely to occur without the requested reservation? Could this development occur in a nearby location where water is available?

14. Foregone Opportunities
What future water development for uses currently allowed or potential new uses will be prevented or subordinated by this reservation? What evidence is available that suggests the proposed use would be the highest and best use or among the highest and best uses of water from the proposed source?

15. Existing/Future Water Use
What are the existing instream uses of water affected by the reservation? What impacts is the reservation likely to have on these uses? Is the proposed use of water one that is permitted by the current basin program? What affect would the reservation have on other classified water uses? Describe what measures would be taken to prevent interference or harm to existing water rights.

16. Adverse Water Impacts

Describe potential adverse impacts that may result from the proposed development. For example, what are the potential impacts on surface and/or ground water quality, streamflows, ground water levels, wetlands, drainage, and flood control.

17. Water Management

Describe what measures will be employed to insure good management in the use of the water. Include such things as diversion measurements, conveyance system design and efficiency, conservation practices and programs, recycling, and other innovations.

NEIL GOLDSCHMIDT
GOVERNOR

Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310 PHONE 378-3671

MEMORANDUM

TO: Water Resources Commission

FROM: Director

SUBJECT: Agenda Item L, November 17, 1989, Water Resources Commission Meeting

Informational Report: Reservations of Water for Future Economic Development

Background

This report was prompted primarily by Commissioner Howland's interest in adequately addressing reservations of water for future economic development. At the July 7 meeting, Chairman Blosser suggested that Commissioner Howland prepare a written proposal on reservations for the Commission's consideration. Commissioner Howland passed out a proposed procedural outline for reservations (Attachment 1) at the Commission's September 29 meeting. Staff agreed to review the proposal and schedule a discussion on the topic for a future meeting.

This report:

* provides a chronology of the Department's actions related to reservations of water for future economic development;
* describes the agency's activities on reservations in the Willamette planning process;
* comments on the Department's rules on reservations of water, and;
* proposes alternative ways to implement the Commission's authority on reservations of water.

Discussion

Chronology and Willamette Planning Actions

1964 The concept of reserving water for future economic development is not new. The State Water Resources Board (SWRB) intended the same thing in adopting the Umatilla

Basin program in 1964. Reservation of water was not among the SWRB's statutory authorities then, so the SWRB used its ability to classify water to accomplish the same end. The program classified 160,000 acre feet of water from the Walla Walla and Umatilla rivers for future domestic, livestock, municipal, industrial, and irrigation development.

1965 The SWRB classified quantities of water, expressed in cubic feet per second (cfs), only for municipal purposes in Drift Creek, Siletz River, Scott Creek, North Fork Beaver Creek and Yachats River in the Mid-Coast Basin. In classifying these waters, the SWRB actually used the word "reservation," though the term still had no statutory basis. Additional reservations for municipal use were made in the 1965 and 1974 Mid-Coast programs.

1979 The Water Policy Review Board (WPRB), successor to the SWRB, reserved water in Garrison Lake in the South Coast Basin for municipal use. In this case, the word "reserved" was used alone to express the intent; no mention was made of classification. Additional reservations were made in the 1984 South Coast Basin program.

1981 The WPRB reserved water in Jetty Creek in the North Coast Basin for municipal use. A distinction between classification and reservation appears to have developed out of the actions taken in the South, Mid-, and North Coast basins. The difference centers on the designation of an amount of water. The term "reserved" or "reservation" most often is used in conjunction with a stated cfs. Where streams were classified only for municipal use, no quantity of water was specified. It is also interesting that all those allocations in which the term "reservation" was used applied only to municipal use.

1987 The Legislature gave identity and stature to the concept of reserving water in Senate Bill 140 which took effect September 27, 1987. The real thrust of this bill, however, focused on instream water rights. The reservation provisions were added to gain support for the bill from agricultural interests. Senate Bill 140 was passed in a flurry of bills on the last day of the session. It is questionable if the mechanics of reserving water had been well thought out or if the implications of this concept were well understood by those who voted for the bill.

1988 Considering the substantial impacts of water reservations, the statutes offer little guidance in applying the new law. The Water Resources Department followed this trend in drafting implementing rules. Administrative rules applying the provisions of SB 140 took effect on November 4, 1988. A single administrative rule on reservations of water is included at the tail end of an entire division of rules created for instream water rights. The questions the Commission is now raising about processing requests for reservations could be addressed through expanded provisions in the reservation rule.

1989 The Department initiated the Willamette/Sandy planning process in August 1988. At its April 17, 1989, meeting, the Commission directed staff to give equal consideration to instream uses, public out-of-stream uses, and reservations. After the meeting, staff prepared a position statement on water allocation reflecting the Commission's direction. This position statement and a cover letter inviting agencies to identify their interests in instream water rights and reservations of water for future economic development was mailed to eleven state agency directors on April 28, 1989. The agencies were asked to respond by the end of June, a 60-day period. The position statement, cover letter and list

of recipient agencies were included as attachments to Status Report #7 presented at the July 7, 1989, Commission meeting.

Two agencies, Division of State Lands and Department of Fish and Wildlife, identified specific instream water right interests by the deadline. The Parks and Recreation Division and Department of Environmental Quality identified additional instream water right interests shortly thereafter. These entire lists have not been provided to the Commission previously but are included with this report as Attachment 2.

The Department of Agriculture expressed interest in reservations of water and requested guidance on the form and content of a reservation request. This information was sent in a letter from the Director to the Department of Agriculture dated June 16, 1989. A copy of the letter and list of information requirements for reservation requests is included as Attachment 3. The Department of Agriculture's reservation request for the Willamette and Sandy basins was included with Status Report #8, presented at the Commission's September 29, 1989, meeting.

No other agency has substantiated an interest in reservations of water by submitting a request. The Economic Development Department did respond to the Director's April 28 letter by phone. EDD suggested the Department review the Oregon Shines document and local public facilities plans. They also suggested the Department contact the directors of METRO's Development Program and the Eugene - Springfield Economic Development Partnership. Those contacts have not yet been made so it is not known what assistance will be forthcoming.

Administrative Rule

The Justice Department (DOJ) has informally advised staff that the statutes on reservations, 537.356 and 537.358, were not specific enough to have created a new administrative tool. DOJ recommended developing the reservation process around existing authority to classify water. This poses some administrative complexity. SB 140 clearly envisioned an application process for reservations. The classification approach that DOJ advises is a program amendment process. This approach requires a Commissioner to hold a hearing in the affected basin. A close parallel can be drawn between this situation and SB 225, the minimum streamflow law of 1983. SB 225 uncoupled minimum streamflows from basin planning and set up an application process to handle minimum streamflow requests.

The Commission believes that it is desirable to make reservations of water in the basin planning process. While that approach seems logical and feasible, the Division 77 rule is written to allow reservations separate from the basin planning process. In fact, two of the rule provisions could be cumbersome to apply in the basin planning process.

Oregon Administrative Rule (OAR) 690-77-200 (2) states a member of the Commission shall conduct a public hearing on the proposed reservation within six months of receipt of the request. If such requests are to be handled in the basin planning process, it is possible, even likely, that the six-month deadline will not coincide with the basin planning schedule. If the rule is observed, the Commission may have to hold a hearing on reservation requests in advance of the hearing/adoption of the basin program. This would be the case if the Department of Agriculture's July 25, 1989, letter expressing interest in reservations was assumed to be an official request.

Another factor lies in the preference or priority date assigned to the reservation. OAR 690-77-200 (1) states that a reservation shall, when developed, have preference over all other water rights, including instream water rights from the same source, that are issued after the date the reservation is established.

OAR 690-77-025 (1) establishes the priority of an instream water right as the date the application is received. OAR 690-77-200 (2) requires that the Departments of Fish and Wildlife, Environmental Quality, and Parks and Recreation be notified of a reservation request within one month of receipt of the request. Presumably, notice would give the agencies the opportunity to submit instream water right applications that would ultimately have senior priority. The rules are clearly written to give instream water right agencies the edge, or at least the opportunity to precede a reservation in priority.

Establishing reservations in the basin planning process presents a couple of scenarios. It forces the instream water right agencies to submit specific applications to protect their interest and priority. This will have the effect of compressing a great deal of permitting and water allocation activity into a basin planning process the Commission has been trying to streamline and shorten. Stream-by-stream allocation evaluations have been a major contributor to the protracted planning schedules of the past.

If instream water right agencies fail to submit applications, reservations may obtain preference by virtue of the Division 77 rule. There is a chance this preference may not be supported by information developed later in the planning process. However, if the Commission conditioned a reservation in favor of a subsequent instream water right application, that would appear to conflict with OAR 690-77-200 (1).

Alternatives

The first part of the following discussion addresses what the Department is doing now relative to reservations of water. The second part of the discussion suggests additional efforts that could be taken on this matter.

The Division 77 rules are designed to operate outside the basin planning process even though reservations are adopted by amending a basin program. This allows agencies to approach the Commission whenever instream or reservation needs or data become available or known. If the Commission also wants to establish specific reservations as a part of basin planning, it may do so just as it may establish minimum streamflows on its own initiative. In that case, the Commission could take the informal expressions of future need and determine the extent to which a reservation would be in the public interest.

Regardless of the basin planning issue, the Division 77 rule on reservations needs to be fleshed out. Additional rules should specify information requirements to support reservation requests and the format such requests should take. Standards for review should also be spelled out.

Staff is currently computing water availability in the Willamette and Sandy basins. Based on the computed figures and identified needs, staff will draft classifications, reservations, or withdrawals that govern future appropriation. These actions will protect flows where necessary and provide the framework for agencies to submit requests for reservations or

instream water rights or both. Specific requests can then be processed under the rules adopted for that purpose whenever an agency is prepared to forward the request.

All of the suggestions in Commissioner Howland's reservation procedure proposal are worthwhile. Each suggestion applies equally well to a reservation approach within or outside the scope of basin planning. In fact, as Commissioner Howland points out, several of the suggestions are already incorporated in Division 77 rules.

Regular department procedures and specific planning efforts in progress parallel, to a degree, several of the proposed procedures. For example, public notice of every instream water right application (proposal item #2) is sent to all county planning directors and a number of state and federal agencies as well. Of the three agencies Commissioner Howland suggested be notified, the Departments of Agriculture and Economic Development are not on the regular mailing list. As noted earlier, directors of eleven state agencies were notified and requested to indicate interest in reservations in the Willamette/Sandy. This reflects the suggestion in Commissioner Howland's proposal item #4.

Reservation procedure proposal item #3 is basically a requirement in the instream water right rules OAR 690-77-045 (b), (c), and (d). By rule, a determination on more beneficial water uses must be made for each instream water right application.

As staff continues developing information upon which to base water allocation in the Willamette/Sandy, it will have repeated contact with state and local agencies concerning reservations. This reflects the level of contact advocated in procedure proposal #5. If agencies do not articulate an interest in reservations, it will not be for lack of opportunity, notice or prompting from the Department.

An additional avenue of solicitation for reservations being used in the Willamette/Sandy is through the planning work groups. The summary of the October 11 Sandy Work Group meeting, included in Attachment 4 to Agenda Item K, reflects a discussion on the matter of reservations. As specific allocation proposals are developed, additional discussions on reservations can be expected.

The emphasis Commissioner Howland places on interagency communication (proposal item 1) at the Commission's and Director's level is a valuable prescription for any aspect of basin planning. This approach may be more successful if the message is focused on a single concept or opportunity. Another forum for exchange, the Strategic Water Management Group, should not be overlooked.

The Commission and Department may want to review the application notice process referenced above. It may be appropriate to add the Departments of Agriculture and Economic Development to the regular public notice list. Standard language could be included in any public notice of new instream water right applications advising agencies of the chance to propose other uses in the public interest.

The development of water allocation rules is scheduled during this biennium. This rulemaking process will provide the opportunity to include detailed instructions on the consideration of reservations in future allocation activities. Those aspects contained in

Commissioner Howland's reservation procedure proposal not currently being carried out could be written into the new allocation rules.

A more intensive approach to the issue of reservations of water could involve a program shift. If the Commission believes the current method of addressing reservations in the basin planning process is not as focused or timely as necessary, it may want to consider a more direct approach. The Commission could initiate a concentrated program of reviewing reservation requests statewide. Such a concerted effort would be similar to the legislative directive in SB 225 from the 1983 session. In response to that bill, a team of four to five staff spent two years processing requests for 75 high-priority minimum streamflows around the state. A similar effort on reservations now would necessarily divert staff away from some existing program(s).

Director's Recommendation

This is an informational report describing the Department's function and activities on reservations of water. The report may serve as basis for further discussion. No formal action by the Commission is necessary.

Attachments: 1. Commissioner Howland's Reservation Procedure Proposal

NOT INCLUDED 2. ODFW, DEQ, and Parks List of Streams of Interest for Instream Water Rights

3. Letter and List of Information Requirements for Reservations Sent to Department of Agriculture

Steve Brutscher
378-3671
October 26, 1989

RESERVATION OF WATER FOR FUTURE DEVELOPMENT
A Procedure proposal 9/29/89

1. Through the Director's and staff member's meetings with State agency heads impress upon the agencies the importance of requesting reservations of water now.

    a. Have Water Resources Commission members attend other state commission meetings to carry the message if necessary.

2. In connection with the review of all in stream water right requests, immediately adopt a policy of requesting from other agencies that may be concerned their assessment of any planned uses of the water that could provide greater benefit to the public.

    a. In each case Departments of Agriculture and Economic Development together with any department that might have an interest. An example: the Department of Geology and Mineral Industries.
    b. Basis: OAR 690-77-045 (2) (b)

3. Also in connection with review of in stream water right applications the Water Resource Department staff and the other agencies should evaluate as to whether or not greater benefit to the public will be gained by dedicating all of the unappropriated water to another use.

    a. Basis: OAR 690-77-045 (3) (c)

4. As each basin program is reviewed, ask the other agencies with water use concerns (such as those listed in 2a, above) to request water reservations for future economic development.

    a. Such as the information received from the Department of Agriculture on future irrigation needs in the Willamette Basin.
    b. Basis: OAR 690-77-200 (1)

5. Establish through staff study and requests to other State Departments particular needs for water reservations for economic development throughout the state and proceed to amend the basin plans involved.

    a. Basis: OAR 690-77-200 (1)

STATE OF OREGON | INTEROFFICE MEMO

RECEIVED
FEB 13 1990
Water Quality Division
of Environmental Qu...

TO: Fred Hansen, Director DEQ DATE: February 9, 1990

FROM: Bill Young, Director WRD

SUBJECT: Instream flow/water quality protection meeting February 5, 1990.

When we met Monday, Water Resources staff outlined several ways that DEQ can prompt protection of streamflows needed for water quality. This memo summarizes the major points of that discussion.

Rules

Since October 28, 1989, (one year after rule adoption) WRD cannot accept an instream water right application from DEQ until DEQ adopts rules. DEQ rules must set the method for determining water quality flow needs. ODFW has such rules for fish and wildlife flow needs. Parks is drafting its rules for recreation and scenic flow needs.

Instream Water Right Application

After rules are adopted DEQ may submit applications whenever it is prepared to do so.

The allowable level of an instream water right is limited by natural flow or the ability to supplement natural flow. It is not limited by the amount of prior appropriation.

Existing Protection

Many water quality limited streams are already protected by use restrictions or instream water rights. Steve Brutscher and Steve Applegate can help identify existing protections. Minimum streamflows originally set for fish were reviewed by DEQ and, at the time, generally seemed adequate for water quality. Those existing flows established a public right at some level on most identified or suspected water quality limited streams. This knowledge may help you set priorities for your efforts to bring water quality matters to the Water Resources Commission.

Permit Conditions

The DEQ Water Quality Division Administrator receives weekly notice of all new water right applications.

DEQ is encouraged to contact WRD and describe any concerns when an application may impair water quality. We can prepare a Memo of Understanding that sets the process for communicating comments if necessary. This has been helpful with ODFW. ODFW routinely requests limits or conditions to protect fish resources. Such conditions are typically negotiated with the applicant and seldom require a contested case. We will send the weekly notice directly to Neil Mullane in the future. Please work with John Borden and Steve Applegate if you want to prepare a Memo of Understanding.

Basin Program Amendment

If you have data delineating the time of year when water quality problems are occurring you may petition the Commission to restrict future appropriations during that period. The restriction would allow DEQ to develop the Total Maximum Daily Loads and instream water right applications without competition from other applications. A rule withdrawing water from appropriation may be for a specified length of time and may apply to all or selected uses.

Reservations

Another option discussed is for DEQ to request a reservation of water for "future economic development" as water needed for pollution abatement. We are not certain how this tool applies, but if it fits the situation it would allow DEQ to reserve water for a future instream water right application. In this instance the amount of unallocated water may be a factor in the amount of the reservation.

The Water Resources Department is ready to assist DEQ in protecting streamflows needed to maintain water quality. Many situations, like the Tualatin, will require a long term fix. We can work now to stop the problem from getting worse by proceeding on the courses of action outlined above.

cc: Peter Green
Neil Mullane
John Borden
Becky Kreag
Bev Hayes
Steve Applegate
Steve Brutscher

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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WORK SESSION
REQUEST FOR EQC DISCUSSION

Meeting Date: March 1, 1990
Agenda Item: #3
Division: Water Quality
Section: Standards and Assessment

SUBJECT:

Dioxin and Total Chlorinated Organics

PURPOSE:

This work session item is to provide an update on the activities of the Commission and Department regarding dioxin and total chlorinated organics. The report briefly describes current activities on:

- Short, Medium, and Long Term Strategies
- Options for Public Forum
- Status of Regulatory Actions
- Columbia River TMDL Progress Report

ACTION REQUESTED:

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

___ Authorize Rulemaking Hearing
___ Adopt Rules

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

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

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

DESCRIPTION OF REQUESTED ACTION:

No action is requested. This report is an update on progress.

AUTHORITY/NEED FOR ACTION:

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

___ Other: — Attachment ___

___ Time Constraints: (explain)

DEVELOPMENTAL BACKGROUND:

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

1. Memo outlining ideas for short, medium, and long term strategies — Attachment A

2. Permit Evaluation Reports — Attachment B

3. Individual Control Strategies — Attachment C

4. Columbia River Draft Total Maximum Daily Load — Attachment D

5. DEQ review comment on EPAs proposed TMDL — Attachment E

6. Chairman Hutchison Letter on Policy Forum — Attachment F

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

This is a work session item for the general discussion of activities related to dioxin and total chlorinated organics.

PROGRAM CONSIDERATIONS:

Short, Medium and Long Term Strategies

Attachment A provides the Commission with a series of items that are placed into short, medium, and long term strategies for addressing both dioxin specifically and total chlorinated organics in general. These are presented for review and discussion purposes to the Commission. They are in draft form and need considerable review and comment.

Options for Public Forum

Attachment F contains the Chairman's letter related to the dioxin and total chlorinated organics policy forum. An exploratory meeting will be held in late February to discuss the forum idea. Results of this meeting will be discussed during this work session item.

Status of Regulatory Actions

Attachment C contains the final Individual Control Strategies for the bleach pulp mills. Attachment B contains the permit evaluation reports which go into considerable detail on these permits and the technical rational behind them.

Columbia River TMDL Progress Report

The Environmental Protection Agency prepared a draft TMDL (total maximum daily load) for review in late December (Attachment D). This draft reflects EPAs thinking at that time. The Department has reviewed that draft and provided EPA with detailed written comments (Attachment E). The

Department and the Washington Department of Ecology have also met with EPA to review the proposed TMDL. The next draft of the TMDL and a revised review and public hearing schedule should be available for the work session in March. The Department plans to hold a TMDL workshop approximately a week before the public meeting to be held on the Columbia River dioxin TMDL. The purpose of this meeting would be to help people understand what a TMDL is so that they can better review the proposed Columbia River TMDL.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The Department and Commission are discussing current and future activities which are intended to be part of the strategic plan and within legislative and agency policy.

ISSUES FOR COMMISSION TO RESOLVE:

No specific issues are before the Commission for resolution.

There are however a considerable number of issues associated with the establishment of the Columbia River dioxin TMDL which are identified in Attachment E.

INTENDED FOLLOWUP ACTIONS:

1. Review the identified strategies.

2. Hold a public forum on dioxin and total chlorinated organics.

3. Work with EPA to finalize the dioxin TMDL for the Columbia River.

4. The Department plans to hold a general workshop on what is a TMDL and why are they used as a regulatory tool about a week before the public meeting on the Columbia TMDL.

Approved:

Section: Neil J. Mullane

Division: Lydia Taylor

Director: Fred Hansen

Report Prepared By: Neil Mullane

Phone: 229-5284

Date Prepared: 2/18/90

NMullane:crw
SA\WC6221
2/18/90

STATE OF OREGON ATTACHMENT A

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

DATE: February 4, 1990

TO: Lydia Taylor
Fred Hansen
Gene Foster

FROM: Neil Mullane

SUBJECT: Short, Medium and Long Range Strategies for TCDD and Total Chlorinated Organics

The Environmental Quality Commission (EQC) and the Department of Environmental Quality (DEQ) have held several discussions regarding TCDD (Dioxin) and total chlorinated organics during the last few EQC meetings. There are numerous facets to the TCDD and total chlorinated organics issue all of which need to be pursued or tracked in some manner to determine if contamination is being adequately addressed. The staff at DEQ has organized these many items into and overall strategy with an identification of those items which should be initiated, conducted or addressed in the short, medium, and long range. As much information that we have available at this time was used to develop this memo. Many of these issues however need to be discussed further before more detail can be provided particularly on the resources needed and time schedule.

SHORT RANGE STRATEGIES FOR DIOXIN AND TOTAL CHLORINATED ORGANICS

Short range strategies are the steps which can be taken in the next 12 months. These strategies would address point source control, fate and effect issues, and TMDL and standards for TCDD and other chlorinated organics discharged. The strategies would include coordination with other agencies and public involvement.

1. INDIVIDUAL CONTROL STRATEGIES

Individual control strategies (ICSs) have been developed by DEQ for the three chlorine bleach pulp mills that discharge to the Columbia and Willamette Rivers. The ICSs establish a waste load allocation (WLA) for TCDD that each mill must meet. The WLAs were established using the current draft of the total maximum daily load being determined by EPA for TCDD discharges

into the Columbia River. The WLAs represent a substantial reduction in the amount of TCDD discharged by the mills into the rivers. The permits also limit AOX (a measurement of total adsorbable organic halides) being discharged. The AOX limit reflects the concern with total chlorinated organics. Limit is based on the technology employed. The ICSs have been signed by the DEQ and submitted to EPA for concurrence.

Resources - The resources available to the Department to conduct this activity are limited to those fees paid by the permitted sources.

Schedule - The DEQ will sign and submit the statutorily required ICSs on the first working day following 2/4, which is the statutory deadline.

2. SEDIMENT SAMPLING

The DEQ will immediately pursue funds to collect sediment samples in the Columbia and Willamette Rivers that will be analyzed for the presence of TCDD

Resources - The Department has a very limited amount of funds to collect sediment samples.

Schedule - Sampling will be conducted the summer of 1990.

3. FISH TISSUE COLLECTION AND ANALYSIS

The DEQ will continue to support studies by other agencies to determine the effects and accumulation of TCDD and other chlorinated organics in fish.

Resources - The Department has secured funding of $17,250 and $25,000 for the investigation of TCDD residue levels found in samples collected from the Columbia and Willamette Rivers, respectively.

Schedule - Samples to be collected in spring/summer of 1990 with sample results reported in winter of 1990.

4. BIOACULMULATION

Attachment A

The DEQ needs to track the evaluation of the bioaccumulation factor used in establishing the water quality standard.

Resources - none

Schedule - should be done as soon as possible

5. PUBLIC FORUM / SCIENTIST / ENVIRONMENT

The DEQ will hold a public forum on TCDD issues designed to solicit and exchange information on the sources and effects of TCDD.

Resource - none budgeted

Schedule - discussion of what a forum should be is scheduled for late February.

6. LOG AVAILABLE INFORMATION

The DEQ has established a log of the information that has been submitted, evaluated, and developed by the Department. This log has been made available to the state library.

Resources - 0.1 FTE Clerical

Schedule - Log has been established. It has to be maintained.

7. ESTABLISH TOTAL MAXIMUM DAILY LOAD

The Environmental Protection Agency has drafted a total maximum daily load for the Columbia River. They are currently in the process of refining the latest report and there will be a public review process initiated sometime in late February or early March. DEQ has commented on the first draft. DEQ will also conduct a public information workshop on the TMDL process in general prior to the date of EPAs the public hearing.

Resources - EPA has taken the lead role in establishing the TMDL. DEQ has no resources to commit to this activity.

Schedule - draft TMDL 12/22

- Review comments January
- Final draft February
- DEQ TMDL workshop late March
- EPA public hearing late March or early April

8. STANDARDS REVIEW PROCESS

The DEQ is currently conducting its triennial standards review. The Water Quality Act requires each state to review its water quality standards every three years. DEQ began its review in December 1989. It will be during this review process that the DEQ will evaluate information provided by groups requesting a review of the TCDD standard.

Resources - DEQ has budgeted resources to conduct the triennial standards review.

Schedule - public review of issues papers in April
- request authorization for public rulemaking hearing at EQC meeting in June,
- conduct hearing in July
- proposed adoption in September

9. PERMIT RENEWAL FOR PULP MILLS

The current ICSs are being established as modifications to existing wastewater permits for the pulp mills or St Helens which receives the wastewater from one of the pulp mills. Each of these permits needs to be renewed in the next year.

Resources - Permit fees

Schedule - Not yet determined.

10. 401 WATER QUALITY CERTIFICATIONS

The DEQ is required under the Section 401 certification program to determine if a dredging project will meet water quality standards. The DEQ will require any in channel dredge project develop and implement a sampling program to determine the level and fate of TCDD in the

dredge sediments in waterbodies suspected to contain dioxin. The Department will require TCDD analysis for in-water disposal of dredged material that meet the requirements for sediment chemistry testing.

Resource - Preformed by project sponsors.

Schedule - Ongoing

11. Additional Studies

U.S. Fish & Wildlife, OSU, OSU/BPA have expressed interest in conducting studies in the basins to identify fate and/or effects of TCDD and other chlorinated organics. The Department will continue actively supporting these studies.

Resources - None budgeted

Schedule - Determined as studies are initiated

12. HEALTH DIVISION EVALUATION OF THE FISH TISSUE ADVISORY LEVELS

The Oregon State Health Division is currently conducting an analysis of the fish tissue data collected during the national bioaccumulation study and the recently completed pulp industry study to determine the health risk of consuming fish from the Columbia River.

Resources - Unknown

Schedule - Unknown

13. LAWSUITS / STANDARDS / ICSs

The DEQ anticipates that there will be a number of legal actions taken against the DEQ and EQC on the issues related to TCDD and AOX. This includes the water quality standard and ICSs.

Resources - None budgeted

Schedule - Unknown

14. CROSS MEDIA DISCUSSIONS

The reduction of TCDD in the environment is not a water quality issue exclusively. The other media programs within DEQ also have to control the discharge of the chemical. The Air Program for example must look to control potential air emissions and the Environmental Cleanup Division must identify potential NPL sites discharging TCDD to the environment and then eliminate these sources.

Resources - none budgeted

Schedule - First meeting 2/23/90

15. SCIENCE ADVISORY BOARD

The DEQ should establish a standing science advisory board which could review and comment on the information developed on the various toxic contamination studies particularly TCDD studies.

Resources - None budgeted. The staffing of a board of this nature would be about .25 FTE. The Department does not currently have this level of resource to give this effort without reducing or eliminating a current commitment.

Schedule - Unknown

16. FREQUENT BRIEFINGS TO EQC AND LEGISLATIVE COMMITTEES

The DEQ will continue to brief the EQC and Legislature on the progress made to control TCDD discharges and study its presence and other toxics and their effect on the environment.

Resources - .25 FTE can be redirected to this effort. If more than .25 FTE is needed other work commitments will have to be delayed or eliminated to provide the resources.

Attachment A

Schedule - Ongoing

17. REVIEW OF STUDIES AND LITERATURE

The DEQ needs to continuously review the studies and literature on all sources of dioxin and total chlorinated organics.

Resources - None budgeted

Schedule - Should be an ongoing activity

MEDIUM RANGE STRATEGIES FOR DIOXIN AND TOTAL CHLORINATED ORGANICS

Medium range studies would be 12 to 24 months in length.

1. REFINEMENT OF THE TCDD TMDL

The EPA is currently working to develop a total maximum daily load (TMDL) for TCDD discharged to the Columbia River. The intent of this effort is to determine the maximum amount of TCDD which can be discharged to the Columbia River and still meet the instream water quality standard of 0.013 parts per quadrillion. This standard was set for human health protection. However, there is very little information on the actual loads coming from the potential sources that could be discharging to the river. Much more needs to be known about the other potential sources if appropriate WLAs are to be made. This information would also provide an indication as to whether the assumption being made for the safety margin are reasonable and correct.

Resources - None budgeted

Schedule - Should be initiated as soon as possible

2. TISSUE AND SEDIMENT SAMPLING

A comprehensive tissue and sediment sampling effort needs to be established. This effort should attempt to coordinate the many different studies being conducted or

planned to effectively obtain the need information.

Resources - None budgeted

Schedule - Should be initiated as soon as possible

3. EXTENSIVE STUDIES OF THE COLUMBIA AND WILLAMETTE RIVERS

Studies need to be planned and conducted in the Columbia and Willamette rivers which examine the potential effects of toxic contamination including TCDD on the environment. The Department is currently developing general study plans for both rivers.

Resources - The cost estimates range from $500,000 to over a $1,000,000 per year for these studies

Schedule - Should be started as soon as possible.

4. IDENTIFICATION OF OTHER DIOXIN SOURCES

Most of the information developed to date has centered around the bleach pulp mills in the United States. However there are several other potential sources of TCDD including: bleach pulp mills in Canada, waste water treatment plants which chlorinate their effluent, nonpoint source activities like agriculture and forestry where chlorinate organic pesticides and herbicides or used, wood treatment facilities, super-fund sites, municipal sewage treatment plants and urban areas. All of these sources need to be examined over time to determine their contribution. In the mean time gross allotments of waste loads must be made on the information we have to date.

Resources - None budgeted

Schedule - As soon as possible

5. EVALUATE AOX MONITORING DATA FROM THE PERMITTED FACILITIES

The current ICSs require the pulp mills to meet an AOX limitation as well as collect data on AOX. The DEQ has

to evaluate this information along with the mills to determine how effective the plants are in reducing AOX in the waste stream.

Resources - unknown

Schedule - unknown

6. CONDUCT FORUMS / WORKSHOPS

The DEQ should hold regular Forums and workshops to review the information and data developed through the studies of toxics and TCDD.

Resources - none budgeted

Schedule -

7. OBTAIN AND EVALUATE DIOXIN INFORMATION FROM OTHER STATES

There are many states which are working to evaluate to effects of TCDD. This information must be collected and evaluated.

Resources - none budgeted

Schedule -

8. DEVELOP POLICIES AND POTENTIAL LEGISLATIVE CONCEPTS TO ADDRESS THE USE OF CHLORINE AND CHLORINE FREE PRODUCTS

Resources -

Schedule -

9. EVALUATION OF PULP TREATMENT SLUDGE

Current ICSs require 2,3,7,8- TCDD and AOX to be monitored.

Resources -

Schedule -

10. ESTABLISH A COMPLIANCE MONITORING PROGRAM

Resources - none budgeted

Schedule -

LONG RANGE STRATEGIES FOR DIOXIN AND TOTAL CHLORINATED ORGANICS

The long range strategies/issues are of 2 to 4 years or more in length. Because very little is known about these only the issue is listed at this time. There are no resource estimates or time schedules.

1. DEVELOP AND IMPLEMENT WATER QUALITY MANAGEMENT PLAN TO KEEP POLLUTANTS OUT OF THE COLUMBIA AND WILLAMETTE RIVERS

The long range plan needs to be the development of an updated Water Quality Management Plan for the Columbia and Willamette rivers.

2. ELIMINATE THE USE OF CHLORINE BLEACH IN THE PULP PROCESS

3. IMPLEMENT A COMPLIANCE MONITORING PROGRAM

4. DETERMINE NEED FOR AND ESTABLISH AS NECESSARY TMDLs FOR OTHER POLLUTANTS

5. INFORMATION GATHERING AND REVIEW

PERMIT MODIFICATION EVALUATION REPORT

(Individual Control Strategy for Dioxin)

For the Pope & Talbot, Inc. Pulp and Paper Mill
at Halsey, Oregon

February 15, 1990

The Department issued an Individual Control Strategy (ICS) as a permit modification to Pope & Talbot, Inc. on February 5, 1990 for controlling the discharge of 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) into the Columbia River and its tributaries.

National Pollutant Discharge Elimination System permit number 100413, issued to Pope & Talabot Pulp, Inc. on December 28, 1987, expires December 31, 1992. The permit will expire before the last compliance date (June 4, 1993) specified in the ICS for the mill.

The ICS was the subject of a public hearing held on January 12, 1990. It has been revised after giving consideration to the oral and written testimony submitted by the permittee and the public at the hearing and during the comment period. The original ICS contained limitations for biochemical oxygen demand (BOD), total suspended solids (TSS), color, pH and fecal coliform and required biomonitoring, in addition to the limitations introduced for TCDD and adsorbable organic halogens (AOX). To narrow the focus of the issues being considered now, the revised ICS includes only limitations introduced for TCDD and adsorbable organic halogens (AOX).

The intent of this permit evaluation report is to state the basis for the revised ICS. Reference is made to the original ICS where necessary for clarification.

SCHEDULE A: Waste Discharge Limitations

A discharge limitation for TCDD has been added to Schedule A. The limitation is based upon a draft report prepared by the Environmental Protection Agency (EPA) which established total maximum daily load (TMDL) and individual waste load allocations (WLAs) for TCDD in the Columbia River and its tributaries. The draft WLA for the Halsey mill is presently set at 4.4 x 10-7 lbs per day (0.2 mg per day). This discharge limitation will be increased or decreased, as necessary, once the final WLA is established by EPA.

The mass discharge limitation for TCDD that appeared in the original ICS was derived from a different basis than was used by EPA. It was based upon meeting the instream water quality standard for TCDD of 0.013 parts per quadrillion (ppq) at the mixing zone boundary. The discharge limitation was then back-calculated from the dilution provided by the mixing zone and the effluent flow rate to meet the water-quality standard. The mass discharge limitation that appeared in the original permit modification was 4.36 x 10-7 lbs per day which was, coincidentally, nearly equal to the EPA WLA.

Two approaches are presented for determining compliance with the TCDD discharge limitation.

The first approach would be to measure the concentration of TCDD directly at Outfall 001 and then determine the mass discharge rate by multiplying this concentration by the effluent flow rate. Current analytical limitations make this approach difficult. To determine compliance with the discharge rate limitation of 4.4 x 10-7 lb per day at the mill's present discharge rate of 14 million gallons per day, the corresponding effluent concentration of 3.8 ppq would have to be measurable. The Department believes that, although this concentration may not be routinely measurable now, it will be in the future based on the advances being made in analytical measurement techniques.

The second approach would be to determine the concentration of TCDD in the combined bleach plant sewer (BPS) and calculate the corresponding mass discharge rate of TCDD at Outfall 001. The Department considers the permittee to be in compliance if the mass discharge from the BPS is equal to or less than 1.1 times the WLA assigned to Outfall 001 ($1.1 \times 4.4 \times 10^{-7} = 4.8 \times 10^{-7}$). The factor of 1.1 is a result of the Department's assumption, until further information is available, that TCDD will be reduced 10 percent as wastewater passes through the treatment works.

The ICS establishes procedures for determining the concentration of TCDD in the bleach plant sewers. First, a bleach plant effluent target concentration shall be determined for each sample. The target concentration is equal to 1.1 x WLA (lb/day) divided by the product of the bleach plant effluent flow (mgd) and the conversion factor of 8.34 x 10-9. Based on limited information, the Department estimates that the target concentration for the Halsey mill bleach-plant effluent will be approximately 9 ppq.

Second, an analytic detection limit shall be determined for each sample. If the detection limit is found to be greater than the target concentration, the analysis is considered invalid and the sample must be reanalyzed. The Department believes that detection limits of 10 ppq or less are attainable. The James River Corporation presented information to the Department on TCDD analyses conducted in November of 1989. They reported the results

of 9 samples that were analyzed to determine the performance of different laboratory bleaching sequences. The range of detection limits reported was 4.8 to 9.9 ppq with an average detection limit of 6.6 ppq.

If the detection limit for a sample is found to be less than or equal to the target concentration, samples that yield a concentration equal to or greater than the detection limit shall be reported as the measured concentration. Samples that yield a nondetectable concentration shall be reported as the detection limit. Individual samples that yield a nondetectable concentration using the above methodology, and are reported as the detection limit, would be in compliance.

The original ICS established TCDD concentration limits in the combined bleach plant effluent and in the effluent from Outfall 001 of "nondetectable". The detection limit was defined as 10 ppq. Direct concentration limits for TCDD do not appear in the revised ICS because the discharge limitation is now based on a WLA approach and not a mixing zone approach as discussed above. The effluent concentration at Outfall 001 will be limited by the WLA and the total effluent flow rate. A WLA of 4.4 x 10-7 lbs per day and an effluent flowrate of 14 mgd would have a corresponding effluent concentration at Outfall 001 of 3.8 ppq.

A mass discharge limitation for AOX has been added to the permit based on the best professional judgement (BPJ) report prepared by the Department (attached). The original and the revised ICS both establish a discharge limitation for AOX of 3.0 lb per air dried short ton (1.5 kg per metric ton) of bleached kraft pulp produced by the mill.

The Department assumes that the AOX concentration in Outfall 001 is great enough to be measured directly and compliance will be based on those measurements.

The discharge limitation for TCDD must be met by June 4, 1992. An additional year has been given for meeting the AOX limitation, considering that the information available on AOX is currently limited. The discharge limitation for AOX must be met by June 4, 1993.

SCHEDULE B: Minimum Monitoring and Reporting Requirements

Monitoring requirements for TCDD and AOX are added to Schedule B for both wastewater effluent and primary and secondary waste sludges.

TCDD shall be measured in the effluent and waste sludges at least quarterly upon issuance of the ICS. This relatively low frequency was established by considering the limited number of laboratories

performing TCDD analysis, the time it takes to get analytical results back from the laboratory, and the cost of the analyses.

AOX shall be measured in the effluent and waste sludges at least monthly upon issuance of the ICS. Different frequencies for monitoring AOX and TCDD have been established because of the differences in analytical procedures required for measuring the two substances. The analytical procedures for measuring AOX are routine when compared to the procedures for measuring TCDD. The method for collecting effluent samples has been changed in the revised ICS. The original ICS required 24-hour composite samples. The revised ICS requires 3-day composite samples. The period of the sample collection has been increased to dampen the effect of daily fluctuations and obtain more representative samples.

TCDD monitoring frequency increases from quarterly to monthly and AOX monitoring frequency increases from monthly to weekly after January 1, 1992, prior to the Schedule A TCDD compliance date of June 4, 1992.

The procedures for sampling waste sludge have been made more specific in the revised ICS. Sludge removed from the stabilization basin shall be analyzed for AOX and TCDD prior to disposal. Representative sampling shall be ensured by compositing samples of the waste sludge and thoroughly mixing prior to testing.

SCHEDULE C: Compliance Conditions and Schedules

Schedule C requires a study to be conducted to evaluate the mixing of plant effluent with ambient river water. The study plan and study results are to be submitted to the Department by August 1, 1990 and January 1, 1991, respectively. The purpose of the study is to evaluate the degree of mixing and dilution that is occurring, the condition and performance of the existing outfall and diffuser system, and the appropriateness of the currently defined mixing zone with respect to TCDD, AOX, and other pollutants of concern.

Schedule C also restates the compliance dates for meeting the discharge limitation for TCDD by June 4, 1992, and AOX by June 4, 1993. Quarterly progress reports are required beginning June 1, 1990. The progress reports shall include information on all efforts, including process changes and chemical substitutions, made to achieve compliance.

SCHEDULE D: Special Conditions

Special Condition 8 has been added to Schedule D to allow further evaluation of the AOX limit after additional information is

available. The Department's BPJ determination was based on limited laboratory bleaching studies, recent literature, and information on efforts being made internationally to reduce the discharge of chlorinated organics.

Special Condition 10 has been added to allow best available technology (BAT) effluent limits to be incorporated into the permit once they are established by EPA. These limits would be achieved according to the time frame established in the Clean Water Act and amendments.

PERMIT EVALUATION REPORT

National Pollutant Discharge Elimination System permit number 3754-J, issued to James River II Inc. for operation of the Wauna mill, has a listed expiration date of September 30, 1988. The Department does not consider the permit expired, however, since according to the Oregon Administrative Procedures Act (ORS 183.430), if a renewal application has been received in a timely way "such license (permit) shall not be deemed to expire, despite any stated expiration date thereon, until the agency concerned has issued a formal order or grant of denial of such renewal". The Department of Environmental Quality has not issued such an order.

The federal deadline (February 4, 1990) for completing individual control strategies (ICSs) for controlling the discharge of 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) into the Columbia River and tributaries has taken precedence over the permit renewal. The Department intends to issue a permit modification as the ICS to meet the federal deadline. The permit will be renewed as soon as possible following the issuance of the permit modification (ICS).

The ICS was the subject of a public hearing held on January 12, 1990. It has been revised after giving consideration to the oral and written testimony submitted by the public at the hearing and during the comment period. The original ICS contained limitations for biochemical oxygen demand (BOD) total suspended solids (TSS), temperature, pH, and requirements for biomonitoring, in addition to the limitations introduced for TCDD and adsorbable organic halogens (AOX). To narrow the focus of the issues being considered now, the revised ICS only addresses limitations and conditions related to the discharge of TCDD and AOX.

All other permit considerations will be evaluated as part of the permit renewal process. All existing permit conditions for BOD, TSS, temperature, pH, and biomonitoring will remain in effect until the renewed permit is issued. A public hearing and comment period will be scheduled on the draft renewal permit.

The intent of this permit evaluation report is to state the basis for the revised ICS. Reference is made to the original ICS where necessary for clarification.

SCHEDULE A: Waste Discharge Limitations

A discharge limitation for TCDD has been added to Schedule A. The limitation is based upon a draft report prepared by the Environmental Protection Agency (EPA) establishing a total maximum daily load (TMDL) and individual waste load allocations (WLAs) for TCDD in the Columbia River and tributaries. The draft WLA for the James River Wauna Mill (based on the existing bleached kraft pulp production of 796 tons per day) is 8.82×10^{-7} lbs per day (0.4 mg per day). This permitted discharge limitation will be changed, if necessary, once the final WLA is established by EPA for the Wauna mill.

The discharge limitation for TCDD that appeared in the original permit modification had a different basis. It was based upon meeting the instream water quality standard for TCDD of 0.013 parts per quadrillion (ppq) at the mixing zone boundary. Using this approach, the discharge limitation was back calculated from the dilution provided by the mixing zone and the effluent flow rate. The discharge limitation that appeared in the original permit modification was 2.7×10^{-6} lbs per day (1.2 mg per day).

Two approaches are presented in the permit modification for determining compliance with the discharge limitation. The first approach would be to measure the concentration of TCDD directly at Outfall 001 and then determine the mass discharge rate by multiplying this concentration by the effluent flow rate. Current analytical capabilities make this approach difficult, however. To determine compliance with the discharge rate limitation of 8.82×10^{-7} lb per day at an effluent flow rate of 38 million gallons per day, an effluent concentration of 2.8 ppq would have to be measurable. We believe that although this concentration may not be routinely measurable now, it will be in the future based on the advances being made in analytical measurement techniques. The second approach is to calculate the mass discharge rate. The calculated mass discharge rate is defined as the difference between the mass rate of TCDD discharged from the bleach plant sewers and the mass rate of TCDD removed from the treatment works through removal of primary and secondary sludge.

The original ICS established TCDD concentration limits in the combined bleach plant effluent and in the effluent from Outfall 001 of "nondetectable". The detection limit was defined as 10 ppq. Direct concentration limits for TCDD do not appear in the revised ICS because the discharge limitation is now based on a WLA approach and not a mixing zone approach as discussed above. The effluent concentration at Outfall 001 will be limited indirectly by the WLA and the total effluent flow rate. A WLA of 8.82×10^{-7} lbs per day and an effluent flowrate of 38 mgd would have a corresponding effluent concentration at 001 of 2.8 ppq.

A waste discharge limitation for AOX has been added to the permit based on the best professional judgement (BPJ) report prepared by the Department (attached). The original and the revised ICS establish a discharge limitation for AOX of 3.0 lb per air dried ton of bleached kraft pulp produced (1.5 kg per metric ton).

The discharge limitation for TCDD must be met by June 4, 1992. An additional year has been given for meeting the AOX limitation considering that the information available on AOX is currently limited. The discharge limitation for AOX must be met by June 4, 1993.

SCHEDULE B: Minimum Monitoring and Reporting Requirements

Monitoring requirements for TCDD and AOX are added to Schedule B. Monitoring is required at four separate locations. The quantity of TCDD and AOX shall be measured in: (1) the combined effluent from the bleaching plant, (2) the waste sludge from the primary clarifier, (3) the waste sludge from the secondary clarifier, and (4) the effluent from Outfall 001.

Two minimum frequencies for monitoring TCDD at the locations identified above are specified. Upon issuance of the ICS, TCDD shall be monitored quarterly. This frequency was established by considering the limited number of laboratories performing TCDD analysis, the time it takes to get analytical results back from the laboratory, the cost of the analyses, and the fact that the discharge limitations are not effective immediately. The monitoring frequency is increased approximately five months before the discharge limitations are effective. The monitoring frequency is increased to monthly after January 1, 1992. The Department believes that monthly monitoring is necessary for determining annual compliance; twelve measurements give a more reliable representation of annual performance than would four.

Two minimum frequencies for monitoring AOX are also specified. AOX shall be measured at least monthly upon issuance of the permit and at least weekly after January 1, 1992. Different frequencies for monitoring AOX and TCDD have been established because of the differences in analytical procedures required for measuring the two substances. The analytical procedures for measuring AOX are routine when compared to the procedures for measuring TCDD.

The Department has also included a note in the ICS saying that the monitoring frequencies established in the permit may be reduced, after June 1, 1994, if we determine that the frequency is greater than necessary to demonstrate compliance.

The method for collecting effluent samples has been changed in the revised ICS. The original ICS required 24-hour composite samples. The revised ICS requires 3-day composite samples. The period of the sample collection has been increased to dampen the effect of daily fluctuations and obtain more representative samples.

The method for collecting samples of waste sludge have been made more specific in the revised ICS. As waste sludge is drawn out of an individual clarifier, proportional samples shall be collected at regular intervals. These proportional samples shall be combined to form a single composite sample, then mixed thoroughly prior to testing. Waste sludge from the primary and secondary clarifiers shall be collected and analyzed separately.

SCHEDULE C: Compliance Conditions and Schedules

Schedule C requires a study to be conducted to evaluate the mixing of plant effluent with ambient river water. The study plan and study results are to be submitted to the Department by August 1, 1990 and January 1, 1991, respectively. The purpose of the study is to evaluate the degree of mixing and dilution that are occurring, the condition and performance of the existing outfall and diffuser system, and the appropriateness of the currently defined mixing zone with respect to TCDD, AOX, and other pollutants of concern.

Schedule C restates the compliance dates for meeting the discharge limitation for TCDD by June 4, 1992, and AOX by June 4, 1993. Quarterly progress reports are required beginning June 1, 1990. The progress reports shall include information on efforts, including process changes and chemical substitutions, made to achieve compliance.

SCHEDULE D: Special Conditions

Special Condition 7 has been added to Schedule D to allow further evaluation of the AOX limit after additional information is available. The Department's BPJ determination was based on laboratory bleaching studies, recent literature, and information on efforts being made internationally to reduce the discharge of chlorinated organics. Special Condition 7 would allow the limitation for AOX to be changed based on the full-scale operational data specific to the James River Wauna Mill.

Special Condition 8 has been added to Schedule D to restrict the use of chemicals that may act as 2,3,7,8-TCDD precursors.

Special Condition 9 has been added to allow best available technology (BAT) effluent limits to be incorporated into the permit once they are established by EPA. These limits would be achieved according to the time frame established in the Clean Water Act and amendments.

PERMIT EVALUATION REPORT

National Pollutant Discharge Elimination System permit number 3855-J, issued to the City of St. Helens on July 17, 1984, has a listed expiration date of June 30, 1989. The Department does not consider the permit expired, however, since according to the Oregon Administrative Procedures Act (ORS 183.430), if a renewal application has been received in a timely way "such license (permit) shall not be deemed to expire, despite any stated expiration date thereon, until the agency concerned has issued a formal order of grant of denial of such renewal". The Department of Environmental Quality has not issued such an order.

The federal deadline (February 4, 1990) for completing individual control strategies (ICSs) for controlling the discharge of 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) into the Columbia River and tributaries has taken precedence over the permit renewal. The Department intends to issue a permit modification as the ICS to meet the federal deadline. The permit will be renewed as soon as possible following the issuance of the permit modification (ICS).

The ICS was the subject of a public hearing held on January 12, 1990. It has been revised after giving consideration to the oral and written testimony submitted by the public at the hearing and during the comment period. The January 12 version of the ICS contained limitations for biochemical oxygen demand (BOD) total suspended solids (TSS), temperature, pH, and requirements for biomonitoring, in addition to the limitations introduced for TCDD and adsorbable organic halogens (AOX). To narrow the focus of the issues being considered, the revised ICS only addresses limitations and conditions related to the discharge of TCDD and AOX. All other permit considerations will be evaluated as part of the permit renewal process. All existing permit conditions for BOD, TSS, temperature, pH, and biomonitoring will remain in effect until the renewed permit is issued. A public hearing and comment period will be scheduled on the draft renewal permit.

The intent of this permit evaluation report is to state the basis for the revised ICS. Reference is made to the original ICS where necessary for clarification.

SCHEDULE A: Waste Discharge Limitations

A discharge limitation for TCDD has been added to Schedule A. The limitation is based upon a draft report prepared by the Environmental Protection Agency (EPA) establishing a total maximum daily load (TMDL) and individual waste load allocations (WLAs) for TCDD in the Columbia River and tributaries. The draft WLA for the City of St. Helens (based solely on the contribution of TCDD from Boise Cascade Corporation at an existing bleached kraft pulp production of 1035 tons per day) is 1.10×10^{-6} lbs per day (0.5 mg per day). This discharge limitation will be changed, if necessary, once the final WLA is established by the EPA.

The discharge limitation for TCDD that appeared in the original ICS had a different basis. It was based upon meeting the instream water quality standard for TCDD of 0.013 parts per quadrillion (ppq) at the mixing zone boundary. Using this approach, the discharge limitation was back calculated from the dilution provided by the mixing zone and the effluent flow rate. The discharge limitation that appeared in the original permit modification was 8.45×10^{-7} lbs per day (0.38 mg per day).

Two approaches are presented in the ICS for determining compliance with the TCDD discharge limitation.

The first approach would be to measure the concentration of TCDD directly at outfall 001 and then determine the mass discharge rate by multiplying this concentration by the effluent flow rate. Current analytical capabilities make this approach difficult. To determine compliance with the discharge rate limitation of 1.10×10^{-6} lb per day at an effluent flow rate of 38 million gallons per day, an effluent concentration of 3.5 ppq would have to be measurable. We believe that, although this concentration may not be routinely measurable now, it will be in the future based on the advances being made in analytical measurement techniques.

The second approach is for the City of St. Helens to provide data to the Department (according to the analytical and monitoring procedures established in the ICS) showing that the contribution of TCDD by Boise Cascade Corporation to the permittee's treatment works is less than or equal to 1.1 x WLA. The 1.1 factor is a result of the Department's assumption, until further information is available, that TCDD will be reduced 10 percent as wastewater passes through the treatment works.

The ICS establishes analytical procedures for determining the concentration of TCDD in the bleach plant sewers. First, a bleach plant effluent target concentration shall be determined for each sample. The target concentration is equal to 1.1 x WLA (lb/day) divided by the bleach plant effluent flow (mgd) divided by the conversion factor (8.34 x 10-9). Based on limited information, the Department predicts that the target concentration for the Boise Cascade bleach plant effluent will be in the range of 10 to 20 ppq, dependent upon bleach plant sewer flow. Second, an analytical detection limit shall be determined for each sample.

If the detection limit is found to be greater than the target concentration, the analysis is considered invalid and the sample must be reanalyzed. The Department believes that detection limits of 10 ppq or less are attainable. The James River Corporation presented information to the Department on TCDD analyses conducted in November of 1989. They reported the results of 9 samples that were analyzed to determine the performance of different laboratory bleaching sequences. The range of detection limits reported was 4.8 to 9.9 ppq with an average detection limit of 6.6 ppq.

If the detection limit is found to be less than or equal to the target concentration, samples that yield a concentration greater than or equal to the detection limit shall be reported as the measured concentration, samples that yield a nondetectable concentration shall be reported as the detection limit. Individual samples that yield a nondetectable concentration using the above methodology, would be in compliance.

The original ICS established TCDD concentration limits in the combined bleach plant effluent and in the effluent from Outfall 001 of "nondetectable". The detection limit was defined as 10 ppq. Direct concentration limits for TCDD do not appear in the revised ICS because the discharge limitation is now based on a WLA approach and not a mixing zone approach as discussed above. The effluent concentration at Outfall 001 will be limited indirectly by the WLA and the total effluent flow rate. A WLA of 1.10×10^{-7} lbs per day and an effluent flowrate of 38 mgd would have a corresponding effluent concentration at 001 of 3.5 ppq.

A waste discharge limitation for AOX has been added to the permit based on the best professional judgement (BPJ) report prepared by the Department (attached). The limitation for AOX is based solely on the contribution of AOX by Boise Cascade Corporation into the permittee's treatment works. Both the original and the revised ICS establish a discharge limitation for AOX of 3.0 lb per air dried ton of bleached kraft pulp produced by Boise Cascade Corporation (1.5 kg per metric ton).

Two approaches are presented in the ICS for determining compliance with the AOX discharge limitation.

The permittee is in compliance if (1) the mass discharge rate of AOX measured directly at Outfall 001 is less than or equal to 3.0 lbs per air dried ton of bleached pulp produced by Boise Cascade Corporation, or (2) the permittee provides data to the Department (according to the analytical and monitoring procedures established in the ICS)) showing that the contribution of AOX by Boise Cascade Corporation to the permittee's treatment works is less than or equal to 1.2 x 3.0 lbs per air dried ton of bleached pulp produced. The 1.2 factor is a result of the Department's assumption, until further information is available, that AOX will be reduced 20 percent as wastewater passes through the treatment works.

The ICS establishes monitoring procedures for determining the contribution of TCDD and AOX by Boise Cascade Corporation into the permittee's treatment works. TCDD and AOX must be measured in the combined bleach plant effluent. TCDD shall be measured quarterly upon issuance of the ICS and monthly beginning January 1, 1992. AOX shall be measured monthly upon issuance of the ICS and weekly beginning January 1, 1992. All samples shall be 3-day composites.

The discharge limitation for TCDD must be met by June 4, 1992. An additional year has been given for meeting the AOX limitation considering that the information available on AOX is currently limited. The discharge limitation for AOX must be met by June 4, 1993.

SCHEDULE B: Minimum Monitoring and Reporting Requirements

Monitoring requirements for TCDD and AOX are added to Schedule B. Monitoring is required at Outfall 001.

TCDD must be analyzed at least quarterly upon issuance of the ICS. This frequency was established by considering the limited number of laboratories performing TCDD analysis, the time it takes to get analytical results back from the laboratory, the cost of the analyses, and the fact that the discharge limitations are based on the contribution of TCDD by Boise Cascade Corporation the permittee's treatment works. Greater frequencies for monitoring TCDD in the combined bleach plant effluent are required as discussed under Schedule A.

AOX shall be measured at least monthly upon issuance of the ICS. Different frequencies for monitoring AOX and TCDD have been established because of the differences in analytical procedures required for measuring the two substances. The analytical procedures for measuring AOX are routine when compared to the procedures for measuring TCDD. Greater frequencies for monitoring AOX in the combined bleach plant effluent are required as discussed under Schedule A.

The method for collecting effluent samples has been changed in the revised ICS. The original ICS required 24-hour composite samples. The revised ICS requires 3-day composite samples. The period of the sample collection has been increased to dampen the effect of daily fluctuations and obtain more representative samples.

The procedures for sampling waste sludge have been made more specific in the revised ICS. Sludge removed from the stabilization basin shall be analyzed for AOX and TCDD prior to disposal. Representative sampling shall be ensured by compositing samples of the waste sludge and thoroughly mixing prior to testing.

SCHEDULE C: Compliance Conditions and Schedules

Schedule C requires a study to be conducted by the permittee to evaluate the mixing of plant effluent with ambient river water. The study plan and study results are to be submitted to the Department by August 1, 1990 and January 1, 1991, respectively. The purpose of the study is to evaluate the degree of mixing and dilution that are occurring, the condition and performance of the existing outfall and diffuser system, and the appropriateness of the currently defined mixing zone with respect to TCDD, AOX, and other pollutants of concern.

Schedule C restates the compliance dates for meeting the discharge limitation for TCDD by June 4, 1992, and AOX by June 4, 1993. Quarterly progress reports are required beginning June 1, 1990. The progress reports shall include information on efforts made to achieve compliance.

SCHEDULE D: Special Conditions

Special Condition 3 has been added to Schedule D to allow further evaluation of the AOX limit after additional information is available. The Department's BPJ determination was based on laboratory bleaching studies, recent literature, and information on efforts being made internationally to reduce the discharge of chlorinated organics. Special Condition 7 would allow the limitation for AOX to be increased or decreased based on the full-scale operational data specific to the Boise Cascade St. Helens mill.

Special Condition 4 has been added to allow best available technology (BAT) effluent limits to be incorporated into the permit once they are established by the EPA. These limits would be achieved according to the time frame established in the Clean Water Act and amendments.

Permit Number: 100413
Expiration Date: 12/31/92
File Number: 36335
Page 1 of 7 Pages

MODIFICATION

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
WASTE DISCHARGE PERMIT

Department of Environmental Quality
811 Southwest Sixth Avenue, Portland, OR 97204
Telephone: (503) 229-5696

Issued pursuant to ORS 468.740 and The Federal Clean Water Act

ISSUED TO:

Pope & Talbot Inc.
P.O. Box 400
Halsey, OR 97348

SOURCES COVERED BY THIS PERMIT:

Type of Waste	Outfall Number	Outfall Location
Pulp and Paper Process Effluent & Domestic Waste	001	RM 147.4

PLANT TYPE AND LOCATION:

Bleached Kraft Pulp and Paper Mill
Halsey, OR.

RECEIVING SYSTEM INFORMATION:

Basin: Willamette
Sub Basin: --
Hydro Code: 22 - - WILL 147.4 D
Receiving Stream: Willamette River
County: Linn

EPA REFERENCE NO: OR-000107-4

Issued by the Department of Environmental Quality.

Lydia R. Taylor, Administrator — FEB 05 1990 Date

ADDENDUM NO.1

NPDES Permit 100413 (OR-000107-4) is modified to address toxic chemicals in the treated effluent. New conditions are added to Schedule A, B, C & D.

SCHEDULE A

The following limitations are added to Permit Number 100413, Schedule A. They will become effective June 4, 1992.

Parameters	Location	Annual Ave. Loading[1]
2,3,7,8-TCDD[2]	001	4.4×10^{-7} lb per day[3] (0.2 mg per day)

The following limitation is added to Permit Number 100413. It will become effective June 4, 1993.

Parameter	Location	30 Day Ave.Loading
AOX[4]	001	3.0 lb per air-dried short ton (1.5 kg per air-dried metric ton)

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1 The annual average shall be the average of all analytical results from samples collected during the calendar year.

2 2,3,7,8-TCDD is defined as 2,3,7,8-tetrachlorodibenzo-p-dioxin

EPA Method 1613 or an equivalent method acceptable to the Department shall be used to analyze for 2,3,7,8-TCDD. Both the suspended and dissolved fractions of the wastewater shall be included in the analysis.

3 This loading limitation is based upon a draft Waste Load Allocation (WLA) developed by EPA. Once the WLA has been finalized, this limitation will be increased or decreased to reflect the final WLA.

Until the permittee can develop a satsifactory method to demonstrate 2,3,7,8-TCDD compliance at Outfall 001, the permittee will be considered to be in compliance with the specified loading limitation if the mass discharge of 2,3,7,8-TCDD from the combined bleach plant sewer (BPS) is equal to or less than 1.1 times the WLA assigned to Outfall 001 ($1.1 \times 4.4 \times 10^{-7} = 4.8 \times 10^{-7}$ lb per day). Until further information is available, the Department assumes that the reduction of 2,3,7,8-TCDD, as wastewater passes through the treatment works, is 10 percent.

The 2,3,7,8-TCDD discharge from the BPS will be determined by analyzing the concentration of 2,3,7,8-TCDD in the BPS effluent and multiplying the analysis result by the effluent flowrate to calculate the mass discharge of 2,3,7,8-TCDD.

The following procedure shall be used for determining the concentration of 2,3,7,8-TCDD in the BPS.

1. A detection limit (DL) shall be determined for each sample
2. The bleach plant effluent target concentration (TC) shall be determined from the following equation:

   TC (ppq) = [1.1 * WLA (lb/day)] / [bleach plant effluent flow (MGD) * 8.34×10^{-9}]

If the DL is found to be greater than the TC, the analysis is considered invalid and the sample shall be re-analyzed.

If the DL is found to be less than or equal to the TC, samples that yield a concentration greater than or equal to the DL shall be reported as the measured concentration and samples that yield a non-detectable concentration shall be reported as the DL.

4 AOX is defined as Adsorbable Organic Halogens. The analytical method to be used is the SCAN-W 9:89 protocol described by the Scandinavian Pulp, Paper, and Board Testing Committee or an equivalent method acceptable to the Department. Both the suspended and dissolved fractions of the wastewater shall be included in the analysis. The allowable loading is based upon the 30 day average production of bleached pulp in air-dried tons.

SCHEDULE B

The following monitoring requirements are added to Permit No. 100413, Schedule B. These additional requirements shall become effective upon issuance of this modification.

(A) Wastewater streams

Parameter	Location	Minimum Frequency	Type of Sample
AOX	001, ASB[1], and BPS[2]	monthly	3-day composite[3]
2,3,7,8-TCDD	001, ASB, and BPS	quarterly	3-day composite

After January 1, 1992, the monitoring frequencies are changed as follows:

Parameter	Location	Minimum Frequency[4]	Type of Sample
AOX	001	weekly	3-day composite
2,3,7,8-TCDD	001, ASB, and BPS	monthly	3-day composite

(B) Primary and secondary waste sludge (prior to January 1, 1992)

Parameter	Minimum Frequency	Type of Sample[6]
AOX[5]	monthly	composite
2,3,7,8-TCDD	quarterly	composite

(C) Primary waste sludge (after January 1, 1992)

Parameter	Minimum Frequency[4]	Type of Sample
AOX	weekly	composite
2,3,7,8-TCDD	monthly	composite

(D) Secondary waste sludge (after January 1, 1992)

Parameter	Minimum Frequency	Type of Sample
AOX	prior to sludge disposal	composite
2,3,7,8-TCDD	prior to sludge disposal	composite

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1 ASB is defined as influent to aerated stabilization basin.

2 BPS is defined as combined bleach plant sewer.

3 AOX and 2,3,7,8-TCDD samples shall be collected during the same 3-day period for comparative purposes

4 After June 1, 1994, the Department may reduce the monitoring frequency if the frequency established by this permit is determined to be more than necessary to demonstrate compliance.

5 Waste sludge shall be sampled for AOX by a method acceptable to the Department.

6 As waste solids are drawn out of the primary clarifier and ASB, proportional samples shall be collected at regular intervals and combined to form a composite sample. That sample shall be mixed thoroughly prior to testing.

SCHEDULE C

The following compliance schedules are added to Schedule C in Permit No. 100413, as follows:

Compliance Conditions and Schedules

6. The permittee shall prepare a study plan for evaluating the mixing of plant effluent with ambient river water. That plan shall be submitted to the Department by August 1, 1990, for Department review and approval. The results of the mixing study shall be submitted to the Department by January 1, 1990, for use in evaluating the appropriateness of the existing mixing zone definition. The final mixing zone geometry will be established at the conclusion of the study.

7. By June 4, 1992, the permittee shall be in compliance with the 2,3,7,8-TCDD limitations established in Schedule A. Progress reports shall be submitted to the Department at the beginning of each calendar quarter beginning June 1, 1990. These progress reports shall include information on process changes made to achieve compliance with the 2,3,7,8-TCDD limitations.

8. By June 4, 1993, the permittee shall be in compliance with the AOX limitation established in Schedule A. Progress reports shall be submitted to the Department at the beginning of each calendar quarter beginning June 1, 1990. These progress reports shall include information on process changes made to achieve compliance with the AOX limitations.

SCHEDULE D

The following Conditions shall be added to Permit No. 100413, Schedule D.

8. The Adsorbable Organic Halogens (AOX) limitation established in Schedule A has been established by using Best Professional Judgement (BPJ) using data provided by the permittee and from other sources. If, after more extensive operational data is available, the Department determines that using highest and best practicable control technology for reducing chlorinated organic compounds will reduce the AOX even further or the Department determines that achievement of the established AOX limitation is not practicable, the permit will be re-opened and new limits established which are based upon the additional data available.

9. Unless approved by the Department, chemical agents or process materials containing pentachlorophenol, trichlorophenol, zinc, recycled oils, and dioxin precursors shall not be used at the pulp and paper mill.

10. Once the new federal BAT effluent limits have been finalized, this permit may be re-opened to include all applicable effluent limits not already in the permit or more stringent than those presently in the permit. A time schedule for achieving those limits, within the time frames established by the Clean Water Act, will also be added to the permit.

P36335WM (CRW) (2/2/90)

MODIFICATION

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
WASTE DISCHARGE PERMIT

Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, OR 97204
Telephone: (503) 229-5696

Issued pursuant to ORS 468.740 and The Federal Clean Water Act

ISSUED TO:

James River II, Inc.
Wauna Mill
Rt. 2 Box 2185
Clatskanie, OR 97016

SOURCES COVERED BY THIS PERMIT:

Type of Waste	Outfall Number	Outfall Location
Process Effluent	001	R.M. 42
Crawford Creek	002	R.M. 42
*WTP Filter Backwash & Boiler Blowdown	003	R.M. 42
Log Washer Effluent	004	R.M. 42

PLANT TYPE AND LOCATION:

Bleached Kraft/Groundwood
Pulp and Paper Mill
Wauna, Oregon

RECEIVING SYSTEM INFORMATION:

Basin: Lower Columbia River
Sub-Basin: Clatskanie
Stream: Columbia
Hydro Code: 10 - - COLU 42.0 D
County: Clatsop

*WTP - Water Treatment Plant

EPA REFERENCE NO: OR-000079-5

Issued by the Department of Environmental Quality

Lydia R. Taylor
Lydia R. Taylor, Administrator

FEB 05 1988
Date

ADDENDUM NO.1

NPDES Permit 3754-J (OR-000079-5) is modified to address toxic chemicals in the treated effluent. New conditions are added to Schedule A, B, C & D.

SCHEDULE A

The following limitations are added to Schedule A of Permit Number 754-J.

Effective June 4, 1992:

Parameters	Location	Annual Ave.Loading[1]
2,3,7,8-TCDD[2]	001	8.82×10^{-7} lb per day[3] (0.4 mg per day)

Effective June 4, 1993:

Parameter	Location	30 Day Ave.Loading
AOX[4]	001	3.0 lb per air dried ton (1.5 kg per metric ton)

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1 The annual average shall be the average of all analytical results from samples collected during the calendar year.

2 2,3,7,8-TCDD is defined as 2,3,7,8-tetrachlorodibenzo-p-dioxin. EPA method 1613 or an equivalent method acceptable to the Department shall be used to analyze for 2,3,7,8-TCDD. Both the suspended and dissolved fractions of the wastewater shall be included in the analysis.

3 This loading limitation is based upon a draft Waste Load Allocation (WLA) for the Columbia River developed by the Environmental Protection Agency. Once the WLA has been finalized, this limitation will be increased or decreased to reflect the final WLA. Compliance will be determined by direct measurement of the mass discharge rate of 2,3,7,8-TCDD from 001 or by calculating the mass discharge rate. The calculated mass discharge rate is defined as the difference between the mass rate of 2,3,7,8-TCDD discharged from the bleach plant sewers and the mass rate of 2,3,7,8-TCDD removed from the treatment works through removal of primary and secondary sludge.

4 AOX is defined as Adsorbable Organic Halogens. The analytical method to be used is the SCAN-W 9:89 protocol described by the Scandinavian Pulp, Paper, and Board Testing Committee or an equivalent method acceptable to the Department. Both the suspended and dissolved fractions of the wastewater shall be included in the analysis. The allowable loading is based upon the 30 day average production of bleached pulp in air dried tons.

SCHEDULE B

The following monitoring requirements are added to Permit No. 3754-J Schedule B. These additional requirements shall become effective upon issuance of this modification.

(A) Wastewater streams

Parameter	Location	Minimum Frequency	Type of Sample
AOX	001 and BPS[1]	monthly	3-day composite[2]
2,3,7,8-TCDD	001 and BPS	quarterly	3-day composite

After January 1, 1992, the monitoring frequencies are changed as follows:

Parameter	Location	Minimum Frequency[5]	Type of Sample
AOX	001 and BPS	weekly	3-day composite
2,3,7,8-TCDD	001 and BPS	monthly	3-day composite

(B) Primary and secondary waste sludge (prior to January 1, 1992)

Parameter	Minimum Frequency	Type of Sample[4]
AOX[3]	monthly	Composite
2,3,7,8-TCDD	quarterly	Composite

(B) Primary and secondary waste sludge (after January 1, 1992)

Parameter	Minimum Frequency[5]	Type of Sample
AOX	weekly	Composite
2,3,7,8-TCDD	monthly	Composite

---

1 BPS is defined as the combined bleach plant sewer.

2 AOX and 2,3,7,8-TCDD samples shall be collected during the same 3-day period for comparative purposes.

3 Waste sludge shall be sampled for AOX by a method acceptable to the Department.

4 Waste sludge from the primary and secondary clarifiers shall be analyzed separately. As waste sludge is drawn out of a clarifier, proportional samples shall be collected at regular intervals and combined to form a single composite sample, then mixed thoroughly prior to testing.

5 After June 1, 1994, the Department may reduce the monitoring frequency if the frequency established by this permit is determined to be more than necessary to demonstrate compliance.

Schedule C is added to Permit No. 3754-J, as follows:

SCHEDULE C

Compliance Conditions and Schedules

1. The permittee shall prepare a study plan for evaluating the mixing of plant effluent with ambient river water. That plan shall be submitted by August 1, 1990, for Department review and approval. The results of the mixing study shall be submitted to the Department by January 1, 1991, for use in evaluating the appropriateness of the existing mixing zone definition. The final mixing zone geometry will be established at the conclusion of the study.

2. By June 4, 1992, the permittee shall be in compliance with the 2,3,7,8-TCDD limitations established in Schedule A. Progress reports shall be submitted to the Department at the beginning of each calendar quarter beginning June 1, 1990. These progress reports shall include information on process changes made to achieve compliance with the 2,3,7,8-TCDD limitations.

3. By June 4, 1993, the permittee shall be in compliance with the AOX limitation established in Schedule A. Progress reports shall be submitted to the Department at the beginning of each calendar quarter beginning June 1, 1990. These progress reports shall include information on process changes made to achieve compliance with the AOX limitations.

SCHEDULE D

The following Conditions shall be added to Permit No. 3754-J, Schedule D.

7. The Adsorbable Organic Halogens (AOX) limitation established in Schedule A has been established by using Best Professional Judgement (BPJ) using data provided by the permittee and from other sources. If, after more extensive operational data is available, the Department determines that using highest and best practicable control technology for reducing chlorinated organic compounds will reduce the AOX even further or the Department determines that achievement of the established AOX limitation is not practicable, the permit will be re-opened and new limits established which are based upon the additional data available.

8. Unless approved by the Department, chemical agents or process materials containing pentachlorphenol, trichlorophenol, zinc, recycled oils, and dioxin precursors shall not be used at the pulp and paper mill.

8. Once the new federal BAT effluent limits have been finalized, this permit may be re-opened to include all applicable effluent limits not already in the permit or more stringent than those presently in the permit. A time schedule for achieving those limits, within the time frames established by the Clean Water Act, will also be added to the permit.

P21328WM (CRW) (2/5/90)

Expiration Date: 6 30/89
Permit Number: 3855-J
File Number: 84069
Page 1 of 7 Pages

MODIFICATION

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
WASTE DISCHARGE PERMIT

Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, OR 97204
Telephone: (503) 229-5696

Issued pursuant to ORS 468.740 and The Federal Clean Water Act

ISSUED TO:

City of St. Helens
P.O. Box 278
St. Helens, OR 97051

SOURCES COVERED BY THIS PERMIT:

Type of Waste	Outfall Number	Outfall Location
Bleached Kraft Pulp and Paper Mill Process Effluent & Treated Municipal Wastewater	001	R.M. 86

PLANT TYPE AND LOCATION:

Primary Municipal Treatment
Plant plus Combined Industrial
Aerated Lagoon
St. Helens, OR

RECEIVING SYSTEM INFORMATION:

Basin: Lower Columbia River
Sub-Basin: Clatskanie
Stream: Columbia
Hydro Code: 10 = - COLU 86.0 D
County: Columbia

EPA REFERENCE NO: OR-002083-4

Issued by the Department of Environmental Quality.

Lydia K. Taylor
Lydia R. Taylor, Administrator

FEB 03 1989
Date

ADDENDUM NO. 1

NPDES Permit 3855-J (OR-002083-4) is modified to address toxic chemicals in the treated effluent. New conditions are added to Schedules A, B, C & D.

SCHEDULE A

The following limitations are added to Schedule A of Permit Number 3855-J.

Effective June 4, 1992:

Parameters	Location	Annual Ave. Loading[1]
2,3,7,8-TCDD[2]	001	1.10×10^{-6} lb per day[3] (0.5 mg per day)

Effective June 4, 1993:

Parameter	Location	30 Day Ave. Loading
AOX[4]	001	3.0 lbs per air dried ton[5] (1.5 kg per air dried metric ton)

---

1 The annual average shall be the average of all analytical results from samples collected during the calendar year.

2 2,3,7,8-TCDD is defined as 2,3,7,8-tetrachlorodibenzo-p-dioxin.

3 The loading limitation for 2,3,7,8-TCDD is based upon a draft Waste Load Allocation (WLA) for the Columbia River developed by the Environmental Protection Agency. Once the WLA has been finalized, this limitation will be increased or decreased to reflect the final WLA. The WLA is based solely on the contribution of 2,3,7,8-TCDD by Boise Cascade Corporation into the permittee's treatment works. Until further information is available, the Department assumes that the reduction of 2,3,7,8-TCDD, as wastewater passes through the treatment works, is 10 percent. The permittee is in compliance with the specified loading limitation if: (a) the mass discharge rate of 2,3,7,8-TCDD measured directly at 001 is less than or equal to the WLA, or (b) the permittee provides data to the Department (according to the analytical and monitoring procedures established in this permit) showing that the contribution of 2,3,7,8-TCDD by Boise Cascade Corporation to the permittee's treatment works is less than or equal to 1.1 x WLA (1.21×10^{-6} lbs per day, 0.55 mg per day).

4 AOX is defined as Adsorbable Organic Halogens.

5 The loading limitation for AOX is based solely on the contribution of AOX by Boise Cascade Corporation into the permittee's treatment works. It is based on best professional judgement as discussed in Schedule D. Until further information is available, the Department assumes that the reduction of AOX, as wastewater passes through the treatment works, is 20 percent. The permittee is in compliance with the specified loading limitation if: (a) the mass discharge rate of AOX measured directly at

001 is less than or equal to 3.0 lbs per air dried ton of bleach pulp produced by Boise Cascade Corporation, or (b) the permittee provides data to the Department (according to the analytical and monitoring procedures established in this permit) showing that the contribution of AOX by Boise Cascade Corporation to the permittee's treatment works is less than or equal to 1.2 x 3.0 lbs per air dried ton of bleached pulp produced (3.6 lbs per air dried ton, 1.80 kg per air dried metric ton).

Analytical Procedures

EPA method 1613 or an equivalent method acceptable to the Department shall be used to analyze for 2,3,7,8-TCDD. Both the suspended and dissolved fractions of the wastewater shall be included in the analysis.

SCAN-W 9:89 described by the Scandinavian Pulp, Paper, and Board Testing Committee or an equivalent method acceptable to the Department shall be used to analyze for AOX. Both the suspended and dissolved fractions of the wastewater shall be included in the analysis.

Procedure for determining the concentration of 2,3,7,8-TCDD in the bleach plant sewer.

A detection limit (DL) shall be determined for each sample.

A bleach plant effluent target concentration (TC) shall be determined from the following equation.

TC (ppq) =

[1.1 * WLA (lb/day)] / [bleach plant effluent flow (mgd) * (8.34×10^{-9})]

If the DL is found to be greater than the TC, the analysis is considered invalid and the sample shall be reanalyzed.

If the DL is found to be less than or equal to the TC: (a) samples that yield a concentration greater than or equal to the DL shall be reported as the measured concentration, (b) samples that yield a non-detectable concentration shall be reported as the DL.

Procedure for determining the loading of 2,3,7,8-TCDD from the bleach plant sewer.

The concentration of 2,3,7,8-TCDD determined above shall be used with the effluent flow rate of the bleach plant effluent to calculate the bleach plant loading.

Monitoring Procedures

The monitoring procedures for determining the contribution of 2,3,7,8-TCDD and AOX by Boise Cascade Corporation into the permittee's treatment works are outlined below.

Effective upon issuance of this permit modification:

Parameter	Location	Minimum Frequency[a]	Type of Sample
AOX	BPS[b]	monthly	3-day composite
2,3,7,8-TCDD	BPS	quarterly	3-day composite[c]

Effective January 1, 1992:

Parameter	Location	Minimum Frequency[a]	Type of Sample
AOX	BPS	weekly	3-day composite
2,3,7,8-TCDD	BPS	monthly	3-day composite[c]

a After June 1, 1994, the Department may change the monitoring frequency if the frequency established by this permit is determined to be more than necessary to demonstrate compliance.

b BPS is defined as the combined bleach plant sewer.

c AOX and 2,3,7,8-TCDD samples shall be collected during the same 3-day period for comparative purposes.

SCHEDULE B

The following monitoring requirements are added to Schedule B of Permit No. 3855-J. They shall become effective upon issuance of this modification.

Parameter	Location	Minimum Frequency	Type of Sample
AOX	001	monthly	3-day composite
2,3,7,8-TCDD	001	quarterly	3-day composite

Secondary sludge removed from the stabilization basin shall be analyzed for AOX and 2,3,7,8-TCDD prior to disposal. Representative sampling shall be ensured by compositing samples of the waste sludge and thoroughly mixing prior to testing.

SCHEDULE C

The following compliance conditions and schedules are added to Schedule C of Permit No.3855-J.

Compliance Conditions and Schedules

5. The permittee shall prepare a study plan for evaluating the mixing of plant effluent with ambient river water. That plan shall be submitted to the Department by August 1, 1990, for Department review and approval. The results of the mixing study shall be submitted to the Department by January 1, 1991, for use in evaluating the appropriateness of the existing mixing zone definition. The final mixing zone geometry will be established at the conclusion of the study.

6. By June 4, 1992, the permittee shall be in compliance with the 2,3,7,8-TCDD limitation established in Schedule A. Progress reports on the reduction of 2,3,7,8-TCDD shall be submitted to the Department at the beginning of each calendar quarter beginning June 1, 1990.

7. By June 4, 1993, the permittee shall be in compliance with the AOX limitation established in Schedule A. Progress reports on the reduction of AOX shall be submitted to the Department at the beginning of each calendar quarter beginning June 1, 1990.

SCHEDULE D

The following Conditions shall be added to Permit No. 3855-J, Schedule D.

3. The Adsorbable Organic Halogens (AOX) limitation established in Schedule A has been established by using Best Professional Judgement (BPJ) using data provided by the permittee and from other sources. If, after more extensive operational data is available, the Department determines that using highest and best practicable control technology for reducing chlorinated organic compounds will reduce the AOX even further or the Department determines that achievement of the established AOX limitation is not practicable, the permit will be re-opened and new limits established which are based upon the additional data available.

4. Once the new federal BAT effluent limits have been finalized, this permit may be re-opened to include all applicable effluent limits not already in the permit or more stringent than those presently in the permit. A time schedule for achieving those limits, within the time frames established by the Clean Water Act, will also be added to the permit.

P84069WM (CRW) (2/5/90)

Department of Environmental Quality

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

A FOLLOW-UP ON PUBLIC COMMENTS RECEIVED REGARDING THE . . .

Water Quality Waste Discharge Permit Modifications

Notice Issued: 2/5/90

Who Are The Permittees:

The Department has finalized and issued the permit modifications for controlling dioxin and other chlorinated organics at the three bleached kraft pulp mills in Oregon. They are James River II at Wauna, Pope & Talbot at Halsey, and Boise Cascade which discharges its wastewater through the City of St. Helens waste treatment system.

What Do The Permits Require:

After reviewing the comments received during the public participation process, the permit modifications have been changed in the following ways:

(1) The discharge limits for dioxin in the previous draft modifications were based upon a calculation of an allowable discharge concentration which could meet an in-stream water quality standard of 0.013 parts per quadrillion (ppq) at the existing mixing zone boundary. Those limitations would eventually be replaced with a waste load allocation to be established by EPA through the process of evaluating total maximum daily loads (TMDLs) for the Columbia Basin. The final permit establishes a waste discharge limitation which is based upon the EPA "draft" waste load allocation. The final waste load allocation for each of the mills will be put into the permits after EPA finalizes them.

(2) The draft permits indicated compliance could be demonstrated if the dioxin concentration at the combined bleach plant sewer was non-detectable, with the level of detectability established at 10 ppq. Recognizing that the detection levels for dioxin are likely to improve over the life of the permit, the final permits provide for the permittee to demonstrate compliance by measuring the quantity of dioxin in the bleach plant sewer less the quantity that is removed through the treatment system. This established an actual target value to be achieved at the bleach plant sewer rather than assuming compliance if the level is non-detectable.

(3) The monitoring frequency has been clarified with the frequency increasing after January 1, 1992.

(4) Other permit conditions in the draft permits, which were unrelated to dioxin or other chlorinated organics, have been removed from the final permit modifications in order to narrow the issues involved.

What Happens Now:

According to Oregon Administrative Rules (OAR) 340-45-055, Department initiated permit modifications go into effect 20 days from the date of mailing of the notice to the permittee. Therefore, these modifications will become effective February 26, 1990, unless within that time a hearing is requested before the Commission.

Copies of the final permit modifications are available upon request.

A complete transcript of the hearing record is available for inspection at:

The Department of Environmental Quality
Water Quality Division
811 S.W. Sixth Avenue
Portland, OR 97204

IW\WC6168

Agency
1200 Sixth Avenue, WD-139
Seattle WA 98101
Oregon
Washington

EPA

DEC

Lydia Taylor, Division Administrator
Water Quality
Department of Environmental Quality
Executive Building
811 SW Sixth Avenue
Portland, OR 97204

Subject: Columbia River TMDL for Dioxin

Dear Lydia,

Enclosed is a summary of agency roles and responsibilities relating to the development and implementation of a TMDL for dioxin for the Columbia River. This has been revised in response to the concerns expressed by the state agencies. Also enclosed is the proposed TMDL for your review. Please note that, in order to keep the TMDL process on track, comments will be needed quickly so that we can all agree on a TMDL by January 26, 1990.

Sincerely,

Tom Wilson, Chief
Office of Water Planning

Enclosures

COLUMBIA RIVER
DIOXIN TMDL

Agency
Roles and Responsibilities

Introduction.

At the request of the states of Oregon, Idaho, and Washington, EPA is assuming a larger than normal role in the development of a dioxin TMDL and related NPDES permit revisions for the Columbia River. The states' request is based upon the complexity of this issue, the interstate nature of the Columbia River, and the need for consistency between the three states.

For reference, the states' statutory responsibilities under Section 303 of the Clean Water Act are to develop and adopt TMDLs; submit those TMDLs to EPA for approval; and revise appropriate NPDES permits to ensure that the pollutant load limits set in the TMDLs are not exceeded. (Since the NPDES program has not been delegated to Idaho, EPA is responsible for issuing revised permits in that state.)

EPA's primary statutory responsibility is to ensure interstate consistency and to develop TMDLs and revised permits where the states fail to do so. EPA must also provide technical assistance and review and approve state-developed TMDLs.

The revised responsibilities, and the target dates for completing each action, are as follows:

Develop Proposed TMDL. (Dec 22, 1989)

EPA will provide a proposed TMDL to each state by December 15, 1989. This TMDL will define the maximum dioxin load capacity for the Columbia River; identify known and potential dioxin sources; propose an allocation of that load among point sources, nonpoint sources, and background (including an appropriate margin of safety and a reserve for future growth).

State Review of Proposed TMDL. (Jan 26, 1990)

States will have until January 26, 1989 to either concur with EPA's proposed TMDL or to negotiate agreement among themselves on desired revisions. If the states cannot reach agreement, EPA will make any revisions it considers appropriate and issue a proposed TMDL for public hearing.

Issue Proposed TMDL/Notice of Public Hearing. (Feb 2, 1990)

This would start a 30 day public comment period. Notice of the proposed TMDL should be issued by each state and EPA, with distribution of the proposed TMDL by each agency as needed. The public meeting will be held in Vancouver, Wa.

Hold Public Hearing on Proposed TMDL. (Feb 22, 1990)

Presuming EPA and the states agree on the proposed TMDL, the Vancouver, Wa., public hearing will be a joint state/EPA hearing. Ecology has agreed to the take the lead in setting up the meeting. Any draft permits issued for public review by that date will also be part of that hearing.

Close Public Comment Period. (Mar 5, 1990)

Self-explanatory

Develop Final TMDL. (Mar 16, 1990)

EPA will, in consultation with the states, determine if any revisions to the proposed TMDL are necessary as a result of the public hearing. Each state will then have the option of adopting the final TMDL itself or of having EPA establish it as the basis for permit development for them.

Develop Draft Permits. (Dec '89 - Mar '90)

The states of Oregon and Washington will develop draft permits for pulp mills in their respective states. EPA will develop a draft permit for the one pulp mill in Idaho. Initial draft permits will be based on the dioxin limits established in the proposed TMDL, but subject to revision based upon the final TMDL limits. States will hold public hearings as appropriate on each subsequent individual permit.

Develop Final Permits. (Feb - Jun 1990)

Final permits are due from Oregon no later than February 4, 1990. Final permits are due from Washington no later than June 4, 1990, but are expected by April 30. EPA will develop the Idaho permit.

TOTAL MAXIMUM DAILY LOAD

FOR

TCDD IN THE COLUMBIA RIVER

Fact Sheet and Evaluation
December 22, 1989

Developed pursuant to the provisions of the Clean Water Act, 33 U.S.C. § 1251, et seq, as amended by the Water Quality Act of 1987, P.L. 100-4.

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   Loads

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   Attenuation
   Analysis of Individual Control Strategies
   Waste Load Allocations

6. SUMMARY

TOTAL MAXIMUM DAILY LOAD
FOR
TCDD IN THE COLUMBIA RIVER

Fact Sheet and Evaluation

1. SCOPE

This TMDL covers the following segments, parameters, and source categories:

WATER QUALITY LIMITED SEGMENTS:		APPLICABLE RULES:
Columbia River		WAC 173-201-047
" "	(RM 0 - 309)	WAC 173-201-080(19)
" "	(RM 0 - 86)	OAR 340-41-205(2)(p)
" "	(RM 86 - 120)	OAR 340-41-445(2)(p)
" "	(RM 247 - 309)	OAR 340-41-645(2)(p)
" "	(RM 309 - 596)	WAC 173-201-080(20)
Snake River	(RM 0 - 139)	WAC 173-201-047
" "		WAC 173-201-080(97)
" "		IDAPA 16.01.2200
Willamette River	(RM 0 - 175)	OAR 340-41-445(2)(p)

WQ STANDARD NOT ATTAINED:

2,3,7,8 - tetrachlorodibenzo-para-dioxin (2,3,7,8-TCDD)

SOURCE CATEGORIES COVERED:

Source Category	Allocation Type	Source Description
0	LA	Upstream Inputs
1	WLA	Pulp & Paper Mills -- Chlorine Bleaching
2	WLA	Pulp & Paper Mills -- Non-Chlorine Bleaching
3	WLA	Municipal Wastewater Treatment Plants
4	WLA	Other Point Source
5	WLA	Port Activities
6	LA	Urban Areas
7	LA	Other Nonpoint Source

2. BACKGROUND

Overview

The Columbia River is currently water quality limited for dioxin (2,3,7,8-TCDD). Both the Oregon Department of Environmental Quality and the Washington Department of Ecology included the lower Columbia River on the Federal Clean Water Act (CWA) § 304(l) short list because of discharges of 2,3,7,8-TCDD from existing bleached kraft pulp mills. Segments identified on the § 304(l) short list are areas which do not meet water quality standards for § 307(a) priority pollutants due substantially to point source discharges. The listing of the lower Columbia River is based on data describing concentrations of 2,3,7,8-TCDD in fish tissue below bleached kraft pulp mills as well as measured concentrations of 2,3,7,8-TCDD in effluents and treatment plant sludges at these mills.

Section 303(d)(1)(C) of the Clean Water Act requires each state to establish total maximum daily loads (TMDLs) on water quality limited segments for appropriate pollutants of concern. This provision states that the TMDL:

> "shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality."

The TMDL describes the **implementation plan** needed to achieve water quality standards using an appropriate margin of safety. The TMDL process defines the allocation of loads to point sources, nonpoint sources, and background. The CWA also requires the development of individual control strategies (ICS's) for point sources identified on the § 304(l) short list. The ICS's need to produce a reduction in the discharge of toxic pollutants from these point sources and must be sufficient to achieve applicable water quality standards.

Federal regulations (40 CFR, § 123.46) require each state to issue final NPDES permits to EPA no later than February 4, 1990. This deadline applies to facilities identified on a § 304(l) short list which has been approved by EPA. The revised NPDES permit serves as the ICS for each source. In the case TCDD and the Columbia, the February 4, 1990 deadline applies to three Oregon bleached kraft pulp mills. There are multiple sources of 2,3,7,8-TCDD to the Columbia River which originate in four states (Idaho, Montana, Oregon, and Washington) as well as in British Columbia. As a result, a TMDL is needed to evaluate the overall effectiveness of the ICS's towards achieving water quality standards. This document describes the process used for setting this TMDL.

Process

The process for developing the TMDL for 2,3,7,8-TCDD on the lower Columbia River consists of several components. These include:

- o **define the loading capacity** of the river at key points
- o **identify sources** which potentially contribute loads of 2,3,7,8-TCDD
- o **allocate loads** to point sources, NPS, and background
- o **implement** the TMDL through WQ management plans and NPDES permits

Because of statutory deadlines identified under § 304(l), a TMDL for 2,3,7,8-TCDD on the lower Columbia is needed to ensure that individual control strategies will lead to the attainment of water quality standards. The TMDL will guide the review of ICS efforts and the development of NPDES permits. Recognizing time constraints, § 303(d) states that a **margin of safety** should be used **which takes into account any lack of knowledge**. Thus, the law indicates that the TMDL process should move forward using available information.

The margin of safety can be applied in different ways. One approach is to use conservative assumptions with respect to sources or fate mechanisms. The regulatory agencies can also decide to provide for some reserve capacity and not to allocate the total available load. As new information becomes available in the future, the TMDL can be refined.

3. LOADING CAPACITY

By definition (40 CFR, § 130.2), the TMDL is the sum of the individual wasteload allocations (WLAs) for point sources and load allocations (LAs) for nonpoint sources and natural background. WLAs and LAs represent the allocated portions of a receiving water's **loading capacity**. The loading capacity is the greatest amount of loading that the river can receive without violating water quality standards. To determine the appropriate loading capacity available for allocation requires the following information:

- o the **water quality standard** for 2,3,7,8-TCDD applicable to the Columbia River.
- o the **river flow** used as the basis to define the "loading capacity" of the Columbia River at key locations.

Water Quality Standard

Both Oregon and Washington have adopted water quality standards for toxic substances which apply to the Columbia River. Washington has identified the Columbia River from the mouth to the Oregon - Washington border (river mile 309.3) as a Class A stream. Because there is a bleached kraft pulp mill in Idaho, rules applicable to the Snake River must also be considered. Washington's rules which apply to toxic substances are found in WAC 173-201-047. The narrative part of the rule indicates that:

> "Toxic substances shall not be introduced above natural background levels in waters of the state which may adversely affect characteristic water uses, cause acute or chronic conditions to the aquatic biota, or adversely affect public health"

Appropriate concentrations for toxic substances in Washington are to be determined in consideration with EPA's Quality Criteria for Water (1986).

Oregon has adopted numeric criteria for 2,3,7,8-TCDD. Table 20 of Oregon Administrative Rules (OAR) Chapter 340, Division 41 summarizes water quality criteria for toxic substances applicable to all basins. This includes the Columbia River from its mouth to river mile 309. The concentration for 2,3,7,8-TCDD listed in Table 20 is based on EPA's Quality Criteria for Water (1986). For 2,3,7,8-TCDD, the criterion identified is 0.000013 ng/L, or 0.013 parts per quadrillion (ppq). This value represents an ambient water concentration needed to protect human health. It considers the consumption of both contaminated water as well as fish or other aquatic organisms. The criteria adopted by the Commission is based on the 10^{-6} risk level which means the probability of one excess cancer case per one million people at the stated concentration.

River Flow

The loading capacity of a stream is determined using the water quality criteria value and a river flow. For conventional pollutants, loads are typically given in pounds per day. In the case of 2,3,7,8-TCDD, loads have been expressed as milligrams (mg) per day which are calculated as follows:

$$\text{Load (mg/day)} = 0.00245 * \text{Concentration (ppq)} * \text{Flow (cfs)}$$

The river flow used to calculate the loading capacity focuses on the rationale behind the development of the criteria for 2,3,7,8-TCDD. The criteria value has been determined using a risk level of 10^{-6} for human exposure over a 70 year life expectancy. As a result, the annual median flow is used to calculate the loading capacity. The median flow represents a middle value where half the flows are above and half below. Extremes in

flow, such as floods, do not affect the median value. Thus, the median flow is considered most appropriate for considering human exposure mechanisms. Table 1 summarizes the loading capacity for 2,3,7,8-TCDD in the Columbia River system at several key points.

Table 1. Loading Capacity for TCDD in the Columbia River System

Location	Median Flow (cfs)	Loading Capacity (mg/day)
Columbia River at McNary Dam	140,000	4.5
Columbia River at The Dalles	156,000	5.0
Columbia River at Vancouver	162,000	5.1
Columbia River near Prescott	178,000	5.7
Columbia River below Longview	190,000	6.0
Snake River near Clarkston	31,100	1.0
Willamette River at Harrisburg	8,130	0.3
Willamette River at Portland	20,900	0.7

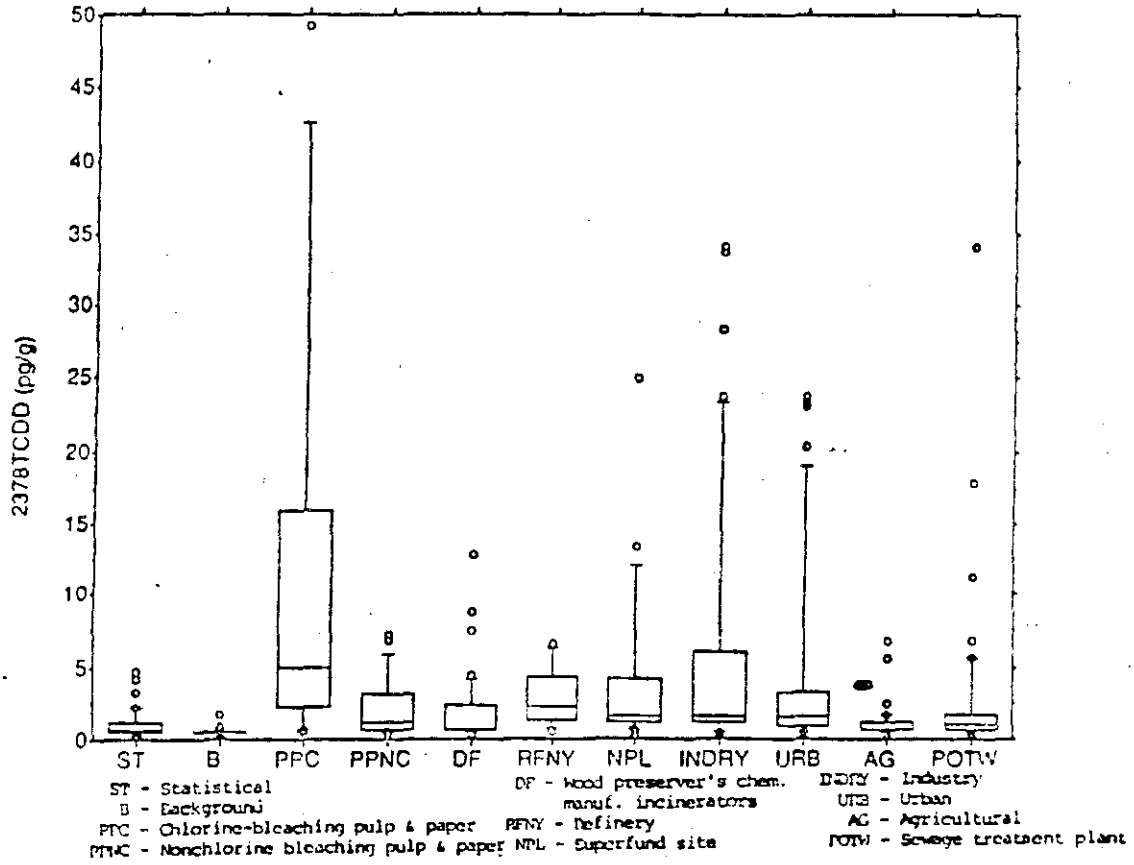
4. EXISTING CONDITIONS

Areas of Concern

Polychlorinated dibenzo-para-dioxins are produced mainly as a result of human activities. Potential sources include the manufacture of chlorinated herbicides, the combustion of domestic and industrial wastes, and the production of bleached kraft pulp.

In 1987, EPA initiated a National Bioaccumulation Study (NBS). This effort was designed to gather screening information on the prevalence and concentrations of selected toxic compounds in fish tissue and other aquatic organisms. This study was conducted on a broad scale across the United States. Sampling sites included relatively undisturbed background areas, streams below industrial, agricultural, and urban activities, and segments below mills using chlorine to bleach pulp. The lab analysis of the tissue collected for the NBS included testing for 2,3,7,8-TCDD. Figure 1 shows relative levels of 2,3,7,8-TCDD in tissue as aggregated by potential source category. As can be seen, the category with the highest levels is bleached kraft pulp mills.

Figure 1. Concentrations of 2,3,7,8-TCDD in Tissue Aggregated by Source Category



Within EPA Region 10, a number of samples were collected in the Columbia River Basin. Tables A-2 and A-3 summarize this information. The general patterns identified in the NBS data are reflected in the Region 10 samples.

Loads

In EPA Region 10, eight bleached kraft mills currently discharge to the Columbia River system. These mills, one in Idaho, four in Washington, and three in Oregon, are shown in Figure 2. The eight mills currently produce over 6,000 tons per day of bleached kraft pulp. Production estimate for bleached kraft pulp based on current NPDES permit limits are shown in Figure 3.

Figure 2. Location of Region 10 Columbia River Basin Bleached Kraft Pulp Mills

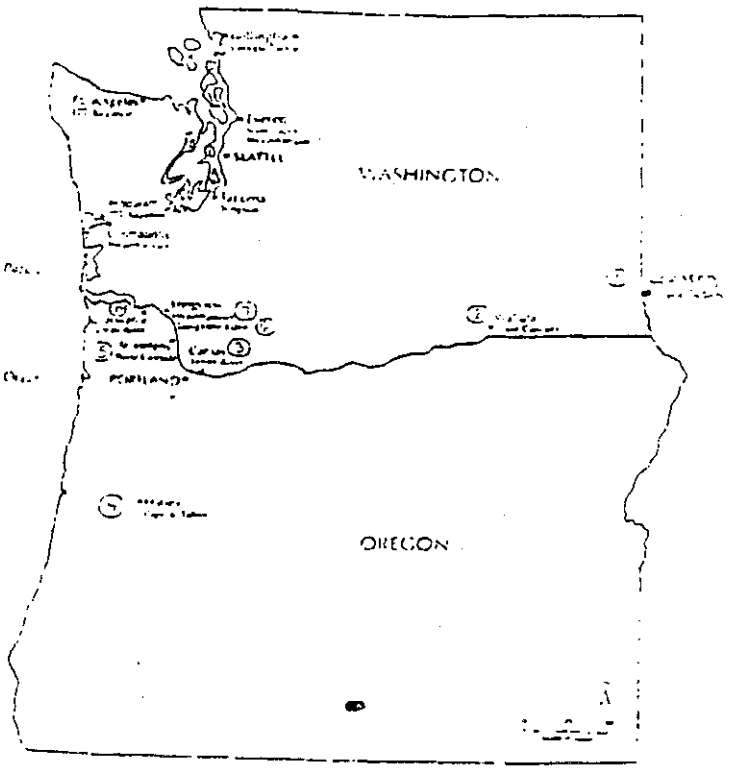
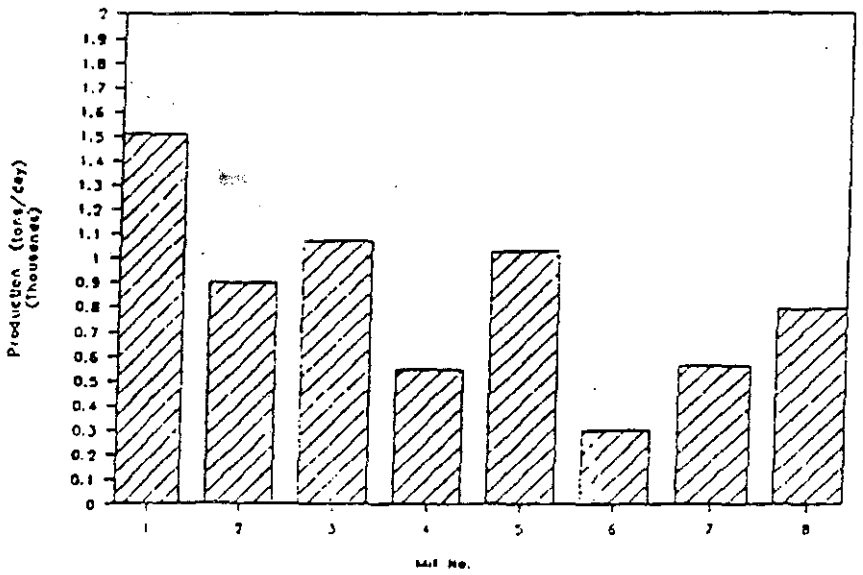


Figure 3. Bleached Kraft Production



In 1987, an EPA / Paper Industry Cooperative Dioxin Screening Study was initiated which looked at 104 bleached kraft pulp mills in the United States. Preliminary results from this study are shown in Table 2. These results can be used to estimate the current cumulative load of 2,3,7,8-TCDD discharged from seven of the eight mills using data from the 104 mill study (**Note:** the James River Camas mill was resampled due to lab analytical problems, follow-up results are not yet available). Figure 4 depicts this load relative to loading capacities estimated for the annual average and median flows. The calculated load is over 40 mg/day. This is more than seven times greater than a loading capacity at 190,000 cfs (the estimated annual median flow at Bradwood -- river mile 38). Figure 5 shows the distribution of individual loads for each of the mills.

Table 2. Region 10 Columbia River Basin Pulp Mills Using Chlorine Bleach Kraft Process

Mill No.	Facility	Location	Bleach Production (tons/day)	Total (mgd)	Bleach (mgd)	Effluent (ppq)	Sludge (ppt)	Load (mg/day)
1	Potlatch	(Lewiston)	1509	37.4	18.7	75.0	78.0	[illegible]
2	Boise Cascade	(Wallula)	904	16.9	3.6	360.0	70.0	23.[illegible]
3	James River II	(Camas)	1071	59.0	8.0	ND(25)	12.0	--
4	Pope & Talbot	(Halsey)	550	13.7	7.0	30.0	31.0	1.[illegible]
5	Boise Cascade	(St. Helens)	1035	38.4	17.0	22.0	4.2	3.[illegible]
6	Longview Fiber	(Longview)	298	62.3	8.0	4.6	69.0	1.[illegible]
7	Weyerhaeuser	(Longview)	565	49.9	4.2	9.3	25.0	1.[illegible]
8	James River II	(Wauna)	796	37.7	9.6	15.0	42.0	2.1
	Total		6728					[illegible]

Figure 4. Cumulative 2,3,7,8-TCDD Load (from 104 mill study)

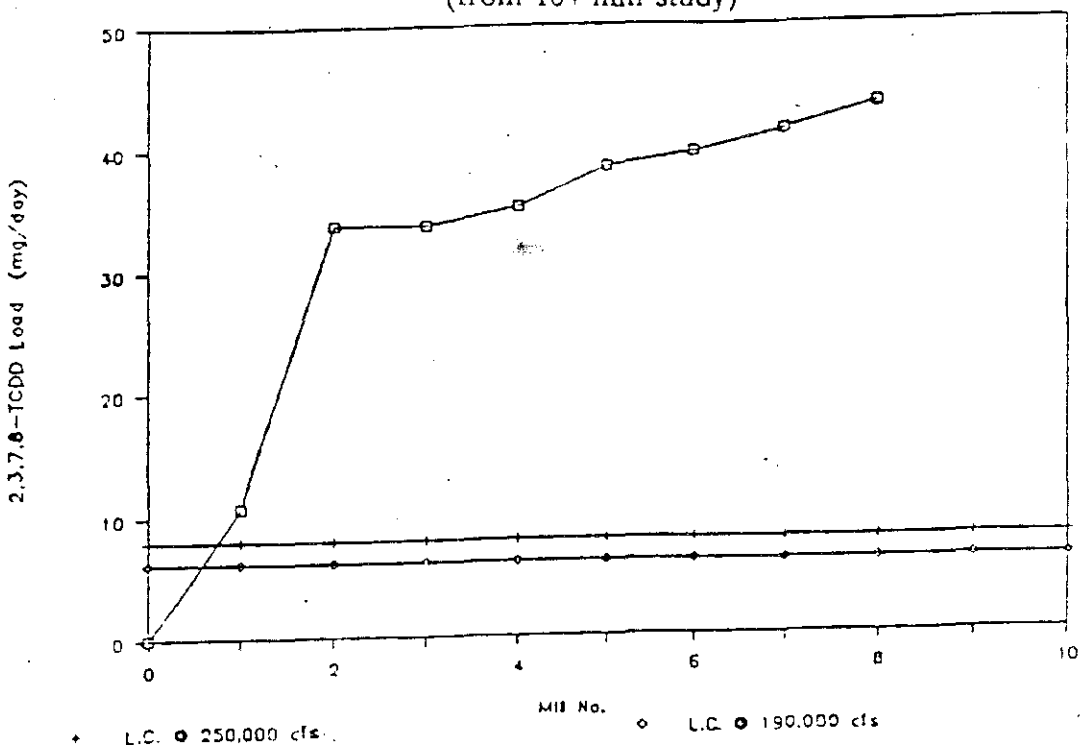
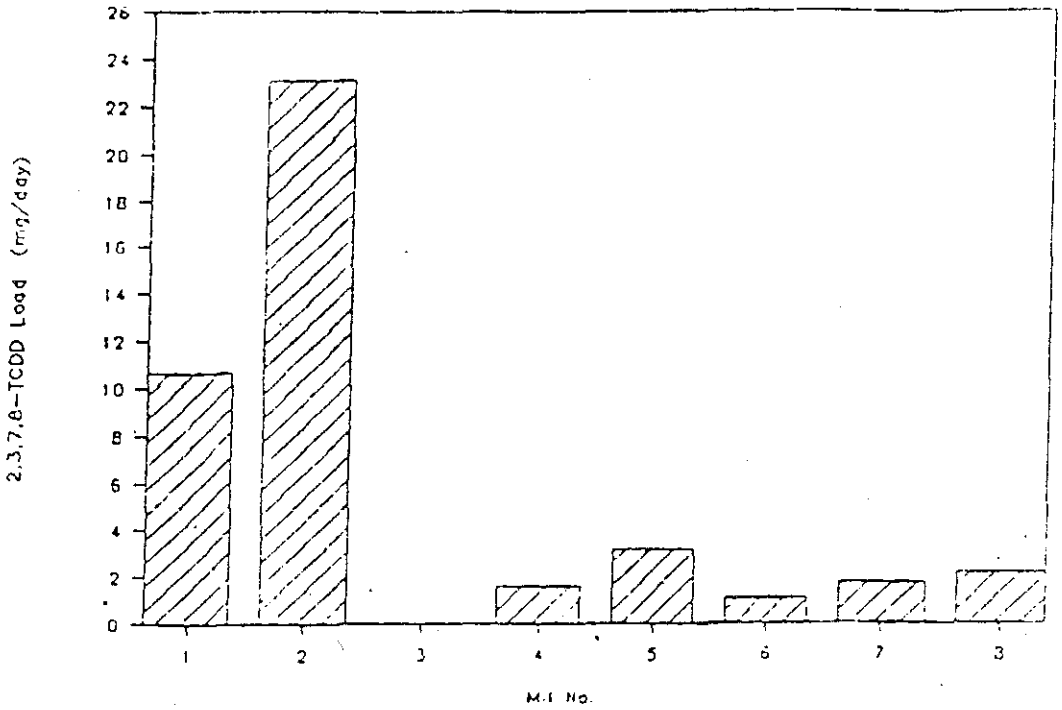


Figure 5. Estimated 2,3,7,8-TCDD Loads
(from 104 mill study)



5. ALLOCATION APPROACH

Apportionment to Source Categories and Reserve Capacity

The TMDL process distributes portions of the stream's loading capacity to various point and nonpoint sources including background conditions. Decisions on actual allocations depend on the amount of available data. The Water Quality Management Regulations [40 CFR, § 130.2] state that:

> "Load allocations are best estimates of the loading, which may range from reasonably accurate estimates to gross allotments, depending on the availablilty of data and appropriate techniques for predicting the loading."

For the purposes of developing a TMDL with appropriate allocations for 2,3,7,8-TCDD, a list of potential sources has been identified. This list includes major tributary streams carrying upstream inputs, bleached kraft pulp mills, major municipal wastewater treatment plants with industrial inputs, and areas of dredging activities where 2,3,7,8-TCDD present in sediments from past practices or upstream inputs could be released. These sources appear in Table 3. The approach used for 2,3,7,8-TCDD in the Columbia River is to first allocate portions of the loading capacity to groups of source categories. Once each group has an identified portion, individual WLAs and LAs can be assigned.

Table 3 summarizes percentages allocated to each source group which includes an identified reserve capacity. The intent of the reserve capacity is to account for uncertainty in the data and to accomodate future growth.

Table 3. Apportionment of Loading Capacity to Source Categories

Allotment (mg/day)	Percent of Loading Capacity *	Source Description
3.0	50	Pulp & Paper Mills -- Chlorine Bleaching
1.5	25	Other Potential Sources (Point & NPS) Upstream Inputs Pulp&Paper Mills -- Non-Chlorine Bleaching Municipal Wastewater Treatment Plants Other Point Sources Port Activities Nonpoint Source -- Urban Areas Other Nonpoint Source
1.5	25	Reserve Capacity

* The percent reported is relative to the total available loading capacity in the Columbia River as measured at Bradwood (River Mile 38).

Attenuation

Losses of 2,3,7,8-TCDD can occur through sedimentation and through uptake by aquatic organims. Very little data is readily available to quantitatively describe this attenuation in the Columbia River system. However, assumptions need to be made. The Clean Water Act specifically states that TMDL's shall be established with a margin of safety which takes into account any lack of knowledge. For the purposes of this analysis, it is assumed that attenuation does not occur. Thus, all 2,3,7,8-TCDD discharged stays intact in the water column. Because this is a conservative assumption, ICS's designed under this scenario which lead to the attainment of water quality standards should also be effective regardless of attenuation. If future studies quantitatively document attenuation rates, allocations can be modified. This could be used to provide an increased margin of safety to account for unknown sources or could be used to accomodate future growth needs.

Analysis of Individual Control Strategies

In June 1989, both Oregon and Washington submitted draft ICS's for the bleached kraft mills identified on the § 304(l) short list. Oregon and Washington have taken slightly different approaches towards the ICS's. The ICS proposed in June by the Washington Department of Ecology will require compliance with a total effluent limit of "non detectable" for 2,3,7,8-TCDD in each of the NPDES permits for the bleached kraft pulp mills. Oregon's proposed ICS will require compliance with a combined bleach plant effluent limit of "non detectable" for 2,3,7,8-TCDD in each of the NPDES permits for the bleached kraft pulp mills.

Analytical protocols and detection limits for dioxin have been discussed in the EPA / Paper Industry Cooperative Dioxin Screening Study (EPA 440/1-88-025). Detection levels vary depending on individual analyses, but are generally around 10 parts per quadrillion (ppq). Consequently, 10 ppq is used as the detection limit for the purposes of this preliminary analysis. Using assumptions described in the approach and estimates of effluent flow data, two scenarios have been conducted.

Scenario I: Limit Existing Oregon Mills to 10 ppq TCDD in Their Combined Bleach Plant Flows and Limit Washington & Idaho Mills to 10 ppq TCDD in Their Total Plant Flows.

The results of this scenario are summarized in the following table and depicted in Figure 6. Estimates of total plant effluent discharge have been gathered from discharge monitoring reports (DMRs) submitted by each mill. Estimates of combined bleach plant flows have been gathered through informal contacts with the mills and could be subject to change. As can be seen, the cumulative load of 10.3 mg/day would exceed the loading capacity defined based on the median flow. The cumulative load could go slightly higher with higher estimates of combined bleach plant flows from the mills. Figure 7 shows the distribution of loads for each of the individual mills.

Table 4. Allocate according to draft 6/89 ICS's (10 ppq 2,3,7,8-TCDD final effluent for WA/ID mills, 10 ppq 2,3,7,8-TCDD on bleach plant flow for OR mills)

Mill No.	Facility	Location	Bleach Pulp Production (tons/day)	Total Flow (mgd)	Bleach Flow (mgd)	TCDD Effluent Conc. Total (ppq)	TCDD Effluent Conc. Bleach (ppq)	TCDD Load (mg/day)
1	Potlatch	(Lewiston)	1509	37.4	18.7	10.0	20.0	1.4
2	Boise Cascade	(Wallula)	904	16.9	3.6	10.0	55.6	0.8
3	James River II	(Camas)	1071	59.0	8.0	10.0	75.0	2.3
4	Pope & Talbot	(Halsey)	550	13.7	7.0	5.0	10.0	0.3
5	Boise Cascade	(St. Helens)	1035	38.4	17.0	5.0	10.0	0.6
6	Longview Fiber	(Longview)	298	62.3	8.0	10.0	87.5	2.7
7	Weyerhaeuser	(Longview)	565	49.9	4.2	10.0	119.0	1.9
8	James River II	(Wauna)	796	37.7	9.6	2.5	10.0	0.4
	Total		6728					10.3

Figure 6. Cumulative Load Using Proposed 6/89 ICS's

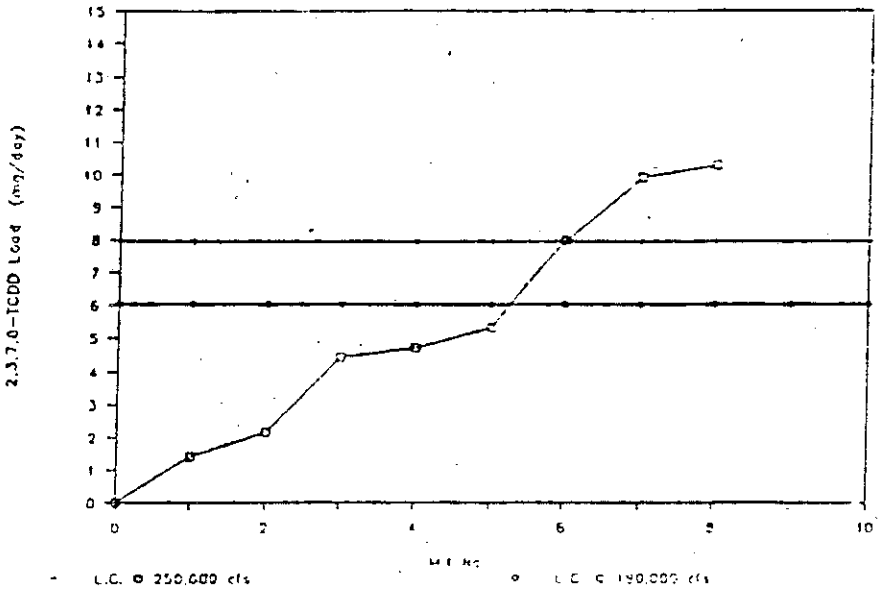
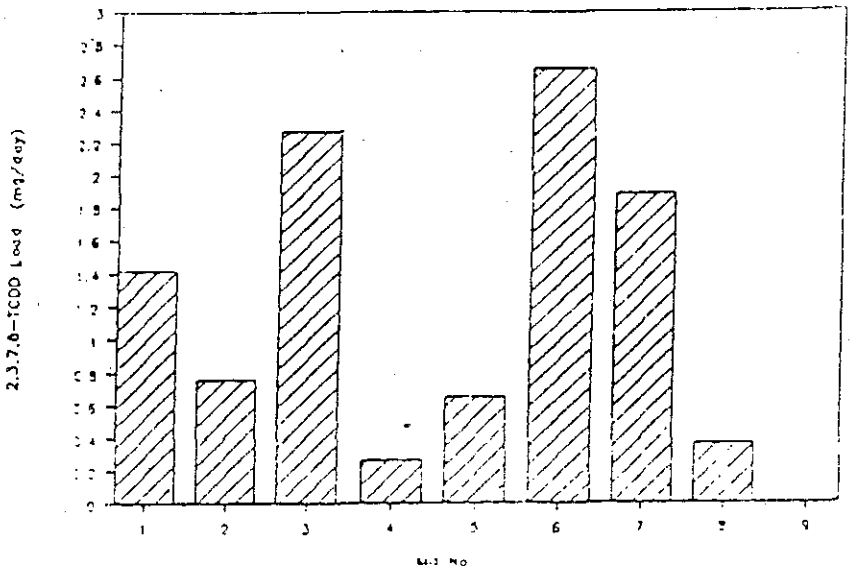


Figure 7. Load Distribution Using Proposed 6/89 ICS's



Scenario II: Limit Existing Mills to 10 ppq TCDD in Their Bleach Plant Flows

The results of Scenario I indicate that the loading capacity could be exceeded and that more restrictive controls may be needed. A permit condition set at a level below the analytical detection limit creates a situation where it is difficult, if not impossible, to determine compliance. Because dioxins and other chlorinated organic compounds are produced in the bleach plant, concentrations of 2,3,7,8-TCDD are higher in the combined bleach plant flow than in the total plant effluent. This means that discharge loads based on total plant effluent limits which are below the analytical detection limit could monitored for compliance using the combined bleach plant waste stream. Scenario II looks at the cumulative load which results from setting limits of 10 ppq in the combined bleach plant flow.

The results of this scenario are summarized in the following table and depicted in Figure 8. As can be seen, the cumulative load of 2.9 mg/day would be below the loading capacity set at either the annual average flow or the median flow. This scenario also indicates that background and non-point source loads, assumed to be zero, could be taken into account. Figure 9 shows the distribution of loads for each of the individual mills. It should be noted that Scenario II does not account for removal of 2,3,7,8-TCDD from the wastewater treatment system prior to discharge.

Table 5. Allocate 10 ppq 2,3,7,8-TCDD Based on Bleach Plant Flow

Mill No.	Facility	Location	Bleach Pulp Production (tons/day)	Total Flow (mgd)	Bleach Flow (mgd)	TCDD Effluent Conc. Total (ppq)	TCDD Effluent Conc. Bleach (ppq)	TCDD Load (mg/day)
1	Potlatch	(Lewiston)	1509	37.4	18.7	5.0	10.0	0.7
2	Boise Cascade	(Wallula)	904	16.9	3.6	1.8	10.0	0.1
3	James River II	(Camas)	1071	59.0	8.0	1.3	10.0	0.3
4	Pope & Talbot	(Halsey)	550	13.7	7.0	5.0	10.0	0.3
5	Boise Cascade	(St. Helens)	1035	38.4	17.0	5.0	10.0	0.6
6	Longview Fiber	(Longview)	298	62.3	8.0	1.1	10.0	0.3
7	Weyerhaeuser	(Longview)	565	49.9	4.2	0.8	10.0	0.2
8	James River II	(Wauna)	796	37.7	9.6	2.5	10.0	0.4
	Total		6728					2.9

Figure 8. Cumulative Load Using 10 ppq Bleach Plant Flow (all mills)

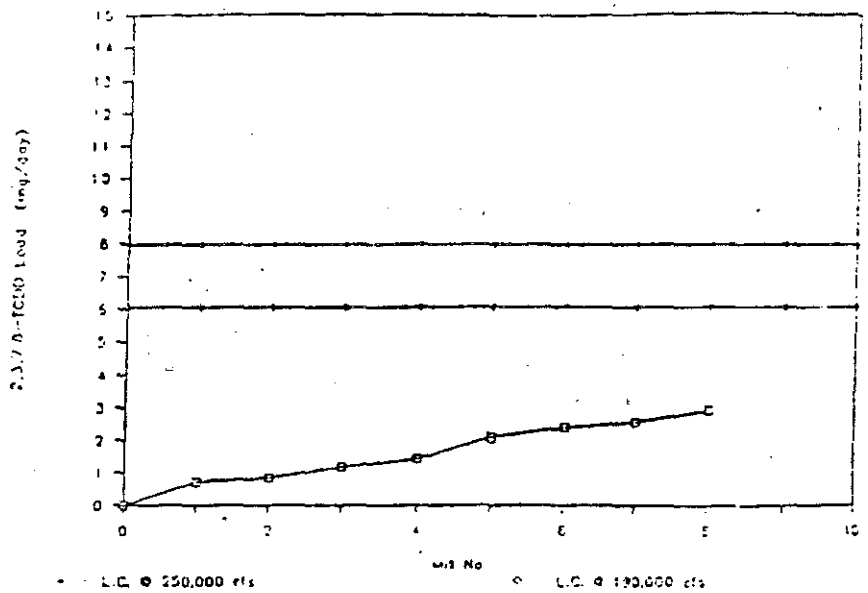
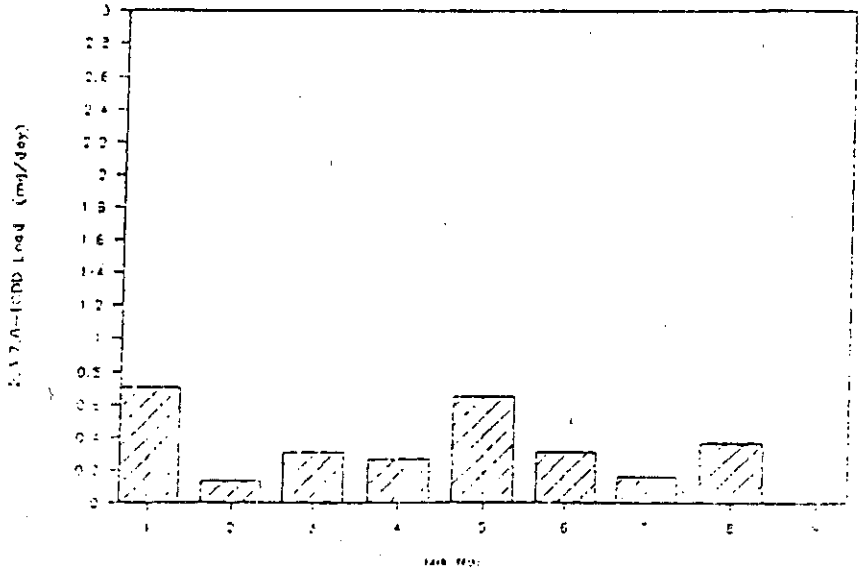


Figure 9. Load Distribution Using 10 ppq Bleach Plant Flow (all mills)



Waste Load Allocations

Allotments have been identified for general source categories which affect the concentration of 2,3,7,8-TCDD in the Columbia River. The development of the TMDL must next address individual allocations. This section discusses waste load allocations (WLAs) for bleached kraft pulp mills.

Pulp & Paper Mills -- Chlorine Bleaching:

Bleached kraft pulp mills receive the largest allotment for 2,3,7,8-TCDD of any source category in the Columbia River basin. For equity, each mill is allocated an equal amount of 2,3,7,8-TCDD to discharge per quantity of bleached pulp produced. Table 6 summarizes this information used to develop the current NPDES permit limits for the eight bleached kraft mills in Region 10. Based on this information, WLA's are identified for each mill.

Table 6. Waste Load Allocations for Bleached Kraft Pulp Mills

Production (tons/day)	Percent	WLA (mg/day)	Mill
1509	22.4	0.7	Potlatch -- Lewiston, ID
904	13.4	0.4	Boise Cascade -- Wallula, WA
1071	15.9	0.5	James River -- Camas, WA
298	4.4	0.1	Longview Fibre -- Longview, WA
565	8.4	0.2	Weyerhaeuser -- Longview, WA
550	8.2	0.2	Pope & Talbot -- Halsey, OR
1035	15.4	0.5	Boise Cascade -- St. Helens, OR
796	11.8	0.4	James River -- Wauna, OR
6728	100.0	3.0	TOTAL

National Bioaccumulation Study

Table A-1. Median Concentrations by Site Category

2,3,7,8-TCDD (ppt)	2,3,7,8-TCDF (ppt)	Site Category
0.50	1.11	Background
0.63	0.68	NASQAN (general ambient)
5.02	12.57	Pulp & Paper - Chlorine Bleaching
1.22	3.76	Pulp & Paper - Nonchlorine Bleaching
0.66	1.63	Potential problem areas (wood treaters, chem. manufacturers, incinerators)
2.16	2.31	Refineries
1.51	3.23	Superfund Sites
1.53	3.40	Other Industrial Sites
1.53	3.00	Urban Areas
0.71	1.18	Agricultural Areas
1.08	1.22	POTWs

Table A-2. Summary of National Bioaccumulation Study Samples Collected in the Columbia River

Sampling Location	Species	Matrix	2378-TCDD	2378-TCDF	TEC	Lipid
Columbia R. at Wallula	Channel Catfish	PF	7.92	4.97	8.71	3.6
" " "	Sucker	WB	5.12	41.78	9.47	17.3
" " "	Carp	WB	56.02	320.69	92.89	25.1
Columbia R. near The Dalles	White Sturgeon	WB	2.14	61.58	8.40	3.6
Columbia R. at Camas	Squawfish	PF	1.14	11.95	2.36	1.3
" " "	Sucker	WB	2.28	15.95	4.08	8.6
Columbia R. at St. Helens	Squawfish	PF	1.28	9.03	2.80	1.7
" " "	Sucker	WB	2.57	11.38	4.17	8.7
" " "	" (dup.)	"	2.01	10.27	3.40	7.7
Columbia R. near Kalama	White Sturgeon	WB	1.06	17.75	2.84	3.2
" " "	" "	"	1.75U	22.15	2.22	4.0
Columbia R. at Longview	Squawfish	PF	1.48	20.12	3.78	3.0
" " "	" (dup.)	"	1.75	20.73	3.85	3.0
" " "	Sucker	WB	5.23	28.34	8.50	13.6
Columbia R. at Wauna	Squawfish	PF	1.73	21.63	4.38	2.8
" " "	Sucker	WB	2.78	16.39	4.45	7.0
Columbia R. near Skamokawa	White Sturgeon	WB	2.07U	22.05	2.21	3.9
" " "	" " (dup.)	WB	0.88	20.94	3.01	2.6
Columbia R. near Astoria	Dungeness Crab		0.97	16.45	2.95	3.6

Table A-3. Summary of National Bioaccumulation Study Samples Collected in the Columbia River Tributaries

Sampling Location	Species	Matrix	2378-TCDD	2378-TCDF	TEC	Lipid
Yakima R. near Richland	Carp	WB	0.79	9.14	2.80	13.7
Snake R. at King Hill	Sucker	WB	0.39U	0.29U	0.00	[illegible]
" " "	"	"	0.37U	0.98U	0.00	
Owyhee R. at Owyhee	Carp	WB	0.70	0.61U	0.70	5.4
" " "	" (dup.)	"	0.87	0.77U	0.87	
Boise R. near Parma	Sucker	WB	0.58	2.31	0.81	22.8
" " "	"	"	0.48	2.19	0.74	24.0
Snake R. at Brownlee Res.	Smallmouth Bass	PF	0.18U			
Snake R. at Lewiston	Bass	PF	0.74	2.75	1.02	4.4
" " "	Sucker	WB	0.46	2.62	0.72	6.2
Willamette R. at Halsey	Whitefish	PF	4.58	16.12	7.12	8.8
" "	Sucker	WB	0.76	2.43	1.15	9.0
Willamette R. near Wilsonville	Crayfish	WB	1.11U	1.77	0.21	3.5
Willamette R. at Portland	Largemouth Bass	PF	0.74	1.09	0.72	3.0
" " "	Sucker	WB	2.25	3.35	4.85	5.1
" " "	Crayfish	WB	2.61	48.14	26.11	3.9
Columbia Slough (Portland)	Carp	WB	2.86	4.10	7.76	12.6
" " "	"	"	7.66	1.82	19.02	10.3

NEIL GOLDSCHMIDT
GOVERNOR

Department of Environmental Quality

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

January 31, 1990

Mr. Bruce Cleland
Environmental Services Division (ES-097)
US Environmental Protection Agency
1200 Sixth Avenue
Seattle, Washington 98101

Re: Columbia River TMDL

Dear Bruce:

We have provided oral comments to you over the past several weeks on the proposed Columbia River TMDL. I would like to at this time provide you with written comments that you should consider when refining the TMDL proposal. Before commenting, I would like to say that we realize the time constraints in putting this proposal together and the difficulty of considering all facets of the TMDL issue. We are very much aware of how difficult this task is and we feel the work done is a very good first draft.

Specific comments include the following:

1) The impact of the proposed methodology on tributary streams must be re-evaluated. The TMDL method must provide an adequate reserve capacity and margin of safety both in the mainstem Columbia and in the tributary streams.

The proposed TMDL divides the loading capacity (LC) for the Columbia River at Bradwood into three allotments: 50% for existing loads from pulp and paper mills, 25 % to other sources, and 25% for future growth and development. Similar logic should be carried forth into the tributary systems.

Over 70% of the available load is allocated to a single source on the Snake River. Consequently, the proposed process may not allow a sufficient margin of safety for other potential sources, such as sewage treatment plants and nonpoint sources, nor allow for future growth and development. There are several states that will be influenced by establishing the LC of the Snake River. A more equitable approach, and one that may be consistent with EPAs proposed rational for gross allotments is:

LC Snake River (est. 31100 cfs)	0.99 mg/d
Existing Sources (Potlatch)	0.495 mg/d

NPS + Growth	
Oregon	0.15 mg/d
Washington	0.15 mg/d
Idaho	0.15 mg/d
Montana	0.025 mg/d
Wyoming	0.025 mg/d

A similar situation exists in the Willamette River. Sub-basins of the Willamette, such as the Columbia Slough, provide fish tissue data that indicates that nonpoint sources of dioxin may exist. However, the method allocates all of the available assimilative capacity at the point of discharge in the Willamette River to a single source. It should be apparent without discussion that standards must be achieved at all locations in every stream, not just at the confluence with the Columbia.

The method again does not provide allocation for nonpoint sources or future growth and development in the Willamette nor does it provide an adequate margin of safety. The method should be reviewed so that it is consistent within the tributary streams. It should provide for some type of margin of safety. An appropriate reserve capacity should also remain for NPS and future growth and development. Allocation of these reserve loads should be the responsibility of the State of Oregon.

In summary TMDLs are a procedure for "WATER QUALITY BASED PERMITTING". Allocations need to focus on attaining standards with a reasonable margin of safety, and allow for future growth and development. Allocations should not be set based on what the dischargers may be able to achieve, which would be technology based permitting.

2) There is no indication of responsibility for NPS allocation, allocations for unidentified point sources, and future growth and development. We recognize that time constraints would prohibit developing more specific allocations in the first draft TMDL. However, we offer the following suggestions:

Allocations for future growth and development should be allocated equitably among the various States. The proposed TMDL method must provide an indication of how these future reserves will be allocated.

We would suggest that the individual states should be equitably allocated a load for future growth and development.

It appears that some of the reserves for future growth may have already been allocated by EPA to existing mills in Washington, not identified for earlier drafts of the TMDL. The State of Oregon should have a reserve capacity of 25% of the LA in the Columbia.

The methodology needs to provide some indication of how or what rational may used to allocate the 25% for NPS and other sources.

3) "Port Activities" have been identified as a point source having an unidentified waste load allocation (WLA). Is it assumed that the states would certify that these activities comply with the TMDL through the Section 401 process?

"Port Activities" would include dredging. These activities require a Section 401 certification from the states that the dredge activities comply with the existing water quality standards including the TMDL. Under this TMDL program the Ports would have to provide the data to show that they would be in compliance with the dioxin limits during dredging activities. Would the EPA approach require program plans from the ports describing how they would meet the waste loads assigned? Additionally, how will EPA assure this approach is consistent between states and sufficient to protect beneficial uses?

4) The margin of safety must be sufficient enough to account for upstream loads, particularly the Celgar Mill in British Columbia.

The individual control strategies (ICSs) developed pursuant to the TMDL must be sufficient to achieve water quality standards, and protect beneficial uses of the river. If the 25% of the LC attributed to other sources and background is a gross allotment, it needs to be justified by review of the information on dioxin discharged into the Columbia in Canada.

5) Production figures and sources.

The production figures used in the allocation process must be documented. To be equitable the method of establishing production figures must be consistent amongst all the mills, e.g limiting the production to the average of the last five years.

6) No more than 50% of the available load should be allocated to existing sources.

Individual states may elect to allocate their reserve capacity to existing mills to increase effluent levels. Alternatively, states may elect to hold on to their reserve for future development or increased environmental protection. The tendency to shift more of the available load toward existing sources does not appear to be equitable. The State of Oregon would effectively be punished for having fewer mills and smaller pulp production and for not allowing a new mill to be permitted and discharge to a water quality limited stream.

7) The TMDL must provide other alternatives for review.

The report describes two scenarios of which only the second scenario is workable. Additional workable scenarios should be considered. An example would be to split the available loads evenly amongst the States. Another example would be to evenly split the flow between the states.

8) The present TMDL assumes no attenuation. This may not be the most conservative approach.

Current information suggests and future data may show that the TCDD deposited in the bed of the river is still available for biological uptake. That fraction which would be available for uptake must eventually be factored into the allocation process. There may not be sufficient reserve capacity and therefore, the waste loads allocated now may have to be reduced in the future.

The TMDL must identify and then layout a strategy for obtaining the information needed to verify the assumptions. This would include collecting and evaluating instream sediment and fish tissue data that could indicate whether the assumptions are reasonable.

Again, I appreciate your effort to develop this TMDL. The Department will work closely with you in developing a final TMDL and addressing the comments above.

Sincerely,

Lydia Taylor

Lydia Taylor, Administrator
Water Quality Division

cc: Carol Jolly, DOE
Stan Springer, DOE

Dick Burkhalter, DOE
Neil Mullane, DEQ
Robert Baumgartner, DEQ

Attachment F

NEIL GOLDSCHMIDT
GOVERNOR

Department of Environmental Quality

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

February 12, 1990

Dr. Mary O'Brian
John Gould
Llewelllyn Mathews
Patrick Parenteau
Nina Bell
Linda Williams
Thane Tieusen
Russell D. Peterson

Re: Dioxin and Total Chlorinated Organics Policy Forum

Dear Invited Participant:

I would like to invite you to participate as part of a work group to advise the Commission and Department on how best to establish the scope, format, audience, time, place and subject matters of a forum on Dioxin and Total Chlorinated Organics Policy.

Commissioner Henry Lorenzen and I will attend the meeting, which I will chair, along with appropriate DEQ staff. The Work group meeting will be public, but only those participants invited to be on the work group will take part in the discussion. For that reason, if you are willing to join us, we ask that you solicit views from others with whom you are usually in contact on these subjects so we can have the breadth of discussion we need.

The work group meeting has been scheduled for February 26, 2:00 p.m. to 4:00 p.m. in the fourth floor conference room at DEQ headquarters.

Enclosed is a proposed agenda and a brief "ideas" list to stimulate your thinking about the subject.

If you are unable to be part of the group, please contact Lydia Taylor at 229-5324, so that an appropriate substitute from the groups whose interests you represent can be selected.

Sincerely,

Bill Hutchison

Bill Hutchison, Chairman
Environmental Quality Commission

BH:LRT:crw
WC6190
Enclosure

Dioxin and Total Chlorinated Organics Work Group

Proposed Agenda

February 26, 1990
2:00 p.m. to 4:00 p.m.
Room 4, DEQ, 811 S.W. Sixth Avenue, Portland, Oregon

1. Discussion of reasons a forum should or shouldn't be held.
2. Purpose statement for the forum.
3. What structure should the forum have?
4. What is the appropriate audience?
5. When and where should the forum be held?

Ideas to begin discussion of the Purpose of the Forum:

1. To choose between regulating to minimize vs. regulating to zero on chlorine related discharges.
2. To develop short, medium, and long term strategies.
3. To develop strategies for existing, expanded or new sources.
4. To develop a strategy with EPA or State of Washington
5. To examine the technical, economic and scientific information and determine a way to qualify its depth and accuracy.
6. To discuss now to coordinate strategies among state and federal agencies, the legislature, the Governor's office, the public and the regulated community.
7. To discuss broader implications of the dioxin issue in all environmental media.

State of Oregon

Department of Environmental Quality Memorandum

Date: February 14, 1990

To: Environmental Quality Commission

From: Fred Hansen

Subject: Item 4 - **Strategic Plan**; March 1, 1990 Work Session

Attached is the draft of the Strategic Plan that we propose be circulated for public review and comment.

We suggest the following process for public input:

1. Issue public notice of the availability of the draft Strategic Plan and the opportunity for presenting written comment.

   - Issue Notice — March 9, 1990
   - Written Comments Due — April 11, 1990

2. Evaluate responses received, and prepare proposed revisions as appropriate.

3. Panel Discussion at May 24, 1990 EQC Work Session. Panel would include various interests and would present their views on the Strategic Plan and on the comments received in response to the public notice.

4. Prepare final Strategic Plan based on direction from the Commission following the panel discussion.

We request that the Commission concur in this approach.

2/14/90 Draft

Environmental Quality Commission
Department of Environmental Quality

Strategic Plan

INTRODUCTION

This document presents the proposed Strategic Plan for the Environmental Quality Commission and Department of Environmental Quality. As used in this document, the term "Agency" is an umbrella term used to represent both the Commission and the Department.

The strategic plan establishes a framework for making critical decisions wisely. The Strategic Plan is not concerned with "nuts and bolts" details of the agency's day-to-day operations. The plan focuses on significant issues where key results are essential. This strategic plan focuses on a short and medium range time span. It sets forth the Mission, Strategic Goals, and Priority Issues of the Agency. This strategic plan will be a primary yardstick for measuring and evaluating Legislative Concepts and Agency Budget Proposals for the 1991-93 Biennium.

ASSUMPTIONS

The following assumptions about the future of Oregon and the nature of future environmental issues, and the strategic planning process will have a bearing on the strategic goals and directions for the Agency:

- The population of Oregon will continue to grow at increasing rates (unless the state takes deliberate effort to discourage or prevent such growth).
- Industrial and economic development will continue to occur at increasing rates (and be encouraged) to provide jobs for Oregon's citizens.
- A change in the nature and mix of industries in Oregon will occur to provide continued employment for existing residents in response to the predictable decline in timber harvest.
- A net migration of citizens to the state and particularly to the urban and suburban centers throughout the state will continue, placing a growing strain on infrastructure and quality of life in the urban and suburban centers.
- The quality of the environment in Oregon is the State's most valuable asset. It is cherished by existing residents, and a highly valued feature for attracting productive future citizens to the state.
- The Environment's assimilative capacity is finite.
- Fiscal constraints will continue to limit available funding for new or expanded environmental quality control efforts.
- Environmental regulatory programs will progressively focus more and more upon the **individual** (both as polluters and as consumers of products and services which unduly contribute to our pollution problems) rather than solely upon cities and industries.
- The demand by the public for more information and more involvement in the deliberations on environmental quality will continue to grow.
- Federal requirements will continue to have a heavy bearing on the activities of the Agency.
- Technology and information will continue to improve and enhance the capability to monitor and control the quality of the environment.
- The Environmental Quality Commission, as a citizen governing body, provides unique opportunities to help achieve goals the Department alone cannot achieve.
- The 1989 Legislatively Approved Budget for the Agency, new legislation to be implemented, and the agreements reflected in the State/EPA agreement (grant agreements) have already established major priorities for the Department for the period from July 1, 1989 through June 30, 1991. There is some ability to adjust priorities and reallocate resources, but significant shifts on an immediate basis will be difficult if not impossible.

MISSION

The Mission statement is a short, concise statement which indicates the purpose or reason for existence of the Agency in global terms.

> **The Mission of the Agency is to be an active force to restore, enhance, and maintain the quality of Oregon's air, water and land.**

STRATEGIC GOALS

Strategic Goals identify the direction the Agency seeks to go or the general results the Agency desires to accomplish over the course of the next few years. The Strategic Goals are not specific as to how the desired results are to be accomplished. The Goal statements provide a "sense of direction" which guide the development of major projects or activities as well as the numerous decisions made by Department managers each day.

To aid in understanding the intent of the goal, descriptive statements are presented to provide additional detail on agency wide direction.

1. **Address environmental issues on the basis of a comprehensive cross-media (air, water, land) approach.**

   This goal will require the Agency to revise and update procedures for permit application evaluation, permit issuance, review of engineering plans, and review of technical proposals to assure that requirements in one environmental media (air, water, land) complement the efforts in other media and do not create new problems. It also calls for special efforts to assure that agency actions and standards protect health and the environment, are based on uniform acceptable risk factors, appropriately consider cumulative effects of pollutant exposure through various pathways, and provide an adequate margin of safety. To support this goal, it will be necessary to establish a data management system in which ambient environmental data, source emission data, and compliance information from each program are accessible and useful to other programs.

2. **Aggressively identify threats to public health or the environment and take steps to prevent problems which may be created.**

   This goal will require improved monitoring to provide essential data to describe current environmental quality, evaluate identified problems, model environmental affects of proposed actions, and evaluate trends in environmental quality. It will also be desirable to develop the capability to track regional/national/international technical/social/economic events and trends that may have significant relationship to Oregon environmental trends, programs, and opportunities for preventive action. It will be necessary to develop enhanced and new capability to perform environmental trends analysis and evaluate varied sources of information to anticipate problems and develop problem-preventive strategies.

3. **Ensure that unallocated assimilative capacity exists by applying "highest and best" technology in conjunction with pollution prevention methods.**

   The environment has limited capacity to assimilate pollutants from human activities without interfering with public health and the quality of life our citizens enjoy. After extensive pollution control efforts, existing industries, cities, and citizen activities produce some residual pollution that utilizes portions of this assimilative capacity. This goal seeks to assure that we never allocate all of the assimilative capacity to existing sources and activities. As population and industry grow, it is necessary to find new ways to reduce and remove pollutants to meet this goal. We also will need to develop new and improved capability to determine the environmental assimilative capacity in areas and environmental media of concern. Refinement of the processes for determining the appropriate uses of increments of currently unused assimilative capacity will be required.

4. **Minimize the extent and duration of unpermitted releases to the environment through a technically sound compliance program which is timely, serves as a deterrent, and ensures that an economic advantage is not gained by non-compliance.**

   This goal anticipates review and restructuring of existing compliance assurance activities to assure that environmental quality objectives are achieved. Examples of actions that may be desirable to

assist in achieving this goal include: review of existing permits and revision as necessary to assure that permits are achievable and clearly understood by permittees, and that conflicting, unenforceable, or unessential permit conditions are eliminated; expansion of the use of self monitoring and reporting by sources (which is objective and valid) as a means to make more effective use of existing DEQ field staff; improvement of technical training of agency staff to make compliance determinations; and enhancement of the capacity and range of laboratory analytical capability to support field compliance determinations.

5. **Promote public awareness of the environment and cultivate a personal sense of value and responsibility for a healthy environment.**

   Past environmental quality control efforts have focused largely on treatment and control of industrial and municipal activities. Pollution control efforts are increasingly recognizing the larger number of small sources -- the activities of each of us as individuals. Thus, to achieve environmental quality goals, we need to secure assistance from experts in understanding options for changing attitudes of the public regarding their actions and environmental quality. We also need to develop a broad-based strategy for informing the public of the relationship between their actions and environmental quality, and integrate implementation of this strategy into all agency actions. Other options for action include exploring options for product labeling as a means of fostering awareness of environmental effects of marketplace products, and enhanced public involvement in agency program development.

6. **Employ the highest professional and ethical standards in dealing with the public, regulated community, and co-workers.**

   This goal will require the Department to develop a clear statement of values to guide agency actions and attitudes. In part, this statement should reflect respect and appreciation for the views of others, and continue to result in decisions that are unbiased, objective, equitable, and based upon sound facts. All staff should be trained to ensure that a consistent approach reflecting department values is followed in dealing with the public, regulated community, and co-workers.

7. **Foster a workplace atmosphere which emphasizes safety; encourages affirmative action; promotes creativity, pride, enthusiasm, productivity, active participation in the issues; and allows staff members to apply their fullest capabilities.**

   If environmental goals are to be achieved, attention must also be paid to the work environment for the staff of the agency. We need to provide adequate time and opportunity for staff to perform quality work, to systematically acknowledge quality work, to promptly address deficient performance, to provide an environment which fosters participation and creativity, to assure a safe workplace through training and effective implementation of safety programs, and to continuously strive to meet affirmative action goals.

8. **Streamline agency programs and activities by identifying and implementing more efficient ways to accomplish essential actions and by eliminating low priority tasks.**

   This goal will require the Agency to systematically evaluate rules, permits, procedures, policies, and activities to find ways to streamline and find more efficient ways to accomplish the desired results. It will also require identification of programs or activities that can more effectively and efficiently be accomplished by other government agencies and seek to transfer such activities to those agencies. Efforts are also appropriate to identify and eliminate work tasks which contribute little to environmental quality protection (accomplishing the goals of this plan) so as to free resource for higher priority tasks.

9. **Maximize the effectiveness of the Environmental Quality Commission in achieving Oregon's environmental goals.**

   The Environmental Quality Commission consists of five citizens appointed by the Governor. By law, they are responsible for establishing the policies which guide the Department in carrying out state environmental laws. They adopt environmental standards, and procedural rules which govern actions by industries, cities, and citizens. The Commission has the opportunity to be a proactive force in the development of environmen-

tal policy. The Commission helps to bridge the gap between the citizen and the regulatory process. The effectiveness of the Commission can be enhanced through involvement in environmental policy issues at the earliest opportunity. However, to avoid diluting the effectiveness of the Commission, efforts must be made to reduce the number of issues on the Commission agenda by eliminating items where statute or rule do not require action.

PRIORITIES

The Agency has identified priorities for each major program. It is assumed that on-going work (development and update of standards, pollution control strategy development, permit issuance, pollution control facility plan review, compliance inspections, enforcement, complaint investigation, environmental quality monitoring, etc.) will continue at approximately present levels unless identified as a potential target for modification as part of the priorities on these lists.

The Agency has also identified items that, although important, are candidates for deferral, modification or elimination in order to be able to assign resources to pursue identified high priorities.

The priorities are expected to be reflected in Division Operating Plans as specific objectives and tasks.

PRIORITIES FOR ALL PROGRAMS

High Priorities

1. Restructure compliance inspection programs to base the inspection frequency and level of effort for each source on the environmental threat posed by the source. (Goal 4)
2. Develop a comprehensive data management system that supports management decision making and facilitates exchange of information between Department programs and other agencies. (Goals 1 & 2)
3. Streamline the permit issuance process and eliminate the backlog of pending permit applications. (Goals 1 & 8)
4. Develop and implement new initiatives for informing the public about actions they can take to reduce pollution. (Goal 5)
5. Provide training and development opportunities for agency staff to assure a highly qualified and knowledgeable staff. (Goals 6 & 7)
6. Implement a Health & Safety Plan to protect employees who may come in contact with hazardous substances. (Goal 7)
7. Develop options for stable long term funding to achieve environmental protection goals. (All Goals)

Candidates for Deferral, Modification, or Elimination

- Reduce staff effort related to preparation for Environmental Quality Commission meetings by reducing the number of items on the agenda.
- Reduce staff effort expended in monitoring sources by increasing the reliance on valid and objective self monitoring and reporting. This will require development and implementation of effective programs for lab certification and selective auditing of self monitoring efforts.
- Reduce staff efforts by transferring activities that logically should be provided at the local level to the appropriate local governments.
- Reduce staff effort devoted to responding to issues which are solely nuisance in nature. (ie those that do not constitute a hazard to public health or the environment.)
- Modify technical assistance efforts to emphasize group approaches rather than one-on-one technical consultation. Also, develop technical assistance efforts which utilize the expertise of individuals and groups outside the Department to accomplish the desired goal.

WATER QUALITY PROGRAM

High Priorities

1. Obtain adequate information to determine the status of water quality in general and to establish the assimilative capacity for specific priority waterbodies. (The entire state should assessed as rapidly as resources permit.) (Goals 2 & 5)
2. Utilize the State Clean Water Strategy (SCWS) to establish priorities for prevention and corrective actions which need to be taken by the Department. The SCWS is a problem prioritization method which ranks streams according to their problem severity and beneficial use value. (Goals 2 & 4)
3. Implement aggressive source control and problem prevention programs based on the priorities established that explore and encourage use of

environmentally sound alternatives for disposal of treated wastewater which do not adversely affect air, land, stream, and groundwater quality. (Goals 1, 3, & 8)

Candidates for Deferral, Modification, or Elimination

- Defer development of a long-term lake protection/restoration program.
- Defer development of a statewide long term estuaries/ocean program.

AIR QUALITY PROGRAM

High Priorities

1. Achieve healthful air quality levels in all pre-1989 non-attainment areas and maintain healthful levels in all attainment areas while allowing for continued economic growth wherever possible. (Goals 2, 3, & 4)
2. Establish a systematic approach to complete and maintain a statewide assessment of Oregon's air quality. (Goal 2)
3. In order to significantly reduce harmful exposure of the public to airborne toxic pollutants, establish an air toxics program which, through the permit process, addresses both new and existing sources and provides a level of protection equal to that of other environmental media. (Goals 1 & 2)
4. Develop improved methods to achieve reductions in area source emissions such as: public education, consumer product labeling, emphasis on pellet vs. cordwood home heating systems, etc. (Goals 3 & 5)

Candidates for Deferral, Modification, or Elimination

- Woodstove certification program; defer to the national certification program.

HAZARDOUS AND SOLID WASTE PROGRAM

High Priorities

1. Develop consistent cleanup standards at waste management facilities under HSW jurisdiction and then identify and have a department approved strategy for cleanup of each problem site. (Goals 1 & 3)
2. Significantly reduce the disposal of domestic solid waste in the state through an expanded bottle bill, adoption and implementation of recycling goals and standards and improved markets for recyclables. (Goal 2)
3. Significantly decrease the percent of domestic solid waste being disposed in landfills without state-of-the art technologies such as double liners and leachate collection through development and enforcement of new solid waste disposal standards. (Goal 3)
4. Significantly reduce the amount of toxic chemicals used and hazardous waste generated in the state through comprehensive implementation of the 1989 Toxic Use Reduction and Hazardous Waste Reduction law and enhanced technical assistance to hazardous waste generators. (Goals 3 & 4)
5. Significantly increase the amount of products purchased by government which utilize non-virgin materials in their manufacture.
6. Develop and implement comprehensive strategies to reduce the generation of special wastes and manage the special wastes that are generated. (Special wastes include household hazardous waste, waste from conditionally exempt hazardous waste generators, incinerator ash, infectious waste, oil contaminated wastes, etc.) (Goal 2)
7. Clarify the responsibility for solid waste management so that local governments are specifically responsible for solid waste planning and implementation of the laws that pertain to solid waste disposal and recycling.
8. Assist owners of underground storage tanks in complying with federal standards by comprehensive implementation of a 1989 law which provides grants for site and tank inspections and loan guarantees/interest rate subsidies for tank upgrades and cleanups.

Candidates for Deferral, Modification, or Elimination

- Substitute Department conducted monitoring of groundwater at solid waste disposal sites with valid and objective monitoring by site operators.
- Implement the new groundwater protection rules at high priority solid waste disposal sites only.
- Reduce the review of and eliminate the need to approve annual wasteshed recycling reports.
- Reduce the Department's workload by requiring RCRA facility operators, with Departmental oversight, to do the facility assessments necessary to obtain closure or post closure permits. Now, the Department does the assessments for the operator.

- Substitute EPA guidance documents for one-on-one technical assistance to operators of hazardous waste sites who are developing corrective action strategies.

ENVIRONMENTAL CLEANUP PROGRAM

High Priorities

1. Enhance the environmental cleanup program to include a non-complex cleanup process (with an appropriate regional component) that will promote voluntary cleanups by responsible parties with limited DEQ oversight. (Goal 8)

2. Aggressively pursue responsible parties to ensure the use of their resources wherever possible to achieve timely cleanups and attain a goal of recovering at least 75% of DEQ expenditures for oversight of these cleanups. (Goal 4)

3. Complete rulemaking on criteria and procedures for the Confirmed Release List, the Site Inventory, Preliminary Assessments and the Hazard Ranking System and implement on an agency-wide basis. (Goals 1 & 2)

4. Secure funding for orphan site cleanups by receiving E-Board approval to sell Pollution Control Bonds to clean up one or more specific sites. (Goals 1 & 2)

Candidates for Deferral, Modification, or Elimination

- Defer implementation of rulemaking/guideline development necessary to do natural resource damage assessments. The Department is authorized to recover damages from responsible parties for injury to or destruction of natural resources caused by a release of hazardous substances.

- Defer further development of financial assistance program for responsible parties who are unable to finance investigations and cleanup. The Department has statutory authority to provide financial assistance in the form of loans and loan guarantees to needy responsible parties, but resources are inadequate to implement except on a very limited basis.

- Until "High Priority Issue" 1 above is implemented, assistance or oversight for most responsible parties wishing to voluntarily investigate and cleanup their sites will not be available.

- Defer adoption of rules defining an "unwilling" responsible party under HB 3515 and defer use of the "non-binding review" provision of HB 3515. This means the Orphan Site Account in HSRAF (state superfund) will not be immediately available for cleanups at sites where the responsible parties are unwilling to conduct the cleanup using their resources.

WHAT COMES NEXT

Following are the anticipated next steps in the ongoing Strategic Planning Process:

1. Opportunity for Review and Input by the Public.

2. Revise this plan as appropriate based on further input.

3. Develop individual Operating Plans for each Division. The Senior Managers of the Department will then review operating plan priorities, prepare preliminary proposals for any reallocation of resources, and report to the Commission.

   Note: Operating Plans are internal management documents developed by individual Divisions within the Department to guide day to day actions and facilitate achievement of the expectations reflected in the Budget, Federal Grant Agreements, and the Goals of the Strategic Plan. Operating Plans are the subject of discussion and review by Department managers on a frequent basis.

4. Develop Performance Indicators and a system for periodic reporting to the Commission.

   Note: Performance Indicators are measures of accomplishment that are developed, tracked and routinely reported to the Commission and Department managers to provide a clear indication of progress toward meeting the Goals reflected in the Strategic Plan.

5. Develop preliminary legislative concept proposals and budget decision packages for early presentation and discussion with the Commission.

6. Annually review and update the Strategic Plan.

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: March 2, 1990
Agenda Item: C
Division: MSD
Section: Administration

SUBJECT:

Pollution Control Tax Credits. (Supplemental Report)

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 _A_

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

Tax Credit Application Review Reports:

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

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 ___
___	Supplemental Background Information	Attachment ___

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

None.

PROGRAM CONSIDERATIONS:

None.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

None.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends the Environmental Quality Commission approve T-2827, T-2941, T-2942, T-3131, T-3135, and T-3140 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 March 2, 1990 Totals
(including original and supplemental report)

Air Quality	$1,884,635
Water Quality	104,887
Hazardous/Solid Waste	14,408
Noise	- 0 -
	$2,003,930

Calendar Year Totals Through January 31, 1990

Air Quality	$ 496,482
Water Quality	1,691,433
Hazardous/Solid Waste	92,526
Noise	-0-
	$ 2,280,441

ISSUES FOR COMMISSION TO RESOLVE:

None

INTENDED FOLLOWUP ACTIONS:

Notify applicants of Environmental Quality Commission actions.

Approved:

Section: Roberta Young

Division: _____

Director: Fred Hansen

Report Prepared By: Roberta Young

Phone: 229-6408

Date Prepared: February 23, 1990

RY:y
MY100397
February 23, 1990

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Ernest B. Smyth
Smyth Hereford Ranch
93461 Smyth Road
Junction City, Oregon 97448

The applicant owns and operates a grass seed farm operation in Junction City, Oregon.

Application was made for tax credit for air pollution control equipment.

2. Description of Claimed Facility

The equipment described in this application is located at 93461 Smyth Road, Junction City, Oregon. The equipment is owned by the applicant and includes a 1989 Freeman 370 baler; a 1989 Oregon Roadrunner hay squeeze; and a 1978 John Deere Tractor.

Claimed equipment cost: $114,706
(Accountant's Certification was provided.)

A breakdown of facility costs is:

Baler	- $32,606
Hay Squeeze	- $59,100
Tractor	- $23,000

The applicant is applying for 90% tax credit ($20,700) on the tractor because 10% of its use is intended for other farm uses. The applicant states that assigning 10% of the use of the tractor to unrelated farm use will cover those anticipated uses.

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 June 8, 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 request for preliminary certification was approved April 6, 1989.

4. Evaluation of Application

a. The equipment is eligible because the principal 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; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)(A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

In determining the percent of the pollution control 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 promotes the conversion of a waste product (straw) into a usable commodity by removing straw from the fields in usable condition for livestock feed or mulch.

2. The estimated annual percent return on the investment in the equipment.

The adjusted cost of the claimed equipment (minus the cost of the portion not attributable to pollution control) $112,406 divided by the average annual cash flow ($6819) equals a return on investment factor of 16.48. Using Table 1 of OAR 340-16-030 for a life of 10 years, the annual percent return on investment is 0%. Using the annual percent return of 0% and the reference annual percent return of 18.3%, 100% is allocable to pollution control.

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 an increase in operating costs of $15,911 to annually maintain and operate the equipment. These costs were considered in the return on investment calculation.

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.

   The applicant states that 10% of the use of the tractor will be for general farm purposes. This reduces the allocable cost of the tractor from $23,000 to $20,700.

The actual cost of the equipment properly allocable to pollution control as determined by using these factors is 98%.

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 98%.

6. Director's Recommendation

   Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $114,406, with 98% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-2827.

J. Britton:jm
(503) 686-7837
February 1, 1990

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

J.S.G., Inc.
Steve & Virginia Glaser
32200 Quail Run
Tangent, Oregon 97389

The applicant owns and operates a grass seed farm operation in Tangent, 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 Ford 3600 tractor, located at 32161 Quail Run, Tangent, Oregon. The equipment is owned by the applicant. The applicant is applying for 75% ($7,125) of the actual claimed facility cost of $9,500. The remaining 25% is being used for other small scale farm jobs during the summer months and is not eligible for tax credit. Because of the limited amount of time the tractor is used as a means to reduce open field burning, the applicant estimates, based on experience, that 25% of the tractor's use will be for other unrelated farm uses.

Claimed equipment cost: $9,500

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 June 27, 1989, and the application for final certification was found to be complete on November 8, 1989, within two years of substantial purchase of the equipment.

b. The request for preliminary certification was approved May 25, 1989.

4. Evaluation of Application

a. The equipment is eligible because the principal 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; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)(A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

In determining the percent of the pollution control 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 material collected by the equipment is disposed of by more efficient stack burning and redistribution of ash back into the fields by connecting the tractor to a pusher, a blower, and a fluffer. The pusher and fluffer prepares the straw for more efficient stack burn and the blower distributes the ash into the field.

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 gross annual income.

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 an increase in operating costs of $1,000 to annually maintain and operate the equipment. These costs were considered in the return on investment calculation.

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.

   The applicant states that 25% of the use of the tractor will be used for farm uses.

The actual cost of the equipment properly allocable to pollution general control as determined by using these factors is 75%.

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 75%.

6. Director's Recommendation

   Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $9,500, with 75% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-2941.

J. Britton:jm
(503) 686-7837
February 2, 1990

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

J.S.G., Inc.
Steve & Virginia Glaser
32200 Quail Run
Tangent, Oregon 97389

The applicant owns and operates a grass seed farm operation in Tangent, 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 John Deere 4255 tractor, located at 32161 Quail Run, Tangent, Oregon. The equipment is owned by the applicant. The applicant is applying for 75% ($37,881.50) of the actual claimed facility cost of $50,508.67. The remaining 25% is being used for small scale farm purposes during the summer months and is not eligible for tax credit. Because of the limited amount of time the tractor is used as a means to reduce open field burning, the applicant estimates, based on experience, that 25% of the tractor's use will be for other unrelated farm uses.

Claimed equipment cost: $50,508.67
(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 July 30, 1989, and the application for final certification was found to be complete on November 8, 1989, within two years of substantial purchase of the equipment.

b. Preliminary certification was approved for the facility.

4. Evaluation of Application

a. The equipment is eligible because the principal 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; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)(A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

In determining the percent of the pollution control 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 tractor is used to pull the propane flamer and the flail chopper, which aids in reducing the combustible material, the remaining stubble is propane flamed.

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 gross annual income.

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 an increase in operating costs of $8,000 to maintain and operate the equipment. These costs were considered in the return on investment calculation.

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.

   The applicant states that 25% of the tractor is attributable to general farm uses.

The actual cost of the equipment properly allocable to pollution control as determined by using these factors is 75%.

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 75%.

6. Director's Recommendation

   Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $50,508.67, with 75% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-2942.

J. Britton:jm
(503) 686-7837
February 2, 1990

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

James VanLeeuwen
27070 Irish Bend Loop
Halsey, Oregon 97348

The applicant owns and operates a grass seed farm operation in Halsey, 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 1977 Ford 8700 tractor located at 27070 Irish Bend Loop, Halsey, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: $10,000
(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:

Purchase of the equipment was substantially completed on July 31, 1989, and the application for final certification was found to be complete on December 15, 1989, within two years of substantial purchase of the equipment.

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): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

In determining the percent of the pollution control 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 tractor promotes the conversion of a waste product (straw) into a usable commodity by providing the power unit for the baling operation. The straw then is used as livestock feed and compost.

2. The estimated annual percent return on the investment in the equipment.

   There is no gross annual income generated by this equipment producing a negative annual percent return on the investment.

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 tractor is an essential piece of equipment required to achieve the applicant's use of alternative methods to open field burning.

4. Any related savings or increase in costs which occur or may occur as a result of the purchase of the equipment.

   The applicant claims operating costs of $13,100 to annually maintain and operate the equipment. However, approximately half of this amount is for a tractor rental rate which is not an acceptable operating expense. The applicant has been notified of the Department's determination. These costs were considered in the return on investment calculation. The applicant states that the value of the livestock ($20/ton) is offset by the baling and transport expenses.

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 $10,000, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3131.

J. Britton:ka
(503) 686-7837
December 15, 1989

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Tom Herndon
27252 Irish Bend Loop
Halsey, Oregon 97348

The applicant owns and operates a grass seed farm operation in Halsey, 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 1988 John Deere 4650 tractor, located at 29702 Nicewood Drive, Halsey, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: $52,508
(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:

Purchase of the equipment was substantially completed on December 22, 1988, and the application for final certification was found to be complete on December 15, 1989, within two years of substantial purchase of the equipment.

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): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

In determining the percent of the pollution control 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 tractor is used to pull equipment which chops the straw and then plows it under.

2. The estimated annual percent return on the investment in the equipment.

   There is no gross annual income generated by this equipment producing a negative annual percent return on the investment.

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.

   The applicant states there is an increase in operating costs of $12,480 to annually maintain and operate the equipment. It is staff's determination that approximately one-third of the claimed facility costs are inappropriate because they reflect equipment rental costs which are not operation expenses. The applicant has been informed of staff's determination. These costs were considered in the return on investment calculation.

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 $52,508, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3135.

J. Britton:ka
(503) 686-7837
December 15, 1989

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Donald Estergard, Pres.
Estergard Farms, Inc.
1455 Larkspur Ave.
Eugene, Oregon 97401

The applicant owns and operates a grass seed farm operation in Harrisburg, 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 John Deere 4850 tractor, located at 32022 Priceboro Drive, Harrisburg, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: $71,401.84
(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:

Purchase of the equipment was substantially completed on June 28, 1989, and the application for final certification was found to be complete on December 14, 1989, within two years of substantial purchase of the equipment.

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): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating

grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

In determining the percent of the pollution control 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 tractor is used to pull a Rear-Bagger Loaf machine and a propane flamer. The loose straw is condensed into loaves and the stubble is propane flamed.

2. The estimated annual percent return on the investment in the equipment.

   There is no annual percent return on investment in the equipment as it's use involves additional steps to achieve field sanitation.

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 an increase in operating costs of $5,960 to annually maintain and operate the equipment. These costs were considered in the return on investment calculation.

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 $71,401.84, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3140.

J. Britton:jm
(503) 686-7837
January 8, 1990

State of Oregon
Department of Environmental Quality Memorandum

Date: February 14, 1990

To: Environmental Quality Commission

From: Bruce A. Hammon, Eastern Region Manager

Subject: Agenda Item E - Regional Managers Report, March 2, 1990 EQC Meeting

Following is the outline of a 20 minute oral report that will be presented at the March 2, 1990 meeting:

-- Overview of Eastern Region Activities

-- Highlights of significant events or environmental issues by program:

Air Quality

- Woodstove-related air pollution problems in the McKay Creek area of Pendleton.
- Compliance summary of air pollution control sources.

Water Quality

- Compliance summary of water pollution control sources.
- Water quality issues concerning gold mining and food processing.

Hazardous and Solid Waste

- Compliance summary of solid waste disposal sites.
- Cull onion disposal in Malheur County.
- Impacts of the new underground storage tank rules on the "mom and pop" gasoline stations in eastern Oregon.

Environmental Cleanup

- Summary of leaking underground storage tank investigations.

Oil and Hazardous Material Response

- Hydrochloric acid spill - North Fork John Day River

-- Questions and Answers

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: March 2, 1990
Agenda Item: F
Division: Air Quality
Section: Planning & Development

SUBJECT:

Air Quality State Implementation Plan: Amendments to the Lane Regional Air Pollution Authority (LRAPA) Title 34, "Air Contaminant Discharge Permits" as Part of the State Implementation Plan.

PURPOSE:

Adoption of the amended Title 34 as part of the State Implementation Plan.

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

DESCRIPTION OF REQUESTED ACTION:

The Lane Regional Air Pollution Authority has amended Title 34, "Air Contaminant Discharge Permits", to fulfill four objectives:

1. Set criteria for public request for public hearings prior to the issuance of Air Contaminant Discharge Permits;

2. Specify source categories which are required to register and to provide emissions information;

3. Increase permit fee revenue to help offset program costs; and

4. Make "housekeeping" revisions to improve regulation clarity and address minor permitting issues.

The LRAPA has acted as Hearing Officer for the Environmental Quality Commission (EQC, Commission) upon authorization by the Department of Environmental Quality (DEQ, Department) which found the proposed rules to be consistent with Department rules.

The Commission is requested to adopt these amendments as a revision to the State of Oregon Clean Air Act, Implementation Plan (OAR 340-20-047), and to direct the Department to submit the revised Plan to the Environmental Protection Agency (EPA) for approval.

AUTHORITY/NEED FOR ACTION:

___	Required by Statute: _____ Enactment Date: _____	Attachment ___
___	Statutory Authority: _____	Attachment ___
_X_	Pursuant to Rule: OAR 340-20-047	Attachment ___
_X_	Pursuant to Federal Law/Rule: PL 95-95 Clean Air Act Amendments of 1977	Attachment ___
___	Other:	Attachment ___

DEVELOPMENTAL BACKGROUND:

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

_X_ Other Related Reports/Rules/Statutes: Attachment F-H

LRAPA Staff Reports to Board of Directors - October & December, 1989 and January, 1990

_X_ Supplemental Background Information Attachment _I_

Opinion of the LRAPA Legal Counsel on Permit Fee Increases

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

In general, permit fees for facilities located in Lane County are greater than for similar facilities in other parts of the state. The revised permit fees are 10 percent higher for all categories. Some final approval of permits may be delayed because of requests by the public for public hearing. Neither effect will have major impact.

PROGRAM CONSIDERATIONS:

* The new criteria for holding public hearings are consistent with recent changes in Department rules.

* Requiring registration and gathering information on emissions will allow LRAPA to compile a more comprehensive emission inventory, which is necessary for preparation of additional volatile organic compound and noncriteria pollutant control programs.

* Increasing permit fees is consistent with the LRAPA Board's desire to require fees to be based on the cost of the permit program. Although comments were received from industry during the public comment period, there were no comments opposing the fee increase. The Commission has concurred in the past on the LRAPA setting higher permit fees than the Department. The informal opinion of the Attorney General's office is that the Legislature's intent to oversee the Department's budget does not extend to the LRAPA.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Not to adopt the amended rules as a State Implementation Plan revision. This would make LRAPA rules inconsistent with the current State Implementation Plan.

2. Request the LRAPA to align its permit fees with the Department's fee schedule. This would result in the LRAPA not being able to cover the costs of their permit program. The Department will need to increase its permit fees in the near future to better cover its costs. There may always be some difference in permit program costs between the LRAPA and the Department, thus some minor differences in fees are justified.

3. Adopt as a State implementation Plan revision all of the amended Title 34.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

Adopt the amended Lane Regional Air Pollution Authority Title 34, "Air Contaminant Discharge Permits" in its entirety 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's permit program costs from permit fees.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The amended rules are found to be consistent with the Strategic Plan, and Agency Policy.

There is some question whether an increase in permit fees by the LRAPA is consistent with Legislative Policy as embodied in House Bill (HB) 5033, which requires the Department to obtain Legislative approval of all fee increases. The LRAPA Legal Council's opinion is that an increase in permit fees by LRAPA is not covered by this Legislation. It is the informal opinion of the Attorney General's office that the intent of HB 5033 is to limit the expenditures of the Department through Legislative oversight of the fees directly charged by the Department. It is believed that this oversight was not intended to extend to LRAPA's budget which is not included in the Department's budget.

ISSUES FOR COMMISSION TO RESOLVE:

1. Should the LRAPA continue to have a different permit fee schedule than the Department?

INTENDED FOLLOWUP ACTIONS:

The Department will forward the revised State of Oregon Clean Air Act Implementation Plan to the Environmental Protection Agency for their approval.

Approved:

Section: John F. Kowalczyk

Division: Dick Nichols

Director: Fred Hansen

Report Prepared By: Gregg E. Lande

Phone: 229-6411

Date Prepared: February 12, 1990

GEL:a
PLAN\AH809
2/12/90

LANE REGIONAL AIR POLLUTION AUTHORITY

TITLE 34

Air Contaminant Discharge Permits

Section 34-001 General Policy and Discussion

In order to restore and maintain Lane County air quality in a condition as free from air pollution as is practicable, consistent with the overall public welfare of the county, it is the policy of the Lane Regional Air Pollution Authority to require a permit to discharge air contaminants from certain sources. As a result, no person shall construct, install, establish, modify, enlarge, develop or operate an air contaminant source listed in ~~Section 34-025 (Table A)~~, without first obtaining a permit from the Authority to discharge air contaminants. In addition, for those sources not listed in ~~Section 34-025 (Table A)~~ which have emissions of air contaminants, the Director may require registration with the Authority.

Section 34-005 Definitions

All relevant definitions for this title can be found with the general definitions listed in Title 14.

Section 34-010 General Procedures for Obtaining Permits

1. Any person intending to construct, install or establish a new source, renew an expired permit, modify an existing source with ~~substantial~~ changes to the process or emission control equipment which would affect air contaminant emissions, or increase the emissions of air contaminants beyond allowable rates established by regulation or permit shall submit a completed application on forms provided by the Authority and containing the following information:

   A. Name, address and nature of business;

   B. A description of the production processes and a related flow chart;

   C. A plot plan showing location of all air contaminant sources, all discharge points and the surrounding residential and commercial property;

   D. Type and quantity of fuels used;

   E. Amount, nature and duration of all emissions of air contaminants;

   F. Estimated efficiency of air pollution control equipment;

G. Other pertinent information required by the Authority.

2. Within fifteen (15) days after receiving the ~~permit~~ application, the Authority will review the application to determine the adequacy of the information submitted.

A. If the Authority determines that additional information is needed, it will promptly request the needed information from the applicant. The application will not be considered complete for processing until the requested information is received. The application will be considered to be withdrawn if the applicant fails to submit the requested information within ninety (90) days of the request.

B. If, in the opinion of the Director, additional measures are necessary to gather facts regarding the application, the Director will notify the applicant of his intent to institute said measures and the timetable and procedures to be followed. The application will not be considered complete for processing until the necessary additional fact-finding measures are completed.

C. When the information in the application is deemed adequate, the applicant will be notified that the application is complete for processing.

D. If, upon review of the application, the Authority determines that a permit is not required, the Authority shall notify the applicant in writing of this determination. Such notification shall constitute final action by the Authority on the permit application.

(1) Upon notification by the Authority, a registered source may be required to obtain a permit.

E. Following determination that it is complete for processing, each application will be reviewed on its own merit, in accordance with the provisions of all applicable statutes, rules and regulations of the State of Oregon and the Lane Regional Air Pollution Authority.

3. In the event the Authority is unable to complete action on an application for a permit within forty-five (45) days ~~after notification that the application is complete for processing~~ of closing of the public comment period or hearing record under LRAPA 34-010(4), the applicant shall be deemed to have received a temporary or conditional permit. Caution should be exercised by the applicant under a temporary or conditional permit, since it will expire upon final action by the Authority to grant or deny the original application, and since such temporary or conditional permit does not authorize any construction activity, operation or discharge which will violate any of the laws, rules or regulations of the State of Oregon or the Lane Regional Air Pollution Authority.

4. If the Authority proposes to issue a permit, public notice or proposed provisions prepared by the Authority will be forwarded to the applicant and other interested persons, at the discretion of the Authority, for comment. ~~The Authority shall issue public notice of its intent to issue an air contaminant discharge permit.~~ The public notice shall allow thirty (30) days for written comment from the applicant, the public and the interested local, state and federal agencies prior to issuance of the permit. If, within fourteen (14) days after commencement of the public notice period, the Authority receives written requests from ten (10) persons, or from an organization or organizations representing at least ten persons, for a public hearing to allow interested persons to appear and submit oral or written comments on the proposed provisions, the Authority shall provide such a hearing before taking final action on the application, at a reasonable place and time and on reasonable notice. Notice of such a hearing may be given, at the Authority's discretion, either in the notice accompanying the proposed provisions or in such other manner as is reasonably calculated to inform interested persons. The Authority shall take final action on the permit application within forty-five (45) days of the closing of the public comment period or the hearing record.

5. ~~After thirty (30) days have elapsed since the date of mailing of the proposed provisions and the issuance of public notice, the Authority may take final action on the application for a permit.~~ The Authority may adopt or modify the proposed provisions or recommend denial of a permit. In taking such action, the Authority shall consider the comments received regarding the proposed provisions and any other information obtained which may be pertinent to the application being considered.

6. The Authority shall promptly notify the applicant in writing of the final action taken on ~~his~~ the application. If the conditions of the permit issued are different from the proposed provisions forwarded to the applicant for review, the notification shall include the reasons for the changes made. A copy of the permit issued shall be attached to the notification.

7. If the applicant is dissatisfied with the conditions or limitations of any permit issued by the Authority, ~~he~~ the applicant may request a hearing before the Board of Directors or its authorized representative. Such a request for hearing shall be made in writing to the Director within twenty (20) days of the date of mailing of the notification of issuance of the permit. Any hearing held shall be conducted pursuant to the rules of the Authority.

8. If the Authority proposes to deny issuance of a permit, it shall notify the applicant by registered or certified mail of the intent to deny and the reasons for denial. The denial shall become effective twenty (20) days from the date of mailing of such notice unless, within that time, the applicant request a hearing. Any hearing held shall be conducted pursuant to the rules of the Authority.

9. Permits issued by the Authority will specify those activities, operations, emissions and discharges which are permitted, as well as requirements, limitations and conditions which must be met.

10. No permit will be issued to an air contaminant source which is not in compliance with applicable rules, unless a compliance schedule is made a condition of the permit.

11. Each permit proposed to be issued or revised by the Authority shall be submitted to the Department of Environmental Quality at least thirty (30) days prior to the proposed issuance date.

12. A copy of each permit issued, modified or revoked by the Authority pursuant to this section shall be promptly submitted to the Department.

~~13. A flow-chart which summarizes the general procedures for air contaminant discharge permit issuance is contained in Figure 1 of this title.~~

~~14~~ 13. The Authority may waive the procedures prescribed in these rules and issue special permits of duration not to exceed sixty (60) days from the date of issuance for unexpected or emergency activities, operations, emissions or discharges. Said permits shall be properly conditioned to insure adequate protection of property and preservation of public health, welfare and resources and shall include provisions for compliance with applicable emissions standards of the Authority. Application for such permits shall be in writing and may be in the form of a letter which fully describes the emergency and the proposed activities, operations, emissions or discharges, as described in Section 34-010.1.

~~15~~ 14. The Authority may institute modification of a permit due to changing conditions or standards, receipt of additional information or other reason, by notifying the permittee by registered or certified mail of its intention to modify the permit. Such notification shall include the proposed modification and the reasons for modification. The modifications shall become effective twenty (20) days from the date of mailing of such notice unless, within that time, the permittee requests a hearing. Such a request for hearing shall be made in writing, and the hearing shall be conducted pursuant to the rules of the Authority. A copy of the modified permit shall be forwarded to the permittee as soon as the modification becomes effective. The existing permit shall remain in effect until the modified permit is issued.

Section 34-015 Special Discharge Permit Categories

1. Minimal Source Permits

   A. The Lane Regional Air Pollution Authority may designate any source as a "minimal source" based upon the following criteria:

(1) Quantity and quality of emissions;

(2) Type of operation;

(3) Compliance with Authority regulations;

(4) Minimal impact on the air quality of the surrounding region.

B. If a source is designated as a minimal source, the compliance determination fee, provided by Section 34-025, will be collected in conjunction with plant site compliance inspections, which will occur every five (5) years.

2. Multiple Source Permits

A. When a single site includes more than one air contaminant source, a single permit may be issued including all sources located at the site. Such applications shall separately identify by subsection each air contaminant source.

B. When an individual air contaminant source, which is included in a multiple-source permit, is subject to permit modification, revocation, suspension or denial, such action by the Authority shall only affect that individual source without thereby affecting any other source subject to that permit.

3. Letter Permits

A. Any source listed in ~~Section 34-025~~ Table A with no, or insignificant, air contaminant discharges may apply to the Authority for a letter permit.

B. The determination of applicability of this letter permit shall be made solely by the Authority.

C. If issued a letter permit, the application processing fee and/or annual compliance determination fee, provided by Section 34-025 may be waived by the Authority.

Section 34-020 Discharge Permit Duration

1. The duration of permits may vary but shall not exceed ten (10) years. The expiration date will be recorded on each permit issued.

2. Air Contaminant Discharge Permits issued by the Authority shall be automatically terminated:

A. Within sixty (60) days after, sale or exchange of the activity or facility which requires a permit;

B. Upon change in the nature of activities, operations, emissions or discharges from those of record in the last application;

C. Within one (1) year after a plant closure lasting continuously for one (1) or more years.

~~C~~ D. Upon issuance of a new, renewal or modified permit for the same operation; or

~~D~~ E. Upon written request of the permittee.

3. In the event that it becomes necessary to suspend or terminate a permit due to non-compliance with the terms of the permit, unapproved changes in operation, false information submitted in the application or any other cause, the Authority shall notify the permittee by registered or certified mail of its intent to suspend or revoke the permit. Such notification shall include the reasons for the suspension or revocation. The suspension or revocation shall become effective twenty (20) days from the date of mailing of such notice unless, within that time, the permittee requests hearing. Such a request for hearing shall be made in writing and shall state the grounds for the request.

4. Termination of a permit resulting from continuous plant closure shall subject the source to review as a new non-permitted source upon application to operate the facility.

5. If the Authority finds that there is a serious danger to the public health or safety or that irreparable damage to a resource will occur, it may suspend or terminate a permit, effective immediately. Notice of such suspension or termination must state the reasons for action and advise the permittee that he may request a hearing. Such a request for hearing shall be made in writing within ninety (90) days of the date of suspension and shall state the grounds for the request.

6. Any hearing requested under this Section shall be conducted pursuant to the rules of the Authority.

Section 34-025 Discharge Permit Fees

1. All persons applying for a permit shall at the time of application pay the following fees:

A. A filing fee of $75;

B. An application processing fee; and

C. An annual compliance determination fee.

The compliance determination fee may be waived when applying for ~~an existing permit~~ modification of an existing permit. The application

processing fee may be waived on permit renewals. Both of these fees may be waived when applying for letter permits.

2. The fee schedule contained in the listing of air contaminant sources in this section (see Table A) shall be applied to determine the permit fees on a standard industrial classification (SIC) basis.

3. Applications for multiple-source permits received pursuant to Section 34-015 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 this section.

4. Modifications of existing, unexpired permits, which are instituted by the Authority due to changing conditions or standards, receipt of additional information or any other reason pursuant to applicable statutes and which do not require refiling or review of an application or plans and specifications, shall not require submittal of the filing fee or the application processing fee.

5. The annual compliance determination fee shall be paid at least thirty (30) days prior to the start of each subsequent permit year. Failure to remit the annual compliance determination fee on time shall be considered grounds for not issuing a permit or for terminating an existing permit.

6. If a permit is issued for a period of less than one 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 twelve (12) months, the applicable annual compliance determination fee shall be prorated by multiplying the annual compliance fee by the number of months covered by the permit and dividing by twelve (12).

7. If a temporary or conditional permit is issued in accordance with adopted procedure, fees submitted with the application shall be applied to the regular permit when it is granted or denied.

8. All fees shall be made payable to the Authority.

9. Table A in this ~~Section~~ Title lists all air contaminant sources required to have a permit and the associated fee schedule.

Section 34-030 Source Emission Tests

1. Upon request of the Director, the person responsible for a suspected source of air contaminants shall make or have made a source test and shall submit a written report to the Director which describes the nature and quantity of air contaminants emitted, the specific operating conditions when the test was made and other pertinent data which the Director may require. The source shall be evaluated at maximum operating capacities.

2. All sampling and testing shall be conducted in accordance with the methods approved by the Authority.

3. The Director may conduct tests of emissions of air contaminants from any source, and may require any person in control of an air contamination source to provide necessary holes in stacks or ducts and proper sampling and testing facilities, as may be necessary and reasonable for the accurate determination of the nature and quantity of air contaminants which are emitted as a result of operation of the source. Upon request, the Director shall supply a copy of the test results to the person responsible for the source of air contaminant emissions.

Section 34-035 Upset Conditions

1. Emissions exceeding any of the limits established in these rules may not be deemed to be in violation of these rules, if they were caused as a direct result of upset conditions in or breakdown of any operating equipment which was unavoidable and which was not caused or contributed to through careless or unsafe operation, or as a direct result of the shutdown of such equipment for scheduled maintenance, if the requirements of this section are met.

2. If the Director determines that the excessive emissions are harmful to the public health or welfare, they will be deemed to be in violation of these rules.

3. Each such occurrence shall be reported to the Director as soon as reasonably possible but at least within four (4) hours of the occurrence of the breakdown or upset condition.

4. The person responsible for the source of excessive emissions shall, with all practicable speed, initiate and complete appropriate actions to correct the conditions causing the excessive emissions. Upon request of the Director, that person shall submit to the Director a full written report ~~to the Director~~ of the occurrence, the known causes and the actions taken to mitigate the emissions and meet the requirements of this section.

5. No later than forty-eight (48) hours after the start of an upset condition or breakdown, the person responsible for the source of excessive emissions shall discontinue operation of the equipment or facility causing the excess emissions. The Director may, for demonstrated good cause which includes but is not limited to equipment availability, difficulty of repairs and nature and quantity of emissions, authorize an extension of operation beyond the 48-hour period.

6. For scheduled maintenance which will produce excessive emissions, a report shall be submitted at least twenty-four (24) hours prior to shutdown and contain the following information:

   A. Identification of the specific facilities to be taken out of service;

B. Statement of the nature and quantity of emissions of air contaminants likely to occur during the shutdown period;

C. Identification of the measures that will be taken to minimize the length of the shutdown period and minimize air contaminant emissions. If mitigating measure are impractical, reasons acceptable to the Director must be given.

7. Scheduled maintenance which will produce excessive emissions is subject to subsection 2 of this section and shall occur, to the extent practicable, during periods of good atmospheric ventilation.

Section 34-040 Records

The Director may~~, from time to time,~~ require owners or operators of air contaminant emissions sources to monitor and maintain records of, and periodically report to the Authority, information on the nature and quantity of emissions and other such information deemed by the Director to be necessary to determine whether or not such sources are in compliance with the rules of the Authority. This may require the installation and maintenance of continuous monitors and electronic data handling systems.

Section 34-045 General Procedures for Registration

1. For those air contaminant sources not listed in Table A ~~of Section 34-025~~, the Director may require registration by the owner or operator of the source on forms provided by the Authority.

2. The following air contaminant sources shall register with the Authority no later than December 31, 1990 and annually thereafter, as required by this rule:

A. Sources within the urban growth boundary

(1) Sources listed in Table A but too small to require a discharge permit;

(2) Service stations;

(3) Paint shops;

(4) Fiberglass layup operations;

(5) Dry cleaners with discharges to the ambient air.

(6) Panel manufacturing operations.

B. Sources outside the urban growth boundary

(1) Sources listed in Table A but too small to require a discharge permit.

3. Registration shall be completed within thirty (30) days following the mailing date of the request by the Authority.

4. Registration shall be made on forms furnished by the Authority and completed by the owner or lessee of the sources, or agent.

5. Information listed under 34-010(1) shall be reported by the registrant.

Section 34-050 Compliance Schedules for Existing Sources Affected by New Rules

1. No existing source of air contaminant emissions will be allowed to operate out of compliance with the provisions of new rules, unless the owner or operator of that source first obtains a Board-approved compliance schedule which lists the steps being taken to achieve compliance and the final date when compliance will be achieved. Approval of a reasonable time to achieve compliance shall be at the discretion of the Board.

2. The owner or operator of any existing air contaminant source found by the Director to be in non-compliance with the provisions of new rules shall submit to the Board for approval a proposed schedule of compliance to meet those provisions. This schedule shall be in accordance with timetables contained in the new rules or in accordance with an administrative order by the Director. This schedule shall contain, as necessary, reasonable time milestones for engineering, procurement, fabrication, equipment installation and process refinement. This request shall also contain documentation of the need for the time extension to achieve compliance and the justification for each of the milestones indicated in the schedule.

3. Within one hundred and twenty (120) days of the submittal date of the request, the Board shall act to either approve or disapprove the request. A schedule for compliance becomes effective upon the date of the written order of the Board.

4. Compliance schedules of longer than eighteen (18) months' duration shall contain requirements for periodic reporting of progress toward compliance.

5. An owner or operator of an air contaminant source operating in non-compliance with these rules, but under an approved compliance schedule, who fails to meet that schedule or make reasonable progress toward completion of that schedule, ~~may~~ shall be subject to enforcement procedures in accordance with these rules.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

	Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee		Annual Compliance Determination Fee	
1.	Seed cleaning located in special control areas, commercial operations only (not elsewhere classified)	0723	~~120~~	130	~~225~~	250
2.	Smoke houses with 5 or more employees	2013	~~120~~	130	~~160~~	175
3.	Flour and other grain mill products in special control area					
	(a) 10,000 or more tons per year	2041	~~380~~	420	~~440~~	485
	(b) Less than 10,000 tons per year	2041	~~300~~	330	~~190~~	210
4.	Cereal preparations in special control areas	2043	~~380~~	420	~~315~~	345
5.	Blended and prepared flour in special control areas					
	(a) 10,000 or more tons per year	2045	~~380~~	420	~~315~~	345
	(b) Less than 10,000 tons per year	2045	~~300~~	330	~~160~~	175
6.	Prepared feeds for animals and fowl in special control areas					
	(a) 10,000 or more tons per year	2048	~~380~~	420	~~440~~	485
	(b) Less than 10,000 tons per year	2048	~~100~~	110	~~140~~	155
7.	Beet sugar manufacturing	2063	~~500~~	550	~~2,185~~	2,400

Notes: 1. A filing fee of $75 is required for all sources.
2. Persons who operate boilers shall include fees as indicated in Items 58, 59 or 60, in addition to fees for any other applicable category.

A11

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee		Annual Compliance Determination Fee	
8. Rendering plant					
(a) 10,000 or more tons per year	2077	~~610~~	670	~~750~~	825
(b) Less than 10,000 tons per year	2077	~~550~~	605	~~595~~	660
9. Coffee roasting greater than 1 ton of coffee per year	2095	~~240~~	265	~~290~~	320
10. Sawmill and/or planing mill					
(a) 25,000 or more board feet per shift	2421	~~150~~	165	~~280~~	310
(b) Less than 25,000 board feet per shift	2421	~~100~~	110	~~210~~	230
11. Hardwood mills	2426	~~100~~	110	~~280~~	310
12. Shake and shingle mills	2429	~~100~~	110	~~105~~	115
13. Mill work with 10 employees or more	2431	~~140~~	155	~~280~~	310
14. Plywood manufacturing					
(a) Greater than 25,000 square feet per hour (3/8" basis)	2435 & 2436	~~580~~	640	~~700~~	770
(b) Less than 25,000 square feet per hour (3/8" basis)	2435 & 2436	~~450~~	495	~~525~~	580

Notes: 1. A filing fee of $75 is required for all sources.
2. Persons who operate boilers shall include fees as indicated in Items 58, 59 or 60, in addition to fees for any other applicable category.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

	Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee		Annual Compliance Determination Fee	
15.	Veneer manufacturing only (not elsewhere classified)	2435 & 2436	~~100~~	110	~~280~~	310
16.	Wood preserving	2491	~~190~~	650	~~345~~	580
17.	Particleboard manufacturing	2492	~~660~~	725	~~945~~	1,040
18.	Hardboard manufacturing	2499	~~740~~	815	~~860~~	945
19.	Battery separator manufacturing	2499	~~120~~	130	~~635~~	700
20.	Furniture and fixture manufacturing					
	(a) 100 or more employees	2511	~~180~~	200	~~345~~	380
	(b) 10 or more employees but less than 100 employees	2511	~~150~~	165	~~290~~	320
21.	Pulp mills, paper mills and paperboard mills	2611, 2621 & 2631	~~1,410~~	1,550	~~3,670~~	4,040
22.	Building paper and building board mills	2661	~~240~~	265	~~290~~	320
23.	Alkalies and chlorine manufacturing	2812	~~410~~	450	~~760~~	835

Notes: 1. A filing fee of $75 is required for all sources.
2. Persons who operate boilers shall include fees as indicated in Items 58, 59 or 60, in addition to fees for any other applicable category.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee		Annual Compliance Determination Fee	
24. Calcium carbide manufacturing	2819	~~440~~	485	~~760~~	835
25. Nitric acid manufacturing	2819	~~290~~	320	~~380~~	420
26. Ammonia manufacturing	2819	~~290~~	320	~~440~~	485
27. Industrial inorganic and organic chemicals manufacturing (not elsewhere classified)	2819	~~370~~	405	~~525~~	580
28. Synthetic resin manufacturing	2819	~~280~~	310	~~415~~	460
29. Charcoal manufacturing	2861	~~550~~	605	~~1,220~~	1,340
30. Herbicide manufacturing	2879	~~730~~	805	~~3,800~~	4,180
31. Petroleum refining	2911	~~1,460~~	1,605	~~3,800~~	4,180
32. Asphalt production by distillation	2951	~~300~~	330	~~570~~	630
33. Asphalt blowing plants	2951	~~290~~	320	~~440~~	485

Notes: 1. A filing fee of $75 is required for all sources.
2. Persons who operate boilers shall include fees as indicated in Items 58, 59 or 60, in addition to fees for any other applicable category.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee		Annual Compliance Determination Fee	
34. Asphalt concrete paving plants					
(a) Stationary	2951	~~290~~	320	~~345~~	380
(b) Portable	2951	~~290~~	320	~~440~~	485
35. Asphalt felts and coating	2952	~~300~~	330	~~665~~	730
36. Blending, compounding or refining of lubricating oils and greases	2992	~~260~~	285	~~410~~	450
37. Glass container manufacturing	3221	~~290~~	320	~~540~~	595
38. Cement manufacturing	3251	~~940~~	1,035	~~2,785~~	3,065
39. Redimix concrete	3273	~~100~~	110	~~140~~	155
40. Lime manufacturing	3274	~~440~~	485	~~290~~	320
41. Gypsum products	3275	~~230~~	255	~~315~~	345
42. Rock crusher					
(a) Stationary	3295	~~260~~	285	~~345~~	380
(b) Portable	3295	~~260~~	285	~~415~~	455

Notes: 1. A filing fee of $75 is required for all sources.
2. Persons who operate boilers shall include fees as indicated in Items 58, 59 or 60, in addition to fees for any other applicable category.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

	Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee		Annual Compliance Determination Fee	
43.	Steel works, rolling and finishing mills, electrometallurgical products	3312 & 3313	~~740~~	815	~~760~~	835
44.	Incinerators					
	(a) 1,000 pounds per hour and greater capacity		~~440~~	485	~~290~~	370
	(b) 40 pounds per hour to 1,000 pounds per hour capacity		~~120~~	130	~~175~~	195
45.	Gray iron and steel foundries, malleable iron foundries, steel investment foundries, steel foundries (not elsewhere classified)	3321 & 3322 & 3324 &				
	(a) 3,500 or more tons per year production	3325	~~740~~	815	~~665~~	730
	(b) Less than 3,500 tons per year production	3325	~~180~~	200	~~345~~	380
46.	Primary aluminum production	3334	~~1,460~~	1,605	~~3,800~~	4,180
47.	Primary smelting of zirconium or hafnium	3339	~~7,310~~	8,040	~~3,800~~	4,180
48.	Primary smelting or refining of ferrous and nonferrous metals (not elsewhere classified)					
	(a) 2,000 or more tons per year production	3339	~~790~~	870	~~1,780~~	1,960
	(b) Less than 2,000 tons per year production	3339	~~150~~	165	~~635~~	700

Notes: 1. A filing fee of $75 is required for all sources.
2. Persons who operate boilers shall include fees as indicated in Items 58, 59 or 60, in addition to fees for any other applicable category.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

	Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee		Annual Compliance Determination Fee	
49.	Secondary smelting and refining of nonferrous metals	3341	~~350~~	385	~~440~~	485
50.	Nonferrous metal foundries	3361 & 3362	~~100~~	110	~~175~~	195
51.	Electroplating, polishing and anodizing with 5 or more employees	3471	~~150~~	165	~~290~~	320
52.	Galvanizing and pipe coating--exclude all other activities	3479	~~100~~	110	~~175~~	195
53.	Battery manufacturing	3691	~~180~~	200	~~380~~	420
54.	Grain elevators--intermediate storage only, located in special control areas					
	(a) 20,000 or more tons per year	4221	~~270~~	300	~~600~~	660
	(b) Less than 20,000 tons per year	4221	~~150~~	165	~~290~~	320
55.	Commercial electric power generation or cogeneration					
	(a) ~~Wood or coal fired~~ Solid fuel--greater than 25 MW	4911	~~5,900~~	6,490	~~3,850~~	4,235
	(b) ~~Wood or coal fired~~ Solid fuel--less than 25 MW	4911	~~3,540~~	3,890	~~1,900~~	2,090
	(c) Oil or gas fired	4911	~~530~~	585	~~915~~	1,005

Notes: 1. A filing fee of $75 is required for all sources.
2. Persons who operate boilers shall include fees as indicated in Items 58, 59 or 60, in addition to fees for any other applicable category.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

	Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee		Annual Compliance Determination Fee	
56.	Gas production and/or manufacturing	4925	~~560~~	615	~~440~~	485
57.	Grain elevators--terminal elevators primarily engaged in buying and/or marketing grain in special control areas					
	(a) 20,000 or more tons per year	5153	~~740~~	815	~~760~~	835
	(b) Less than 20,000 tons per year	5153	~~210~~	230	~~290~~	320
58.	Fuel burning equipment within the boundaries of Eugene-Springfield Air Quality Maintenance Area					
	(a) Residual or distillate oil fired--250 million or more btu per hour (heat input)	4961	~~240~~	265	~~290~~	320
	(b) Residual or distillate oil fired--5 or more but less than 250 million btu per hour (heat input)	4961	~~200~~	220	~~210~~	230
	(c) Residual oil fired, less than 5 million btu per hour (heat input)	4961	~~100~~	110	~~105~~	115
59.	Fuel burning equipment within the boundaries of Eugene-Springfield Air Quality Maintenance Area					
	(a) Wood or coal fired--35 million or more btu per hour (heat input)	4961	~~280~~	310	~~345~~	380
	(b) Wood or coal fired--less than 35 million btu per hour (heat input)	4961	~~100~~	110	~~245~~	270

Notes: 1. A filing fee of $75 is required for all sources.
2. Persons who operate boilers shall include fees as indicated in Items 58, 59 or 60, in addition to fees for any other applicable category.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee		Annual Compliance Determination Fee	
60. Fuel burning equipment outside the boundaries of Eugene-Springfield Air Quality Maintenance Area					
(a) All wood, coal and oil fired--greater than 30 x 10^6 btu per hour (heat input)	4961	~~290~~	320	~~315~~	345
61. New sources not listed herein which would emit 10 or more tons per year of any air contaminants, including but not limited to: particulates, SO_x, NO_x or hydrocarbons, if the source were to operate uncontrolled					
(a) High cost		~~2,360~~	2,600	~~2,350~~	2,600
(b) Medium cost		~~410~~	450	~~410~~	450
(c) Low cost		~~210~~	230	~~210~~	230
62. New sources not listed herein which would emit significant malodorous emissions as determined by Authority review of sources which are known to produce similar air contaminant emissions					
(a) High cost		~~2,360~~	2,600	~~2,350~~	2,600
(b) Medium cost		~~410~~	450	~~410~~	450
(c) Low cost		~~180~~	200	~~175~~	200

Notes: 1. A filing fee of $75 is required for all sources.
2. Persons who operate boilers shall include fees as indicated in Items 58, 59 or 60, in addition to fees for any other applicable category.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
63. Existing sources not listed herein for which an air quality problem is identified by the Authority			
(a) High cost		~~2,360~~ 2,600	~~2,350~~ 2,600
(b) Medium cost		~~400~~ 440	~~400~~ 440
(c) Low cost		~~180~~ 200	~~175~~ 200
64. Bulk gasoline plants	5100	~~100~~ 110	~~190~~ 210
65. Bulk gasoline terminals	5171	~~1,180~~ 1,300	~~635~~ 700
66. Liquid storage tanks--39,000 gallons or more capacity (not elsewhere classified)	4200	~~100~~/tank 110	~~175~~/tank 200
67. Can coating	3411	~~1,770~~ 1,950	~~1,140~~ 1,255
68. Paper coating	2641 & 3861	~~590~~ 650	~~380~~ 420
69. Coating flat wood	2400	~~590~~ 650	~~380~~ 420

Notes: 1. A filing fee of $75 is required for all sources.
2. Persons who operate boilers shall include fees as indicated in Items 58, 59 or 60, in addition to fees for any other applicable category.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee		Annual Compliance Determination Fee	
70. Surface coating manufacturing					
(a) Greater than 1 ton but less than 20 tons VOC per year	2500 & 3300	~~100~~	110	~~105~~	115
(b) Greater than 20 tons but less than 100 tons VOC per year	2500 & 3300	~~120~~	130	~~255~~	280
(c) Greater than 100 tons VOC per year	2500 & 3300	~~590~~	650	~~505~~	555
71. Flexographic or rotograveure printing over 60 tons VOC per year per plant	2751 & 1754	~~120~~	130	~~255~~	280
72. New sources of VOC are listed herein which have the capacity or are allowed to emit 10 or more tons per year VOC					
(a) High cost		~~1,360~~	1,495	~~2,350~~	2,585
(b) Medium cost		~~410~~	450	~~410~~	450
(c) Low cost		~~180~~	200	~~175~~	200
73. Sources subject to federal NESHAPS rules under section 112 of the federal Clean Air Act (except demolition or renovation)		~~100~~	110	~~150~~	165

Notes: 1. A filing fee of $75 is required for all sources.
2. Persons who operate boilers shall include fees as indicated in Items 58, 59 or 60, in addition to fees for any other applicable category.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee		Annual Compliance Determination Fee	
74. Sources of toxic air pollutants (not elsewhere classified)					
(a) High Toxicity*			450		450
(b) Moderate Toxicity*		~~250~~	275	~~300~~	330
75. Underground storage tank remediations involving strippers or condensers			275		330

* New York State Air Guide-1 1985-86 Edition

Notes: 1. A filing fee of $75 is required for all sources.
2. Persons who operate boilers shall include fees as indicated in Items 58, 59 or 60, in addition to fees for any other applicable category.

STATEMENT OF NEED FOR PROPOSED RULE AMENDMENTS

Pursuant to ORS 183.335(2), the following statement provides information on the proposed action to amend Oregon's Revised State Implementation Plan (SIP) for Particulate Matter for the Eugene/Springfield Air Quality Maintenance Area.

Legal Authority

ORS 183, 468.020, ORS 468.505, ORS 468.535, OAR 340-11 and 340-20, LRAPA Title 12 and the Federal Clean Air Act Amendments of 1977 (PL 95-95).

Need for Amendments

The LRAPA Board of Directors has determined that there is public interest in permitted air contaminant discharges from regulated facilities and desires to provide a mechanism for open public discussion on permit applications. The proposed amendments establish criteria to allow public hearings on permit applications when requested. The board has also determined that the public interest is served by developing information on toxic emissions as a first step for possible emission reduction measures. The proposed amendments specify selected sourced of toxic emissions for registration and establish a fee. The board has also determined a need to recover a larger percentage of costs for LRAPA's permit and enforcement programs. The proposed amendments would adjust permit fees upward by 10 percent.

Principal Documents Relied Upon

1. State of Oregon State Implementation Plan Revision, Eugene/Springfield AQMA
2. LRAPA Title 34, "Air Contaminant Discharge Permits", Amendment Draft
3. LRAPA Staff Report to Board of Directors, October 10, 1989
4. Clean Air Act Amendments of 1977 (PL 95-95)
5. ORS 468, et. seq.

FISCAL AND ECONOMIC IMPACT STATEMENT

Impact on State Agencies: None.

Impact on Local Agencies: The proposed new fees and fee adjustments would help offset the costs of the permit enforcement and registration programs.

Impact on Public: Little if any. The incremental fee increases to affected businesses are estimated to be insignificant relative to total cost to public of goods and services provided.

Impact of Affected Facilities: Little. In addition to the 10 percent increase in fees, there is some time involved to complete the registration forms. Some permit applicants may be delayed in receiving final approval of permits.

LAND USE CONSISTENCY STATEMENT

The proposed rule amendments have no impact on and are consistent with land use as described in applicable land use plans in Lane County.

OREGON INTERGOVERNMENTAL PROJECT REVIEW

State Clearinghouse
Intergovernmental Relations Division
155 Cottage Street N. E.
Salem, Oregon 97310
373-7652

RECEIVED
NOV 2? 1989
#19271
LANE REGIONAL AIR POLLUTION AUTHORITY

C O N C L U S I O N S

APPLICANT: Lane Regional Air Pollution

PROJECT TITLE: Amendments to Air Contaminant Discharge Permits

DATE: November 21, 1989

The State of Oregon (and local clearinghouses if listed) has reviewed your project and reached the following conclusions:

[XX] No significant conflict with the plans, policies or programs of state or local government have been identified.

[ ] Relevant comments of state agencies and/or local governments are attached and should be considered in the final design of your proposal.

[ ] Potential conflicts with the plans and programs of state and/or local government:

- [ ] may exist.
- [ ] have been identified and remain unresolved. The final proposal has been reviewed and final comments and recommendations are attached.
- [ ] have been satisfactorily resolved. No significant issues remain.

==========

A copy of this notification and attachments, if any, must accompany your application to the federal agency.

FEDERAL CATALOG # 66.900

NOTICE TO FEDERAL AGENCY

THE FOLLOWING IS THE OFFICIALLY ASSIGNED STATE IDENTIFIER NUMBER

OR891024-045-2

Dolores Streeter
Clearinghouse Coordinator

IPR #3

B2

LCOG Lane Council of Governments

November 1, 1989

RECEIVED
NOV 02 1989
#19111
LANE REGIONAL AIR POLLUTION AUTHORITY

Mr. Donald Arkell
Lane Regional Air Pollution Authority
225 North 5th, Suite 501
Springfield, OR 97477

Dear Mr. Arkell:

SUBJECT: AREAWIDE CLEARINGHOUSE REVIEW

TITLE: Proposed Rules Affecting Oregon State Implementation Plan Revision, Eugene/Springfield AQMA for TSP -- Adoption of Amendments to LRAPA Title 34, "Air Contaminant Discharge Permits"

The Lane Council of Governments has received the above referenced proposal for review. It has been determined that no clearinghouse comment needs to be made. Nevertheless, thank you for the opportunity.

Sincerely,

JoAnn McCauley
Information Coordinator

JM:OA

Local Government Services
125 East Eighth Avenue
Eugene, Oregon 97401
Telephone (503) 687-4283

Senior and Disabled Services
1025 Willamette St. Suite 200
Eugene, Oregon 97401
Telephone (503) 687-4038

Attachment C

GUARD PUBLISHING COMPANY

P. O. BOX 10188 PHONE (503) 485-1234
EUGENE, OREGON 97440

Legal Notice 16447

Legal Notice Advertising

- Lane Regional Air Pollution Authority
- ATTN: Donald Arkell 225 N. 5th, Suite 501
- Springfield, OR 97477

- ☐ Tearsheet Notice
- ☐ Duplicate Affidavit

AFFIDAVIT OF PUBLICATION

STATE OF OREGON,)
COUNTY OF LANE,) ss.

I, WENDY L. WALSH

being first duly sworn, depose and say that I am the Advertising Manager, or his principal clerk, of the [redacted] a newspaper of general circulation as defined in ORS 193.010 and 193.020; published at Eugene in the aforesaid county and state; that the NOTICE OF INTENT TO ADOPT RULES,

a printed copy of which is hereto annexed, was published in the entire issue of said newspaper for ONE successive and consecutive DAY in the following issues:

NOVEMBER 8, 1989

Wendy L. Walsh

Subscribed and sworn to before me this NOV. 9, 1989

Jean A. Crawford
Notary Public for Oregon

My Commission Expires: 6-30-91

AFFIDAVIT

NOTICE OF INTENT TO ADOPT RULES AND TO AMEND OREGON'S AIR QUALITY IMPLEMENTATION PLAN

In accordance with Title 42 of the Lane Regional Air Pollution Authority (LRAPA) Rules and Regulations, the Board of Directors is proposing:

To adopt amendments to LRAPA Title 34, "Air Contaminant Discharge Permits," which would: set criteria for public requests for public hearings prior to issuance of Air Contaminant Discharge Permits; specify source categories which are required to register and to provide emissions information; increase permit fee revenue to help offset permit program costs; and improve regulation clarity and address minor permitting issues.

WHO IS AFFECTED

Individuals and groups interested in public participation in issuing or renewing permits; certain commercial facilities which emit volatile organic compounds; industrial facilities holding air contaminant discharge permits.

PUBLIC HEARING

Public hearing on the above rule amendments will be held before the LRAPA Board of Directors at its regular meeting on Tuesday, December 12, 1989.

Location: City Council Chambers, Springfield City Hall, 225 North 5th Street, Springfield, OR 97477. Time: 12:15 p.m.

Copies of the proposed amendments, as well as Statements of Need and Fiscal Impact, are available for review at the LRAPA office located at 225 North 5th, Suite 501 (Springfield City Hall building) until December 12. The public may comment on the proposed regulations by calling the LRAPA business office, 726-2514; and written comment may be submitted until December 11, 1989, to 225 North 5th, Suite 501.

No. 16447 — November 8, 1989

NOTICE OF INTENT TO ADOPT RULES AND TO AMEND OREGON'S AIR QUALITY IMPLEMENTATION PLAN

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n.8 (688)

Affidavit of Publication

STATE OF OREGON, COUNTY OF LANE - ss

I, Leota J. Emery being duly sworn, depose and say that I am the Legal Clerk of the Springfield News, a newspaper of general circulation, as defined by ORS 193.010 and 193.020; printed and published at Springfield in the aforesaid county and state: that the

Notice of Intent to Adopt Rules and to Amend Oregon's Air Quality Implementation Plan.

a printed copy of which is hereto annexed, was published in the entire issue of said newspaper for successive and consecutive weeks in the following issues:

November 8, 1989

By Leota J. Emery

Subscribed and sworn to me this 8th day of November, 19 89

Frances A. Ramsey
Notary Public for Oregon

(My Commission expires May 17, 1991)

NOTICE OF INTENT TO ADOPT RULES AND TO AMEND OREGON'S AIR QUALITY IMPLEMENTATION PLAN

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14-1tc

Affidavit of Publication

State of Oregon
County of Lane

I, Peter Morales, being first duly sworn, depose and say that I am business manager of [redacted] a newspaper of general circulation, as defined by ORS 193,010, and 193,020, printed and published at Cottage Grove in the aforesaid county and state; that Notice of intent to adopt rules

a printed copy of which is hereto annexed, was published once a week in the entire issue of said newspaper for 1 successive and consecutive weeks in the following issues: Nov. 8, 1989

Subscribed and sworn to before me this 8 day of Nov., 1989.

Notary Public for Oregon
(My commission expires 10-3-93)

C3

OREGON BULLETIN

RECEIVED
NOV 17 1989
LANE REGIONAL AIR POLLUTION AUTHORITY

VOLUME 29, No. 10
Issue Date: November 15, 1989

This issue contains Administrative Rule Orders and Notices of Proposed Rulemaking officially filed **October 21, 1989, 8:00 a.m. through November 3, 1989, 5:00 p.m.**

Published by
BARBARA ROBERTS
Secretary of State

C4

NOTICE OF PROPOSED RULEMAKING HEARING

(Statement of Need and Fiscal Impact must accompany this form.)

RECEIVED

AGENCY: LAND USE BOARD OF APPEALS
(Department) (Division)

NOV 1 1 57 PM '89

The above named agency gives notice of hearing.

BARBARA ... SECRETARY OF STATE

HEARINGS TO BE HELD:

Date:	Time:	Location:
11/30/89	10:30 am	Hearings Room, 100 High St. SE, Suite 220, Salem Oregon

Hearings Officer(s): LUBA referees Michael A. Holstun, Corinne C. Sherton, Wendie L. Kellington

Pursuant to the statutory authority of ORS 19.230(4) and 197.820(4) or

Chapter(s) _____, Oregon Laws 19__ or

House Bill(s) _____ or Senate Bill(s) _____, 19__ Legislature

the following action is proposed:

ADOPT: _____

AMEND: 661-10-075

REPEAL: _____

☒ Prior Notice Given; Hearing Requested by Interested Persons ☐ No Prior Notice Given

SUMMARY:
Appeal may be transferred to circuit court of the county in which the appealed decision was made if the Board determines the appealed decision is not reviewable as a land use decision.

Interested persons may comment on the porposed rules orally or in writing at the hearing. Written comments received by 11/30/89 will also be considered. Written comments should be sent to and copies of the proposed rulemaking may be obtained from:

AGENCY: LAND USE BOARD OF APPEALS
ADDRESS: 100 High Street SE, Suite 220
Salem, OR 97310

ATTN: Jan Zwemke
PHONE: 373-1265

[signature] 11/1/89
Signature Date

SED 424 (Rev. 10/1/87)

NOTICE OF PROPOSED RULEMAKING HEARING

RECEIVED

(Statement of Need and Fiscal Impact must accompany this form.)

NOV 2 2 54 PM '89

BARBARA ... SECRETARY OF STATE

AGENCY: Lane Regional Air Pollution Authority
(Department)

The above named agency gives notice of hearing.

HEARING TO BE HELD:

Date:	Time:	Location:
12/12/89	12:15 p.m.	City Council Chambers Springfield City Hall 225 North 5th Street Springfield, OR

Hearings Officer(s): Donald R. Arkell

Pursuant to the statutory authority of ORS 183.468.020, 468.535, OAR 340-11 and 340-20, LRAPA Title 12 and the Federal Clean Air Act Amendments of 1977 (PL 95-95), the following action is proposed:

AMEND: LRAPA Title 34, "Air Contaminant Discharge Permits"

X Prior Notice Given; Hearing Requested by Interested Persons ___ No Prior Notice Given

SUMMARY:

The LRAPA Board of Directors has determined that there is public interest in permitted air contaminant discharges from regulated facilities and desires to provide a mechanism for open public discussion on permit applications. The proposed amendments establish criteria to allow public hearings on permit applications when requested. The board has also determined that the public interest is served by developing information on toxic emissions as a first step for possible emission reduction measures. The proposed amendments specify selected sources of toxic emissions for registration and establish a fee. The board has also determined a need to recover a larger percentage of costs for LRAPAS's permit and enforcement programs. The proposed amendments would adjust permit fees upward by 10 percent.

Interested persons may comment on the proposed rules orally or in writing at the hearing. Written comments received by December 11, 1989 will also be considered. Written comments should be sent to and copies of the proposed rulemaking may be obtained from:

AGENCY: Lane Regional Air Pollution Authority
ADDRESS: 225 North 5th, Suite 501
Springfield, OR 97477

ATTN: Donald R. Arkell, Director
PHONE: (503) 726-2514

[signature] October 31, 1989
Signature Date

C5

Agenda Item No. 8

LRAPA Board of Directors Meeting

January 9, 1990

To: Board of Directors

From: Donald R. Arkell, Director

Subject: Public Hearing, December 12, 1989, LRAPA Title 34, "Air Contaminant Discharge Permits"

Summary of Procedure

A public hearing on the proposed Title 34 amendments was held by the LRAPA Board of Directors on December 12, 1989. LRAPA had received designation from the DEQ Director as hearings office for the Oregon Environmental Quality Commission, and this was a concurrent EQC/LRAPA hearing. Notice of the hearing was published in the Cottage Grove Sentinel, the Eugene Register-Guard and the Springfield News, as well as the Secretary of State's Bulletin.

Summary of Testimony

Two persons commented at the hearing on several proposed amendments, and written comments were also received from two persons and from the Department of Environmental Quality. The hearing record was held open until Friday, December 22 to accept additional comments. A list of persons commenting, both orally and in writing, and a summary of those comments, as well as staff responses, is attached (see also the minutes of the December 12 meeting).

Director's Recommendation

It is recommended that the board adopt the proposed Title 34 amendments, as revised.

DRA/MJD

LRAPA RESPONSE TO PUBLIC COMMENTS REGARDING PROPOSED AMENDMENTS TO TITLE 34

Comments by Randall S. Hledik, Wildish Sand and Gravel Company

1. Section 34-010.4: If a hearing is requested, it should be set within 16 days after the request for the hearing, in order to stay within the 30-day public review period.

   Response: We agree that a requested hearing should be scheduled as rapidly as possible to minimize permit issuance time. However, it is essential that adequate public notice be provided to allow for input of information from all interested parties.

2. Section 34-010-4: Authority action should be taken within 15 days after the public hearing to keep the decision time within the present 45-day processing period.

   Response: Staff agrees that action on the permit application should be taken as expeditiously as possible. We are concerned, however, that attempting to stay within the 45-day processing period on those few occasions when a hearing is requested may deprive the applicant ,as well as interested public, of adequate notice. Permits are not automatic, and hearings may reveal more information which would cause additional conditions to be imposed, or denial of the permit.

   There is no doubt that the new rules, as proposed, change the focus of the permit issuance process from the immediate issuance of a permit to providing time and a procedure for additional public input into the permits. The proposal is made in response to a recent Oregon court case on which a public hearing was required by DEQ. There was considerable delay in issuing the permit involved. Staff believes it is preferable to have an administrative hearing process in place to handle those few instances where there is controversy.

   Recommendation: It is the staff's recommendation to adopt the wording as proposed. The staff will also go on record to minimize delays consistent with the need to provide reasonable notice and requested hearing to determine appropriate action on permit applications.

3. Section 34-010: LRAPA and DEQ should develop an agreement to recognize each other's permits for portable sources, thus eliminating the need to obtain permits for each jurisdiction.

   Response: There was no proposal to address this item as part of this rulemaking. LRAPA and the state routinely share information in reference to any source. In addition, a permit issued by one agency will often be used as a model to develop the permit when the source crosses jurisdictional bounds. The need to establish separate permits is founded on the facts that each jurisdiction has unique air quality concerns and addresses

them in a different manner. In addition, emission standards may vary between the different jurisdictions.

Recommendation: No action on this issue.

Comments by Russell J. Ayres, Weyerhaeuser Company

1. Section 34-040: Continuous emission monitors (CEM's) for emissions reporting are alright, but we are concerned with process-related gas parameters such as carbon monoxide or oxygen.

   Response: LRAPA's primary objective is the establishment of a basis to assure continual compliance with emission limits. Where direct measurement of emissions can be accomplished, this is the preferred option. If direct measurement is not possible (i.e., opacity of a wet plume), other parameters which may relate to process or efficiency of control equipment may need to be monitored and reported. The intent of this section is to determine compliance with emission standards and not prescribe operational procedures.

   Recommendation: No wording changes are recommended. Adopt Section 34-040 as proposed.

2. Section 34-040: CEM's generate a large amount of data. Resources are required by both parties in managing this data.

   Response: LRAPA staff is sensitive to resources that could be required to manage large data bases. LRAPA has been actively collecting, analyzing and reporting data for a number of years. The level of record keeping and reporting is discretionary, in that the Director "may require" submittal of the data. Typically, this discretionary process is negotiated in the permitting process, which factors in the need to assure continuous compliance as well as the resources to satisfy that need.

   Recommendation: Adopt Section 34-040 as proposed. Allow staff to use discretion to develop specific CEM and reporting requirements with each affected permit holder. Staff report to board in one year on CEM.

Comments by Mark Rauck, Lane Boiler Owners Association

1. Section 34-010.1: Leave in the word "substantial" to prevent the requirement of "permitting" for every minor process change.

   Response: It was never the intent of the LRAPA staff to require permit modifications for all process changes. The intent of the wording change was to add clarity to the section by removing the undefined qualifier, "substantial" and to implement permit modifications on process changes

which relate to emission discharges. Our primary concern relates to emission discharges and not process operation.

Recommendation: It is the staff's recommendation to remove the word "substantial", as proposed, add the qualifier "which would affect air contaminant emissions" after the words "control equipment," and adopt Subsection 34-010.1 as amended. The paragraph would then read:

> "Any person intending to construct, install or establish a new source, renew an expired permit, modify an existing source with changes to the process or emission control equipment which would affect air contaminant emissions, or increase the emissions of air contaminants beyond allowable rates established by regulation or permit shall submit a completed application on forms provided by the Authority and containing the following information:"

2. Section 34-010.14: It is unclear what can trigger a permit modification. It is further recommended that LRAPA issue a notice of intent to modify a permit with "a few weeks" notice time, rather than the specified 20-day time period.

Response: This comment may have been prompted by a typographical error. This is an existing section of the roles where the only change proposed was to renumber the section. It appeared in the original draft that the whole section was new.

Recommendation: Adopt the new number, 34.010.14.

3. Section 34.020.2.A: Mr. Rauck indicated a concern about chapter 7 bankruptcy being used to terminate a permit and indicated written testimony would be submitted later. Although no written testimony was provided, staff gave further review to the expressed concern.

Response: Staff has worked with legal counsel in pursuing the proposal to terminate a permit as a result of chapter 7 bankruptcy. Several legal issues were raised that need to be resolved before LRAPA's concerns about permitting bankrupt non-operating facilities can be properly addressed in the regulations. Staff is proposing to address this item during a subsequent rule revision.

Recommendation: Delete reference to Chapter 7 bankruptcy in both existing 34-020.2.A. and proposed 34-020.4. Adopt new Subsection 34-020.4 as amended.

4. Section 34-040: No change in data collection or reporting is required. There would be a significant economic burden to install electronic data reporting systems.

Response: See earlier comment and response. The existing reporting system relies on periodic inspections for a number of major sources and review of records maintained at the site. This does not provide any continuous record of a source's performance or adequate assurance that compliance is in fact maintained during periods when the source is not being inspected or tested. The need for a CEM program, particularly in respect to major sources, is therefore evident. Much equipment already exists at most major sources to accommodate electronic data gathering and reporting. Although some additional resource commitment will be required by those affected by this requirement, CEM should not be judged an unreasonable way to provide public assurance of continuous compliance.

Recommendation: Adopt Section 34-040 as proposed. Allow staff to use discretion to develop specific CEM and reporting requirements with each affected permit holder.

Comment by William Carpenter, General Public

1. CEM's should be used as a means to assure continual compliance rather than intermittent inspection and reporting.

   Response: Staff agrees with comment. Continuous monitoring also helps the operators be more aware of their process emissions.

Comments from DEQ

1. DEQ staff reviewed the proposed rules for stringency and consistency with DEQ and EPA rules and made one suggestion. Section 34-045.6, as originally proposed, would have required a fee in conjunction with the registration of air contaminant sources. DEQ determined that this type of fee was not within the Department's authority, nor was it consistent with the statutes which allow both the Department and the Regional Authority to collect fees related to Air Contaminant Discharge Permits.

   Response: After further review, LRAPA staff agrees with DEQ's comments.

   Recommendation: It is proposed to delete 34-045.6, 6.A and 6.B from the proposed amendments.

DIRECTORS RECOMMENDATION

It is the Director's recommendation to adopt the proposed amended rules as they are presented to you today. Sections 34-010.1, 34-020.2.A and 4 and 34-040.6 were modified from the 12/12/89 draft as a result of comments received from the DEQ and from the public for the December 12, 1989, public hearing.

PTW/mjd:01/09/90

NEIL GOLDSCHMIDT
GOVERNOR

Department of Environmental Quality

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

December 11, 1989

Donald R. Arkell, Director
Lane Regional Air Pollution Authority
225 North Fifth, Suite 501
Springfield, OR 97477

Re: Proposed Amendments, LRAPA Title 34,
"Air Contaminant Discharge Permits"

Dear Mr. Arkell:

We have received a copy of the information which was presented to the Lane Regional Air Pollution Authority Board of Directors on October 10, concerning proposed changes to Title 34. Air Quality Division staff have reviewed the proposed amendments to determine if they are compatible with state rules.

With the exception of one area the proposed rules appear to meet stringency and consistency requirements. We do not believe that the collection of a fee in conjunction with the registration of air contaminant sources (proposed Section 34-045-6) is within the Department's authority. Neither is it consistent with the statutes which allow both the Department and the Regional Authority to collect fees related to Air Contaminant Discharge permits.

It is our understanding that you are willing to remove the registration fee from the proposed rules. Therefore, contingent on that change, you are authorized to be the Environmental Quality Commission's hearings officer. You are also authorized to hold a public hearing on the Commission's behalf concurrent with the public hearing at the December 12 LRAPA Board of Directors meeting, in order to receive comments concerning these proposed rule changes.

Thank you for your assistance in providing public notice and involvement, and for helping to streamline the rule adoption and approval process.

Sincerely,

Nick Nikkila
Administrator
Air Quality Division

NN:GEL:a
PLAN\AH309
cc: Paul Kaprowski, EPA Oregon Operations Office

E5

Since 1935

WILDISH SAND & GRAVEL CO.

P. O. BOX 7428
EUGENE, OREGON 97401
(503) 485-1700

RECEIVED
NOV 06 1989
LANE REGIONAL AIR POLLUTION AUTHORITY

October 31, 1989

RECEIVED
NOV 06 1989
19116
LANE REGIONAL AIR POLLUTION AUTHORITY

Lane Regional Air Pollution Authority
Attention: Permit Program
225 North 5th Street, Suite 501
Springfield, OR 97477

Ladies and Gentlemen:

Subject: Proposed Rule Revisions - Air Contaminant Discharge Permits

We have had a chance to review your memorandum of October 18, 1989, and we offer the following comments.

1. Regarding Item 1 "Public Hearing Criteria", it is not clear to us what the timeframe for permit processing may be if a public hearing is requested. That is, presently a permit applicant can expect Authority action within 45 days after a "complete" permit application is filed. It appears that if at present a hearing is to be held at the discretion of the Authority, the hearing must be conducted, and the information received at the hearing must be considered in time to meet the 45 day deadline.

   The proposed rule appears to lengthen this decision period in two ways. First, the 45 day period does not start until after the public comment period or the public hearing record is closed. Second, there does not appear to be any time limit established pertaining to when a public hearing will be held if requested by the public.

   That is, upon receipt of a "complete" permit application, a group of 10 or more people has 14 days in which to request a hearing. How long then, does the Authority have before it sets a hearing date? We would request that it would be set within 16 days in order to stay within the present 30 day public review period.

   We would also request that final action by the Authority be taken 15 days after the public hearing to keep decision time within the present 45 day processing period.

Our concern, obviously, is that if there is no deadline established for a hearing date, the time to process a permit could lengthen arbitrarily and considerably in itself, and then the action period would add another 45 days.

This could create unnecessary operational delays.

2. Regarding Item 4B, please provide us information as to how this requirement would apply to rock crushing, asphaltic concrete batching, and readi-mix concrete batching permittees.

On a final note, we ask that at sometime you consider developing a reciprocity arrangement with the Department of Environmental Quality in which the DEQ and LRAPA would recognize each other's air contaminant discharge permits for portable air pollution sources which move between Lane County and other Oregon counties.

Very truly yours,

WILDISH SAND & GRAVEL

Randall S. Hledik
Director, General Services

RSH:pyl

cc: Mike Altucker, Eugene Sand & Gravel Co.
Allen Babb, Delta Sand & Gravel Co.
Steve Coward, Morse Bros.
Vern Egge, Egge Sand & Gravel Co.
Dick Angstrom, OCAPA
Jim Britton, APA

Weyerhaeuser
Paper Company

P.O. Box 275
Springfield, Oregon 97477
Tel (503) 746 2511
Fax (503) 741 5240

Weyerhaeuser

December 12, 1989

Mr. Paul Willhite
Lane Regional Air Pollution Authority
225 North 5th, Suite 501
Springfield, Oregon 97477

Dear Paul,

The purpose of this letter is to provide comment on the proposed amendments to LRAPA Title 34, "Air Contaminant Discharge Permits." Specifically we would like to comment on Section 34-040 Records. The proposed change would add language intended to provide LRAPA with information to determine whether or not such sources are in compliance.

Previously in a letter dated July 10, 1989 we commented on the cost of CEMS and commented on these same issues in the context of the PM10 Point source subcommittee work. We also discussed informally the "electronic data transfer" issue at a meeting with LRAPA staff on November 1, 1989.

Our concerns are summarized as follows:

On LRAPA Proposal: "This may require the installation and maintenance of continuous monitors"

1. We have no objection to a requirement for a CEM (continuous emission monitor) for a regulated air emission parameter, i.e. Stack Opacity.

2. We are concerned about any CEM requirements for process related gas parameters that are unregulated, i.e. O_2 or CO. This is based on a philosophy where LRAPA sets regulated standards for air quality and industry operates its process to meet the regulation, rather than being regulated on how to operate.

LRAPA Proposal: "and automatic data handling systems."

3. This language is not specific enough to comment on; but we will comment on what we think the intention is. It appears that LRAPA is proposing reporting requirements for sources that presently

have none. It also appears that rather than using a traditional report, that data would be printed to floppy disc once/month and mailed to LRAPA. Our comments are summarized as follows.

a. There is already some language requiring sources to periodically report emissions deemed by the Director to be necessary to determine compliance.

b. The reporting requirements need to be specified. It is difficult to comment constructively on the new reporting requirements because of vagueness of the new requirements.

c. Submitting raw data amounts to a large quantity of information that would be difficult to manage. A months worth of raw data from a single Opacity meter is 43,200 one minute averages, equivalent to almost 1000 pages of data. We think this is too large a step to take at this time, considering that there are no reporting requirements at present.

d. In our opinion a more standard reporting requirement is more practical, than electronic data transfer of uncondensed data.

We appreciate the opportunity to comment on the proposed changes.

Sincerely,

Russell J. Ayers

Russell J. Ayers
Air Quality Supervisor

LANE BOILER OWNERS ASSOCIATION, INC.
P.O. Box 1485
Springfield, Oregon 97477-0164

January 5, 1990

RECEIVED
JAN 09 1990
LANE REGIONAL AIR POLLUTION AUTHORITY

Ms. Ellie Dumdi,
Chairperson
L.R.A.P.A. Board
c/o Lane County Board of Commissioners
125 East 8th Avenue
Eugene, Oregon 97401

Dear Ms. Dumdi:

Lane Boiler Owners Association, Inc., represents fourteen local member companies that generate their mill steam by burning hogged fuel. The Association formed back in 1980 when the first SIP -State Implementation Plan- was issued.

At the time, LRAPA and the Boiler Owners committed to work together to improve the air shed quality. Mills in the Association shared information and operating experience in order to increase boiler efficiency and reduce particulate discharge. Over the years, an effective dialogue has been maintained between LRAPA and LBOA on issues related to area air shed quality.

I wish to follow-up on the recent public testimony I gave about proposed changes to Title 34. The following text will generally follow the public testimony.

I direct your attention to page 1, section 34-010, paragraph 1. (Please refer to the enclosed copy of Title 34.)

We object to striking out the word "substantial" when describing changes to process or emission control equipment that may require the submission of a permit application.

To our industry, the words "substantial change" maintains the principle that "sufficient cause" shall be developed before a business is required to submit a permit application. Removal of the word "substantial" conveys unreasonable power to the Authority to interpret what "changes" in a process or emission control equipment will require a permit application. Even the word "substantial" is subject to interpretation. Existing permits spell out the operating limits for emissions and process flows. If the business is operating within the permit, the requirement to submit a new application should not be triggered by this section of Title 34.

I direct your attention to page 4, section 34-010, paragraph number 14.

We recognize that permits may need to be modified from time to time. We object to the unclear language in the proposed paragraph concerning what should trigger a permit modification notice.

E10

LANE BOILER OWNERS ASSOCIATION, INC.
P.O. Box 1485
Springfield, Oregon 97477-0164

The phrase "receipt of additional information" and "other reason" seem unreasonably open-end, and should either be more specifically defined or struck from the revision. Also, the prospect of being presented with "modified" permit requirements with 20 days to react is unreasonable. If the facility is operating in compliance with an existing permit, a "notice of intent to modify" should be required several weeks before an order is issued. All businesses need this time to study the impact of the proposed changes. We are in a very competitive global business environment now and environmental equipment expenditure can impact the future of businesses and jobs. Sufficient time is required to make the best decisions for our businesses and community.

Please turn your attention now to page 5, section 34-020, paragraph 2A.

The uncertainty of Discharge Permit status should not become another unknown that hampers the conduct of business in our community. Facilities must be sold from time to time and even bankruptcy is necessary to protect owners, creditors and employees. If a facility is operating within its present permit, the sale or exchange or even a bankruptcy should trigger a "review" of permit status within 12 months not within sixty (60) days.

If this clause were allowed it could become a unfortunate bargaining tool during an acquisition or sale of a mill. In turn this could have a negative impact on the mill owners, employees and a community's economic health. Because of the bankruptcy court's Automatic Stay, we are not even certain that the Authority could take any action without Relief From the Automatic Stay granted by the trustee.

Finally, please focus your attention to page 9, section 34-040.

We feel that no change in the present language is justified. There are sufficient requirements now on owners and operators for providing such information deemed by the Director to be necessary to determine whether or not such sources are in compliance.

Continuous monitoring and data handling systems should be optional if mutual benefits are apparent. The expenditure for electronic monitoring and data transmission equipment would be a serious financial burden to many facilities.

Additional thoughts on the monitoring issue:

1. We must maintain the principle that "sufficient cause" exist before the Director can seek additional records.

2. Access to premises and operating charts is already guaranteed.

3. The continuous monitors being envisioned will not directly

LANE BOILER OWNERS ASSOCIATION, INC.
P.O. Box 1485
Springfield, Oregon 97477-0164

measure the criteria pollutant, which is grains/scf.

4. The retrofitting of continuous monitoring equipment on existing boiler systems is NOT a trend across the country.

5. These complex sensing instruments are a challenge to install and keep at accurate calibration. Many small mills do not have the technical skills to do this.

6. Direct connected data links would add to the Agency staff, not reduce it. Too much garbage to interpret.

Thank you for this opportunity to express our views. If you have any questions or would like further supporting details, I will do all that is reasonable to respond.

Sincerely,

Mark Rauch

Mark Rauch, President
of the Board of the Lane Boiler
Owners Association, Inc.

cc: file
Mr. Don Arkell
MR/kdb

MINUTES

LANE REGIONAL AIR POLLUTION AUTHORITY
BOARD OF DIRECTORS MEETING
TUESDAY--OCTOBER 10, 1989
SPRINGFIELD CITY COUNCIL CHAMBERS
225 North 5th Street
Springfield, Oregon

ATTENDANCE:

Board	Ellie Dumdi, Chair--Lane County; Debra Ehrman--City of Eugene; Betty Horvath--City of Cottage Grove; Emily Schue--City of Eugene; George Wojcik--City of Springfield (ABSENT: Rob Bennett--City of Eugene; Chris Larson--City of Springfield)
Staff	Don Arkell--Director; Paul Willhite; Ralph Johnston; Marty Douglass; Cal Yoshida; Tim Mixon; Merrie Dinteman
Advisory Committee	Kathryn Barry
Other	Russell Ayers, Dick Crabb, Keith Euhus and Melody Sydow

OPENING: Dumdi called the meeting to order at 12:27 p.m.

MINUTES: MSP (Horvath/Schue)(unanimous) approval of the minutes of the September 1989 meeting as submitted.

EXPENSE REPORT: MSP (Schue/Ehrman)(unanimous) approval of the financial report for September 1989.

PUBLIC PARTICIPATION: None

ADVISORY COMMITTEE: Kathryn Barry indicated the committee was to meet the following week and would be formulating final PM10 SIP recommendations for the board.

REQUEST FOR AUTHORIZATION OF PUBLIC HEARING, PROPOSED AMENDMENTS TO LRAPA TITLE 34: Arkell said the proposed amendments to Title 34, "Air Contaminant Discharge Permits," would fulfill four objectives for the agency:

1. Set criteria for public request for public hearings prior to the issuance of Air Contaminant Discharge Permits;
2. Specify source categories which are required to register and to provide emissions information;
3. Increase permit fee revenue to help offset permit program costs; and
4. Make "housekeeping" revisions to improve regulation clarity and address minor permitting issues.

Arkell requested authorization of public hearing on the proposed amendments at the December board meeting.

** *Motion* **

MSP (Schue/Wojcik)(unanimous) authorization of public hearing on proposed amendments to LRAPA Title 34 at the December 12, 1989 board meeting.

BACKGROUND INFORMATION ON PM10 SIP DEVELOPMENT:

Ralph Johnston presented a review of the process the LRAPA Advisory Committee has used in formulating the recommendations to be submitted to the board. He said the Eugene-Springfield area exceeded the standard by a small margin the last three winters. The "worst case" occured in 1985, which is the design year used to compute the required emissions reductions. He also touched on selection of the computer model used to predict exceedances as an aid in selecting strategies and on the need for data base and emissions inventory development.

There was some discussion of the woodstove curtailment programs, since this is the largest single source of PM10 problems in the area and is likely to be a major component of PM10 emission reduction strategies. Johnston said the committee believes the current voluntary curtailment program should remain in place until November 1, 1991 and that survey work and studies should also be done to evaluate the effectiveness of the program. If reductions are not sufficient, it would likely be recommended that a mandatory curtailment program be implemented. At present, LRAPA does not have legal authority to adopt wood heating regulations. In order to implement a mandtory program in the non-attainment area, the cities and county would have to adopt ordinances for that purpose. One enforcement option would be to contract with LRAPA. Some exemptions have been suggested, such as sole source of heat, low-income households, certified stoves and pellet stoves. Exemptions based on the type of fuel used may require standardization of quality of fuels. Exemptions of any kind would require some type of registration program, and enforcement would require additional staff. The committee is considering other strategies, such as prohibiting sale and installation of used, non-certified stoves. Here, too, LRAPA has no jurisdiction, and the cities and county would have to adopt appropriate ordinances.

Johnston showed computer-generated model results comparing the present design levels within the Eugene-Springfield area with the computer model's prediction of reductions with woodstove curtailment. The model predicts exceedances throughout the metropolitan area at the present time but that intermittant curtailment which achieves 70 percent reduction in emissions would result in no exceedances. Arkell stressed that mandatory curtailment would mean only six to ten days per season when people would be unable to use wood heat.

Regarding curtailment of industrial processes during short-term periods of air stagnation, Arkell said this is not really practical in most cases since it takes a long time to reduce emissions from industrial sources. By the time the agency and the affected industries could react, the situation would either be out of hand or over with. In addition, Arkell said that EPA generally does not allow credit for such short-term industrial process curtailment. EPA guidance requires full-time emission reductions.

Staff received a number of complaints because the advisory committee's public forum on the SIP strategies was held during the day when people are at work; therefore, it was suggested that the board's public hearing on the SIP be held during the evening, perhaps at Harris Hall in Eugene.

DEVELOPMENT OF AGENCY POLICY ON FIELD BURNING: It was determined that this discussion should be postponed, pending a court decision regarding a change in the title of the ballot measure. The court's decision should be rendered soon, since the supporters of the measure will need time to collect signatures by July of 1990 in order to put the measure on the November 1990 ballot.

DIRECTOR'S REPORT: Arkell briefly reviewed the agency's activities during the month of September.

Industry — The new permit rule amendments should help staff to deal with a company which has declared Chapter 7 bankruptcy. The emission reductions from the closure would revert back to the public realm, and any new operation at the site would be treated as a new source by LRAPA.

Local Inter-Governmental Contact — Staff attended council meetings in Eugene and Springfield during September regarding backyard burning and woodstoves. Cottage Grove and Lane County are also slated for similar visits in the next few months.

Monitoring — Orders have been received for 38 of the portable PM10 samplers developed by LRAPA and EPA, and staff will be manufacturing more of them.

Staff Profile — This month's profile was of Cal Yoshida, the agency's Data Management Specialist. Cal is the staff computer expert and has developed most of the agency's data systems, using off-the-shelf software and his own programs.

OLD BUSINESS: Ellie Dumdi said the committee appointed to review the director's salary had met October 3. They determined that Arkell is an excellent executive director, and a salary increase was appropriate.

** *Motion* ** As chair of the committee, Dumdi MOVED approval of a 5 percent salary increase for Don Arkell, effective January 1, 1990. George Wojcik SECONDED, and the MOTION PASSED BY UNANIMOUS VOTE.

NEW BUSINESS: None.

ADJOURNMENT: There being no further business, the meeting adjourned at 1:36 p.m. The next regular meeting of the LRAPA Board of Directors is scheduled for Tuesday, November 14, 1989.

Respectfully submitted,

Merrie Dinteman

Merrie Dinteman
Recording Secretary

Agenda Item No. 6

LRAPA Board of Directors Meeting

October 10, 1989

TO: Board of Directors

FROM: Donald R. Arkell, Director

SUBJ: **Request for Authorization of Public Hearing on Proposed Amendment of LRAPA Title 34, "Air Contaminant Discharge Permits"**

SUMMARY OF REVISIONS

The proposed amendments to Title 34 are designed to fulfill the following four objectives:

1. Set criteria for public request for public hearings prior to the issuance of Air Contaminant Discharge Permits;
2. Specify source categories which are required to register and to provide emissions information;
3. Increase permit fee revenue to help offset permit program costs; and
4. Make "housekeeping" revisions to improve regulation clarity and address minor permitting issues.

DISCUSSION OF SIGNIFICANT ISSUES

1. Public Hearing Criteria

Current permit regulations require that public notice shall be provided, with at least thirty (30) days for comment from the public prior to the issuance of any new or renewed permit for an industrial point source. There are no provisions for public hearing if requested by members of the public. Although the agency has general powers to hold hearings, more specific guidance is appropriate. In June of 1988, the Environmental Quality Commission adopted specific regulations for holding hearings as part of the

industrial point source permit issuance process. The proposed amendment to Title 34 parallels the state regulations.

The proposed regulations provide that, if within fourteen (14) days after the commencement of the public notice period, ten (10) or more people (or an organization of 10 or more people) request a public hearing, the Authority shall conduct a hearing before taking final action on the permit.

The proposed regulations require the Authority to take final action on the permit within forth-five (45) days of closing the public comment period or the hearing record. The current requirement is to take action on the permit within forty-five (45) days after notification that the application is complete. Procedurally, a hearing would be conducted by the director or designee. The director would make a decision to issue, modify or deny the permit, as now. If denied, the appeal route is to the LRAPA board, as now (through hearings officer).

Impact on public *is to provide opportunity for significant groups of individuals or organizations to have influence on new and renewed industrial point source permit conditions.*

Impact on the permit applicant *is that final action on controversial permit applications may be extended for the time needed to publish notice and hold a hearing. Additional permit conditions may be imposed in response to issues discussed at the hearing.*

Impact on LRAPA *is the added cost of implementing the extra step, including making a record, additional responses, notification of hearing.*

2. Registration Process

Current regulations allow the Director to require registration of air contaminant sources not requiring an Air Contaminant Discharge Permit. In addition to preserving this general authority, the proposed regulations would require the registration of selected source categories. Typically, these source categories emit Volatile Organic Carbons (VOC's) or toxic pollutants, or are listed on the permit table but below the present emissions threshold or 5-employee threshold requiring an Air Contaminant Discharge Permit. VOC emissions are precursors to topographic ozone. The registration process includes a one-time twenty-five-dollar ($25) registration fee. The registration program would allow LRAPA to compile a more comprehensive VOC emissions inventory, preparatory for additional VOC and toxic control programs.

Impact on the public is to provide information on VOC and toxic air contaminants.

Impact on sources is the time needed to complete registration forms and review data with LRAPA staff, and a one-time fee of $25 to cover costs.

Impact on LRAPA is the added cost of verifying and compiling data in a useable format--offset by the registration fee.

3. Increase Permit Fees by 10%

In January of 1986, the LRAPA Board adopted resolution 86-2 regarding air contaminate discharge permit fees. Key elements of this resolution: (a) require fees to be based on cost of administering the permit program; (b) establish a permit revenue cap of 13 percent of the LRAPA annual operating budget; and (c) require LRAPA staff to consult with affected industry representatives prior to consideration at a public hearing.

Current permit revenue is approximately $50,000 per year. Increasing revenue by 10 percent, or approximately $5000, would raise the revenue closer to the actual permitting and compliance assurance costs. The statutory requirements and LRAPA resolution No. 86-2 are met by this proposal. The permit revenue accounts for 9.9 percent of the current budget. If the proposed increase is adopted, the permit revenue would account for 10.9 percent of the budget.

In contrast to our previous fee adjustment three years ago, which included a redistribution of fees between source categories and required extensive input from industry, this is an "across-the-board" 10 percent fee increase. Industry will be provided a draft of the proposed regulations with a cover letter this week. We will be soliciting comments and prepare a staff report prior to the public hearing.

Impact on permitted sources is a 10 percent increase in compliance determination fees, ranging from $20 (low) to $50 (mid) to $360 (high).

Impact on LRAPA is that the additional revenue would help offset increased cost of the compliance assurance and permit programs.

4. Other Revisions

A. A revision is proposed for Section 34-020 affecting permanently-closed sources. The proposal is that, if a source has been closed permanently for a year or filed for Chapter 7 bankruptcy, the permit would automatically terminate. A facility whose permit is terminated under this provision, and which is reopened at a later date, would be considered a new source. New Source Review would be required under LRAPA rules which may, in some cases, require the upgrading of control equipment as a condition for a new start. The current TSP SIP and the prospective PM10 SIP both

assume a baseline scenario that, over time, heavy wood products industries will decline. This revision will assure that the emissions inventory reduction caused by closed sources is permanent and consistent with the SIP.

Impact on sources is that emission controls on permanently-closed or liquidated major sources may need to be upgraded prior to start-up to meet the requirements of a new source. These requirements include Best Available Control Technology (BACT), Lowest Achievable Emission Rate (LAER) and emissions offsets. There would be benefit for new or expanded smaller industries by creating larger emission growth increments.

Impact on LRAPA is that more extensive permit reviews will be required to assure compliance with New Source Review procedures.

B. Currently, under Section 34-040, LRAPA can require maintenance and submittal of emissions information and records. This proposed revision would include specific requirements for the installation of continuous monitors and automatic data-handling systems.

Impact on sources and on LRAPA is minimal. Existing regulations are being clarified.

C. The category of permitted sources in Table A is clarified with regard to electric power generation by adding the word "commercial," thus removing question about sources that generate electric power exclusively for their own use, in conjunction with operation of their hogged-fuel boiler(s). A new category is also added to require underground storage tank remediations involving strippers or condensers to obtain permits.

Impact on sources is that permit fees for operation of commercial electric power generation or cogeneration will increase. In addition, Underground Storage Tank (UST) remediations using air stripping equipment will be required to obtain air contaminant permits.

Impact on LRAPA is that increased fees associated with generation will help offset additional compliance monitoring activities. Requiring permits on UST remediations will result in prior review and establishment of controls to minimize VOC emissions.

RECOMMENDATION

It is the director's recommendation that the board authorize a public hearing on December 12, 1989, with the intent of taking testimony and adopting amended Air Contaminant Discharge Permit regulations.

DRA/mjd

MINUTES

LANE REGIONAL AIR POLLUTION AUTHORITY
BOARD OF DIRECTORS MEETING
TUESDAY–DECEMBER 12, 1989
SPRINGFIELD CITY COUNCIL CHAMBERS
225 North 5th Street
Springfield, Oregon

ATTENDANCE:

Board	Ellie Dumdi, Chair--Lane County; Rob Bennett--City of Eugene; Betty Horvath--City of Cottage Grove; Chris Larson--City of Springfield; Emily Schue--City of Eugene; George Wojcik--City of Springfield (ABSENT: Debra Ehrman--City of Eugene)
Staff	Don Arkell--Director; Paul Willhite; Ralph Johnston; Marty Douglass; Tim Mixon; Merrie Dinteman
Advisory Committee	Kathryn Barry; Brian Bauske

OPENING: Dumdi called the meeting to order at 12:21 p.m.

MINUTES: MSP (Horvath/Schue)(unanimous) approval of the minutes of the October 1989 meeting as submitted.

EXPENSE REPORT: MSP (Schue/Horvath)(unanimous) approval of the financial reports through November 30, 1989.

PUBLIC PARTICIPATION: None

ADVISORY COMMITTEE: Brian Bauske indicated that the committee has completed a two-year process which began when the board charged the committee to prepare recommendations for the PM10 SIP. He was prepared to present the recommendations later in the meeting.

PUBLIC HEARING--PROPOSED AMENDMENTS TO LRAPA TITLE 34: Arkell entered into the record affidavits of publication of hearing notice in the Cottage Grove Sentinel, the Eugene Register-Guard and the Springfield News. He stated that notice had also been published in the Secretary of State's Bulletin. He indicated that there were two issues about which people had expressed concern during the notice period:

1. Continuous Emission Monitoring (CEM). This is a measure intended to increase the level of surveillance on major sources of air pollution. It is a way to obtain more continuous data on the operation of industrial sources than we now have. Staff does not wish to impose unreasonable requirements, but there does appear to be a need for CEM. Industry is concerned about the extent to which monitoring may increase and about reporting requirements.

2. Public Hearings. The rule includes provision for public hearing in connection with permit issuance if enough interested persons request it. Industry is concerned that this would add too much time to the process. Again, staff does not wish to drag the process out any further than necessary but does wish to allow the public access to the record and an opportunity to express their concerns regarding specific parts of permits.

Public Hearing

Chair Dumdi opened the public hearing at 12:32 p.m. Written comments on the proposal (copies attached as part of these minutes) included:

1. Randall S. Hledik of Wildish Sand & Gravel, Eugene, received November 6, 1989.

   Mr. Hledik expressed concern about the public hearing criteria extending the time it takes to process a permit. He suggested that date for requested hearing be set within 16 days after request is made in order to stay within the current 30-day public review period. He further suggested that final action by the Authority be taken 15 days after the public hearing to keep decision time within the present 45-day processing period. Hledik also requested information (and received the attached written response) regarding clarification of how CEM is applied to rock crushing, asphaltic concrete batching and readi-mix concrete batching permittees.

   He suggested that LRAPA develop with DEQ a reciprocity agreement to recognize each other's air contaminant discharge permits for portable air pollution sources which move between Lane County and other Oregon counties.

2. Russell J. Ayers, Weyerhaeuser Paper Company, Springfield, received December 12, 1989.

   Regarding CEM, Ayers states that Weyerhaeuser has no objection to CEM requirement for a regulated air emission parameter such as stack opacity; however, they are concerned about CEM requirements for process-related gas parameters that are unregulated, such as CO or O_2.

   Regarding automatic data handling systems mentioned in the rules, Weyerhaeuser staff felt the language in the proposed rule is not specific enough and needs to be clarified. Based on what they assume the intent of the proposal to be, Ayers stated that they felt that it would not be practical to electrically transmit to LRAPA large amounts of uncondensed data every month, and a more standard reporting requirement would be better.

Oral testimony taken at the hearing included:

1. Mark Rauck, 2098 Olive, Eugene, representing Lane Boiler Owners Association.

   In Section 34-010.1, Rauck recommended that the word "substantial" be left in the text, because LBOA feels that removing the word would give LRAPA too much power to interpret what changes should require permit modification and new application.

   In Section 34-010.14, Rauck said the language was unclear as to what should trigger the need for permit modification. He suggested that a notice of intent to modify be issued with a few weeks notice, instead of the current 20-day response time. He said environmental equipment costs can impact industry very strongly, and they need time to figure out what should be done for businesses and for the community with regard to emission controls.

   In Section 34-020.2.A, regarding Chapter 7 bankruptcy filing, Rauck stated that LBOA was not yet ready to comment adequately but would submit written testimony following the hearing.

   In Section 34-040, Rauck felt that no change in the present wording was justified. He felt that requiring electronic data handling systems would impose too great a financial burden on many facilities.

2. William Carpenter, 1745 Rainbow Loop, Springfield.

   Mr. Carpenter spoke to the issue of Continuous Emissions Monitoring. He stated that he had worked in industry for some years as a chemical engineer. He felt that industry can easily get around intermittent monitoring, and that continuous monitoring is the only successful way to insure that permit restraints are met in this area.

There being no further testimony, the public hearing was closed at 12:40.

Arkell suggested holding the public hearing open for a few days to allow time to receive any additional comments. He said staff would bring this back to the board in January with responses to testimony and recommendations for board action. The board elected to hold the hearing open until Friday, December 22.

PM10 SIP, EUGENE-SPRINGFIELD:

Presentation of LRAPA Advisory Committee Recommendations (Brian Bauske)

Brian Bauske, 1989 Chair of the LRAPA Advisory Committee, presented the committee's recommendations for PM10 standard attainment. Bauske described the committee's activities over the past two years, including familiarizing themselves with the technology and regulations involved in air pollution control; review of the saturation study performed last winter and of continued PM10 monitoring in the area; a review by EPA of how that agency checks LRAPA's efforts; a report on economic analysis of control measures by Dr. Bob Gay; meetings with representatives from other jurisdictions in the West who have faced similar control problems with PM10 and woodstove emissions; and a survey of what kinds of programs have been used by other jurisdictions. The committee was divided into three sub-committees: modeling; area sources (woodstoves); and point sources (industry). The committees went into the process assuming that reductions would need to be made in a number of different areas in order the meet and maintain the standards. After carefully studying all the evidence, however, the committee's conclusion was that reduction of emissions from only one source, wood heating, is needed. A mandatory curtailment program would be more effective than a voluntary one but, Bauske said, LRAPA and DEQ are prohibited by state law from regulating home wood heating and that the cities and county would have to adopt ordinances in order to carry out this proposed attainment plan. The committee's recommendation is to continue the voluntary plan during this heating season and next season and work, in the meantime, to put a mandatory program in place to begin in the fall of 1991, if it is necessary.

If a mandatory wood heating curtailment program is necessary, the committee recommends an exemption for sole source of heat. They will continue to evaluate information regarding possible exemptions for other reasons, such as for cleaner-burning technology or low income. Bauske said the committee feels that LRAPA is the logical agency to carry out an enforcement program and that it should be based, at least initially, on complaints received.

Regarding sale and installation of non-certified used stoves, Bauske said the committee feels the installation of these stoves should be prohibited. Although regulation of installation is not allowed by law, the sale of used stoves could be regulated.

The term "seasoned wood" needs to be defined. LRAPA has a number of moisture meters which can be used by the public to check firewood to see what the moisture content is. LRAPA should help to make this technology available to the public. An option discussed by the committee is a program to certify that wood offered by firewood dealers is adequately seasoned.

Public education is a very strong component of the proposed attainment plan, and this effort needs to be strengthened and continued. Suggestions in this area are adoption of a cartoon-type mascot for the public to identify with control of air pollution, and production of a public service announcement.

Discussion

Concerning catalytic converters for existing stoves, Bauske said converters are available but not quite ready for retro-fitting into older stoves. Work is ongoing to significantly increase the efficiency of the stoves, and the woodstove industry is constantly involved in research to improve their product.

If sale of used stoves were prohibited, what would happen if a person wanted to sell one to someone who intended to transport it elsewhere for use outside of Lane County? Bauske said that there is potential for a bad loophole in this regard, and the plan needs to include provision to avoid it. The easiest method, in the committee's opinion, would be to regulate installation of these used, non-certified stoves through building department inspections when people apply for building permits for installation.

Medford has an even worse woodstove problem than Eugene-Springfield, and officials are talking about establishing a special fund to buy up old woodstoves, especially if they are the sole source of heat, and encouraging the use of other heat sources. Bauske said the committee had discussed that and had determined that the problem in Eugene-Springfield is not severe enough to warrant the expense of this type of program--that the woodstove curtailment program, if adhered to, should be sufficient to reduce levels enough to attain and maintain the standards.

There was some discussion of the reason for holding off on the mandatory program for two more seasons and of encouraging switching to newer-technology stoves or other heat sources in the meantime. A question was raised as to whether, with all the emission reduction efforts in the interim, the emissions levels might come down without the mandatory program and how much that would affect the final decision. Bauske said there are a number of studies being done now in different areas which will give LRAPA good information on which to base a decision regarding going to a mandatory program. Results of those studies should be available fairly soon.

Dumdi thanked Bauske for his presentation and also extended thanks to the entire committee for the time and hard work they have put into this project over the past two years.

Public education is a very strong component of the proposed attainment plan, and this effort needs to be strengthened and continued. Suggestions in this area are adoption of a cartoon-type mascot for the public to identify with control of air pollution, and production of a public service announcement.

Public education is a very strong component of the proposed attainment plan, and this effort needs to be strengthened and continued. Suggestions in this area are adoption of a cartoon-type mascot for the public to identify with control of air pollution, and production of a public service announcement.

Request for Authorization of Public Hearing on PM10 SIP

Ralph Johnston described the process of developing the plan and what needs to be done to adopt it and get it accepted by EPA. Johnston reiterated the background information given to the board at previous meetings. He said the board needs to hold a public hearing on the proposed plan and that, after it is adopted by the LRAPA board, it will be submitted to the Environmental Quality Commission for review and approval, then to EPA for its approval. Johnston said the technical part of the work has been completed. He explained what had been done and showed the standard violations the model predicted under worse-case conditions, compared with predictions of no violations in the same areas with the wood heating curtailment program. Johnston indicated the advisory committee would make recommendations next June regarding exemptions to the mandatory plan. He stressed the fact that local governments will need to adopt appropriate ordinances in order to enforce this plan. He said an executive summary, along with about 50 pages of the body of the plan would be prepared and provided to the board members during the next week or two.

Discussion

In response to questions, Johnston said the non-attainment area gets some PM10 pollution from areas outside LRAPA's jurisdiction. A background level of about one-third of the standard is already built into the modeling, and that level is consistent no matter where you go in the Willamette Valley. It does not come from sources which can be controlled. Natural sources contribute to it, and some of the pollutants generated in this area drift to other jurisdictions and contribute to those areas' background levels.

It was suggested that the wood burning advisory printed in the Register-Guard should be on the front page instead of the second page. Johnston said staff would check into it and see if it would be possible for the paper to do this.

Regarding sole source of heat as an exemption instead of "low income/sole source of heat," Johnston said low income had not been considered because there are only 5 to 10 days during a season when burning would actually be prohibited. He added that, under community block grants, installation of an alternative heat source is required in order to get the grant. In other areas where mandatory programs are in place, exemptions for sole source are only good for two or three years, after which the exemption runs out. At the end of that time, there must be another source of heat or at least a supplemental source.

Rob Bennett wished to go on record in favor of asking people to upgrade to better technology stoves, even if it is the sole source of heat, to the extent that it is not an income issue.

It was requested that staff convert 20 tons to volume so that board members will be able to give a satisfactory answer when people ask what 20 tons means with regard to amount of emissions. It was also suggested that some kind of description be prepared to explain to people in medical terms what fine particulate does to their bodies, because the education program should provide this information to tell people why these measures are necessary.

Arkell requested authorization of public hearing on the proposed plan and suggested that it be held in the evening at the Eugene City Council Chambers. He suggested Tuesday, January 30. He said there is also a minor change in Title 34, "Air Contaminant Discharge Permits," which EPA will require as part of the adoption process. This change affects reporting requirements, in that particulate emissions reported to EPA must be reported as PM10 rather than as Total Suspended Particulate. Arkell again stressed the fact that local ordinances will need to be in place before EPA will approve the attainment plan. He said staff will prepare some draft ordinances and submit them to the councils and commission next spring.

*** Motion ***

MSP (Horvath/Larson)(unanimous) authorization of public hearing on proposed PM10 SIP and changes to Title 34 on Tuesday, January 30, 1990.

REQUEST FOR AUTHORIZATION OF PUBLIC HEARING ON PROPOSED NEW TITLE 14, "Rules of Practice and Procedure":

Arkell explained the need to adopt a proposed new Title 14 which incorporates existing Titles 42, 44 and 45 into one title. The new title would take clear up some inconsistencies in the current rules and provide clearer procedures. It would provide procedures for public information hearings; contested case hearing; rulemaking procedures; procedures for issuing subpoenas; evidentiary hearings; default orders. It would also include emergency powers of the board and director to issue emergency closure orders. Most of these

processes are currently conducted under various state statutes and rules. Title 14 would write these procedures into LRAPA's rules to give staff clear and consistent guidelines to follow.

The proposed new Title 14 would also necessitate minor housekeeping changes in existing Titles 20, 34 and 38, as well as re-numbering of existing Titles 12, 13 and 14.

** *Motion* ** MSP (Larson/Bennett)(unanimous) authorization of public hearing on Title 14 on Tuesday, February 13, 1990.

DIRECTOR'S REPORT: Arkell briefly reviewed the agency's activities during the months of October and November.

Backyard Burning The backyard burning season started October 1. The City of Springfield held a public hearing regarding the issue of backyard burning and decided to continue the practice with some changes. They plan to change to a split season and provide for penalties for violators and restrictions on the types of materials to be burned. LRAPA staff is working with the fire department on the new burning program.

Staff Profile The staff member profiled this month was Jerry Boyum. Since he was sick, this item was postponed until the January meeting.

Samplers Staff has been very active producing portable samplers for use by EPA and the Mexican government for a joint study in El Paso, Texas and Juarez, Mexico.

OLD BUSINESS: None

NEW BUSINESS: None.

ADJOURNMENT: There being no further business, the meeting adjourned at 1:45 p.m. The next regular meeting of the LRAPA Board of Directors is scheduled for Tuesday, January 9, 1990.

Respectfully submitted,

Merrie Dinteman

Merrie Dinteman
Recording Secretary

Agenda Item No. 6

Board of Directors Meeting

December 12, 1989

TO: Board of Directors

FROM: Donald R. Arkell, Director

SUBJ: **Proposed Adoption of Amendments to LRAPA Title 34, "Air Contaminant Discharge Permits"**

Summary of Rule Revisions

The proposed amendments to Title 34 are designed to fulfill the following four objectives:

1. Set criteria for holding public hearings in reference to the issuance of air contaminant discharge permits;
2. Specify source categories which are required to register and provide emission information to the air pollution authority;
3. Increase permit fee revenue to help offset permit program costs; and
4. Make "housekeeping" revisions to improve regulation clarity and address minor permitting issues.

Comments from Affected Parties

LRAPA has received comments from one party, only. Mr. Randall S. Hledik of Wildish Sand and Gravel Company raised two specific issues. These are: (1) the time required to obtain a permit has been made indeterminate due to the inclusion of the public hearing process in lieu of the 30-day public comment process currently prescribed; and (2) he wished clarification regarding the reporting requirements anticipated for the aggregate industry. In addition, he expressed a desire that LRAPA explore a reciprocity air permit arrangement with the DEQ for portable sources likely to cross county borders.

The full context of his comments, along with our response, is entered into the record of this hearing.

Response To Comments

Public Hearing Process. The inclusion of the public hearing process is in direct response to recent DEQ rule revisions mandated by the courts to accommodate input from the public into the permitting process. Our current process is changed from providing a 30-day comment period, prior to issuing the proposed permit, to providing a 30-day comment period with provision for public hearing if a timely request by sufficient parties is made.

Mr. Hledik correctly observed that the public hearing process removes the 45-day fixed time frame for issuing permits and may result in delays in obtaining permits, where public hearings are requested and held. The time delay would be that needed to provide reasonable public notice, hold the hearing, compile and consider the record.

We would comment that this proposed revision is likely to affect only permit applications that are controversial. It affords an opportunity for public forum that doesn't exist now.

Continuous Emission Monitor Installation. LRAPA currently has the authority to require monitoring and reporting of emission data and other pertinent information relating to source operation. Each air contaminant discharge permit contains provisions relating to monitoring and reporting. In some instances, this already requires the use of continuous emission monitors. The concept of electronic data transmittal, although relatively new to LRAPA, is prescribed elsewhere and will provide a means to assure compliance with established emission limits on a more continuous contemporaneous basis.

In setting the monitoring and reporting requirements for each source, or class of sources, LRAPA considers numerous parameters to avoid being arbitrary. Among these are cost, benefit, and operating environment. At the present, there are no plans to install sophisticated continuous or electronic monitors on sources in the aggregate industry.

Reciprocity Air Permit Agreement. The final issue raised by Mr. Hledik was that of developinmg a reciprocity agreement with the DEQ to provide for the issuance of a "statewide permit." This issue was discussed extensively during the formation of the permit program. At that time, it was decided that each regional authority should issue permits for sources operating within its boundaries. Only portable operations are affected by crossing from one jurisdiction to another. Due to the fact that each location is unique and that each jurisdiction may have slightly different rules, we maintain that each should be responsible for issuing, or denying, the permit. In a sense, however, limited reciprocity does exist. Both the state and the LRAPA will use an issued permit as a basis for developing and setting generic limits. Source test information is exchanged and used freely between the agencies. Permit application information is also freely accepted between the agencies. Although autonomy is maintained, there is a sincere effort to minimize the burden to the permittee.

Amendment(s) to the Proposed Regulation

After additional review of the proposed regulations, staff is recommending that the word "automatic" appearing in the last line of Section 34-040 Records be replaced by the word "electronic."

Recommendation

Unless there is substantial testimony requiring staff evaluation, it is the Director's recommendation to adopt the changes to Title 34 as proposed and amended.

PTW/mjd

MINUTES

Attachment H

LANE REGIONAL AIR POLLUTION AUTHORITY
BOARD OF DIRECTORS MEETING
TUESDAY–JANUARY 9, 1990
SPRINGFIELD CITY COUNCIL CHAMBERS
225 North 5th Street
Springfield, Oregon

ATTENDANCE:

Board	Emily Schue, Chair--City of Eugene; Ellie Dumdi--Lane County; Debra Ehrman--City of Eugene; Betty Horvath--City of Cottage Grove; Chris Larson--City of Springfield; Emily Schue--City of Eugene (ABSENT: Rob Bennett--City of Eugene; George Wojcik--City of Springfield)
Staff	Don Arkell--Director; Paul Willhite; Ralph Johnston; Marty Douglass; Tim Mixon; Merrie Dinteman
Advisory Committee	Kathryn Barry
Other	Dick Crabb; Corey Unfried; Darrel Williams; John Wolcott

OPENING: Dumdi called the meeting to order at 12:29 p.m.

ELECTION OF 1990 OFFICERS: Dumdi opened nominations for 1990 board offices. Ehrman NOMINATED Emily Schue from Eugene as chair and Chris Larson from Springfield as Vice-Chair. Larson SECONDED. There were no further nominations. Schue and Larson were elected by unanimous vote.

Dumdi then passed the gavel to Schue. Schue thanked Dumdi for her leadership during the past year.

BUDGET COMMITTEE APPOINTMENTS: Appointments to the LRAPA Budget Committee were postponed until February.

MINUTES: MSP (Horvath/Larson)(unanimous) approval of the minutes of the December 1989 meeting as submitted.

EXPENSE REPORT: MSP (Larson/Dumdi)(unanimous) approval of the financial report through December 31, 1989.

PUBLIC PARTICIPATION: None

ADVISORY COMMITTEE: Arkell indicated the written report from committee chair Brian Bauske was submitted in order to satisfy a regulatory requirement for an annual report of the committee's activities.

PROPOSED AMENDMENTS TO LRAPA TITLE 34: Following the public hearing on these rules on December 12, the hearing record was held open until December 22 in order to allow time to receive additional comments from the public. No further comments were received. Staff prepared responses to each of the points brought up in both oral and

written comments, and some changes were made in the original proposal for Title 34 in response to those comments. Arkell indicated that a letter from Mark Rauch of the Lane Boiler Owners' Association, which was received just prior to the January 9 meeting, was a written version of the oral comments made at the December 12 hearing and contained no new information.

The staff responses and the amended draft rules were submitted to the board at this time, along with a request from staff to adopt the proposed changes to Title 34, "Air Contaminant Discharge Permits," as amended.

** *MOTION* ** After brief discussion, MSP (Ehrman/Horvath) adoption of the proposed changes to Title 34, as amended.

BOHEMIA, COBURG COMPLIANCE SCHEDULE: Arkell explained that staff had discovered last summer that Bohemia's Coburg plan was operating outside its Plant Site Emission Limits, in non-compliance with its permit. Bohemia was notified at that time of the problem. Bohemia has undertaken the development of a compliance schedule to return the boiler to compliance with the Plant Site Emissions Limit in the company's Air Contaminant Discharge Permit. He said Bohemia staff was present to present detailed information and a compliance schedule.

Corey Unfried, Environmental Coordinator for Bohemia, Inc., explained that addition of steam vats at the veneer plant had created additional steam demand which had resulted in the boiler operating above the allowed rate. Unfried said the company had hired a firm to test the boiler emission levels to determine what needed to be done to bring it into compliance. They also tested the particle size distribution and did a combustion evaluation on the boiler to get as much information as possible before making a decision regarding control equipment. Unfried described measures taken to reduce emissions as much as possible in the interim through process controls. He explained the types of equipment considered and the process by which it was determined that an Electrostatic Precipitator (ESP) would be the best control method. Unfried said the options have now been narrowed to a choice between two wet ESP's and that Bohemia will be getting bids from vendors and then selecting the best one. He presented a time line for ordering the equipment and installing and testing it, with a projected final compliance date of December 31, 1990. Unfried added that the plan includes installation of oxygen and CO analyzers on the system to provide monitoring data to help maintain compliance on the boiler. In response to questions, he said the installation would cost approximately $500,000 and that annual operation costs for the control H2

system would be in the range of $27,600 to $38,000 depending on the type of equipment installed. Unfried also said the company would report progress on the schedule to LRAPA on a regular basis. He assured the board that the proposed control equipment would allow for expansion of the system while maintaining compliance.

Arkell said staff had applied a set of guidelines to this situation to deal with it in the same manner as similar problems with other companies. He indicated that Bohemia had cooperated fully with LRAPA and that the proposed time line was reasonable. He recommended that the board approve the proposed compliance schedule and issue an enforcement order which would include appropriate milestones for reporting back to the board during the schedule (issuance of purchase order, construction of the system, compliance testing).

** *MOTION* ** Following brief discussion, MSP (Dumdi/Ehrman)(unanimous) approval of compliance schedule for boiler as Bohemia's Coburg plant site, with requirements for reporting back to LRAPA board regarding key elements of the schedule.

PERSONNEL POLICY, MARTIN LUTHER KING'S BIRTHDAY: Arkell proposed that LRAPA begin recognizing Martin Luther King's, Jr.'s birthday on the third Monday on January, as most other local government offices do. In order to keep the total number of holidays constant, he proposed to eliminate one of the two floating holidays currently in the personnel policy. The only difference in the agency's holiday schedule would be that the office would be closed one more day during the year. In the past, the City of Springfield has had to provide building security so that LRAPA's office could be open on that day.

** *MOTION* ** MSP (Ehrman/Dumdi)(unanimous) approval of change in holiday schedule, as proposed. The change is to take effect immediately.

DIRECTOR'S REPORT: Arkell briefly reviewed the agency's activities during the month of December.

Woodstoves Staff was very active in evaluating the effectiveness of the woodstove emissions curtailment programs in both Eugene/Springfield and Oakridge. There was an extended period of Air Stagnation Advisory (ASA) between December 12 and 31, during which time the majority of the wood-burning advisories were "yellow." Staff completed about 25 surveys in Eugene/Springfield and 8 in Oakridge during that time. The surveys will continue through the end of February, and a report of the evaluations is to be completed at the end the season. Arkell added that pollution levels had remained below standards during the ASA period, speculating that

there appeared to be some evidence of reduced burning early during the episode, and temperatures were moderate during that time.

Springfield City Council — Staff met with Springfield City Council and had some very useful discussion on subjects of mutual interest to the city and LRAPA, such as open burning, woodstove curtailment programs, long-range growth planning and transportation planning for development within the city limits.

1990 Olympic Trials — Staff was contacted in December by the Oregon Track Club regarding historical air quality information during the summer months. The club is gathering information in preparation for a bid to host the 1990 Olympic Trials.

Staff Profile — The staff member profiled this month, Jerry Boyum, was unavailable due to monitoring activities in Oakridge. Arkell indicated that this will be held over until Jerry is able to attend a board meeting.

PM10 Hearing — Arkell reminded the board that the public hearing on the proposed PM10 SIP is scheduled for 7:00 p.m. on Tuesday, January 30 in the Eugene City Council Chambers.

Advisory Committee Appointments — Arkell presented a list of advisory committee members whose terms have expired. He indicated that the board would need to re-appoint those individuals or appoint new members in February. The board briefly discussed the number of consecutive terms served by individuals on the advisory committee, and directed staff to ask the committee to discuss this at its January 17 meeting and provide the board with recommendations. Staff will bring this back before the board in February and, in the meantime, will provide the board with information on the current makeup and representation of the advisory committee and members' length of service.

New Cottage Grove Board Member — Betty Horvath announced that she would no longer be a member of the LRAPA board, stating that she had enjoyed the knowledge she had gained and the people she worked with during her five years on the board. She introduced Darrel Williams, current president of the Cottage Grove City Council, who will be replacing her on the LRAPA board. Schue thanked Horvath for her valuable contribution in representing Cottage Grove.

OLD BUSINESS: None

NEW BUSINESS: Arkell stated that staff would like to propose its own bills to the 1991 Oregon Legislature instead of tacking our needs onto someone else's bills as was done last year. He requested that the board's Legislative Committee be reacti-

vated to develop an agenda of legislation proposals to discuss with the Lane County legislators and key committee members in preparation for the 1991 legislative session. Arkell indicated staff would provide administrative support in arranging for meetings, developing reports to bring before the full board for concurrence and presenting information to the legislature.

Schue authorized reactivation of the LRAPA Board Legislative Committee, with representatives from each of the contributing jurisdictions. Members of the committee include: Ellie Dumdi from Lane County; Darrel Williams from Cottage Grove (replacing Betty Horvath); Chris Larson from Springfield; and Emily Schue from Eugene. Larson indicated that she would be unavailable for meetings for a while but would be available by telephone. Dumdi said she would be unavailable for meetings on Thursdays.

ADJOURNMENT: There being no further business, the meeting adjourned at 1:21 p.m. The next regular meeting of the LRAPA Board of Directors is scheduled for Tuesday, February 13, 1990.

Respectfully submitted,

Merrie Dinteman

Merrie Dinteman
Recording Secretary

LANE REGIONAL

AIR POLLUTION AUTHORITY

(503) 726-2514
225 North 5th, Suite 501, Springfield, OR 97477

Donald R. Arkell, Director

M E M O R A N D U M

To: Record of Adoption Proceedings, LRAPA Title 34 Amendments

From: Donald R. Arkell, Hearings Officer

Subject: Public Hearing, December 12, 1989

Summary of Procedure

Pursuant to public notice, a public hearing was convened by the LRAPA Board of Directors at 12:35 p.m. on December 12, 1989 in the Springfield City Council Chamber at 225 North 5th, Springfield. LRAPA had received designation from the DEQ Director as hearings office for the Oregon Environmental Quality Commission, and this was a concurrent EQC/LRAPA hearing. The purpose of the hearing was to receive testimony concerning proposed amendments to LRAPA Title 34, "Air Contaminant Discharge Permits."

Summary of Testimony

Two persons commented at the hearing on several proposed amendments, and written comments were also received from two persons and from DEQ. The hearing record was held open until Friday, December 22 to accept additional comments. A list of persons commenting, both orally and in writing, and a summary of those comments, as well as staff responses, is included with the attached copy of the minutes of the December 12 meeting. This information was provided to the LRAPA board for consideration prior to action.

Action of the LRAPA Board of Directors

Based on the proposal and statement of need, and having heard the testimony and comments presented at the hearing and considered the responses and recommendations of staff, the LRAPA board, by unanimous vote of those present, adopted the proposal as amended. The board directed that the amended Title 34 be forwarded to the EQC for adoption as a revision to the Oregon State Implementation Plan.

DRA/MJD

Clean Air Is a Natural Resource - Help Preserve It

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
JAN 12 1990
AIR QUALITY CONTROL

Attachment I

M E M O R A N D U M

TO: Donald Arkell, Director, Lane Regional Air Pollution Authority

FROM: Timothy J. Sercombe

DATE: January 3, 1990

RE: Effect of House Bill 5033 on Proposed LRAPA Permit Fee Increases

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Question Presented:

The 1989 Oregon Legislative Assembly enacted HB 5033 which appropriated various sums to the Department of Environmental Quality. Section 6 of the Bill provided as follows:

> "(1) Notwithstanding any other law, the Environmental Quality Commission shall not establish or increase any fee or charge, whether for a license or otherwise, without prior approval of the Emergency Board or the Legislative Assembly.
>
> "(2) Adoption by the Legislative Assembly of this biennial appropriation measure based on a budget that includes increases in fees or charges or the adoption of a measure specifically establishing or increasing fees or charges constitutes prior legislative approval for purposes of subsection (1) of this section."

The Environmental Quality Commission is scheduled to consider various LRAPA rule changes during its February, 1990 meeting. One of these rule changes would increase the fees charged for various air contamination discharge permits. You asked whether HB 5033 controls that agency approval. We advise that it does not.

Analysis:

The Authority's power to issue permits comes from 2 statutes. ORS 468.555 contains specific authority for the permit programs of regional air pollution authorities. It provides that,

> "(1) The commission by rule may authorize regional authorities to issue permits for air contamination sources within their areas of jurisdiction.
>
> "(2) Permit programs established by regional authorities pursuant to subsection (1) of this section shall conform to the requirements of ORS 468.065 and shall be subject to review and approval by the commission."

The general authority for actions of regional authority is contained in ORS 468.535(1), which provides that,

> "(1) When authorized to do so by the commission, a regional authority formed under ORS 468.505 shall exercise the functions relating to air pollution control vested in the commission and the department by ORS 468.035, 468.065, 468.070, 468.090, 468.120, 468.295, 468.310, 468.320, 468.325, 468.335, 468.340 and 468.875 to 468.897 insofar as such functions are applicable to the conditions and situations of the territory within the regional authority. The regional authority shall carry out these functions in the manner provided for the commission and the department to carry out the same functions. . . ."

ORS 468.065 controls the process for issuance of permits. Subsection 2 of the statute allows the commission to establish a "schedule of permit fees for permits . . . The permit 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 non-compliance with the permit."

ORS 468.065(5) provides, in part,

> ". . . The fees accompanying an application to a regional air pollution authority pursuant to a permit program authorized by the commission shall be retained by and shall be income to the regional authority. Such fees shall be accounted for and expended in the same manner as are other funds of the regional authority. However, if the department finds after hearing that the permit program administered by the regional authority does not conform to the requirements of the permit program approved by the commission pursuant to ORS 468.555, such fee shall be deposited and expended as are permit fees submitted to the department."

OAR 340-20-165 establishes the amount of fees charged for a "permit", defined by OAR 340-20-145(4) to include "a written permit issued by the Department or Regional Authority . . ." OAR 340-20-165(12) provides that,

> "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)."

Similarly, OAR 340-20-185 authorizes a regional authority to "issue, modify, renew, suspend and revoke air contaminant discharge permits for air contamination sources within its jurisdiction." The rule requires submission of proposed permits to DEQ prior to issuance and after issuance.

There are several arguments supporting the conclusion that HB 5033 does not require prior legislative approval of permit fee increases by LRAPA. First, the apparent intent of the bill is to limit the amount of expenditures by the Department of Environmental Quality. Because ORS 468.065(5) continuously

appropriates collected fees to meet the administrative expenses of the various environmental programs of the DEQ, it is necessary to limit the amount of fees collected in order to effectively curtail the budget of the DEQ.

LRAPA's budget is not included within DEQ's budget. LRAPA's budget is adopted under the Local Budget Law. See, ORS 294.305 to 294.520 and definition of "municipal corporation" under ORS 294.311(19). Section 5 of HB 5033 provides that, "Notwithstanding any other law, all sections of this Act are subject to Executive Department rules related to allotting, controlling and encumbering funds." Again, this displays an intent to limit the coverage of the Act to DEQ expenditures and to EQC actions. The allotting, controlling and encumbering of LRAPA funds is controlled by the Local Budget Law and is not generally subject to Executive Department rules.

Second, section 6 of the Act can be fairly read to cover EQC actions which by themselves establish or increase a fee or charge. The Environmental Quality Commission, by virtue of OAR 340-20-165(12) has already delegated authority to LRAPA to adopt permit fees of a different amount than that adopted by the EQC. No further action of the Environmental Quality Commission is necessary for adoption of LRAPA fees, as a matter of state law.[1]

Third, subsection 2 of section 6 of the measure incorporates

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[1] Compare the fee situation to the limited authority given regional authorities under ORS 468.535(2) which requires the regional authority to "submit to the commission for its approval all air quality standards adopted by the regional authority prior to enforcing any set standards." No such similar restriction exists for the establishment of permit fees.

additional fees or charges included as part of the DEQ budget previously adopted. That budget, in turn, contains appropriations to LRAPA which were established on the basis of the proposed permit fee increases. A strong argument exists that, to the extent that the statute is applicable, there has been prior ratification of the proposed fee increases through adoption of the DEQ budget under section 6(2) of HB 5033.

The answer to this question is not free from doubt. We have not found any controlling judicial precedents or helpful Attorney General opinions. To the extent that a permit fee is part of a "permit program", ORS 468.555 requires that "[p]ermit programs established by regional authorities . . . be subject to review and approval by the commission." Similarly, ORS 468.065(5) states that "the fees accompanying an application to a regional air pollution control authority pursuant to a permit program authorized by the commission shall be retained by and shall be income to the regional authority." These two statutory sections suggest that EQC is required to approve the amount of fees charged by LRAPA for permits as part of its general approval authority over permit programs of the Authority.

ORS 468.535(1) provides in part that, "The regional authority shall carry out these functions [including the permit issuing function] in the manner provided for the commission and the department to carry out the same functions." House Bill 5033 is a limitation on the manner in which the commission and department can carry out their function of charging fees for air contamination discharge permits. ORS 468.535(1) could be read to

subject LRAPA to the same restrictions imposed by law upon the commission and department, including the restrictions imposed by HB 5033.

To conclude, HB 5033 appears on its face to be limited to regulation of the fees directly charged by the Department of Environmental Quality. Section 6 of the bill should be read to limit only actions of the EQC which by themselves establish or modify fees. The Bill should not be read to cover actions of the EQC which ratify fee increases promulgated by LRAPA or actions of the EQC in including those fee increases in the State Implementation Plan. Section 5 of the statute suggests that its coverage is limited to the controlling of DEQ funds alone. Moreover, section 6(2) of the measure can be read to include ratification of the LRAPA proposed fee increases by virtue of the appropriation made to LRAPA in the adopted DEQ budget for this biennium.

A substantial argument exists supporting a contrary conclusion. We believe, on balance, that the better argument is for a more narrow reading of HB 5033. Should you desire further legal review, we suggest that the legislative history of the measure be reviewed for any significant clues. Should you have further questions or if we can be of assistance in this or any other regard, please do not hesitate to inquire.

HARRANG, LONG, WATKINSON,
ARNOLD & LAIRD, P.C.

By: Timothy J. Sercombe

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: March 2, 1990
Agenda Item: G
Division: Hazardous and Solid Waste
Section: Waste Reduction

SUBJECT:

Reclaimed Plastic Tax Credit: Adoption of Temporary Rules as Permanent Rules.

PURPOSE:

Senate Bill 1083, as passed by the 1989 Oregon Legislature, makes changes to the statutory language in ORS 468.925 to 468.965. The accompanying rules, OAR 340-17-010 to 340-17-055, were in conflict with the changes made in the statute. On December 1, 1989, the Environmental Quality Commission (Commission) adopted temporary rules for the Reclaimed Plastic Tax Credit program and authorized a public hearing on those rules for adoption as permanent rules. The temporary rules cleared up any conflict that existing rules had with the changes in the statute and are in effect until May 29, 1990. A hearing was held on January 9, 1990 on the proposed permanent rules and no changes were recommended. The Department of Environmental Quality (Department) is thus requesting adoption of the temporary rules as permanent rules.

ACTION REQUESTED:

__ Work Session Discussion
__ General Program Background
__ Program Strategy
__ Proposed Policy
__ Potential Rules
__ Other: (specify)

__ Authorize Rulemaking Hearing

Proposed Rules (Draft)	Attachment ____
Rulemaking Statements	Attachment ____
Fiscal and Economic Impact Statement	Attachment ____
Draft Public Notice	Attachment ____

_X_ Adopt Rules

Proposed Rules (Final Recommendation)	Attachment _A_
Rulemaking Statements	Attachment _B_
Fiscal and Economic Impact Statement	Attachment _C_
Public Notice	Attachment _D_

__ Issue a Contested Case Decision/Order

Proposed Order	Attachment ____

__ Other: (specify)

DESCRIPTION OF REQUESTED ACTION:

The Reclaimed Plastic Tax Credit program was originally set up in 1985 to allow tax relief on investments made for the manufacture of a reclaimed plastic product. The changes in the program outlined in Senate Bill 1083 allow more types of investments to be eligible for tax credits and extends the sunset date for the program from December 31, 1988 to July 1, 1995.

On December 1, 1989, the Commission adopted temporary rules and authorized a public hearing on those rules for adoption as permanent rules. The hearing was held on January 9, 1990 on the proposed permanent rules and no changes were recommended. The proposed permanent rules include the following modifications to the existing rules, resulting from changes to the statute:

- Extending the sunset date for the program to July 1, 1995;

- Expanding eligibility for tax credits to include investments in equipment, personal property, or machinery which is necessary for the collection, transportation or processing of reclaimed plastic or the manufacture of a reclaimed plastic product; and

- Adding a formula to calculate the percent of the investment which is properly allocable to the collection, transportation or processing of reclaimed plastic or the manufacture of a reclaimed plastic product.

Other changes include:

- the definition of "qualifying business" in the statute had a typographical error in it. Therefore, the definition was changed in the rules to be consistent with the remaining statutory language; and

- wording changes and additions were made which ensure that the Reclaimed Plastic Tax Credit program is compatible with the Pollution Control Tax Credit program.

AUTHORITY/NEED FOR ACTION:

__	Required by Statute: _____ Enactment Date: _____	Attachment ___
__	Statutory Authority: _____	Attachment ___
_X_	Amendment of Existing Rule: OAR 340-17-010 to 340-17-055	Attachment ___
__	Implement Delegated Federal Program: _____	Attachment ___
__	Other:	Attachment ___
__	Time Constraints: (explain)	

DEVELOPMENTAL BACKGROUND:

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

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The temporary rules/proposed permanent rules modify the existing rules to allow more investments to be eligible for tax credit. Under existing rules, only those investments which are made in equipment or machinery used to produce a reclaimed plastic product would be eligible for tax credit. The new statutory language expands the eligibility to investments in equipment, machinery or personal property used to collect, transport or process reclaimed plastic or manufacture a reclaimed plastic product. The affected

community did not oppose Senate Bill 1083 when it was being heard in the legislature and are supportive of the proposed rule changes. There were no changes proposed to the rules during the public hearing process. The testimony received (see Attachment E) endorsed the Reclaimed Plastic Tax Credit program as presented in the proposed administrative rules and its enabling legislation.

PROGRAM CONSIDERATIONS:

The administration of the tax credit program is estimated to take 0.10 FTE of an existing staff person's time. The fees established in the existing rules were not changed and will cover the cost of this administration.

Unlike the Pollution Control Tax Credit program, preliminary certification is still required in the Reclaimed Plastic Tax Credit program. Therefore, applicants can still request a waiver of the preliminary certification from the Commission if they feel "special circumstances" apply.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

Request adoption of temporary rules as permanent rules.

No other alternatives were considered by the Department, as the statute is fairly detailed in its requirements and the temporary rules modified existing rules to directly reflect the changes made in the statute.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends approval of the above alternative, adoption of temporary rules as permanent rules. There were no changes to the rules suggested during the public hearing process.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

By adopting the temporary rules as permanent rules, the Department is able to carry out the Reclaimed Plastic Tax Credit program as passed by the 1989 Legislature in Senate Bill 1083. The temporary rules are consistent with other agency tax credit rules and will assist in developing opportunities for recycling of secondary plastics in keeping with Oregon's solid waste management hierarchy.

ISSUES FOR COMMISSION TO RESOLVE:

None.

INTENDED FOLLOWUP ACTIONS:

File rules with the Secretary of State's office by March 5, 1990.

Approved:

Section: David Rozell

Division: Stephanie Hallock

Director: Jill Hamann

Report Prepared By: Lissa Wienholt

Phone: 229-6823

Date Prepared: February 9, 1990

EAW:b
RECY\YB9376
February 9, 1990

OREGON ADMINISTRATIVE RULES

FOR PLASTICS RECYCLING TAX CREDITS

CHAPTER 340, DIVISION 17

340-17-010 Purpose

The purpose of these rules is to prescribe procedures and criteria to be used by the Department and Commission for issuance of tax credits to Oregon businesses that make [~~capital~~]investments in order to collect, transport, or process reclaimed plastic or to manufacture a reclaimed plastic product. These rules are to be used in connection with ORS 468.925 to 468.965 and apply only to [~~capital~~]investments made on or after January 1, 1986 and before [~~January 1, 1989~~]July 1, 1995, except where otherwise noted herein.

340-17-015 Definitions

(1) "[~~Capital~~]Investment" means the amount of money a person invests to acquire or construct equipment, personal property or machinery necessary to collect, transport, or process reclaimed plastic or to manufacture a reclaimed plastic product. [~~A capital~~]An investment shall be determined to have been made on the date a sales contract is agreed to by the buyer or the date of issuance of a purchase order.

(2) "Circumstances beyond the control of the applicant" means facts, conditions and circumstances which applicant's due care and diligence would not have avoided.

(3) "Commission" means Environmental Quality Commission.

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

(5) "Personal property" means any investment in property directly related to the operation of the industry or enterprise seeking the tax credit, which make a significant contribution to the collection, transportation or processing of reclaimed plastic or the manufacture of a reclaimed plastic product, excluding land and buildings.

[~~(5)~~] (6) "Qualifying business" means a [~~manufacturing~~]business in Oregon that collects, transports, or processes reclaimed plastic or manufactures a reclaimed plastic product which will achieve compliance with Department statutes and rules or Commission orders or permit conditions before certification of tax credit. [~~in Oregon~~].

[~~(6)~~](7) "Reclaimed plastic" means plastic [~~that originates within Oregon~~]from industrial consumers, commercial users or post-consumer waste. [~~and is intended to be used to manufacture a nonmedical or nonfood plastic product. The reclaimed plastic must not be an industrial waste generated by the person claiming the tax credit, but must be purchased from a plastic recycler other than the person claiming the tax credit.~~] "Reclaimed Plastic" includes shredded plastics, regrind, pellets or any other similar products manufactured from Oregon industrial consumers, commercial users, or post consumer waste that is sold for the purpose of making an end product out of reclaimed plastic and is intended to be used to manufacture a non-medical or non-food plastic product.

[~~(7)~~](8) "Reclaimed plastic product" means a plastic product of real economic value for which more than 50 percent of the plastic used in the product is reclaimed plastic. [~~Shredded plastic, regrind or any similar product which is sold for the purpose of making an end product of reclaimed plastic does not qualify as a reclaimed plastic product.~~]

[~~(8)~~](9) "Special circumstances" means emergencies which call for immediate erection, construction or installation of a facility, cases where applicant has relied on incorrect information provided by Department personnel as demonstrated by letters, records of conversations or other

written evidence, or similar adequately documented circumstances which directly resulted in applicant's failure to file a timely application for preliminary certification. ~~[Special circumstances shall not include cases where applicant was unaware of tax credit certification requirements or applied for preliminary certification in a manner other than that prescribed in 340-17-015(1).]~~

340-17-020 Procedures for Receiving Preliminary Tax Credit Certification

(1) Filing of Application

(a) Any person proposing to apply for final certification of ~~[a capital]~~ an investment made in Oregon to collect, transport or process reclaimed plastic or to manufacture a reclaimed plastic product pursuant to ORS 468.935 shall file an application for preliminary certification with the Department of Environmental Quality. The application shall be made on a form provided by the Department. The preliminary certificate need not be issued prior to construction for compliance with this requirement.

(b) The ~~[capital]~~investment must not be made until 30 days after filing an application with DEQ unless DEQ reviews the application and notifies the applicant that the application is complete. If the ~~[capital]~~ investment is made within 30 days after filing the application and the Department has not notified the applicant that the application is complete, the application will be rejected by the Department.

(c) The Commission may waive the filing of the application if it finds the filing inappropriate because special circumstances render the filing unreasonable and if it finds such investment would otherwise qualify for tax credit certification pursuant to ORS 468.925 to ~~[to]~~468.965.

(d) Within 30 days of the filing of an application the Department shall request any additional information that applicant needs to submit in order for the application to be considered complete. After examination of the application, the Department may also request corrections and revisions to the plans and specifications. The Department may require any other information necessary to determine whether the proposed ~~[capital]~~ investment is in accordance with Department statutes, rules and standards.

(e) The application shall not be considered complete until the Department receives the information requested and notifies the applicant in writing that the application is complete and ready for processing. However, if the Department does not make a timely request pursuant to subsection (d) above, the application shall be deemed complete 30 days after filing.

(2) Approval of Preliminary Certification

(a) If the Department determines that the proposed investment is eligible it shall within 60 days of receipt of a completed application issue a preliminary certificate approving the investment. ~~[It is not necessary for this certificate to]~~ The preliminary certificate does not include a determination of the full extent to which a facility is eligible for tax credit.

(b) If within 60 days of the receipt of a completed application, the Department fails to issue a preliminary certificate of approval and the Commission fails to issue an order denying certification, the preliminary certificate shall be considered to have been issued. The ~~[capital]~~ investment must comply with the plans, specifications and any corrections or revisions previously submitted.

(c) Issuance of a preliminary tax credit certification does not guarantee final tax credit certification.

(3) Denial of Preliminary Certification

(a) If the Department determines that the [~~capital~~]investment does not comply with the Department statutes, rules and standards, the Commission shall issue an order denying certification within 60 days of receipt of a completed application.

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

(4) Appeal

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

340-17-025 Procedures for Final Tax Credit Certification

(1) Filing of Application

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

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

(c) An application shall not be considered filed until all requested information is [~~furnished~~]submitted by the applicant, and the Department

notifies the applicant in writing that the application is complete and ready for processing.

(d) The application must be [~~filed~~]submitted between January 1, 1986 and [~~December 31, 1988~~]June 30, 1995. Failure to file a timely application shall make the [~~capital~~]investment ineligible for tax credit certification.

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

(f) An extension shall only be considered if applied for between January 1, 1986 and [~~December 31, 1988~~]June 30, 1995. An extension may be granted for no more than one year. Only one extension may be granted.

(g) An application may be withdrawn and resubmitted by applicant at any time between January 1, 1986 and [~~December 31, 1988~~]June 30, 1995 without paying an additional processing fee, unless the amount of the investment has increased. An additional processing fee shall be calculated by subtracting the cost of the [~~capital~~]investment on the original application from the cost of the [~~capital~~]investment on the resubmitted application and multiplying the remainder by one-half of one percent.

(h) If the Department determines the application is incomplete for processing and applicant fails to submit requested information within 180 days of the date when the Department requested the information, the application will be rejected by the Department. If the applicant makes a written request for additional time to submit requested information, the Department may grant additional time so long as applicant is required to submit requested information by [~~December 31, 1988~~]June 30, 1995.

(2) Commission Action

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

(b) The Commission shall act on an application for certification before the 120th day after the filing of a complete application. Failure of the Commission to act constitutes approval of the application.

(c) The Commission may consider and act upon an application at any of its regular or special meetings. The matter shall be conducted as an informal public informational hearing, not a contested case hearing, unless ordered otherwise by the Commission.

(d) Certification

(A) If the Commission determines that the [~~capital~~]investment is eligible, it shall certify the actual cost of the facility and the portion of the actual cost properly allocable to the [~~capital~~]investment made for the purpose of collecting, transporting or processing reclaimed plastic or manufacturing a reclaimed plastic product. Each certificate shall bear a separate serial number for each such facility.

(B) No determination of the proportion of the [~~capital~~]investment to be certified shall be made until receipt of the application.

(C) A certificate is effective for purposes of tax relief in accordance with ORS 316.103 and 317.106 if investment was made on or after January 1, 1986 and before [~~January 1, 1989~~]July 1, 1995.

(D) Certification under ORS 468.935 shall be granted for a period of 5 consecutive years. The 5-year period shall begin with the tax year of the person in which the facility is certified under this section.

(e) Rejection

If the Commission rejects an application for certification, or certifies a lesser actual cost of the [~~capital~~]investment or a lesser portion of the actual cost properly allocable to the collection, transportation or processing of reclaimed plastic or to the manufacture of a reclaimed plastic product than was claimed in the application for certification, the Commission shall cause written notice of its action, and a concise statement of the findings and reasons therefore, to be sent by registered or certified mail to the applicant. [~~within 120 days after the filing of the application.~~]

(3) Appeal

If the application is rejected for any reason, or if the applicant is dissatisfied with the certification of actual cost or portion of the actual cost allocated to the collection, transportation or processing of reclaimed plastic or to the manufacture of a reclaimed plastic product, the applicant may appeal as provided in ORS 468.110. The rejection of the certification is final and conclusive on all parties unless the applicant appeals as provided in ORS 468.110 before the 30th day after notice was mailed by the Commission.

340-17-030 Determination of Percentage of Certified Investment Costs Allocable to Collection, Transportation or Processing of Reclaimed Plastic or Manufacturing a Reclaimed Plastic Product

(1) Definitions:

(a) "Claimed Investment Costs" means the actual cost of the claimed equipment, machinery, or personal property. Certification of the actual cost of the claimed equipment, machinery, or personal property must be

documented by a certified public accountant for claimed investment costs which are over $20,000.

(b) "Net Investment Cost" means the claimed investment costs minus the salvage value of any equipment, machinery or personal property removed from service.

(c) "Salvage value" means the value of a piece of equipment, machinery or personal property at the end of its useful life minus what it costs to remove it from service. Salvage value can never be less than zero.

(2)[~~(1)~~] In establishing [~~T~~]the percent of costs properly allocable to the investment costs incurred to allow a person to collect, transport or process reclaimed plastic or to manufacture a reclaimed plastic product, the Commission shall consider the following factors and make appropriate findings regarding their applicability: [~~shall be equal to the estimated percent of time the collection, transportation, processing or manufacturing process will convert reclaimed plastic into a saleable or usable commodity, based on projections for the first year of operation of the manufacturing process.~~]

(a) The estimated percent of time the equipment, machinery or personal property is utilized to collect, transport or process reclaimed plastic or manufacture a reclaimed plastic product, based on projections for the first year of operation.

(b) The alternative methods, equipment and costs for achieving the same objective;

(c) Other factors which are relevant in establishing a portion of the actual cost of the investment properly allocable to the collection, transportation or processing of reclaimed plastic or to the manufacture of a reclaimed plastic product.

(3)[(2)] The portion of actual costs properly allocable shall be from zero to 100 percent in increments of one percent. If zero percent, the commission shall issue an order denying certification.

(4) The portion of actual costs properly allocable shall not include costs for:

(a) air conditioners;

(b) septic tanks or other facilities for human waste;

(c) property installed, constructed or used for moving sewage to the collecting facilities of a public or quasi-public sewerage system;

(d) equipment, personal property or machinery not directly related to the operation of the industry or enterprise seeking the tax credit; or

(e) any distinct portion of the investment which makes an insignificant contribution to the collection, transportation or processing of reclaimed plastic or the manufacture of a reclaimed plastic product including the following specific items:

(A) office furnishings;

(B) parking lots and road improvements;

(C) landscaping;

(D) external lighting;

(E) company or related signs; and

(F) automobiles.

OAR 340-17-035 Amount of Tax Credits Available

(1) For purposes of monitoring the Department's tax credit limit the Department will consider the sum of the preliminary certifications issued in each calendar year. When preliminary certification is waived under OAR 340-17-020, the year of final certification will be used. A

preliminary certificate which is granted and then cancelled within the same calendar year shall not be counted as part of the $1.5 million annual certification limit after it has been cancelled.

(2) Not more than $1.5 million in investment costs will be issued preliminary certification in any calendar year. In each calendar year a minimum of $500,000 of the $1.5 million will be reserved for investments costing $100,000 or less. The maximum cost certified for each investment shall not exceed $500,000 except as permitted by OAR 340-17-035(4).

(3) If the applications exceed the $1,500,000 limit, the Commission shall prioritize ~~[capital]~~investments, based on the date of filing of applications for final certification. Those applications filed first will receive first priority for certification. The total amount for which the investment is eligible shall be certified so long as there are adequate funds to do so.

(4) If the applications certified in any calendar year do not total $1,000,000, the Commission may increase the certified costs above the $500,000 maximum for previously certified ~~[capital]~~investments. The increases shall be allocated based upon the method of prioritization used in subsection (3) of this section. The increased allocation to previously certified ~~[capital]~~investments under this subsection shall not include any of the $500,000 reserved under subsection (2) of this section.

(5) When considering the percent of costs properly allocable to the investment costs incurred to allow a person to collect, transport or process reclaimed plastic or to manufacture a reclaimed plastic product, the following steps will be used:

(a) Determine the claimed investment costs.

(b) Determine the salvage value, if any, of any equipment which is being taken out of service.

(c) Determine the net investment cost.

(d) Determine the estimated percent of time the equipment, machinery or personal property will be utilized to collect, transport or process reclaimed plastic or manufacture a reclaimed plastic product, based on projections for the first year of operation.

(e) Determine the total allocable cost multiplying the net investment cost by the percent of time the equipment, machinery or personal property will be utilized to collect, transport or process reclaimed plastic or manufacture a reclaimed plastic product.

340-17-040 Procedure to Revoke Certification

(1) Pursuant to the procedures for a contested case under ORS 183.310 to 183.550, the Commission may order the revocation of the final tax credit certification issued under ORS 468.940, if it finds that:

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

(b) The holder of the certificate has failed substantially to operate the qualifying business [~~to manufacture a reclaimed plastic product~~] as specified in such certificate.

(2) As soon as the order of revocation under this section has become final, the Commission shall notify the Oregon Department of Revenue.

(3) If the certification of an [~~capital~~] investment is ordered revoked pursuant to paragraph (a) of subsection (1) of this section, all prior tax relief provided to the holder of such certificate shall be forfeited and the Department of Revenue or the proper county officers shall proceed to collect those taxes not paid by the certificate holder as a result of the

tax relief provided to the holder under any provision of ORS 316.103 and 317.106.

(4) If the certification of an [~~capital~~]investment is ordered revoked pursuant to paragraph (b) of subsection (1) of this section, the certificate holder shall be denied any further relief provided under ORS 316.103 or 317.106 in connection with such facility from and after the date that the order of revocation becomes final.

(5) The Department may withhold revocation of a certificate when the [~~capital~~]investment ceases to be used for the collection, transportation or processing of reclaimed plastic or the manufacture of a recycled plastic product if the certificate holder indicates in writing that [~~manufacture of a recycled product~~] recycling activities specified in the certificate will commence again within five years time. The Department will provide the Department of Revenue with a copy of the certificate holder's written indication of intent to recommence [~~manufacture of a recycled product~~]recycling activities specified in the certificate. In the event that the facility is not returned to operation as indicated, the Department shall revoke the certificate.

340-17-045 Procedures for Transfer of a Tax Credit Certificate

To transfer a tax credit certificate from one holder to another, the Commission shall revoke the certificate and grant a new one to the new holder for the balance of the available tax credit following the procedure set forth in ORS 316.103 and 317.106.

340-17-050 Fees for Final Tax Credit Certification

(1) An application processing fee of one-half of one percent of the cost claimed in the application for final certification but no more than $5,000 shall be paid with each application. However, if the application processing fee is less than $50, no application processing fee shall be charged. In addition, a non-refundable filing fee of $50 shall be paid with each application. No application is complete until the filing fee and processing fee are submitted. An amount equal to the filing fee and processing fee shall be submitted as a required part of any application for a plastics recycling tax credit.

(2) Upon the Department's receipt of an application, the filing fee becomes non-refundable.

(3) The application processing fee shall be refunded in whole if the application is rejected.

(4) The fees shall not be considered by the Environmental Quality Commission as part of the cost of the [~~capital~~]investment to be certified.

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

340-17-055 Taxpayers Receiving Tax Credit

(1) A person receiving a certificate under this Division may take tax relief only under ORS 316.103 or 317.106, depending upon the tax status of the person's trade or business.

(2) If the person receiving the certificate is an electing small business corporation as defined in section 1361 of the Federal Internal Revenue Code, each shareholder shall be entitled to take tax credit relief as provided in ORS 316.103, based on that shareholder's pro rata share of the certified cost of the [~~capital~~]investment.

(3) If the person receiving the certificate is a partnership, each partner shall be entitled to take tax credit relief as provided in ORS 316.103, based on that partner's pro rata share of the certified cost of the ~~[capital]~~investment.

(4) Upon any sale, exchange or other disposition of ~~[a facility]~~ equipment, personal property or machinery written notice must be provided to the Department of Environmental Quality by the company, corporation or individual for whom the tax credit certificate has been issued. Upon request, the taxpayer shall provide a copy of the contract or other evidence of disposition of the property to the Department of Environmental Quality.

(5) The company, corporation or individual claiming the tax credit for ~~[a]~~leased equipment, personal property, or machinery ~~[facility]~~must provide a copy of a written agreement between the lessor and lessee designating the party to receive the tax credit and a copy of the complete and current lease agreement for the facility.

(6) The taxpayer claiming the tax credit for ~~[a facility]~~the equipment, personal property, or machinery with more than one owner shall provide a copy of a written agreement between the owners designating the party or parties to receive the tax credit certificate.

NOTE: ORS 468.955(3) refers in error to ORS 316.097 and 317.116, which relate to Pollution Control Tax Credits, rather than Plastics Recycling Tax Credits. OAR 340-17-040(3) refers instead to claiming plastics recycling tax credit under ORS 316.103 and 317.106, consistent with legislative intent.

Attachment B

RULEMAKING STATEMENTS
for
Proposed Revisions to Existing Rule Pertaining to
Plastics Recycling Tax Credit

OAR 340, Division 17

Pursuant to ORS 183.335, these statements provide information on the intended action to adopt a rule.

STATEMENT OF NEED:

Legal Authority

The 1989 Oregon Legislature passed Senate Bill 1083 which made changes to the existing Plastics Recycling Tax Credit Program contained in ORS 468.925 to 468.965. As a result of changes made to the statute, the accompanying rules (OAR 340-17-010 to OAR 340-17-055) need to be modified to be consistent with the statute.

Need for Rule

In order to implement recent statutory changes, amendment of the tax credit rules is necessary.

Principal Documents

1) Existing state statute, ORS 468.925 to 468.965
2) OAR Chapter 340-17-010 to 340-17-055
3) Senate Bill 1083 (1989)

Land Use Consistency

This proposed rule does not affect land use as defined in the Department's coordination program approved by the Land Conservation and Development Commission.

FISCAL AND ECONOMIC IMPACT

The Reclaimed Plastic Tax Credit program was originally set up in 1985 to allow tax relief on investments made for the manufacture of a reclaimed plastic product. The changes in the program outlined in Senate Bill 1083 allow more types of investments to be eligible for tax credits and extends the sunset date for the program from December 31, 1988 to July 1, 1995. The proposed rule revisions establish the criteria for eligibility and the process for application for tax credit.

The net effect of the rule revisions should be to allow more tax credits to be eligible thereby increasing the impact on the general fund. The statute states that the total costs of investments which receive preliminary certification for tax credit from the Environmental Quality Commission in any calendar year shall not exceed $1,500,000. The maximum impact on the general fund will vary from year to year depending on the percent of costs properly allocable and what year applicants receive their final certification.

There should be no significant or adverse economic impact on the general public, small businesses, or large businesses as a result of these rule revisions. The rule revisions should encourage market development in the area of plastics recycling both at a processor and manufacturer level and so could increase the tax base for the state.

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Plastics Recycling Tax Credit Rule Amendments Public Hearing

Date Prepared: December 1, 1989
Hearing Date: January 9, 1990
Comments Due: January 12, 1990

WHO IS AFFECTED: Amendment of rules will affect people applying for plastics recycling tax credits.

WHAT IS PROPOSED: The DEQ proposes to adopt amendments to the Plastics Recycling Tax Credit Rules (OAR 340-17-010 through 340-17-055) to reflect statutory amendments made by the 1989 Legislature.

WHAT ARE THE HIGHLIGHTS: Proposed amendments would:

- extend the sunset date of the program to July 1, 1995;
- broaden the eligibility requirements for investments to include equipment, machinery, or personal property which is used to collect, transport or process reclaimed plastic or manufacture a reclaimed plastic product;
- clarify the method by which the percent allocable will be determined; and
- ensure that the plastics tax credit program is compatible with the pollution control tax credit program.

HOW TO COMMENT: A public hearing will be held at:

2:00 - 4:30 p.m.
Tuesday, January 9, 1990
DEQ Building
Room 10 A
811 S.W. Sixth Avenue
Portland, OR

Written or oral comments may be presented at the hearing. Written comments may also be sent to the Department of Environmental Quality, Management Services Division, 811 S.W. 6th Avenue, Portland, OR 97204, and must be received no later than 5:00 p.m., Friday, January 12, 1990.

(over)

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

11/1/89

FOR FURTHER INFORMATION:

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

Copies of the proposed rule amendments can be obtained from:

Claudia Jones
Management Services Division
811 SW Sixth Avenue
Portland, OR 97204
Telephone: 229-6022
Toll-free: 1-800-452-4011

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 may consider the proposed new rule revisions at its meeting on February 23, 1990.

Attachment E

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY **INTEROFFICE MEMORANDUM**

DATE: January 25, 1990

TO: Environmental Quality Commission

FROM: Lissa Wienholt, Hearings Officer

SUBJECT: Public Hearing, Proposed Amendments to Reclaimed Plastic Tax Credit Rules (OAR 340-17-010 to 340-17-055)

On January 9, 1990 a public hearing regarding proposed amendments to rules pertaining to the Reclaimed Plastic Tax Credit program was held in Portland, Oregon. One member of the public attended the hearing and gave testimony. Two individuals submitted written testimony.

Ted Hughes, representing the Oregon plastics industry and the Council for Solid Waste Solutions, gave testimony. Mr. Hughes endorsed the administrative rules and the enabling legislation, Senate Bill 1083. Mr. Hughes stated that this approach, tax credits and market assistance, was the best way to encourage plastics recycling. Mr. Hughes stated that the previous Reclaimed Plastic Tax Credit program was too restrictive and that the changes to the program outlined in Senate Bill 1083 and incorporated in the proposed rules would go a long way in encouraging the recovery of plastics from the wastestream.

Written testimony was submitted by Rena Cusma, Executive Officer of the Metropolitan Services District (see attached). Ms. Cusma supports the rules and the enabling legislation and stated that Metro endorses this approach because it utilizes economic development tools to support waste reduction technologies.

Written testimony was also submitted by Curt Nichols, Energy Management Engineer for the Oregon Department of Energy (ODOE) (see attached). Mr. Nichols was concerned that projects may be eligible for both the Reclaimed Plastic Tax Credit and the ODOE Business Energy Tax Credit and felt that the rules should specify whether or not both tax credits can be claimed. This is addressed in statute in ORS 316.103 (14):

> "No credit shall be allowed under this section and under ORS 468.925 to 468.965 for any portion of a facility for which the taxpayer claims a tax credit or ad valorem tax relief under ORS 307.405, 316.097, 316.116 or 316.140 to 316.142 and 469.185 to 469.225."

METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

Management Services Div.
Dept. of Environmental Quality

RECEIVED

JAN 3 1990

December 28, 1989

Department of Environmental Quality
Management Services Division
811 SW Sixth Avenue
Portland, OR 97204

Re: Plastics Recycling Tax Credit Rule Amendments
Public Hearing

To the Environmental Quality Commission:

Thank you for the opportunity to comment on the Department of Environmental Quality's proposed rules for the Plastics Recycling Tax Credit Program. Metro supports the rules and believes they will effectively implement the statutory amendments made by the 1989 legislature.

Broadening the eligibility requirements and extending the sunset date for Plastics Recycling Tax Credits particularly increases the likelihood that businesses will invest in much needed equipment to collect and transport reclaimed plastic. Metro endorses this approach since it utilizes economic development tools to support waste reduction technologies.

The proposed rules strengthen the existing program and should send a signal to businesses that Oregon wants to promote the recovery of recycled materials. If you have any questions on this testimony or require additional information, please feel free to get in touch with me.

Sincerely,

Rena Cusma
Executive Officer

RC:sg

cc: Bob Martin, Director of Solid Waste

Executive Officer
Rena Cusma

Metro Council

Mike Ragsdale
Presiding Officer
District 1

Gary Hansen
Deputy Presiding Officer
District 12

Lawrence Bauer
District 2

Jim Gardner
District 3

Richard Devlin
District 4

Tom DeJardin
District 5

George Van Bergen
District 6

Ruth McFarland
District 7

Judy Wyers
District 8

Tanya Collier
District 9

Roger Buchanan
District 10

David Knowles
District 11

Recycled paper

NEIL GOLDSCHMIDT
GOVERNOR

Department of Energy

625 MARION ST. NE, SALEM, OREGON 97310 PHONE 378-4040 TOLL FREE 1-800-221-8035
FAX 373-7806

December 19, 1989

Lissa Wienholdt
Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204

Dear Lissa:

I reviewed the DEQ rule amendments and permit renewal. We appreciate the chance to comment. My comments are below. Please forward them to the proper person.

1) Changing the Pollution Control Tax Credit (PCTC) so it only requires a single (final) certification is a good, customer-service idea. But, businesses often choose between PCTC and the ODOE tax credit (BETC). BETC rules say that applicants are not eligible for BETC and PCTC. In the past, when there has been a pre-certification requirement for PCTC, we could check to see if someone was trying to get both credits. Now, an application to DEQ can be as much as two years later. It will be harder to check. I don't see anything specific in the PCTC rules that says if they've received BETC they're not eligible. I'd add a clause that says that to your rules.

2) Another overlap may exist with the Plastics Recycling Tax Credit. Some items could be eligible for both it and BETC. I think your rules should say if you want them to receive both (or not). Since BETC's limits are higher -- $40 million a year and $3.5 million per project -- we may want to encourage its use when they are eligible for both.

3) Based on my understanding of Wastech's refuse-derived fuel project, it sounds good. I think it's well worth a renewal of their solid waste disposal permit. Refuse-derived fuel can offset the use of oil, natural gas, or other non-renewable fuels.

So, (almost) everything looks OK to me. Thanks for the chance to comment. Keep up the good work.

Sincerely,

Curt Nichols
Energy Management Engineer

BETC\CWN\DEQ RULE.WP5

The Oregon Department of Energy is an Equal Opportunity Employer

NEIL GOLDSCHMIDT
GOVERNOR

Department of Environmental Quality

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

REQUEST FOR EQC ACTION

Meeting Date: March 2, 1990
Agenda Item: H
Division: HSW
Section: Solid Waste

SUBJECT:

Disposal of Cleanup Materials Contaminated with Hazardous Substances - Approval of Changes to Specified Waste Rules. (noted as "special waste" rules in October 20, 1989 EQC meeting)

PURPOSE:

The proposed rules would restructure the current solid waste rules related to specified wastes (OAR 14-61-060), specifically addressing requirements for disposal of cleanup materials contaminated with hazardous substances, and updating requirements for disposal of waste tires, hazardous wastes, and lead acid batteries. The proposed rule revisions would also establish a permit fee to fund Department of Environmental Quality review of plans to dispose of cleanup materials contaminated with hazardous substances.

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 Department requests that the Environmental Quality Commission (EQC) approve the proposed revision to solid waste rules regarding "specified wastes".

Current solid waste administrative rules (Division 61) include a section (340-61-060) on "General Rules Pertaining to Specified Wastes". This section outlines special disposal or management requirements for a number of wastes, including: agricultural wastes, hazardous solid wastes, waste vehicle tires, waste oils, and demolition materials. This section was written in 1972 and is considerably out of date. The Department felt there was a need to both update the requirements for some of these specified wastes and to add requirements for a whole new range of wastes believed to present, as a group, greater environmental risk than household garbage.

On October 20, 1989 the EQC authorized public hearings on proposed "special waste rules". These rules established a new category of wastes (special wastes) and established specific standards for one type of special waste: cleanup materials contaminated with hazardous substances. The Department intended to add to the list of "special wastes" (e.g. asbestos, incinerator ash) through future rulemaking.

Based upon written and oral testimony received, as well as further discussions with the Solid Waste Advisory Committee, the Department has made a number of changes to the proposed rules. The most fundamental change involves the structure of the rules. Instead of adding a new category of wastes (special wastes) the Department is now proposing to amend the current category of "specified wastes" by adding several subcategories. These subcategories are listed below, along with the wastes to be included in the proposed rule.

As stated before, the Department intends to add other wastes, such as ash and infectious wastes, to these categories through future rulemaking. Infectious wastes will be added

at the Commission's May meeting. Others will be added as the Department works with the Solid Waste Advisory Committee to develop policies for management and disposal.

A) Wastes prohibited from disposal at solid waste landfills.

- Hazardous wastes
- Hazardous wastes from other states
- Lead-acid batteries
- Waste oils

B) Wastes allowed to be disposed of only in landfills using "best management practices" to protect groundwater.

- Cleanup materials contaminated by hazardous substances
- Conditionally Exempt Generator Hazardous Waste (to be added in future)
- Industrial Sludges containing hazardous substances (to be added in future)
- Incinerator Ash (to be added in future)

C) Wastes which require special handling or management practices.

- Waste tires
- Agricultural wastes
- Demolition materials
- Infectious Wastes (to be added in future)
- Asbestos (to be added in future)

Other significant changes or revisions from the proposed rules reviewed by the Commission on October 20, 1989 include:

1. Lead-acid batteries have been added to the list of wastes prohibited from solid waste landfills, reflecting

a 1989 law passed by the Oregon legislature. Lead-acid batteries were not included in the previous rule proposal.

2. The effective date for implementation of the rules on cleanup materials contaminated with hazardous substances has been changed from September 1, 1990 to January 1, 1991 to provide additional time for treatment and other disposal options to be developed.

3. "Best management practices" were defined to include, at a minimum, a bottom lining system, leachate collection, and leachate treatment.

4. The rules for disposal of cleanup materials contaminated by hazardous substances have been revised to clarify that on-site treatment of these wastes does not require a solid waste disposal permit, and that permitted landfills do not require an additional permit to accept these materials.

5. The requirements for submission of a waste management plan by landfill operators who wish to receive cleanup materials contaminated by hazardous substances have been simplified.

6. An exemption to the requirement for disposal in landfills with liners and leachate collection has been extended to landfills which receive less than 1000 tons of contaminated cleanup materials per year. There is an additional exemption for cases in which the Department determines that disposal of the cleanup material does not constitute a significant environmental risk.

7. The fee scale has been lowered for landfills accepting low volumes of cleanup materials, and has been eliminated for those landfills accepting less than 1000 tons per year.

AUTHORITY/NEED FOR ACTION:

___	Required by Statute: _____	Attachment ___
	Enactment Date: _____	
_X_	Statutory Authority: ORS 459.420	Attachment E
___	Pursuant to Rule: _____	Attachment ___
___	Pursuant to Federal Law/Rule: _____	Attachment ___
___	Other:	Attachment ___

___ Time Constraints: (explain)

DEVELOPMENTAL BACKGROUND:

___	Advisory Committee Report/Recommendation	Attachment ___
_X_	Hearing Officer's Report/Recommendations	Attachment _F_
_X_	Response to Testimony/Comments	Attachment _G_
_X_	Prior EQC Agenda Items: (list) October 20, 1989 Item T	Attachment _H_
___	Other Related Reports/Rules/Statutes:	Attachment ___
___	Supplemental Background Information	Attachment ___

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

For the purposes of this rule, the regulated or affected community consists primarily of landfill operators and those involved in cleanup of contaminated materials, particularly the cleanup of petroleum-contaminated soils.

For those involved in the cleanup of contaminated materials, a major concern is the availability of disposal options. Many landfills are no longer accepting these materials because of liability concerns. This has resulted in cleanup contractors having to haul material long distances for disposal, which in turn drives up the already high cost of cleanup. Many comments were received by those involved in underground storage tank cleanup activity that the proposed rules would add to their costs by further restricting disposal options, since only two landfills in the state currently meet the proposed design criteria.

The Department has attempted to encourage the development of disposal and treatment options through these proposed rules by eliminating the option of "cheap" less environmentally protective disposal and by disallowing exemptions to the design requirements when treatment facilities are available. The proposed rules for disposal of cleanup materials are also intended to encourage qualified landfill operators to accept the wastes by enabling them to charge additional disposal fees to compensate for special design requirements and added risk.

In response to comments from the regulated community, the Department has made a number of changes in the proposed rules which would help ensure available disposal options. First, it was apparently not clear to many in the regulated community that the Department had provided for some exceptions to the design requirements in the proposed rule. The Department has extended the exceptions to include landfills which will be accepting a very small amount, proportionately, of cleanup materials. Secondly, the fee schedule has been lowered or eliminated for landfills taking small amounts of contaminated material, reducing the economic impact on these landfills and thereby encouraging them to take small amounts of cleanup material.

Municipal solid waste landfills currently pay a number of fees to the Department: Permit application and processing fees, annual compliance determination fees, and annual recycling program implementation fees. Beginning in July 1990, an additional fee of 50 cents per ton will be charged on domestic solid waste. As an example, a landfill accepts 100,000 tons of domestic solid waste per year will pay the following annual fees:

. Annual Compliance Fee	$12,000
. Annual Compliance Fee on Monitoring wells (5)	1,250
. $.50/Ton tipping fee	50,000
. Total annual fees	$63,250

The Department proposes to add to the annual fees listed above a hazardous substance authorization fee paid by landfills taking contaminated cleanup materials. This one-time fee would be paid when applying for a new permit, permit modification, or permit renewal. It is expected that this fee would have to be paid every five years, during permit renewal. In the example above, if that same landfill accepted 5000 tons of contaminated cleanup material per year, it would pay the one-time fee of $1000. Amortized over 5 years, this would add an additional $200 per year of payments to the Department (an increase of .4%).

Another major concern from the regulated community, primarily from landfill operators, was the amount of regulatory "red tape" involved in applications, plan submittals, and record-keeping to accept cleanup materials contaminated with hazardous substances in the previously proposed rules.

The biggest concern in this category was the perceived requirement for a solid waste permit for on-site treatment of cleanup materials, and a requirement for an additional permit for already-permitted solid waste landfills. The Department does not intend either of these, and has clarified the proposed rule accordingly. In addition, the requirements for submittal of a waste management plan have been simplified to include only the information essential to ensure proper environmental protection. Last, the Department intends to allow exemptions to the design criteria for some landfills on a categorical basis, rather than consider requests for exemption only on a case-by-case basis for each individual load of waste.

PROGRAM CONSIDERATIONS:

1. The most important objective for the Department is environmental protection. This rule has been proposed primarily because there are certain wastes which are considered to pose significant environmental risks that are currently disposed of in landfills with little or no engineered protection of groundwater. The proposed rule would establish a higher standard of landfill design and operation for landfills accepting these contaminated wastes. At the same time, the rule provides an incentive for on-site or other treatment of the waste.

2. The proposed rule is easier to implement and enforce than the previously proposed rule. Simplification has occurred in a number of areas: a) review of the waste management plan has been reduced by eliminating reporting requirements for treatment methods and disposal location of contaminated wastes; b) reporting requirements have been reduced from monthly to quarterly; c) landfills accepting very small volumes of contaminated cleanup materials are exempted from design requirements; and d) other exemptions from design requirements can be implemented on a categorical, rather than case-by-case basis.

3. The proposed rule provides the Department with a clear structure for incorporating additional wastes through future rule-making. By eliminating the new category of "special wastes" and dividing the "specified waste" section into clearly defined sub-categories, the Department can more easily include wastes such as asbestos, incinerator ash, infectious waste, and conditionally exempt generator hazardous waste in the future. Infectious wastes, for

example, will be included under "wastes which require special handling or management".

4. Review of waste management plans from landfill operators that want to accept cleanup materials contaminated with hazardous substances will create an additional workload on Department staff. It is expected that a total of 1.0 full time equivalent position (FTE) will be required to review plans and requests for exemption from design requirements. Even with the reduced fee for landfills accepting small amounts of contaminated cleanup materials, the fee is expected to generate enough revenue to fund the 1.0 FTE.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Adopt the proposed rules as revised from the previous draft.

2. Wait until additional landfills contain new design and operational features before adopting these rules.

3. Provide an exemption from the requirement for a plan submittal for landfills accepting very small volumes of contaminated cleanup material, as proposed by Oregon Sanitary Services Institute.

4. Wait until policies for management and disposal are developed for all specified wastes before adopting rules on cleanup materials contaminated with hazardous substances.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends the adoption of the proposed rules as revised from the previous draft.

The Department agrees with several members of the regulated community who pointed out in testimony to the Department that there is a current shortage of available landfill sites that meet the design criteria for "best management practices". However, the Department's clear intention is to create a demand for appropriate treatment and disposal options throughout the state. Already, there are three serious proposals for development of treatment facilities in the northern and southern portions of the Willamette valley. To delay adoption of these rules until more facilities exist is likely to result in delayed development of more facilities. The Department has revised the rule to allow an additional four months, from September 1, 1990 to January 1,

1991 for development of these treatment and disposal facilities during the 1990 construction season.

The Oregon Sanitary Services Institute (OSSI) recommended an exemption from the submission and approval of plans for landfills taking less than 1000 tons per year of contaminated cleanup material. However, the OSSI proposal still required these landfill operators to keep records of types and volumes of waste received. Since these records constitute the main components of the required plan, the Department does not recommend eliminating this requirement. However, in order to encourage landfills to take small amounts of this contaminated material, the Department has eliminated the fee for these landfills.

Waiting until policies are developed for all specified wastes would delay adoption of the rule for at least one year. The Department believes it is better to adopt rules now addressing a particularly problematic waste, and to adopt a structure for adding future rules on other specified wastes.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

By encouraging treatment of contaminated materials and raising the design standards for landfills that accept these materials, the Department is following the agency and state policy to focus on preventing pollution, and the strategic goal of best available control technology.

The proposed rules are also consistent with other agency programs designed to clean up pollution from releases of hazardous substances. Without stringent design standards, hazardous substances removed from one site, often at extremely high cost, may be deposited in a landfill with little or no engineered features to protect groundwater.

ISSUES FOR COMMISSION TO RESOLVE:

1. Should the Department attempt to push development of proper treatment or disposal facilities by adopting disposal standards that are higher than currently available for most areas of the state?

2. Should the Department proceed to create several new categories of specified wastes, including a category of solid wastes that require higher design standards than for municipal solid waste?

INTENDED FOLLOWUP ACTIONS:

1. Notify landfill operators and other affected parties of the new requirements prior to the upcoming construction season beginning in May.

2. Submit a request to the E-Board for 1.0 FTE to review plans and submittals related to the new specified waste rules.

3. Review plans submitted by landfill operators for disposal of cleanup materials contaminated with hazardous substances.

4. Review permit applications for facilities to treat contaminated cleanup materials. Permit applications are expected within the next six months for three treatment facilities. The Department will be working with the applicants to ensure appropriate environmental safeguards at these facilities.

5. Return to the Commission with rules for disposal and management of infectious waste, incinerator ash, asbestos, and other wastes to be included under the newly structured "specified waste" rules. Infectious wastes rules are currently out for public comment and will be presented to the Commission at its May meeting.

Approved:

Section: Steve Greenwood

Division: Stephanie Hallock

Director: [signature]

Report Prepared By: Steve Greenwood

Phone: 229-5782

Date Prepared: January 29, 1990

Attachment A
Agenda Item: H
Meeting Date: March 2, 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.

1. Rule OAR 340-61-060 is proposed to be amended as follows:

General Rules Pertaining to Specified Wastes

340-61-060 (1) Wastes prohibited from disposal at solid waste landfills.

(a) Hazardous Wastes. Wastes defined as hazardous wastes must be managed in accordance with ORS 466.005 et seq. and applicable regulations.

[(6)](b) Hazardous Wastes from Other States. Wastes which are hazardous under the law of the state of origin shall not be managed at a solid waste disposal site when transported to Oregon. Such wastes may be managed at a hazardous waste facility in Oregon if the facility is authorized to accept the wastes pursuant to ORS 466.005 et seq. and applicable regulations.

(c) Lead-acid batteries. No lead-acid batteries may be mixed in municipal solid waste or disposed of at a solid waste landfill.

[(4)] (d) Waste Oils. Large quantities of waste oils, greases, or oil sludges, [or oil soaked wastes] shall not be placed in any disposal site unless special provisions for handling and other special precautions are included in the approved plans and specifications and operational plan to prevent fires and pollution of surface or groundwaters.

[(2) Hazardous Solid Wastes. No hazardous solid waste shall be deposited at any disposal site without prior written approval of the Department or state or local health department having jurisdiction.]

(2) Wastes allowed to be disposed only in landfills using "best management practices" to protect groundwater. For the purpose of this rule, best management practices shall be defined as including, at a minimum: a bottom lining system which performs equivalent to a composite liner consisting of a 60 mil thickness geomembrane component and two feet of soil achieving a maximum saturated hydraulic conductivity of 1×10^{-6} centimeters per second; and a leachate collection and treatment system designed to maintain a leachate head of one foot or less.

(a) Cleanup materials contaminated by hazardous substances.

(A) After January 1, 1991, cleanup materials contaminated by hazardous substances may be landfilled only in solid waste landfills authorized by the Department to receive this type of material.

(B) The land and facilities used for disposal, treatment, transfer, or resource recovery of cleanup material contaminated by hazardous substances, unless that activity is otherwise regulated by the Department, shall be defined as a disposal site under ORS 459.005 and shall be subject to the requirements of these rules, including permit requirements.

(C) The Department may authorize an owner or operator of a landfill to receive cleanup materials contaminated by hazardous substances, that are not hazardous wastes as defined by ORS 466.005, after January 1, 1991, if the following criteria are met:

(i) The landfill uses "best management practices" as defined in this section.

(ii) A waste management plan for the facility is approved by the Department which specifically addresses the management of the cleanup materials and requires, at a minimum, the following practices:

(I) The owner or operator of the landfill maintains for the facility a copy of the analytical results of one or more representative composite samples from the contaminated materials received for disposal;

(II) The owner or operator maintains for the facility a record of the source, types, and volumes of the contaminated materials received for disposal, and reports the sources, types, and volumes received to the Department in a quarterly waste report;

(III) Petroleum-contaminated soils, whenever possible, are incorporated into the daily cover material unless such practice would increase risks to public health or the environment; and

(IV) Any other requirements which the Department determines are necessary to protect public health and the environment.

(D) The Department may authorize an owner or operator of a landfill to receive cleanup materials contaminated by hazardous substances for disposal after January 1, 1991, at a facility which does not meet the performance criteria in subparagraph (C)(i) of this subsection if:

(i) the landfill accepts less than 1000 tons or 5% of the total volume of waste received, whichever is less, per year of cleanup material contaminated by hazardous substances;or

(ii) the cleanup materials contain concentrations of hazardous

substances which do not exceed the cleanup levels approved by the Department for the site from which the materials were removed; or

(iii) the Department determines that the total concentrations and the hazardous characteristics of the hazardous substances in the cleanup materials will not present a threat to public health or the environment at the disposal facility, after considering the following factors:

(I) the compatibility of the contaminated materials with the volumes and characteristics of other wastes in the landfill;

(II) the adequacy of barriers to prevent release of hazardous constituents to the environment, including air, ground and surface water, soils, and direct contact;

(III) the populations or sensitive areas, such as aquifers, wetlands, or endangered species, potentially threatened by release of the hazardous substances;

(IV) the demonstrated ability of the owner or operator of the facility to properly manage the wastes;

(V) relevant state and federal policies, guidelines and standards; and

(VI) the availability of treatment and disposal alternatives.

(3) Wastes which require special handling or management practices.

[(3)](a) Waste Vehicle Tires:

[(a) Open Dumping. Disposal of loose waste tires by open dumping into ravines, canyons, gullies, and trenches, is prohibited;

(b) Tire Landfill. Bulk quantities of tires which are disposed by landfilling and which are not incorporated with other wastes in a general landfill, must be baled, chipped, split, stacked by hand ricking or otherwise handled in a manner provided for by an operational plan submitted to and approved by the Department;

(c) General Landfill. Bulk quantities of tires if incorporated in a general landfill with other wastes, shall be placed on the ground surface on the bottom of the fill and covered with earth before other wastes are placed over them.]

(A) Waste tires shall be managed in accordance with ORS 459.705 through 459.790, and applicable regulations.

Comment: Provision updated to be consistent with new Waste Tires statute.

[(1)](B) Agricultural Wastes. Residues from agricultural practices shall be recycled, utilized for productive purposes or disposed of in a

manner not to cause vector creation or sustenance, air or water pollution, public health hazards, odors, or nuisance conditions.

[(5)] (C) Demolition Materials. Due to the unusually combustible nature of demolition materials, demolition landfills or landfills incorporating large quantities of combustible materials shall be cross-sectioned into cells by earth dikes sufficient to prevent the spread of fire between cells, in accordance with engineering plans required by these rules. Equipment shall be provided of sufficient size and design to densely compact the material to be included in the landfill.

2. Rule OAR 340-61-010 is proposed to be amended as follows:

340-61-010(21) ["Hazardous Waste" means discarded, useless or unwanted materials or residues in solid, liquid or gaseous state and their empty containers which are classified as hazardous pursuant to ORS 459.410.] "Hazardous waste" means discarded, useless or unwanted materials or residues and other wastes which are defined as hazardous waste pursuant to ORS 466.005.

Comment: Definition updated to be consistent with current Hazardous Waste statute:

340-61-010(49) "Cleanup materials contaminated by hazardous substances" means contaminated materials from the cleanup of releases of hazardous substances into the environment.

340-61-010(50) "Hazardous substance" means any substance defined as a hazardous substance pursuant to section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601 et seq.; oil, as defined in ORS 466.540; and any substance designated by the Commission under ORS 466.553.

340-61-010(51) "Release" has the meaning given in ORS 466.540(14).

4. Revise OAR 340-61-120 to add new subparagraph (2)(i).

Permit Fee Schedule
340-61-120.

(2) Application Processing Fee. An application processing fee varying between $50 and $2,000 shall be submitted with each application. The amount of the fee shall depend on the type of facility and the required action as follows:

(a) A new facility (including substantial expansion of an existing facility):

(A) Major facility	$2,000
(B) Intermediate facility	$1,000
(C) Minor facility	$ 300

(b) Preliminary feasibility only (Note: the amount of this fee may be deducted from the complete application fee listed above):
(A) Major facility $1,200
(B) Intermediate facility .....$ 600
(C) Minor facility .....$ 200

(c) Permit renewal (including new operational plan, closure plan or improvements):
(A) Major facility .....
(B) Intermediate facility .....
(C) Minor facility .....$ 125

(d) Permit renewal (without significant changes):
(A) Major facility .....$ 250
(B) Intermediate facility .....$ 150
(C) Minor facility .....$ 100

(e) Permit modification (including new operational plan, closure plan or improvements:
(A) Major facility .....$ 500
(B) Intermediate facility .....$ 250
(C) Minor facility .....$ 100

(f) Permit modification (without significant change in facility design or operation): All categories .....$ 50

(g) Permit modification (Department initiated) All categories .... No fee

(h) Letter authorizations, new or renewal .....$ 100

(i) Hazardous substance authorization (Any permit or plan review application which seeks new, renewed, or significant modification in authorization to landfill cleanup materials contaminated by hazardous substances):

(A) Authorization to receive 100,000 tons or more of designated cleanup up waste per year: $ 50,000;

(B) Authorization to receive at least 50,000 but less than 100,000 tons of designated cleanup material per year: $ 25,000;

(C) Authorization to receive at least 25,000 but less than 50,000 tons of designated cleanup material per year: $ 12,500;

(D) Authorization to receive at least 10,000 but less than 25,000 tons of designated cleanup material per year: $ 5,000;

(E) Authorization to receive at least 5,000 but less than 10,000 tons of designated cleanup material per year: $ 1000;

(F) Authorization to receive at least 1,000 but less than 5,000 tons of designated cleanup material per year: $ 250.

ATTACHMENT B

Agenda Item H, March 2, 1990 EQC Meeting

STATEMENT OF NEED FOR RULEMAKING

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

(1) Legal Authority

ORS 459.045(1) and (3) require the Commission to adopt reasonable and necessary rules governing the management of solid wastes to prevent pollution of the air, ground and surface waters. The Commission is authorized specifically to establish design and operational standards for land disposal facilities and to define "wastes" subject to solid waste regulation.

ORS 459.235(2) and ORS 468.065 authorize the Commission to establish solid waste permit fees, subject to review of the Executive Department and prior approval of the appropriate legislative review body.

(2) Need for the Rule

a) Disposal standards:

Hazardous substances are a group of substances (primarily chemicals) designated pursuant to the major federal environmental statutes and the Oregon Environmental Cleanup Law, ORS 466.547, as presenting a significant threat to public health and the environment if released into the environment. These environmental statutes provide authorities and processes for identifying and cleaning up releases of hazardous substances.

Oregon's solid waste statute and regulations allow materials from cleanup actions which are contaminated by hazardous substances but are not defined as "hazardous wastes" subject to hazardous waste management authorities to be disposed of in any solid waste disposal facility which is permitted by the Department to accept such wastes. These regulations broadly require that such permits include operational plans for the facility which specifically address these hazardous materials, and prohibit the release of any substance from a facility which would degrade the environment. However, the regulations do not provide any specific criteria for

determining when disposal of hazardous substances may be authorized.

The development of the Department's environmental cleanup programs (e.g., its state "Superfund", leaking underground storage tank, and drug lab cleanup programs) has created an increasing demand on the Department for information and action on requests to dispose of contaminated cleanup material in solid waste landfills. Standards for permitting the disposal of these materials in solid waste landfills are needed to support the Department's decisionmaking and to guide the public in planning cleanup actions. The proposed rule would provide these standards.

b) Fees:

The Department estimates that the equivalent of one full time professional technical staff person (1 FTE) would be needed during the initial and subsequent fiscal years to complete required permit actions on applications to landfill contaminated cleanup materials in accordance with the new standards. The proposed rule would establish a permit fee to fund the additional FTE.

c) Restructuring of regulation:

The existing "General Rules for Specified Wastes" section in the solid waste regulations, OAR 340-61-060, addresses both (a) categories of wastes which require additional management controls because they contain hazardous constituents and (b) categories of wastes which do not contain hazardous constituents but require specific management controls to address other characteristics. Combining these two distinct, hazardous vs. nonhazardous categories of waste streams in the same section in the rule may be confusing or misleading to the public. The proposed rule changes would establish a separate section for each of these categories of wastes.

d) Updating the regulation:

The Waste Tire statute, ORS 459.705 et seq., has been enacted and the definition of "hazardous waste" in ORS 466.005 has been revised since the adoption of OAR 340-61-060. OAR 340-61-060 needs to be updated to be consistent with relevant provisions of these statutes. The proposed rule would make the changes needed.

Principal Documents Relied Upon

ORS 459.045, 459.235(2), and 466.547 et seq.

Federal Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq., and legislative history.

Solid Waste files, Oregon Waste Systems permit file re: landfill performance standards.

LAND USE COMPATIBILITY STATEMENT

Land Use Consistency

The Department has concluded that the proposal conforms with the Statewide Planning Goals and Guidelines.

Goal 6 (Air, Water and Land Resources Quality): This proposed rule is designed to protect surface and groundwater quality in the affected are and is consistent with this Goal.

Goal 11 (Public Facilities and Services): This proposed rule would allow for solid waste disposable in an environmentally sound manner and is consistent with this Goal.

This proposed rule does not appear to conflict with other Goals.

Public comment on any land use issue involved is welcome and may be submitted in the same manner as indicated for testimony in this notice.

The Department requests that local, state, and federal agencies review the proposed action and comment on possible conflicts with their programs affecting land use and with Statewide Planning goals within their expertise and jurisdiction.

The Department of Environmental Quality intends to ask the Department of Land Conservation and Development to mediate any appropriate conflicts brought to its attention by local, state or federal authorities.

ATTACHMENT C

FISCAL AND ECONOMIC IMPACT STATEMENT

I. Introduction:

Proposed Actions:

Oregon's solid waste statute and regulations (ORS 459.005 et seq. and OAR 340, Division 61) allow materials from cleanup actions which are contaminated by hazardous substances but are not defined as "hazardous wastes" subject to hazardous waste management authorities to be disposed of in any solid waste disposal facility which is permitted by the Department to accept such wastes. Current regulations broadly require that such permits include operational plans for the facility which specifically address these hazardous materials, and prohibit the release of any substance from a facility which would degrade the environment. However, the current regulations do not presently provide any specific criteria for determining when disposal of hazardous substances may be authorized.

The proposed rules establish standards for permitting disposal of cleanup materials and create a permit fee to fund the Department's implementation of the proposed standards. With respect to some landfills, these standards may be more restrictive than those the Department might presently impose. The fee would be assessed on applicants for new, renewed, or modified permit authorization to receive contaminated cleanup materials for disposal in a solid waste landfill.

Overall Economic Impacts:

Owners and operators of landfills are imposing their own restriction on the types of wastes accepted for disposal. Only a limited number of operators currently do or are likely in the future to accept cleanup materials contaminated by hazardous substances for disposal. Nevertheless, the new permitting standards may limit the ability of some of these owners or operators to accept contaminated cleanup materials for disposal at some landfills in the state which otherwise would have received such wastes, or may require additional investment to upgrade facilities.

A reduction in the availability of landfills to accept cleanup materials may result in increased costs for cleanup and disposal of these materials. Some wastes will need to be transported further for disposal at increased transportation costs. In addition, landfills that can accept the wastes may, in some instances, charge more for disposal. Restrictions on landfilling may also result in a shift toward treatment of cleanup materials prior to or in lieu of disposal, possibly with higher net cleanup costs.

The permit fee would increase costs of disposal at most 50 cents per ton of cleanup materials. In most instances, owners or operators would pass the fee onto generators of cleanup materials or, more broadly, to all landfill users as part of their charges for disposal.

The recordkeeping and reporting requirements in the proposed regulation are not expected to require significant additional resources.

II. General Public:

To the extent that the general public is financially responsible (directly or through fees and taxes) for the costs of cleanup of releases of hazardous substances, the economic impacts described above would affect the general public.

III. Small Business:

Small businesses would be affected in the same way as the general public. Small businesses with major liability for cleanup costs could be significantly impacted.

Few small businesses are expected to own or operate landfills which currently do or will in the future accept contaminated cleanup materials for disposal.

IV. Large Business:

Large businesses would also be affected in the same way as the general public. In addition, a few landfill owners or operators which would otherwise accept contaminated cleanup materials for disposal may not be authorized to do so under the proposed permitting standards.

V. Local Governments:

Local governments would be affected in the same way as the general public and as large businesses which own or operate landfills.

VI. Other State Agencies:

Other state agencies would be affected in the same way as the general public if responsible for the costs of cleanup of hazardous substances.

SW\SK2287

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Attachment D

Proposed Rules Relating to the Solid Waste Management of Contaminated Cleanup Materials

Hearing Dates: December 5, 1989
December 6, 1989
December 7, 1989

Comments Due: December 15, 1989

WHO IS AFFECTED: Owners and operators of solid waste landfills having or seeking permit authorization to dispose of contaminated materials from the cleanup of releases of hazardous substances. Generators and other persons, including public and private entities, responsible for cleanup of releases of hazardous substances.

WHAT IS PROPOSED: The Department proposes to add new administrative rules to establish standards for permitting the solid waste disposal of cleanup materials contaminated by hazardous substances, OAR 340-61-061, and to establish a new permit fee to fund the Department to implement the new standards, OAR 340-61-120(2)(i). The Department also proposes to restructure OAR 340-61-060, governing management of specified wastes, and update this section to be consistent with related statutes.

WHAT ARE THE HIGHLIGHTS: The proposed amendments would:

- o establish standards for permitting solid waste landfills to receive cleanup materials contaminated by hazardous substances for disposal (new OAR 340-61-061(1));
- o establish a new permit fee to fund the Department's implementation of the new criteria for permitting disposal of contaminated cleanup materials (new OAR 340-61-120(i));
- o restructure OAR 340-61-060 into two sections to address separately rules for (a) wastes which require specific management controls because of their hazardous constituents (new special waste section, OAR 340-61-061) and (b) wastes which do not contain hazardous constituents but have other characteristics warranting unique rules (existing specific waste section, OAR 340-61-060).
- o update provisions in OAR 340, Division 61, to make them consistent with changes in related statutes, ORS 459.705 (Waste Tires) and ORS 466.005 (Hazardous Waste).

(over)

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

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:

A public hearing will be held before a hearings officer at:

9:30 a.m.
December 5, 1989
School Administration Building
Room 330
520 NW Wall Street
Bend, OR

9:30 a.m.
December 6, 1989
Jackson Education Service District
Boardroom
101 North Grape
Medford, OR

9:30 a.m.
December 7, 1989
DEQ Headquarters
Conference Room 4A
811 SW Sixth Avenue
Portland, OR

Written or oral comments may be presented at the hearing. Written comments may also be sent to the Department of Environmental Quality, Solid Waste Section, Hazardous and Solid Waste Division, 811 S.W. 6th Avenue, Portland, OR 97204, and must be received no later than 5:00 p.m., December 15, 1989.

Copies of the complete proposed rule package may be obtained from the DEQ Hazardous and Solid Waste Division. For further information, contact Steve Greenwood at 229-5782, or toll-free at 1-800-452-4011.

WHAT IS THE NEXT STEP:

The Environmental Quality Commission may adopt new rules identical to the ones proposed, adopt modified rules as a result of testimony received, or may decline to adopt rules. The Commission will consider the proposed new rule and rule revisions at its meeting on February 23, 1990.

SB8951.D

(6) To the extent funds are available, the department may conduct similar pilot projects in other local government units outside the boundaries of the metropolitan service district.

(7) The department shall report to the Sixty-seventh Legislative Assembly on the implementation of the pilot project and the results of the pilot project. [1989 c.833 §73]

(Lead-Acid Battery Disposal)

459.420 Permitted lead-acid battery disposal; disposal by retailers. (1) No person may place a used lead-acid battery in mixed municipal solid waste, discard or otherwise dispose of a lead-acid battery in this state except by delivery to a lead-acid battery retailer or wholesaler, to a collection or recycling facility authorized under ORS 459.005 to 459.426 or to a secondary lead smelter permitted by a state or the United States Environmental Protection Agency.

(2) No lead-acid battery retailer shall dispose of a used lead-acid battery in this state except by delivery to the agent of a battery wholesaler, to a battery manufacturer for delivery to a secondary lead smelter permitted by a state or the United States Environmental Protection Agency, to a collection or recycling facility authorized under ORS 459.005 to 459.426 or to a secondary lead smelter permitted by a state or the United States Environmental Protection Agency. [1989 c.290 §2]

459.422 Acceptance of used batteries by retailers and wholesalers. (1) A person selling lead-acid batteries at retail or offering lead-acid batteries for retail sale in the State of Oregon shall accept after December 31, 1993, used lead-acid batteries of the same type purchased from a customer at the point of transfer in a quantity at least equal to the number of new batteries purchased, if offered by the customer.

(2) Any person selling new lead-acid batteries at wholesale shall accept used lead-acid batteries of the same type from any customer at the point of transfer in a quantity at least equal to the number of new batteries purchased, if offered by a customer.

(3) A person accepting batteries in transfer from an automotive battery retailer shall be allowed up to 90 days to remove batteries from the retail point of collection. [1989 c.290 §§3, 4]

459.426 Notice to customers. (1) Any person selling new lead-acid batteries shall post in each area where lead-acid batteries are sold a clearly visible and legible sign stating that:

(a) Lead-acid batteries cannot be disposed of in household solid waste or mixed municipal waste, but must be recycled; and

(b) The dealer will accept used lead-acid batteries of the same type sold by the dealer.

(2) If a person selling new lead-acid batteries requires a customer to pay a fee for a new lead-acid battery if the customer does not provide a used lead-acid battery for trade-in, the dealer shall also include on or near the sign required under subsection (1) of this section a statement advising potential customers that the dealer charges a fee if the customer does not provide a used lead-acid battery for trade-in. [1989 c.290 §5]

Note: Sections 6 and 10, chapter 290, Oregon Laws 1989, provide:

Sec. 6. Notwithstanding section 3 of this 1989 Act [ORS 459.422 (1)], any person selling new lead-acid batteries shall accept at least one used lead-acid battery from any person, if offered. [1989 c.290 §6]

Sec. 10. Section 6 of this Act is repealed December 31, 1993. [1989 c.290 §10]

459.430 [1971 c.699 §3; 1973 c.778 §2; 1973 c.835 §147; 1977 c.867 §2; 1979 c.132 §2; 1981 c.709 §5; renumbered 466.015]

459.440 [1971 c.699 §3a; 1973 c.835 §148; 1977 c.867 §3; 1981 c.709 §5a; renumbered 466.020]

459.442 [1981 c.709 §20; renumbered 466.070]

459.445 [1977 c.867 §6; 1981 c.709 §6; 1983 c.703 §10; 1985 c.565 §75; 1985 c.670 §37; renumbered 466.075]

459.450 [1971 c.699 §16a; 1973 c.835 §150; 1977 c.867 §4; renumbered 466.080]

459.455 [1983 c.703 §2; 1985 c.735 §2; renumbered 466.085]

459.460 [1971 c.699 §21; 1973 c.835 §149; 1981 c.709 §7; renumbered 466.090]

(New Tire Fee)

459.504 Definitions for ORS 459.504 to 459.619. As used in ORS 459.504 to 459.619, unless the context otherwise requires:

(1) "Business" means any trade, occupation, activity or enterprise engaged in for the purpose of selling new tires in this state.

(2) "Department" means the Department of Revenue.

(3) "Place of business" means any place where new tires are sold.

(4) "Retail dealer" means every person who is engaged in the business of selling to ultimate consumers new tires.

(5) "Sale" means any transfer, exchange or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person. It includes a gift by a person engaged in the business of selling new tires, for advertising, as a means of evading the provisions of ORS 459.504 to 459.619, or for any other purposes whatsoever.

(6) "Tire" has the meaning given that term in ORS 459.705.

(7) "Wholesale sales price" means the established price for which a manufacturer

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

DATE: January 12, 1990

TO: Environmental Quality Commission

FROM: Deanna Mueller-Crispin, Hearing Officer

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 revisions to OAR 340-61 addressing disposal of cleanup materials contaminated by hazardous substances, and amendments to the solid waste fee schedule.

A summary of the written testimony follows.

Debbie Miley of XL Timber Inc., Stayton, expressed concern about the high fee scale. She feels such high rates discourage people from operating this type of business (disposal of hazardous substances).

Michael C. Hawkins of Hawk Oil Co., Medford, noted concern that the rule would limit disposal of contaminated soil to two sites, Arlington and Coffin Butte in Benton County. He believes Benton County is trying to close Coffin Butte, which would leave one site. Hauling to either site from southern Oregon would be "financially prohibitive." He requested help in finding practical low-cost methods for disposal of contaminated soil.

J. Mark Morford of Stoel Rives Boley Jones & Gray, Portland, suggests that the proposed rule be modified to exempt onsite cleanups from permitting and technical requirements. He feels that the rule would otherwise stifle voluntary cleanup efforts, particularly of petroleum spills. Subjecting onsite treatment and containment to these requirements would greatly increase their costs and technical problems, making them infeasible. He cites examples of innovative onsite treatment methods which might be frustrated by the proposed rule. He suggests that DEQ has the authority to exempt the onsite portion of cleanups from permitting and other requirements, although it is not clear whether this exemption may be limited to cleanups done under DEQ's authority. He points out that the Environmental Cleanup Division encourages voluntary cleanups, and is developing guidance for them.

Pamela Badger of Waste Management of North America, Inc., Redmond, WA, made several suggestions for clarifying language in the rule. She asks whether a "waste management plan" (340-61-061(1)(c)(iv)) is required by any other OAR or ORS; if not, this plan should be defined. She recommends quarterly rather than monthly reporting as less burdensome. She also had questions on the technical standards for handling contaminated materials. She asks whether "treatment prior to disposal" (340-61-061(1)(c)(iv)(b)) refers to treatment [of contaminated materials] received prior to arrival at the disposal site; if so, it is unrealistic.

Concerning the section establishing standards for treatment of contaminated soils, Ms. Badger recommends that its applicability to petroleum-contaminated soils be clarified; she feels it is appropriate for petroleum-contaminated soils to be used for daily (rather than interim) cover. She also recommends that the standards in this section be recommended rather than required, to be used in situations where it will not pose an increased risk to the public. She asks what the Department's process will be for authorizing disposal of cleanup materials at a site not meeting the rule's performance criteria; will this be on a case-by-case or blanket basis? She recommends that DEQ clarify whether recycling facilities are "disposal" facilities for purposes of this regulation; waste oil recycling facilities should not be subject to this regulation.

Ms. Badger characterizes the $50,000 processing fee as punitive, and feels it will discourage contaminated soil acceptance. She recommends that DEQ establish a rebate system to reimburse a cleanup facility if the amount of cleanup materials accepted is less than the fee category paid by the facility.

Diana Godwin of the Oregon Sanitary Service Institute, Salem, recommended modifying the rule to clarify that an operator of an existing permitted landfill does not have to obtain a separate permit to accept these cleanup materials. She provided language which would establish adding a specific authorization for cleanup materials containing hazardous substances to existing landfill permits. She also recommends a specific exemption from these new requirements for landfills receiving less than 1000 tons of this material per year. This would allow landfills to continue to receive small quantities of these materials, thereby preventing their unregulated disposal. Such landfills would not have to apply for authorization from DEQ, but they would have to maintain a record of materials collected and their disposal. Treatment of the materials to remove liquids would be required, and they would be used for interim cover.

Del J. Fogelquist of the Western States Petroleum Association, Seattle, WA, recommends that the new regulations not be adopted until practical alternatives are found for handling contaminated soil from underground storage tank cleanups. He notes that these soils seem to qualify as "cleanup materials contaminated by hazardous substances," and persons needing to dispose of such soils have very few, if any, feasible alternatives to dispose of them at landfills. He notes that on-site handling/disposal may often be preferable to removal. Mr. Fogelquist supports the provision allowing disposal of these wastes at landfills not meeting all the operating requirements for special wastes, but is concerned that the proposed rule seems to prohibit on-site disposal except at permitted landfills. He believes that such on-site handling of cleanup materials should not be regulated under DEQ's landfill permitting, but rather under its underground storage tank cleanup authority.

Donald A. Haagensen of Chem-Security Systems, Inc., Arlington, comments that the toxicity or chemical properties of cleanup materials contaminated by hazardous substances should be the basis for whether the materials can be disposed of in landfills, rather than the generation source of such wastes. He states that similar wastes from different industries or sources should not be regulated differently. He believes that the only way to assure this is to base the definition of special wastes on concentration and composition levels. He notes that the Environmental Quality Commission can designate something as a "hazardous substance" only based on whether its characteristics may pose a hazard. Criteria for allowing landfill should have the same basis, rather than relying on origin of the material. Mr. Haagensen requests that DEQ repropose rules requiring analysis of the chemical composition of hazardous substances contaminating cleanup materials, and establishing specific levels of hazardous constituents that would be allowed to be disposed of in landfills.

Mr. Haagensen further comments that the rules must be reviewed to ensure they do not allow landfilling of cleanup materials contaminated with wastes that could not be buried under the federal RCRA program.

Mr. Haagensen makes additional comments on specific areas of the rule. He recommends that the rule state specifically that hazardous substances do not include hazardous wastes, and that definition of "hazardous substance" be further defined to clearly exclude hazardous waste. The design requirements should be revised to show that they are minimum criteria rather than maximum criteria that cannot be exceeded. The operating requirements should have a presumption against disposing of hazardous soils in

landfill interim cover material unless it is shown that there will be no increased risk. He requests a rule clarification, for consistency with current policy, that cleanup materials contaminated by hazardous substances from states other than Oregon that would not be a hazardous waste under Oregon law but would be required to be managed as a hazardous waste in the state of origin, would have to be similarly managed in Oregon.

Christopher C. Wolhlers of Century West Engineering, Portland, notes that the new regulations will have significant impacts on owners and operators of underground storage tanks. Currently most petroleum-contaminated soils are disposed of in landfills; this regulation would require significant changes. He recommends that DEQ develop alternatives to landfill disposal of such soils, taking costs and environmental and other impacts into account.

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STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

DATE: January 3, 1990

TO: Environmental Quality Commission

FROM: Bradford D. Price, Hearing Officer

SUBJECT: Public Hearing, Proposed Amendments to Solid Waste Rules, Medford, OR, 9:30 a.m., December 6, 1989

On December 6, 1989, a public hearing regarding proposed rules addressing disposal of cleanup materials contaminated by hazardous substances, and amendments to the solid waste fee schedule was held in Medford, Oregon. Four members of the public and three television network persons attended the hearing. One individual gave testimony.

Goly Ostovar, private citizen from Ashland, gave testimony. Ms. Ostovar said she was unfamiliar with the rules and provided the following testimony:

Ms. Ostovar's concerns were that these rules provided more lenient regulations for the landfills and allowed for more hazardous and/or special wastes to enter the landfills. Ms. Ostovar was also concerned that these rules allowed an easier avenue for out of state wastes to enter Oregon landfills.

After Ms. Ostovar's testimony, Dennis Belsky, DEQ Southwest Region, attending persons, and myself discussed the new rules in depth. During this discussion Ms. Ostovar realized that the proposed rules were more stringent in regulating flow of special waste to landfills and the proposed rules did not pertain to out of state waste flow.

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STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

DATE: December 8, 1989

TO: Environmental Quality Commission

FROM: Deanna Mueller-Crispin, Hearing Officer

SUBJECT: Public Hearing, Proposed Amendments to Solid Waste Rules, Portland, 9:30 a.m., December 7, 1989

On December 7, 1989 a public hearing regarding proposed rules addressing disposal of cleanup materials contaminated by hazardous substances, and amendments to the solid waste fee schedule was held in Portland, Oregon. Ten members of the public attended the hearing and three gave testimony.

A summary of the testimony follows:

Chris Wohlers of Century West Engineering, Portland, testified representing the Oregon Petroleum Marketers Assoc. He noted that the proposals would impose new restrictions on the transportation, treatment and handling of hazardous substances. As defined in ORS 466.540, this includes petroleum products such as gasoline stored in underground storage tanks. The proposed regulations would have a particular impact on the owners of such tanks, and require operating changes in disposal of petroleum-contaminated soils by these persons, and possibly considerably increased costs.

Requiring additional safeguards for handling special wastes may be good public policy; but DEQ should recommend additional alternatives to landfill disposal of cleanup materials. One pollutant problem [soil contamination] should not be exchanged for another -- such as air and water pollution.

The public notice given for this rulemaking was inadequate; the Oregon Petroleum Marketers Assoc. and major oil jobbers were not made aware of this, nor were the 20,000-some owners of underground storage tanks. He requested that the Department extend the comment period past January 1, 1990.

Jason Boe, also representing the Oregon Petroleum Marketers Assoc. and the Oil Heat Institute, also requested that the comment period be extended -- the industry did not receive notice of the hearings. He also commented that the petroleum industry has been subject to many heavy costs connected with underground storage tanks. This has been especially burdensome for small oil jobbers and independent gasoline dealers. He noted that currently only two sites in the state would meet the proposed disposal standards for these hazardous cleanup materials, located in Benton County

and Arlington. This would cause additional costs, including higher transportation costs, for persons having to dispose of these wastes. The effect of additional regulations is that part of the petroleum distribution market will be forced to close. The rules should not be so rigid that all cleanup wastes are forced to be transported long distances at a great increase in cost.

Ian Whitlock of Spears, Lubersky et al, Portland, requested clarification of some definitions. He commented that the term "special waste" is confusing. It seems to refer to a category of several different items, serving as a caption for a section of the rule (OAR-61-061). It does not appear to have a regulatory definition of its own. He also noted that the term, "cleanup materials," is almost used as a synonym for special waste. This is not clear; it needs better definition. He also asked whether "cleanup materials" includes such mixed waste or contaminated materials as municipal wastewater sludge which may contain hazardous constituents. He thought it did not, but commented that it is not clear.

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STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMO

TO: Environmental Quality Commission DATE: January 5, 1990

FROM: E. T. Davison, Hearing Officer

SUBJECT: Public Hearing, Proposed Amendments to Solid Waste Rules, Bend, OR, 9:30 a.m., December 5, 1989

On December 5, 1989, a public hearing regarding proposed rules addressing disposal of cleanup materials contaminated by hazardous substances, and amendments to the solid waste fee schedule was held in Bend, Oregon. Three members of the public attended the hearing. One individual provided oral testimony on behalf of a county government.

Al Driver, Director of Transportation and Solid Waste for Deschutes County, gave testimony. Mr. Driver stated that Deschutes County does not accept materials contaminated with hazardous materials at any of the County's six landfills. He also said that the County has received a number of requests in the past few months from persons trying to dispose of cleanup materials at County landfills and asking for direction in how to properly manage these wastes. Deschutes County is very interested in the Department's efforts to develop rules pertaining to these wastes. Mr. Driver also said that Deschutes County will submit written testimony to the Department relating to the proposed rules before the end of the comment period.

The public hearing was recessed at 10:00 a.m. to receive questions. Following a brief discussion of the proposed rules, the three persons in attendance left. After a short waiting period to determine if any additional persons would attend, the hearing was reconvened and formally closed.

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STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY **INTEROFFICE MEMORANDUM**

DATE: January 22, 1990

TO: Environmental Quality Commission

FROM: Steve Greenwood, Manager, Solid Waste Section

SUBJECT: Response to Testimony/Comments, Proposed Revisions to Solid Waste Rules Concerning Contaminated Cleanup Materials

The Department held four public hearings on the proposed rule revisions establishing standards for permitting the solid waste disposal of cleanup materials contaminated by hazardous substances. Written public comments were accepted until January 8, 1990.

Comments generally fell into six categories:

- Disposal costs (fees, additional costs caused by new disposal standards)
- Lack of disposal options
- Technical disposal standards
- Other permit requirements
- Definitions/clarifications
- On-site cleanups

1. Disposal Costs/Fees.

o Comment: The proposed rule would be especially burdensome for the petroleum industry which has been hit hard by other regulations. The rules should not be so rigid that all cleanup wastes are forced to be transported long distances at a great increase in cost.

o Response: The proposed rule may, in fact, increase disposal costs for cleanup wastes by requiring higher design standards. However, all cleanup wastes will not be forced to be transported long distances. The rules are intended to increase treatment and proper disposal options, and there are exemptions to the design requirements included in the

proposed rules. The rules have also been revised to broaden the exemption criteria.

o Comment: The high fees will discourage people from operating businesses to dispose of hazardous substances.

o Response: According to comments made by the Solid Waste Advisory Committee, the fees to the Department will not be a burden to landfill operators and will not discourage people from accepting these wastes for disposal. Many are now discouraged by the increased liability, which is far greater than the solid waste fees proposed.

o Comment: A fee rebate system should be established to encourage landfill operators to accept contaminated soils. Because the processing fee is very high, DEQ should reimburse the cleanup facility if the amount of cleanup materials accepted is less than allowed under the fee category paid by the facility.

o Response: A fee rebate system is not needed (see above), since the fee does not represent a significant portion of the per-ton cost of accepting these wastes (approximately 1%). The Department has, however, reduced the fees required for landfills accepting small amounts of contaminated cleanup materials, and has eliminated the fees for landfills accepting 1000 tons or less per year.

2. Lack of Disposal Options.

o Comment: Only two landfills would meet disposal standards in the proposed rule. This would cause financial hardship in transporting wastes long distances. DEQ should recommend additional practical low-cost alternatives to landfill disposal of cleanup materials rather than restricting alternatives.

o Response: It is true that currently only two landfills in the state would meet the disposal standards in the proposed rule. However, the rule also allows for some exemptions to the design standards. The rule is intended to promote the development of facilities for treatment, which is the preferred management option.

o Comment: DEQ should develop alternatives to landfill disposal of petroleum-contaminated soils, taking costs and environmental and other impacts into account.

o Response: The proposed rules are designed to encourage development of alternatives by the regulated community. At least two treatment facilities are currently being proposed to meet the demand for landfill alternatives.

3. Technical Disposal Standards.

o Comment: The requirement to incorporate "contaminated soils" into "interim cover materials" (at landfills) should be clarified. Does this apply to petroleum-contaminated soils only? In some cases this action can cause pollution problems (dry soils, wind).

o Response: The rule has been revised so that this requirement applies only to petroleum-contaminated soils.

o Comment: Standards requiring use of contaminated soils as interim cover materials should be recommended rather than required, to be used in situations not posing an increased risk to the public.

o Response: The rule has been revised so that this requirement applies only to petroleum-contaminated soils. In addition, the words "whenever possible" have been added to account for situations when use as cover material is not possible or advisable.

o Comment: The operating requirements should have a presumption against disposing of hazardous soils as interim cover material unless it is shown that there will be no increased environmental risk.

o Response: See above. The requirement includes language with says, "unless such practice would increase risks to public health or the environment".

o Comment: Landfill disposal of cleanup materials contaminated by hazardous substances should be based on the toxicity or chemical properties of the cleanup materials, not on their source. This is the only way to treat wastes from different sources equitably. DEQ should propose new rules requiring analysis of the chemical composition of hazardous substances contaminating cleanup materials, and establishing

specific levels of hazardous constituents that would be allowed to be disposed of in landfills.

o Response: For the Department to develop rules based upon toxicity or chemical properties would take considerable time and resources, which the Department does not now have. It is important, particularly with the activities of underground storage tank cleanups, that some rules and guidance be provided to the regulated community as soon as possible. The language of the rule was developed on the assumption that if hazardous substances are involved, and if the Department is requiring expensive cleanup activities, that these materials by definition present an increased risk to the environment.

o Comment: The rules should not allow landfilling of cleanup materials contaminated with wastes that could not be buried under the federal RCRA program.

o Response: Any federal landfilling ban would be applicable to solid waste sites as well as hazardous waste sites, both of which are regulated under the Resource Conservation and Recovery Act (RCRA).

o Comment: The design requirements should be revised to show that they are minimum criteria rather than maximum criteria that cannot be exceeded.

o Response: The words, "at a minimum" have been added to the section describing best management practices.

4. Other Permit Requirements.

o Comment: Required reporting should be quarterly rather than monthly.

o Response: The reporting requirement has been change to quarterly reporting.

o Comment: Will DEQ authorize disposal of cleanup materials at a site not meeting the rule's performance criteria on a case-by-case or blanket basis?

o Response: The DEQ may authorize disposal of cleanup materials on a categorical, or "blanket" basis, as opposed to only a case-by-case basis. This will be more efficient for both the regulated community and for DEQ staff. Therefore,

if a landfill wishes to accept a certain type of waste (e.g. petroleum contaminated soil under a certain level of saturation) it may apply for that exemption, rather than an exemption for a specific load of that waste.

o Comment: Landfills receiving less than 1000 tons of cleanup materials per year should be exempted from these requirements. This would allow landfills to continue to receive small quantities of these materials, thereby preventing their unregulated disposal. Such landfills would have to maintain records of materials accepted, and materials would have to be handled in certain ways.

o Response: Landfills receiving less than 1000 tons of cleanup materials per year have been exempted from the fees, but not the requirement for submittal of a plan. It is not intended for the plans to be long, burdensome documents.

5. Definitions/Clarifications.

o Comment: The term "special waste" is confusing. It does not seem to have a definition of its own, but rather to serve as a caption for several types of waste.

o Response: The Department agrees that the term "special waste" was confusing, and has deleted the use of this term, instead creating more explicit sub-categories under the currently used "specified waste" rules.

o Comment: "Cleanup materials" is not defined. Is it a synonym for special waste? Does it include such mixed waste as municipal wastewater sludge?

o Response: "Cleanup materials contaminated by hazardous substances" is defined in the rules as materials from the cleanup of releases of hazardous substances into the environment. Further definition of "release" and "hazardous substances" can be found in ORS 466.540.

o Comment: "Hazardous substance" should be further defined to clearly exclude hazardous waste.

o Response: The proposed rule has been revised to clearly

exclude hazardous wastes from disposal in solid waste landfills.

o Comment: Does "treatment prior to disposal" (340-61-061(1)(c)(iv)(b)) refer to treatment of contaminated materials received prior to arrival at the disposal site? If so, it is unrealistic.

o Response: Treatment of contaminated materials can happen either prior to arrival or after arrival at a disposal site, but must happen prior to disposal.

o Comment: Are recycling facilities "disposal" facilities for purposes of this regulations? Waste oil recycling facilities should not be subject to this regulation.

o Response: Recycling facilities are not disposal facilities for the purposes of this regulations. Waste oil recycling does not require a permit.

o Comment: The rule should be modified to clarify that an operator of an existing permitted landfill does not have to obtain a separate permit to accept cleanup materials.

o Response: The rule has been modified to clarify that an operator of an existing permitted landfill does not have to obtain a separate permit to accept cleanup materials.

o Comment: The rules should be clarified to be consistent with current policy that cleanup materials contaminated by hazardous substances from states other than Oregon, if required to be managed as a hazardous waste in the state of origin, would have to be similarly managed in Oregon even if not a hazardous waste under Oregon law.

o Response: The rules clearly state that wastes considered hazardous in another state have to be similarly managed in Oregon if shipped here for disposal.

6. <u>On-site Cleanups.</u>

o Comment: On-site cleanups should be exempted from permitting and technical requirements. Requiring a permit for such operations will stifle voluntary (and innovative) on-site cleanups.

o Response: On-site cleanups are currently regulated by the Environmental Cleanup Division, and will not be subject to solid waste permits.

o Comment: The rules appear to prohibit on-site disposal except at permitted landfills. On-site handling may often be preferable to removal, and should be encouraged. DEQ regulation of such on-site disposal should not be regulated under DEQ's landfill permitting, but rather under its underground storage tank cleanup authority.

o Response: On site treatment and disposal, if regulated by another part of DEQ, would be exempt from solid waste permit requirements under the revised rule.

(Note: At the December 7 hearing in Portland several persons commented that the petroleum industry had not been notified of the proposed rulemaking, and requested that the written comment period be extended beyond December 15. In response, DEQ extended the written comment period until January 8, 1990.)

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NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: March 2, 1990
Agenda Item: I-1
Division: Hazardous & Solid Waste
Section: Underground Storage Tanks

SUBJECT:

UST - Adoption of Rules for Grant Reimbursement Program

PURPOSE:

Provide assistance in the form of reimbursement grants to property owners, tank owners, or permittees for Underground Storage Tank (UST) tightness testing and soil assessment of underground storage tank facilities that contain motor fuel.

Establish an underground storage tank definition that is consistent with the federal definition.

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

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

___ Approve Department Recommendation

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

DESCRIPTION OF REQUESTED ACTION:

The 1989 legislature adopted House Bill 3080 establishing reimbursement grant, loan guarantee, and interest rate subsidy programs to provide financial assistance to persons responsible for underground storage tanks in meeting Environmental Protection Agency (EPA) requirements and obtaining financial responsibility coverage. The legislation required the program to become operative on September 1, 1989.

The Environmental Quality Commission adopted three separate temporary rules at the September 15, 1989 Commission meeting.

1. The rules establishing the grant reimbursement program allow the Department of Environmental Quality to reimburse property owners, tank owners, or permittees up to 50 percent of the costs, not to exceed $3,000, for conducting tightness testing and soil assessment on underground storage tanks that contain an accumulation of motor fuel.

2. The state compliance definition for an underground storage tank was modified to be consistent with the September 23, 1988 federal UST rules.

3. The service provider definition for an underground storage tank was modified to be consistent with the September 23, 1988 federal UST rules.

The Department of Environmental Quality (DEQ, Department) conducted public hearings on these temporary rules during December 1989 at five locations throughout the state. Attachment E contains a summary of these hearings. The Department received no oral or written testimony on modifications to the definition of an underground storage tank. The Department received both oral and written testimony on the grant reimbursement rules.

Several persons objected to the provisions within the rules that require soil assessments to be supervised or conducted under the direction of a registered professional engineer or

a registered geologist. They argued that certified professional soil scientists, professional hydrologists, or professionals meeting DEQ's waste management specialist classification are qualified to perform soil assessments and may be even more qualified than professional engineers and geologists who do not have training and experience in soil assessments. The purpose of the soil assessment is to qualify the UST facility for insurance and a loan guarantee. The person who directs or supervises soil assessment must meet professional and ethical standards. The Department believes that persons who meet the requirements for registration as a professional engineer or geologist are committed to these high standards. After reviewing the requirements for certification and registration as a soil scientist it is apparent that certified soil scientists also meet these high standards. Accordingly, these final rules have been modified to allow certified and registered soil scientists to direct or supervise soil assessments.

The Department is requesting adoption of the grant reimbursement rules, Attachment A, the modifications to the UST compliance rules, Attachment B, and the modifications to the UST service provider rules, Attachment C.

AUTHORITY/NEED FOR ACTION:

___ Required by Statute: _____ Attachment ___
Enactment Date: _____
_X_ Statutory Authority: ORS 466.705 - .995 Attachment ___
Chapter 1071 Oregon Law 1989
___ Pursuant to Rule: _____ Attachment ___
___ Pursuant to Federal Law/Rule: _____ Attachment ___

___ Other: Attachment ___

_X_ Time Constraints:

The temporary rules adopted at the September 15, 1989 Commission meeting will terminate on March 17, 1990 unless the Commission acts to extend the temporary rules or adopt the proposed rules.

DEVELOPMENTAL BACKGROUND:

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

Attachment ___

___ Other Related Reports/Rules/Statutes:

Attachment ___

___ Supplemental Background Information Attachment ___

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The federal underground storage tank regulations require owners or operators of USTs to demonstrate financial responsibility of at least $1,000,000 no later than October 26, 1990 to pay for cleanup and third party damages caused by releases from USTs. Firms offering UST insurance will likely require UST sites to be tested for tank leakage and soil contamination. Before insurance can be obtained it may also be necessary to upgrade the tanks to EPA standards for new USTs. Upgrading would cost an estimated $50,000 to $100,000 for a typical gasoline service station. Small businesses that pump small quantities of motor fuel may not be able to afford the cost of both the upgrading and the financial responsibility coverage.

The UST reimbursement grant proposed by HB 3080 provides financial assistance in the form of a 50 percent reimbursement grant up to $3,000 for UST tightness testing and soil assessment. For a site with three tanks, the grant reimbursement should cover half the estimated $6,000 cost of performing tank tightness testing and soil assessment. The environmental benefit of the grant reimbursement program will be early detection of potentially contaminated sites, leading to a program of early site cleanups and UST system upgrades or replacements.

Funding for the grant reimbursement program is provided by an UST regulatory fee on petroleum products of $10 per withdrawal from a bulk loading facility and a $10 per cargo tank or barge of petroleum products that is imported for delivery into an underground storage tank.

An UST Financial Assistance Workgroup of eleven members representing the regulated community and other interested parties has been appointed to assist the Department in developing the UST reimbursement and guarantee loan program. The workgroup has reviewed the proposed rules and recommends adoption as final rules.

The regulated community is supportive of receiving grant reimbursements for soil assessment and underground storage tank tightness testing.

PROGRAM CONSIDERATIONS:

Underground storage tanks containing motor fuel are located at approximately 6000 facilities throughout Oregon. The legislation (HB 3080) requires that a preference be given to reimbursement grants over loan guarantees. Based upon the revenue projections there will be an estimated $3,390,000 for the reimbursement grant program thereby providing grants for 1130 facilities, if the average grant is $3,000, the maximum allowed. The number of grants may vary if the average grant is less than $3,000 or the projected revenue is less than anticipated.

The remainder of the funds collected by the $10 regulatory fee will be used for the loan guarantee, interest rate subsidy, and for administration of the programs. These funds will provide loan guarantee and interest rate subsidies on low interest rate loans for upgrading and replacement of USTs at an estimated 245 facilities.

To date, approximately 720 grant reimbursement applications have been requested and mailed. The Department has received 16 completed applications. Only one grant application has been authorized for payment. While this is a small response, the Department believes that many requests for grants will accompany applications for loan guarantees.

In an attempt to determine the anticipated use of the grant monies by both large and small businesses, each application contained a postcard questionnaire asking for information on the business considering the reimbursement grant. To date, the Department has received 133 postcards. Both large and small businesses are returning postcards. Although this sample is small and may not be representative, it appears that the first-come-first-serve policy for issuance of grant reimbursements will produce a mix of small and large businesses receiving grants. The Department will keep the Commission informed on the performance of the grant reimbursement program.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Propose EQC adoption of the rule for the grant reimbursement portion of the program, adoption of the modified UST rules, and adoption of the modified UST service provider rules.

   This alternative will allow the reimbursement grant program to continue as planned by the legislature and

the Commission, and will make Oregon's definition of an underground storage tank consistent with the federal definition.

2. Propose that the EQC allow the temporary rules to lapse without action.

   This alternative is not recommended by the Department. It would stop the grant reimbursement program.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission adopt the rules as presented in Attachments A,B, and C.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The recommended action is consistent with legislative policy.

ISSUES FOR COMMISSION TO RESOLVE:

1. During adoption of the temporary grant reimbursement rules, the Commission was concerned that issuing reimbursement grants on a first-come-first-serve basis would allow larger businesses to obtain the bulk of the grants and that the funds would be used up before many small businesses are able to complete soil assessment, UST tightness testing and make application for a grant. As discussed, both large and small businesses are requesting reimbursement grant applications. The 17 applications received to date are from small and medium sized businesses with one facility per applicant. The demand on the grant funds is under our projections at this time. The Department is not recommending implementation of a priority system that would give preference to small businesses. The Department will periodically report to the Commission if either the mix of businesses changes or the demand for reimbursement grants dramatically changes.

2. There are no additional issues for the Commission to resolve that were not identified and resolved by the Commission during the adoption of the temporary rules at the September EQC meeting.

INTENDED FOLLOWUP ACTIONS:

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

Approved:

Section:

Division:

Director:

Report Prepared By: Larry D. Frost

Phone: 229-5769

Date Prepared: February 14, 1990

LDF:lf
GRNTSTAF.RPT
February 14, 1990

Attachment A
Agenda Item I-1
3-2-90 EQC Meeting

OREGON ADMINISTRATIVE RULES
CHAPTER 340, DIVISION 170 - DEPARTMENT OF ENVIRONMENTAL QUALITY

UNDERGROUND STORAGE TANK REIMBURSEMENT GRANT PROGRAM

AUTHORITY, PURPOSE, AND SCOPE

340-170-005 (1) These rules are promulgated in accordance with and under the authority of ORS 466.705 through 466.835 and ORS 466.895 through 466.995 as amended by Chapter 1071, Oregon Laws, 1989 (House Bill 3080).

(2) The purpose of these rules is to provide for the regulation of persons who receive reimbursement grants for UST tightness testing and soil assessment of underground storage tank facilities that contain motor fuel regulated by ORS 466.705 through 466.835 and ORS 466.895 through 466.995; and to provide assistance to owners of underground storage tanks in meeting Environmental Protection Agency requirements and obtaining financial responsibility coverage.

(3) These rules establish requirements and standards for:

(a) Reimbursement grant of up to 50 percent, not to exceed $3,000, for UST tightness testing and soil assessment,

(b) Procedures for applying and qualifying for a reimbursement grant,

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

(4) Scope: OAR 340-170-010 through OAR 340-170-080 applies to persons who receive reimbursement grants for UST tightness testing and soil assessment.

DEFINITIONS

340-170-010, As used in these rules,

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

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

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

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

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

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

(5) "Facility" means any one or combination of underground storage tanks and underground pipes connected to the tanks, used to contain an accumulation of motor fuel, including gasoline or diesel oil, that are located at one contiguous geographical site.

(6) "Firm" means any business, including but not limited to corporations,

limited partnerships, and sole proprietorships, engaged in the performance of tank services.

(7) "Grant" means reimbursement for costs incurred for UST tightness testing and soil assessment at a facility with underground storage tanks containing motor fuel.

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

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

(10) "Motor fuel" means a petroleum or a petroleum-based substance that is a motor gasoline, aviation gasoline, No.1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

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

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

(13) "Property owner" means the legal owner of the property where the underground storage tank resides.

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

(15) "Soil assessment" means evaluating the soil adjacent to the UST system for contamination from motor fuel.

(16) "Soil remediation" means those corrective actions taken to excavate, remove, treat or dispose of soil contaminated with motor fuel so as to bring a site containing underground storage tanks into compliance with the Department's Cleanup Rules for Leaking Petroleum UST System, OAR Chapter 340, Division 122.

Note: Soil remediation does not include cleanup or decontamination of contaminated groundwater or surface water, provisions for alternate water supplies or any related remediation work.

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

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

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

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

(21) "Underground storage tank" or "UST" means an underground storage tank as defined in OAR Chapter 340, Division 150.

SOIL ASSESSMENT

340-170-020 (1) Soil assessment at a facility where underground storage tanks contain an accumulation of motor fuel shall be conducted by the property owner, UST owner or permittee in accordance with OAR Chapter 340 Division 122 and subsections (2) and (3) of this section.

(2) Conduct an inspection of the UST facility to:

(a) Look for warning signs that indicate possible soil or water contamination due to spills or leakage from underground tanks;

Note: Warning signs of petroleum contamination include discolored or oily soil, petroleum and gasoline odors, and a sheen on standing or moving water. Check for these signs on the property and adjacent property.

(b) Check with owners of adjacent property to see if they have observed petroleum taste or odor in drinking water, petroleum fumes in their basement or buildings, or other unusual conditions that could be caused by motor fuel;

(c) Review UST inventory control and UST repair records for indications of releases from the USTs; and

(d) Prepare a written record of the inspection results.

(3) In situations where the tanks and lines are to remain in place, the property owner, tank owner, or the permittee shall:

(a) Submit a specific soil sampling plan to the Department for approval prior to initiating any work; or

(b) Collect soil samples by boring or test pits:

(A) Where groundwater is not present, collect one sample in each boring or test pit from the native soils at an elevation below, but no more than two feet below, the bottom of any underground storage tank;

(B) Where groundwater is present, collect two samples in each boring or test pit, the first sample within the first six inches of saturated soil and the second sample at an elevation below, but no more that two feet below, the bottom of any underground storage tank;

(C) Borings or test pits shall be located along each side of an imaginary rectangular area drawn around an UST or group of USTs so that each side of the rectangle lies a maximum of three feet from the nearest UST.

(i) The imaginary rectangle may be drawn around a group of USTs when each UST is within six feet of an adjacent UST.

(ii) A separate imaginary rectangle must be drawn around each UST that is located more than six feet from an adjacent UST.

(iii) A minimum of one boring or test pit shall be located at the midpoint on each side of the imaginary rectangle. Where a side exceeds fifteen feet, two or more borings or test pits shall be located equally spaced along the side. Borings or test pits shall not be located more than twenty five feet apart along any side of the rectangle.

(D) Analyze the soil and/or ground water samples in accordance with subsection (1) of this section.

Note: The soil assessment procedures outlined in this section are intended for use only when qualifying for the reimbursement grant described by these rules.

UNDERGROUND STORAGE TANK TIGHTNESS TESTING

340-170-030 (1) UST tightness testing consists of testing the underground storage tank and associated piping and equipment routinely in contact with the ground for tightness against product leakage at normal operating pressures.

(2) Tank tightness testing must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the UST that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

(3) Pipe tightness testing, for that piping not tested during the tank tightness test, must be capable of detecting a 0.1 gallon per hour leak rate at one and one-half times the operating pressure. Suction piping shall be tested at a positive pressure equivalent to one and one-half times the negative operating pressure.

(4) The tank and pipe tightness testing report shall contain the testing equipment manufacturers written performance claims pertaining to the test used, and the manner in which these claims have been justified or tested by the equipment manufacturer.

GENERAL PROVISIONS, UNDERGROUND STORAGE TANK FACILITY REIMBURSEMENT GRANT

340-170-050 (1) The property owner, tank owner, or permittee of an UST facility may qualify to receive an UST tightness testing and soil assessment reimbursement grant at any facility location.

(2) A facility location may not receive more that one reimbursement grant.

(3) The reimbursement grant shall not exceed the lesser of fifty percent of the costs for UST tightness testing and soil assessment or $3,000 at any facility location.

(4) The reimbursement grant is limited to investigating underground storage tank systems located at a facility:

(a) where tanks contain motor fuel;

(b) are regulated by OAR Chapter 340, Division 150;

(c) where UST tightness testing is performed in accordance with OAR 340-160-005 through OAR 340-160-150;

(d) where UST tightness testing is performed in accordance with these rules;

(e) where soil assessment is performed in accordance with OAR Chapter 340 Division 122 and these rules;

(f) where soil assessment is performed under the direction or supervision of a registered professional engineer, registered geologist, or a certified professional soil scientist (a soil scientist with certification and inclusion in the American Registry of Certified Professionals in Agronomy, Crops, and Soils, Ltd.(ARCPACS)).

(g) where soil assessment and/or UST tightness testing is performed after September 1, 1989 and before August 31, 1992; and

(h) where regulated underground storage tanks have a valid UST permit.

Note: The Department will not approve a grant where tanks are being permanently decommissioned, removed or filled in place. The legislature intended for the grants to assist operating motor fuel facilities attempting to comply with Federal/State underground

storage tank regulations.

APPLICATION, UNDERGROUND STORAGE TANK FACILITY REIMBURSEMENT GRANT

340-170-060 (1) Any person wishing to obtain a reimbursement grant from the Department shall submit a written application on a form provided by the Department. Applications must be submitted no later than February 28, 1993. All application forms must be completed in full, and accompanied by all required exhibits.

(2) Applications which are unsigned or which do not contain the required exhibits (clearly identified) will not be accepted by the Department and will be promptly returned to the applicant for completion. The application will not be considered complete until the requested information is received. The application will be considered to be withdrawn if the applicant fails to submit the requested information within 180 days of the request.

(3) Applications which are complete will be accepted by the Department.

(4) Within 30 days after the application is determined complete, the Department will approve the application if the UST tightness testing and soil assessment meets all Department requirements.

(5) In the event the Department is unable to process an application within 30 days after the application is considered complete by the Department, the applicant shall be deemed to have received approval of the application. In no case, however, is the Department obligated to reimburse more than 50 percent or $3,000, whichever is the lesser amount.

(6) If, upon review of an application, the Department determines that the reimbursement grant application does not meet the requirements of the statutes and rules, the Department shall notify the applicant in writing of this determination. Such notification shall constitute final action by the Department on the application.

INFORMATION REQUIRED ON THE REIMBURSEMENT GRANT APPLICATION

340-170-070 (1) The reimbursement grant application shall include:

(a) The name and mailing address of the grant applicant;

(b) The signatures of the property owner, the tank owner and the permittee;

(c) The UST facility name and location;

(d) The UST permit numbers;

(e) The date of the application;

(f) The date of the UST tightness testing and soil assessment;

(g) The name of the persons performing UST tightness testing and soil assessment;

(h) Description of the assessed area including a sketch showing, but not limited to, property boundaries, location of structures, location and identification of tanks including tank contents and tanks tested, and identification of soil assessment sites;

(i) Assessment findings including, but not limited to, results of laboratory tests, UST tightness testing results, soil matrix calculations (OAR 340-122-325) and the site inspection results where the underground storage tank remained in place during the assessment.

(j) The actual cost of UST tightness testing and soil assessment.

Note: Actual costs include, but are not limited to, paid invoice with related canceled check or vendor receipt if cash payment was made.

(2) The Department shall have access to books, documents, papers and records of the applicant which are directly pertinent to qualifying for the reimbursement grant for the purpose of making audit, examination, excerpts and transcripts. The applicant shall maintain these records for three years after the reimbursement grant payment date.

REIMBURSEMENT GRANT PAYMENT

340-170-080 (1) Upon approval of the reimbursement grant application the Department shall determine if sufficient grant funds are available in the Underground Storage Tank Compliance and Corrective Action Fund to make the reimbursement grant payment.

(2) Reimbursement grant applications will qualify for payment on a first come first serve basis based upon the date of receipt of the complete application.

(3) Where the Department determines that grant funds are available, the reimbursement payment will be made after approval of the reimbursement grant application. Reimbursement grant payments will be prioritized by date of receipt of a complete grant application.

(4) Where the Department determines that grant funds are not available, payment will be made as soon as funds are available from the Underground Storage Tank Compliance and Corrective Action Fund. The Department shall notify the applicant in writing that payment of the reimbursement grant will be delayed until funds become available.

(5) The Department and State of Oregon are not obligated to pay the reimbursement grant if grant funds are not available.

(6) The reimbursement grant payment will be by warrant to the reimbursement grant applicant.

Note: At this time, the amount of revenue projected to be available for the reimbursement grant program is $3,390,000. If each applicant receives the maximum allowable reimbursement grant of $3,000 per facility location, the Department can provide 1130 reimbursement grants.

(7) Upon payment of the reimbursement grant payment, the Department will issue a written notice of compliance indicating that the assessment and testing have been conducted in accordance with requirements of the Department.

February 13, 1990
RULE3081.ZZZ

Attachment B
Agenda Item I-1
3-2-90 EQC Meeting

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

MODIFICATIONS TO UNDERGROUND STORAGE RULES

DEFINITIONS

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

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

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

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

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

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

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

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

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

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

(9) "Regulated substance" means:

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

(b) Oil.

(10) "Release" means the discharge, deposit, injection, dumping, spilling, emitting, leaking or placing of a regulated substance from an

underground storage tank into the air or into or on land or the waters of the state, other than as authorized by a permit issued under state or federal law.

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

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

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

(c) Septic tank;

(d) Pipeline facility (including gathering lines) regulated under:

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

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

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

(e) Surface impoundment, pit, pond or lagoon[.];

(f) Storm water or waste water collection system[.];

(g) Flow-through process tank[.];

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

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

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

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

EXEMPTED TANKS

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

(a) Any UST system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances;

(b) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 402 or 307(b) of the Clean Water Act;

(c) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks;

(d) Any UST system whose capacity is 110 gallons or less;

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

substances;

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

(g) Pipes connected to any tank described in subsections (a) to (f) of this section.

Note: The exempt underground storage tanks defined by this section are the same underground storage tanks defined by Federal Underground Storage Tank Regulations, 40 CFR 280.10, Paragraph (b), September 23, 1988.

February 12, 1990
MODRULE4.302

Attachment C
Agenda Item I-1
3-2-90 EQC Meeting

OREGON ADMINISTRATIVE RULES
CHAPTER 340, DIVISION 160 - DEPARTMENT OF ENVIRONMENTAL QUALITY

MODIFICATIONS TO RULES FOR REGISTRATION AND LICENSING REQUIREMENTS FOR UNDERGROUND STORAGE TANK SERVICE PROVIDERS

DEFINITIONS

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

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

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

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

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

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

(6) "Facility" means the location at which underground storage tanks are in place or will be placed. A facility encompasses the entire property contiguous to the underground storage tanks that is associated with the use of the tanks.

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

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

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

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

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

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

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

(14) "Tank Services Provider" is an individual or firm registered and, if

required, licensed to offer or perform tank services on regulated underground storage tanks in Oregon.

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

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

(17) "Underground Storage Tank" or "UST" means an underground storage tank as defined in OAR 340-150-010 (11) **and is not an exempted tank as defined in OAR 340-150-015**.

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

[*EXEMPTED TANKS*

340-160-015 (1) The following regulated underground storage tanks are exempt from the requirements of this part:

(a) Hazardous waste tanks

(b) Hydraulic systems and tanks

(c) Wastewater treatment tanks

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

(e) UST systems containing electrical equipment

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

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

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

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

(j) Airport hydrant fuel distribution systems

(k) UST systems with field-constructed tanks

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

February 12, 1990
MODCERT4.302

Attachment D
Agenda Item I-1
3-2-90 EQC Meeting

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF ADOPTING OAR Chapter 340 Division 170 and Modifying Portions of OAR Chapter 340 Divisions 150 and 160	))))))	STATEMENT OF NEED FOR RULES

Statutory Authority

ORS 466.705 through ORS 466.835, 466.895 and 466.995 authorizes rule adoption for the purpose of regulating underground storage tanks. Chapter 1071, Oregon Law 1989 (HB3080) authorizes the Commission to adopt rules establishing a reimbursement grant, loan guarantee, and interest subsidy program to provide financial assistance to persons responsible for underground storage tanks, containing an accumulation of motor fuel, so that they may meet Environmental Protection Agency (EPA) requirements and obtain financial responsibility coverage.

Need for the Rules

The proposed rules are needed to carry out the authority given to the Commission to adopt rules for establishing the reimbursement grant portion of the program, providing reimbursement grants for the costs of underground storage tank tightness testing and soil assessment of 50 percent, up to a maximum of $3,000 for each facility.

Failure to adopt the rules will result in serious prejudice to the public interest, and particularly to persons responsible for underground storage tanks containing motor fuel, because reduced financial assistance could cause significant financial hardship to the tank owner resulting in closure of businesses retailing motor fuel. Closure of retail motor fuel facilities would reduce fuel supplies to the motoring public, particularly in the rural and remote areas of Oregon.

Principal Documents Relied Upon

ORS 466.705 through 466.835, 466.895 and 466.995, 1989

40 CFR 280, September 23, 1988

Fiscal and Economic Impact

Fiscal Impact

The revenue for the reimbursement grant and loan guarantee program is generated by a regulatory fee on petroleum products of $10 per withdrawal from a bulk loading facility. The revenue is expected to total $12,000,000, $3,000,000 per year for four years. Failure to adopt the rules would allow the Department to use the revenue for the underground storage tank program or alternately, the loan guarantee program if rules are adopted for the loan guarantee program.

Small Business Impact

The majority of businesses owning and operating underground storage tanks are classified as small business. Federal regulations require owners and operators of underground storage tanks to demonstrate financial responsibility of up to $1,000,000 by October 26, 1990 for cleanup and third party damages resulting from a release from an underground storage tank. Underwriters will likely require a contamination free facility and upgrading of the tanks to federal standards for new tanks. Underground storage tank tightness testing and soil assessment will indicate a clean or contaminated site. The underground storage tank tightness test and soil assessment for a typical three tank site is estimated to cost $6,000.

The proposed reimbursement grant will pay for 50 percent, up to a maximum of $3,000, for tank tightness testing and soil assessment at a facility where the tanks contain an accumulation of motor fuel. This reimbursement grant provides a way for a person to afford the first step toward qualifying for financial responsibility. The program will be able to fund reimbursement grants for approximately 1130 facilities, an expenditure of $3,390,000 if each grant was $3,000.

The soil assessment will provide early detection of contamination, thereby allowing the property owner, tank owner or UST permittee to do a low cost soil cleanup before ground water is contaminated.

February 12, 1990
NDFSCGRT.302

NEIL GOLDSCHMIDT
GOVERNOR

Attachment E
Agenda Item I-1
3-2-90 EQC Meeting

Department of Environmental Quality

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

DATE: February 12, 1990

TO: Environmental Quality Commission

FROM: Larry D. Frost

SUBJECT: Hearing Report Summary
and
Responsiveness Summary

On September 8, 1989, the Environmental Quality Commission authorized five Public Hearings on proposed rules for the underground storage tank reimbursement grant rules. Public hearings were held at 3:30 P.M. on:

- o December 11, 1989 in Bend, Oregon
- o December 12, 1989 in Pendleton, Oregon
- o December 12, 1989 in Portland, Oregon
- o December 14, 1989 in Medford, Oregon
- o December 15, 1989 in Eugene, Oregon

A thirty minute informational meeting was held prior to each hearing to describe and answer questions on the reimbursement grant program.

The following persons either testified verbally at one of the hearings or submitted written comments as shown below:

Name/Representing	Verbal	Written/Date
Gary W. Hahn Hahn and Associated, Inc.		December 26, 1989
Bart Barlow Cascade Earth Sciences, Ltd.		December 12, 1989
Cedric L. Hayden State Representative, District 38		December 30, 1989
Robert C. Paeth Department of Environmental Quality		December 28, 1989

Fredrick W. Scalise Omnicon Environmental Management		December 26, 1989
Steven Wilson Cascade Earth Sciences, Ltd.		December 22, 1989
Don Russell Boardman, Oregon	*	December 12, 19889
George Bonbright Bonbright Oil Co.	*	December 12, 1989
Terry Rahe Cascade Earth Sciences, Ltd.	*	December 11, 1989 December 14, 1989 December 15, 1989
Tom Ferrero Ashland, Oregon	*	December 14, 1989
Mike Hawkins Hawk Oil Company	*	December 14, 1989
Steve Wilson Cascade Earth Sciences, Ltd.	*	December 12, 1989
Art Van Alstine O.E.M. Industries	*	December 12, 1989
Victor A. Klinger Lexington Chevron	*	December 12, 1989

COMMENT AND RESPONSE TO COMMENTS ON PROPOSED REIMBURSEMENT GRANT RULES

Requirement for both soil assessment and tank tightness testing

COMMENT (Russell): A reimbursement grant should be provided where only soil assessment or UST tightness testing is done. The rules shouldn't require both.

COMMENT (Bonbright): Daily UST inventories and a tightness test should be good enough to satisfy the requirements for insurance and the grant.

COMMENT (Van Alstine): Tightness tests are an unnecessary expense. If a business would install cathodic protection, a site assessment would not be needed. These tests were an added expense that many smaller businesses can

not afford. In order to install cathodic protection, the tanks must be tight. The tightness can be determined from accurate inventory control and an annual tank tightness test.

DEPARTMENT RESPONSE: For an UST facility to qualify for insurance and/or a loan guarantee it will be necessary to certify that the site is not contaminated and none of the tanks are leaking. Proper soil assessment and tank tightness tests provide the best indication of past practices and the present condition of the tanks. The Department is not interested in risking public funds on a loan guarantee without a soil assessment and UST tightness tests.

Cost of soil assessment and tank tightness tests

COMMENT (Russell, Bonbright, Van Alstine):

The owner should be able to take soil samples and send them to a laboratory. A registered engineer or geologist is too expensive. Why should the owner spend $6,000 when he can do both the UST tightness test and the soil sample for $2,000.

Tightness tests are an unnecessary expense. If cathodic protection was installed, a site assessment would not be needed.

DEPARTMENT RESPONSE: The soil assessment will generally determine if soil contamination exists adjacent to the UST. UST tightness testing will determine if the tank and/or tank piping is currently leaking. Both investigation methods are required to determine if the site is clean. Unfortunately, it is necessary to have these tests performed by someone independent from the tank owner or operator, such as a registered engineer or geologist. The rules have been modified to allow soil scientists to perform the soil assessment. This may reduce the costs.

Supervision of Soil Assessment

COMMENT (Rahe, Wilson, Ferroro, Hawkins, Hahn, Barlow, Paeth, Scalise):

The rules only allow registered engineers and geologists to supervise soil assessment who may or may not be qualified by training and experience to supervise soil assessments. Many of these professionals are registered or licensed in other aspects of engineering or geology, rather than soil testing. The rules exclude other qualified professionals in the soil analysis field such as soil scientists, subsurface technicians, the DEQ's licensed UST service providers and others who are currently working in the field.

DEPARTMENT RESPONSE: The Department feels it is necessary for the supervision of the soil assessment to be performed by persons who are registered or licensed and are bound by a code of ethics. Soil assessments performed in order to qualify for the loan guarantee program must be acceptable to both the commercial lending institutions and the insurance industry. The Department believes that a Registered Soil Scientist meets these criteria. The rules have been modified to include Certified and Registered Soil Scientists.

Soil Contamination

COMMENT (Hawkins): The soil assessment would show soil contamination from overfills and spills at most USTs. The UST owner would be required to cleanup the contamination. The cost may bankrupt the business. The grant reimbursement program does not help the small business if it causes bankruptcy.

DEPARTMENT RESPONSE: It has been the experience of the Department that most of the contamination at a UST site is caused by overfills and spills during filling of the tanks. The resulting contamination is usually limited to the backfill around the USTs. Removal of the UST and the backfill will usually remove all contamination. Most businesses will be asking for a reimbursement grant as a result of attempting to qualify for insurance. It will be necessary to cleanup contamination and possibly replace the USTs to qualify for insurance. The Department believes that the program is beneficial to those who plan to stay in business. It does not help those who plan to leave the retail motor fuel business.

Qualification of Cardlock and Keylock Fueling Operations for Grants

COMMENT (Klinger): The legislation was set up to provide grants to facilities that retail gasoline to the general public. Cardlock and keylock operations do not qualify as retail motor fuel facilities. The DEQ will not be operating within the scope of the law if grants are given to cardlock operations.

DEPARTMENT RESPONSE: Office of the Attorney General has determined that all persons responsible for USTs that contain motor fuel can qualify for the reimbursement grant program.

February 12, 1990
COMGRSM.302

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: March 2, 1990
Agenda Item: I-2
Division: Hazardous & Solid Waste
Section: Underground Storage Tanks

SUBJECT:

UST - Adoption of Rules for Guaranteed Loan and Interest Rate Subsidy Programs

PURPOSE:

Provide assistance in the form of guaranteed loans and/or interest rate subsidies to property owners, underground storage tank (UST) owners, or permittees for upgrading or replacing underground storage tank facilities that contain motor fuel. A 7.5 percent interest rate on UST loans is subsidized by providing an Oregon income tax credit to commercial lending institutions for the difference between 7.5 percent and 3 percent above the prime rate at either United States National Bank of Oregon or First Interstate Bank of Oregon, N.A..

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 ___

___ Issue a Contested Case Order
___ Approve a Stipulated Order

___ Enter an Order
Proposed Order — Attachment ___

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

DESCRIPTION OF REQUESTED ACTION:

The 1989 legislature passed House Bill 3080 to establish loan guarantee and interest rate subsidy programs to provide financial assistance to persons responsible for underground storage tanks. As required by federal underground storage tank regulations, these persons must obtain financial responsibility coverage of at least $1,000,000 no later than October 26, 1990 to pay for cleanup and third party damages caused by releases from USTs. The legislation required the programs to become operative on September 1, 1989.

Firms offering UST insurance are likely to require that UST sites be upgraded to the EPA standards for new USTs before insurance will be provided. Businesses that pump small quantities of motor fuel may not be able to afford the cost of both the upgrading and the financial responsibility coverage.

The proposed rules establish the loan guarantee and interest rate subsidy portion of the legislation by allowing the Department of Environmental Quality to provide a loan guarantee and an interest rate subsidy to commercial lending institutions that provide loans for soil remediation and upgrading or replacing underground storage tank systems containing motor fuel. The borrower must provide a minimum down payment of 20 percent. The loan guarantee is limited to 80 percent of the loan principal, up to a maximum of $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 seven and one half percent (7.5%) loan and three percent (3%) above the prime rate of either the United States National Bank of Oregon or First Interstate Bank of Oregon, N.A. selected on the date of the initial loan by the commercial lending institution.

The proposed rule establishes a numerical priority system that gives preference to:

1. Financial condition of the applicant.
2. Availability of motor fuel to rural population centers.
3. Small business.
4. Facilities retailing motor fuel.

These four criteria address the stated public purpose in HB 3080: to insure an adequate supply of competitively priced motor fuel throughout the state, to sustain and support economic development, to protect Oregon's growing tourism industry, and to encourage private insurance carriers to reenter the UST insurance market.

The proposed rules place these financial assistance programs into separate and distinct programs that may be used separately or together for any project. The loan guarantee program uses a numerical priority ranking system to place applications into three separate categories, Category A (30 points or greater), Category B (16 through 29 points), and Category C (15 points or less). The numerical ranking provides a maximum of 10 points and a minimum of 2 points each for:

1. Construction cost,
2. Distance to the farther of the two nearest retail motor fueling facilities,
3. Population of the community where the motor fueling facility is located, by the regional rural population or the incorporated city population,
4. Annual motor fuel throughput, and
5. Annual gross receipts from sales at a retail motor fueling facility.

Note: (Points for #4 and #5 are the most quantifiable and objective, in the Department's opinion, to evaluate the "financial condition of the applicant" as required by the statute.) Also, non-retail facilities can only score points in two categories, construction cost and motor fuel throughput.

The loan guarantee program will provide guarantees for an estimated 245 facilities. Discussions with the U.S. Small Business Administration (SBA) indicate that they are interested in "taking out" the state loan guarantee and providing an SBA loan guarantee for up to 90 percent of all construction work at the facility. These "take outs" may free up money otherwise reserved to cover defaults and allow the Department to provide loan guarantees for more than 245 facilities. The reserve for defaults is estimated to be $1,375,000 over the program's life.

The proposed rules provide interest rate subsidies on a first-come-first-serve basis. This program provides an Oregon income tax credit to financial lending institutions that provide loans at 7.5 percent for qualified UST projects. The amount of the tax credit is limited to the difference between the loan expenses on a 7.5 percent loan and three percent (3%) above the prime rate of either the United States National Bank of Oregon or First Interstate Bank of Oregon, N.A. selected on the date of the initial loan by the commercial lending institution. Funds available for interest rate subsidies over the life of the program are estimated to be $3,874,400.

The loan guarantee and interest rate subsidy programs benefit the environment by providing an incentive to approximately 245 UST facility systems which, without the incentive, may not upgrade and replace their systems.

The public should benefit by being able to purchase fuel from additional retail motor fuel facilities in the rural and remote sections of Oregon since the proposed priority system gives preference to small rural businesses retailing motor fuel and, hopefully, will help them stay in business.

Funds for the loan guarantee and interest rate subsidy tax credit program are provided by a regulatory fee on petroleum products of $10 per withdrawal from a bulk loading facility and $10 per cargo tank or barge for petroleum products that is imported for delivery into an underground storage tank. This fee also funds the UST grant reimbursement program and the administrative expenses associated with both programs.

AUTHORITY/NEED FOR ACTION:

___ Required by Statute: _____ Attachment ___
Enactment Date: _____

_X_ Statutory Authority: ORS 466.705 - .995 Attachment ___
Chapter 1071 Oregon Law 1989

___ Pursuant to Rule: _____ Attachment ___

___ Pursuant to Federal Law/Rule: _____ Attachment ___

___ Other: Attachment ___

_X_ Time Constraints: (explain)

The temporary rules adopted at the October 20, 1989 Environmental Quality Commission (Commission) meeting will terminate on April 24, 1990 unless the Commission acts to adopt the proposed rules.

DEVELOPMENTAL BACKGROUND:

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

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The Department of Environmental Quality (Department) has been working with an Underground Storage Tank Financial Assistance Workgroup of eleven members of the public to assist in developing the UST reimbursement and guarantee loan program. The workgroup has reviewed the proposed rules and recommends adoption as final rules. In addition, the Department has worked with technical experts from commercial lending institutions to develop workable loan guarantee and interest rate subsidy rules. Those portions of the regulated community with whom we have had contact are supportive of both the loan guarantee program and the interest rate subsidy program. They do, however, believe that the programs may not help many of the very small businesses. These businesses may not have the funds for the twenty percent down payment or adequate income to repay the loans.

The Department conducted public hearings on these temporary rules during December 1989 at five locations throughout the state. Attachment C contains a summary of these hearings. The Department received both oral and written testimony on the loan guarantee and interest rate subsidy rules.

The rules have been modified as a result of comments received in oral and written testimony, review of the temporary rules by the UST Financial Assistance Workgroup, review by representatives from commercial lending institutions, and review by the Department.

One person objected to cardlock fueling operations qualifing for a loan guarantee and an interest rate subsidized loan. The Attorney General has determined that cardlocks are not retail motor fuel facilities serving the general public and, therefore, would not have priority as a retail facility. A cardlock fueling

operation would qualify in a lower category for a loan guarantee and an interest rate subsidized loan. A note in the rules describes a retail facility as one selling to the general public, thereby limiting cardlock/keylock facilities to the non-retail priority categories.

The Department has clarified the rule language for several of the priority factors to eliminate errors when assigning numerical points.

The commercial lending institutions commented that limited loan variations were available under the temporary rules. The rules have been modified to allow multiple loans and refinancing of outstanding loans if the total term of all loans does not exceed ten years.

To simplify the identification of the "nonsubsidized interest rate for loans of like terms and conditions" the rules have been modified to establish this rate as prime interest rate plus 3 percent, where the prime rate is selected by the financial institution on the day of the initial note, from the published prime of either United States National Bank of Oregon or First Interstate Bank of Oregon, N.A..

PROGRAM CONSIDERATIONS:

There are approximately 6,000 locations in Oregon with USTs that contain motor fuel. The loan guarantee and interest rate subsidy programs will provide funding for the expenses of tax credits and loan defaults for approximately 245 facilities if:

1. An upgraded facility receives a $25,600 loan guarantee,
2. A facility where USTs are replaced receives a $64,000 loan guarantee,
3. Ten percent of the loans default during life of the program (13 years), and
4. All facilities receive an interest rate subsidy.

Approximately $1,375,000 may be spent for loan defaults and $3,874,400 for payment of interest rate subsidies, a total of $5,059,900 for these programs.

The Department anticipates that significantly more than 245 loan guarantees will be funded. We are currently working with the SBA for a substitution of a federal guarantee at the completion of construction of the upgraded or replaced

UST system. Each Small Business Administration loan guarantee "take out" will release funds for use in new loan guarantees. Funds will also be available from any loan guarantee that is below the $64,000 maximum.

The remainder of the $10 regulatory fee will be used to fund the grant reimbursement portion of the legislation (HB 3080) and administration for both programs. These funds will provide grants for reimbursement of 50 percent, up to $3,000 maximum, for expenses of soil assessment and tank tightness testing at USTs that contain motor fuel.

The program performance will be audited by the Department. The tax credit portion of the program will be audited by the Department and the Oregon Department of Revenue.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Propose EQC adoption of the rules for the loan guarantee and interest rate subsidy/tax credit portions of House Bill 3080.

   This alternative will allow the loan guarantee and interest rate subsidy/tax credit program to continue, as planned by the legislature and the Commission.

2. Propose that the EQC allow the temporary rules to elapse without action.

   This alternative is not recommended by the Department. It would stop the loan guarantee and interest rate subsidy/tax credit program.

3. Adopting the temporary rules as permanent rules without the changes proposed by the Department based on public comment.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission adopt the rules as presented in Attachment A.

The rationale is discussed in the previous sections.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The recommended action is consistent with legislative policy.

ISSUES FOR COMMISSION TO RESOLVE:

There are no issues for the Commission to resolve that were not identified and resolved by the Commission during the adoption of the temporary rules at the October EQC meeting.

INTENDED FOLLOWUP ACTIONS:

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

Approved:

Section: _____

Division: Stephanie Hallock

Director: _____

Report Prepared By: Larry D. Frost

Phone: 229-5769

Date Prepared: February 14, 1990

LDF:lf
LOANSTAF.RP3
February 14, 1990

Attachment A
Agenda Item I-2
3-2-90 EQC Meeting

OREGON ADMINISTRATIVE RULES
CHAPTER 340, DIVISION 180 - DEPARTMENT OF ENVIRONMENTAL QUALITY

UNDERGROUND STORAGE TANK LOAN GUARANTEE AND INTEREST RATE SUBSIDY PROGRAM

AUTHORITY, PURPOSE, AND SCOPE

340-180-005 (1) These rules are promulgated in accordance with and under the authority of ORS 466.705 through 466.835 and ORS 466.895 through 466.995 as amended by Chapter 1071, Oregon Laws, 1989 (House Bill 3080).

(2) The purpose of these rules is to provide for the regulation of:

(a) persons who receive guaranteed loans for soil remediation, upgrading of underground storage tanks, and replacement of underground storage tanks where the underground storage tanks contain motor fuel and are regulated by ORS 466.705 through 466.835 and ORS 466.895 through 466.995; to provide assistance to owners of underground storage tanks in meeting Environmental Protection Agency requirements and obtaining financial responsibility coverage, and

(b) commercial lending institutions who issue guaranteed underground storage tank loans.

(3) These rules establish requirements and standards for:

(a) loan guarantees of up to 80 percent of the loan principal not to exceed $64,000 for UST upgrading, UST replacement, and soil remediation,

(b) applying and qualifying for a guaranteed loan through a commercial lending institution,

(c) loan interest rates,

(d) applying and qualifying for interest rate subsidies to commercial lending institutions,

(e) loan default, and

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

(4) Scope:

(a) OAR 340-180-005 through -080 applies to persons who receive loan guarantee certificates and loan guarantees for soil remediation, underground storage tank upgrading, and underground storage tank replacement.

(b) OAR 340-180-090 through -110 applies to persons who receive tax credit certificates and loan interest rate subsidies on loans for soil remediation, underground storage tank upgrading, and underground storage tank replacement.

(c) OAR 340-180-120 applies to persons seeking a written notice of compliance from the Department for soil remediation.

DEFINITIONS

340-180-010, As used in these rules,

(1) "Collection Expenses" means out of pocket expenses, attorney fees, administrative expenses, filing fees, recording fees, and other expenses related to collection of unpaid loan monies.

(2) "Commercial lending institution" means any bank, mortgage banking company, trust company, stock savings bank, saving and loan association, credit union, national banking association, federal savings and loan association or federal credit union maintaining an office in this state.

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

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

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

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

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

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

(7) "Facility" means any one or combination of underground storage tanks and underground pipes connected to the tanks, used to contain an accumulation of motor fuel, including gasoline or diesel oil, that are located at one contiguous geographical site.

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

(9) "Grant" means reimbursement for costs incurred for UST tightness testing and soil assessment at a facility with underground storage tanks containing motor fuel.

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

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

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

(13) "Motor fuel" means a petroleum or a petroleum-based substance that is a motor gasoline, aviation gasoline, No.1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

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

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

(16) "Property owner" means the legal owner of the property where the underground storage tank resides.

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

(18) "Soil assessment" means evaluating the soil adjacent to the UST system for contamination from motor fuel.

(19) "Soil remediation" means those corrective actions taken to excavate, remove, treat or dispose of soil contaminated with motor fuel so as to bring a site containing underground storage tanks into compliance with the Department's Cleanup Rules for Leaking Petroleum UST System, OAR Chapter 340, Division 122.

Note: Soil remediation does not include cleanup or decontamination of contaminated groundwater or surface water, provisions for alternate water supplies or any related remediation work.

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

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

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

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

(24) "Underground storage tank" or "UST" means an underground storage tank as defined in OAR Chapter 340, Division 150.

DISTRIBUTION PRIORITY OF FUNDS FOR LOAN GUARANTEE EXPENSES

340-180-020 (1) A portion of the funds in the Underground Storage Tank Compliance and Corrective Action Fund during each individual month shall be assigned by the Department to pay for the expenses of providing loan guarantees to commercial lending institutions for loans that fund soil remediation, UST upgrading, and UST replacement at facilities that contain an accumulation of motor fuel. Loan guarantees shall be approved giving first priority to earliest received complete application then giving priority in accordance with the numerical ranking system described in this section.

(2) In order to determine the numerical ranking, the loan application must first be evaluated by:

(a) Assigning a numerical score to each of the parameters in subsection 340-180-020 (4); and

(b) totaling the parameter scores to arrive at the Total Score.

(3) The Total Score shall then be used to establish priority categories for providing funds to loan guarantee applications. Priority categories shall be established where a Total Score of 30 points or greater is an "A" category, a Total Score of 16 points but less than 30 points is a "B" category, and a Total Score less than 16 points is a "C" category.

Note: A facility must retail motor fuel to receive points in some of the following numerical parameters. To be considered "retail", a motor fuel facility must sell motor fuel to the general public. For the purposes of these rules a wholesale cardlock or keylock fueling facility is not considered a retail facility.

(4) Numerical parameters are:

(a) For construction work to upgrade or replace USTs containing motor fuel at a facility:

(A) Assign 10 points for total construction costs less than $40,000.

(B) Assign 8 points for total construction costs of $40,000 through $59,999.

(C) Assign 6 points for total construction costs of $60,000 through $79,999.

(D) Assign 4 points for total construction costs of $80,000 through $99,999.

(E) Assign 2 points for total construction costs of $100,000 or more.

(b) For a facility that retails motor fuel:

(A) Assign 10 points where no more than two other facilities that retail motor fuel are within 30 road miles.

(B) Assign 8 points where no more than two other facilities that retail motor fuel are within 25 road miles.

(C) Assign 6 points where no more than two other facilities that retail motor fuel are within 20 road miles.

(D) Assign 4 points where no more than two other facilities that retail motor fuel are within 15 road miles.

(E) Assign 2 points where no more than two other facilities that retail motor fuel are within 10 road miles.

(c) For facilities that retail motor fuel within an incorporated city:

(A) Assign 10 points for a facility located within a city with a population under 2,000.

(B) Assign 8 points for a facility located within a city with a population of 2,000 through 4,999.

(C) Assign 6 points for a facility located within a city with a population of 5,000 through 9,999.

(D) Assign 4 points for a facility located within a city with a population of 10,000 through 19,999.

(E) Assign 2 points for a facility located within a city with a population of 20,000 and greater.

(d) For facilities that retail motor fuel located outside an incorporated city:

(A) Assign 10 points for a facility located outside of an incorporated city and east of the Cascade mountain range summit including all of Hood River and Klamath counties.

(B) Assign 8 points for a facility located outside of an incorporated city and west of the Coast mountain range summit including all of Columbia, Coos, Curry, and Tillamook counties.

(C) Assign 6 points for a facility located outside of an incorporated city, east of the Coast mountain range summit, and west of the Cascade mountain range summit within Benton, Douglas, Jackson, Josephine, Lane, Linn, Marion, Polk, and Yamhill counties.

(D) Assign 4 points for a facility located outside of an incorporated city, east of the Coast mountain range summit, west of the Cascade mountain range summit, and outside of the Portland Metropolitan Service District within Clackamas, Multnomah and Washington counties.

(E) Assign 2 points for a facility located outside of an incorporated city and within the Portland Metropolitan Service District.

(e) Annual motor fuel throughput at a facility in gallons:

(A) Assign 10 points where the throughput is less than 100,000 gallons.

(B) Assign 8 points where the throughput is 100,000 through 199,999 gallons.

(C) Assign 6 points where the throughput is 200,000 through 299,999 gallons.

(D) Assign 4 points where the throughput is 300,000 through 399,999 gallons.

(E) Assign 2 points where the throughput is 400,000 gallons and greater.

(f) For a retail motor fuel facility:

(A) Assign 10 points where the previous two year average annual gross sales receipts are less than $250,000.

(B) Assign 8 points where the previous two year average annual gross sales receipts are $250,000 through $499,999.

(C) Assign 6 points where the previous two year average annual gross sales receipts are $500,000 through $749,999.

(D) Assign 4 points where the previous two year average annual gross sales receipts are $750,000 through $999,999.

(E) Assign 2 points where the previous two year average annual gross sales receipts are $1,000,000 or greater.

Note: Provide documentation for the gross sales receipts from all income sources at the facility. If the facility is less than two years old or the business records are not available for the past two years, the applicant may provide other documentation to establish the two year average annual gross sales receipts.

GENERAL PROVISIONS, GUARANTEED UNDERGROUND STORAGE TANK FACILITY LOAN

340-180-030 (1) Property owners, tank owners, and permittees of a UST facility that contains motor fuel may qualify to receive a guaranteed loan for soil remediation, UST upgrading, and UST replacement.

(2) The applicant for a guaranteed loan shall provide a minimum down payment of twenty percent (20%).

(3) The guaranteed loan must be issued by a commercial lending institution.

(4) The loan guarantee provided by the Department may be up to eighty percent of the loan principal, not to exceed $64,000 at any facility location.

Note: For example, for a $50,000 UST project, the applicant must provide a minimum 20 percent down payment ($10,000), the commercial lending institution may loan the remaining 80 percent ($40,000), and the Department may only guarantee 80 percent of the amount of money loaned. In this case the loan quarantee would be $32,000.

(5) Loan guarantees shall be issued in a priority order, in accordance with OAR 340-180-020 and OAR 340-180-060.

(6) Only one loan guarantee may be issued to each facility.

(7) The loan guarantee is limited to work for soil remediation at a facility where USTs contain motor fuel and work to upgrade or replace the underground storage tank systems containing an accumulation of motor fuel located at a facility where:

(a) the USTs are regulated by OAR Chapter 340, Division 150.

(b) UST system upgrading, retrofitting and replacement is performed by

licensed service providers in accordance with OAR 340-160-005 through -150,

(c) UST tightness testing and/or soil assessment was performed prior to issuance of a loan guarantee,

(d) performance of UST tightness testing and/or soil assessment was in accordance with OAR 340-170-010 through -080,

(e) each regulated underground storage tank has a valid UST permit, and

(f) work started after September 1, 1989 and is completed by August 31, 1992.

(8) Loan guarantees are not available to pay for soil remediation at a facility undergoing decommissioning, including tank removal or where tanks are being filled in place.

(9) Money from a loan guaranteed by the Department shall only be used for labor, material and equipment listed on the Department published eligible expense list.

APPLICATION FOR UNDERGROUND STORAGE TANK LOAN GUARANTEE CERTIFICATE

340-180-040 (1) Any person wishing to apply for a loan guarantee certificate for an underground storage tank loan shall submit a written application on a form provided by the Department. Applications shall be submitted within 180 days after completion of the UST tightness testing and/or soil assessment. All applications must be complete.

(2) Applications which are unsigned or which do not contain the required exhibits (clearly identified) will not be accepted by the Department and will be promptly returned to the applicant for completion. The application will not be considered complete until the requested information is received. The application will be considered to be withdrawn if the applicant fails to submit the requested information within 180 days of the request.

(3) Applications which are complete will be accepted by the Department for processing.

(4) Within 30 days after the application is determined complete, the Department will:

(a) assign a priority category, and

(b) establish a loan guarantee amount.

(5) If, upon review of an application, the Department determines that the loan guarantee application does not meet the requirements of the statutes and rules, the Department shall notify the applicant in writing of this determination. Such notification shall constitute final action by the Department on this application.

INFORMATION REQUIRED ON THE UST LOAN GUARANTEE CERTIFICATE APPLICATION

340-180-050 (1) The underground storage tank loan guarantee certificate application shall include:

(a) name, mailing address and telephone number of the applicant,

(b) name, mailing address and telephone number of the property owner, UST owner, and the permittee,

(c) signatures of the applicant, the property owner, the UST owner, and the permittee,

(d) UST facility name and location,

(e) UST permit numbers,

(f) date of the application,

(g) description of work at the UST facility including:

(A) Description of the work area including a sketch showing, but not limited to, property boundaries, location of structures, location and identification of the underground storage tanks containing an accumulation of motor fuel,

(B) Description of tank upgrade or replacement items and activities, including those items and activities that are not part of a UST system but are required because of construction interference, and

Note: Work qualifying for the loan guarantee certificate includes:

1. Modification, replacement, and installation of any portion of the UST system containing motor fuel including replacement of paving and structures located immediately over the UST systems and are required to be removed and replaced due to work on the UST systems.
2. Replacement of an underground storage tank system with an above ground storage tank system that meets existing state and local codes.
3. Installation of the underground portion of any required Stage I vapor recovery system or anticipated future Stage II vapor recovery system.
4. Soil remediation for soil contaminated with motor fuel including replacing excavated soil, paving and structures that are required to be removed during soil remediation.

(h) total project cost in the form of a bid, estimate, or paid invoices from a licensed UST service provider, identifying those items that qualify for the loan guarantee certification described by these rules,

Note: The total project cost will affect the priority for the loan guarantee application and the amount of the guarantee. The Department recommends that the applicant obtain three bids or estimates to identify an accurate total project cost. Where construction is completed prior to applying for a loan guarantee certificate the applicant may document project costs with paid invoices.

(i) a copy of the soil assessment and UST tightness testing Notice of Compliance from the Department, and

(j) the information required to determine the priority category for the facility:

(A) county,

(B) location of the facility east or west of the summits of the Coast and Cascade mountain ranges,

(C) city and city population as shown in the current Oregon Blue Book, if the facility is located within an incorporated city,

(D) location of the facility inside or outside of the Portland Metropolitan Service District,

(E) distance to nearest two facilities that retail motor fuel, in the shortest highway miles,

(F) gallons of motor fuel throughput during the last 12 months,

(G) annual gross sales receipts for previous two years for the business conducted at the facility,

(H) annual revenue receipts for previous two years for any nonprofit or

governmental entity, and.

(I) type of business at the facility including SIC code.

(2) The Department shall have access to books, documents, papers and records held by the applicant which are directly pertinent to qualifying for the loan guarantee certificate for the purpose of making audit, examination, excerpts and transcripts. The applicant shall maintain these records for three years after the initial loan date.

LOAN GUARANTEE CERTIFICATE

340-180-060 (1) In accordance with this part, the Department shall issue a loan guarantee certificate to an applicant who has filed a complete application.

(2) At the beginning of each month the Department shall determine the portion of the funds in the Underground Storage Tank Compliance and Corrective Action Fund that shall be used for the expenses of approved loan guarantee applications during the month. The portion dedicated to the loan guarantee expenses shall be distributed in the following manner.

(a) Sixty percent (60%) of the month funds shall be set aside for the expenses of category "A" loan guarantees.

(b) Thirty percent (30%) of the month funds shall be set aside for the expenses of category "B" loan guarantees.

(c) Ten percent (10%) of the month funds shall be set aside for the expenses of category "C" loan guarantees.

(d) Funds set aside within a category during any month shall be used to provide loan guarantee certificates for loan applications received during the previous month, first providing loan guarantee certificates to applications with the highest numerical ranking within the category, then to applications with the next highest numerical ranking within the category, and so on in numerical order, except:

(A) Within a category, any loan guarantee application not receiving a loan guarantee certificate during a month shall receive a loan guarantee certificate before any new application received during any subsequent month.

(B) Where loan applications have the same numerical ranking, the loan application with the earliest filing date shall receive a loan guarantee certificate first.

(e) At the end of the month, funds not used to provide loan guarantee certificates shall be added to the funds the Department makes available during the next month.

(f) Loan guarantee applications within a category that do not receive a loan guarantee certificate within the current month shall be funded first in time and in priority order within that category during the following month, and so on in subsequent months.

(3) The loan applicant may not assign any right, title, and interest in the loan guarantee certificate or the loan guarantee to any person other than a subsequent property owner, tank owner or permittee of the underground storage tank facility.

(4) Loan guarantee certificates shall be valid for 180 days or the termination date shown on the loan guarantee certificate.

LOAN GUARANTEE

340-180-070 (1) The Department shall issue a loan guarantee, not to exceed the lesser of eighty percent (80%) of the loan principal or $64,000, to a commercial lending institution for a loan to provide soil remediation, UST upgrading, and replacement of USTs at a facility containing motor fuel where:

(a) a loan guarantee certificate has been issued to the loan applicant,

(b) the loan guarantee does not provide a guarantee for work other than approved work authorized in 340-180-050,

(c) the loan is amortized with equal payments over the term of the loan where the interest rate is fixed, or with equal principal payments over the term of the loan where the interest rate is variable,

Note: To assure that funds are available from the UST Compliance and Corrective Action Fund (USTCCAF) to pay loan guarantees during the life of the loan, it is necessary for most loans to have equal payments over the term of the loan. The Department, however, recognizes that the lending policies may differ between commercial lending institutions and may differ between individual loans, particularly during construction. The Department expects that equal loan payments will start after construction is complete. The Department is willing to consider other loan arrangements and other loan repayment schedules subsequent to the initial loan, such as multiple loans and loan refinancing where USTCCAF monies are available to pay loan guarantees, upon default, in full. Each new loan arrangement may be approved by the Department on a case by case basis. The final maturity date of the loan may not exceed 10 years from the initial note date.

(d) the loan maturity date of the loan does not exceed 10 years from the initial closing date,

(e) the commercial lending institution has approved the loan, subject to receiving the loan guarantee from the Department, and

(f) the loan applicant or the commercial lending institution has provided the terms of the loan to the Department. The terms of the loan include but are not limited to:

(A) amount of loan,

(B) down Payment,

(C) interest rate,and

(D) the term of the loan from the initial note date.

(2) The loan guarantee shall terminate on the first to occur of:

(a) thirty (30) days after loan maturity date, including all extensions or renewals or extensions caused by the Department under 340-180-080(2)(b),

Note: For example, if the initial note has a five year maturity date it's maturity date may be extended beyond five years, but not past 10 years. The loan guarantee will terminate 30 days after the new maturity date. All of the above rules apply to any extension of the maturity date.

(b) upon payment of the loan guarantee to the commercial lending institution, or

(c) when the loan guarantee provided by the Department is replaced by a

loan guarantee provided by the U.S. Small Business Administration (SBA).

(3) The commercial lending institution shall notify the Department promptly when a loan guaranteed by the Department is paid in full or replaced with a S.B.A. loan guarantee.

(4) The payment of the loan guarantee is subject to monies being allocated and being available from the Underground Storage Tank Compliance and Corrective Action Fund.

Note: The funds available for payment of loan guarantees upon loan default is estimated to be $1,375,000, where 20% of the loans default during the life of the program. The Department expects to provide $13,752,000 in loan guarantees for approximately 245 loans, where the Department provides the guarantee throughout the life of the loan. It is expected that the SBA (U.S. Small Business Administration) will agree to provide their loan guarantee (takeout the loan) after the soil cleanup and UST construction work is complete, approximately six months after the Department issued the original loan guarantee. The Department encourages transfer of loan guarantees to the SBA or to conventional financing in order to increase the number of loan guarantees provided by the Department.

NOTICE OF DEFAULT ON A GUARANTEED LOAN

340-180-080 (1) Any commercial leading institution wishing to obtain payment from the Department under the Department's loan guarantee shall provide the following:

(a) Written notice from the commercial lending institution in the form of a demand for payment of the loan guarantee, stating:

(A) the guaranteed loan to the borrower is in default,

(B) the commercial lending institution has made a good faith effort to work with the borrower, using the institution's established procedures, to bring the loan back into good standing,

(C) demand for payment in full has been made to the borrower by the commercial lending institution, and

(D) the borrower has not paid the loan in full.

(b) The demand for payment of the loan guarantee shall include:

(A) a copy of the demand letter to the borrower from the commercial lending institution, and

(B) a statement showing the principal balance outstanding on the date the demand letter was sent to the borrower.

(2) Subject to the availability of funds from the Underground Storage Tank Compliance and Corrective Action Fund, the Department shall, within 30 days after receipt of the default notice,

(a) pay to the commercial lending institution the lesser of:

(A) the amount guaranteed by the Department, or

(B) the principal balance outstanding on the date the commercial lending institution sent the default notice to the Department, or

(b) where agreed upon by the commercial lending institution and where the borrower is unable to pay, the Department may make partial principal payments of the loan guarantee equal to the monthly loan principal payment for up to twelve monthly loan payments. If the loan is still in default after the Department has made twelve monthly payments, the Department will pay the loan

guarantee, pursuant to subsection (2)(a) of this section.

(3) If the commercial lending institution receives payment of the loan, in whole or in part, after the date of the default notice, the commercial lending institution shall promptly notify the Department in writing of such payment.

(4) Once the Department has paid the loan guarantee certificate in whole or in part, the commercial lending institution shall reimburse the Department for any collection of the principal portion on the unpaid loan at the guarantee percentage shown on the loan guarantee certificate. The reimbursement shall be in legal tender. The expenses of collection may be deducted from the reimbursement paid to the Department.

(5) The Department understands that collection may consist of cash, securities, notes, personal property, real property or any other form of payment accepted by the commercial lending institution. The reimbursement to the Department shall be after the collection has been converted to legal tender. Payment to the Department by the commercial lending institution shall be made within thirty days after any collection is converted into legal tender.

GENERAL PROVISIONS, INTEREST RATE SUBSIDY AND TAX CREDIT CERTIFICATE

340-180-090 (1) Commercial lending institutions making loans for soil remediation, UST upgrading, and replacement of UST systems containing motor fuel may qualify to receive an Oregon income tax credit.

(2) The Oregon income tax credit may not exceed the difference between the amount of finance charge charged during the taxable year including interest on the loan and interest on any loan fee financed at an annual rate of seven and one half percent (7.5%) and the amount of finance charge that would have been charged by the commercial lending institution during the taxable year, including any interest on the loan and interest on any loan fee financed at an annual rate charged for nonsubsidized loans. For purposes of calculating the income tax credit, the determination of the interest rate charged on a nonsubsidized loan (including any additional notes or replacement notes) shall be calculated by using a fixed annual interest rate equal to three percent above the publicly announced prime rate of interest of either United States National Bank of Oregon or First Interstate Bank of Oregon, N.A. in effect on the date of the initial note. The commercial lending institution shall choose which of the two banks prime rate it uses to make this calculation. The difference in income between the interest rate calculated in this manner and a 7.5 percent interest rate shall be the tax credit due the commercial lending institution.

(3) Income tax credits may be received where:

(a) the borrower pays seven and one half percent (7.5%) fixed interest rate,

(b) the loan is amortized with equal payments over the term of the loan.

Note: To assure that funds are available from the UST Compliance and Corrective Action Fund (USTCCAF) to pay interest rate subsidies during the life of the loan, it is necessary for most loans to have equal payments over the term of the loan. The Department, however, recognizes that the lending policies may differ between commercial lending institutions and may differ between individual loans, particularly during construction. The Department is willing

to consider other loan arrangements and other loan repayment schedules subsequent to the initial loan, such as multiple loans and loan refinancing where the interest rate subsidy conserves the USTCCAF monies so that all qualified interest rate subsidies are paid in full. Each new loan arrangement may be approved by the Department on a case by case basis. The final maturity date of the loan may not exceed 10 years from the initial note date.

(c) the loan maturity date does not exceed 10 years from the initial closing date,

(d) the borrower has received a tax credit certificate for an interest rate subsidy, and

(e) the loan applicant or the commercial lending institution has provided the terms of the loan to the Department. The terms of the loan include but are not limited to:

(A) amount of loan,

(B) down Payment,

(C) the nonsubsidized rate calculated in subsection (2) of this section,

(D) interest rate, and,

(D) the term of the loan from the initial note date.

(4) Only one interest rate subsidy may be issued to each facility.

(5) The interest rate subsidy is limited to loans for work for soil remediation at a facility where USTs contain motor fuel and work to upgrade or replace the underground storage tank systems containing an accumulation of motor fuel located at a facility where:

(a) the USTs are regulated by OAR Chapter 340, Division 150 and 40CFR 280,

(b) UST system upgrading, retrofitting and replacement is performed by licensed service providers in accordance with OAR 340-160-005 through -150,

(c) UST tightness testing and/or soil assessment was performed prior to application for a loan,

(d) UST tightness testing and soil assessment was performed in accordance with Department regulations,

(e) each regulated underground storage tank has a valid UST permit, and

(f) the loan is provided by a commercial lending institution.

(6) An Oregon income tax credit may be paid on loans provided by a commercial lending institution that are not guaranteed by the Department where the borrower has received a tax credit certificate from the Department.

(7) The commercial lending institution shall file for the Oregon income tax credit during their regular state income tax filing.

Note: The funds available for Oregon tax credits are estimated to total $3,874,000 over the life of the program, providing tax credits for approximately 245 loans. These 245 loans may be the same as or different from the proposed 245 loans guaranteed under OAR 340-180-070. When the Department has issued tax credit certificates that create a demand of approximately $3,874,000 on the UST Compliance and Corrective Action Fund the Department will recommend to the Environmental Quality Commission to set the maximum interest rate on loans at 7.5%. Since it is doubtful that any commercial lending institution will issue a 7.5% loan, the effective action will be to stop the subsidized interest rate program. The Department believes that this intended action is consistent with the legislative intent

to fund the Oregon income tax credit out of the UST Compliance and Corrective Action Fund.

APPLICATION FOR TAX CREDIT CERTIFICATE

340-180-100 (1) Any person wishing to obtain a Tax Credit Certificate for an interest rate subsidy on a loan for soil remediation, UST upgrading, and replacement of UST systems containing motor fuel shall submit a written application on a form provided by the Department.

(2) The underground storage tank loan interest rate subsidy application shall include all information required under Section 340-180-050(1)(a) through (j) of these rules.

(3) Applications which are unsigned or which do not contain the required exhibits (clearly identified) will not be accepted by the Department and will be promptly returned to the applicant for completion. The application will not be considered complete until the requested information is received. The application will be considered to be withdrawn if the applicant fails to submit the requested information within 180 days of the request.

(4) Applications which are complete will be accepted by the Department for processing.

(5) Within 30 days after the application is complete for processing, the Department will approve or deny the issuance of a Tax Credit Certificate.

(6) If, upon review of an application, the Department determines that the application does not meet the requirements of the statutes and rules, the Department shall notify the applicant in writing of this determination. Such notification shall constitute final action by the Department on this application.

Note: Work qualifying for the Tax Credit Certificate includes:

1. Modification, replacement, and installation of any portion of the an UST system containing motor fuel including replacement of paving and structures located immediately over the UST systems.
2. Replacement of an underground storage tank system with an above ground storage tank system that meets existing state and local codes.
3. Installation of the underground portion of any required Stage I vapor recovery system or anticipated future Stage II vapor recovery system.
4. Soil remediation for soil contaminated with motor fuel including replacing excavated soil, paving and structures that are required to be removed during soil remediation.

(9) The Department shall have access to books, documents, papers and records held by the applicant which are directly pertinent to qualifying for the tax credit certificate for the purpose of making audit, examination, excerpts and transcripts. The applicant shall maintain these records for three years after the initial loan date.

TAX CREDIT CERTIFICATE

340-180-110 (1) In accordance with this part, the Department shall issue a tax credit certificate to an applicant who has filed a complete application.

(2) Funds collected and deposited into the Underground Storage Tank Compliance and Corrective Action Fund may be used to pay this Oregon income tax credit. The Department will pay to the Oregon Department of Revenue, no less than once each quarter year, all valid income tax credits claimed for interest rate reimbursement by the commmercial lending institutions against Underground Storage Tank Tax Credit Certificates.

(3) Tax credit certificates shall be issued on a first come first serve basis. The application with the earliest filing date shall receive a tax credit certificate first.

(4) The applicant may not assign any right, title, and interest in the tax credit certificate to any person other than a subsequent property owner, tank owner or permittee of the underground storage tank facility.

(5) Tax credit certificates shall be valid for 180 days or the termination date shown on the tax credit certificate.

NOTICE OF COMPLIANCE FOR SOIL REMEDIATION

340-180-120 (1) A person wishing to obtain a written notice of compliance for soil remediation shall submit a written application on a form provided by the Department. The application shall include:

(a) the name and mailing address of the applicant,

(b) the signature of the applicant,

(c) the UST facility name and location,

(d) the UST permit numbers,

(e) the date of the application,

(f) the completion date of the soil remediation,

(g) description, including a sketch showing, but not limited to, property boundaries, location of structures, location and identification of tanks including tank contents, and identification of soil assessment sites, and

(h) findings including, but not limited to, results of laboratory tests, soil matrix calculations, and tank tightness tests.

(2) Applications which are obviously incomplete, unsigned, or which do not contain the required exhibits (clearly identified) will not be accepted by the department and will be returned to the applicant for completion.

(3) Applications which appear complete will be accepted by the department for processing.

(4) Within 30 days after receipt, the Department will determine if the facility meets the Department's cleanup standards and will provide a written determination of compliance.

February 13, 1990
RULE3080.ZZZ

Attachment B
Agenda Item I-2
3-2-90 EQC Meeting

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF ADOPTING OAR Chapter 340 Division 180	)))	STATEMENT OF NEED FOR RULES

Statutory Authority

ORS 466.705 through ORS 466.995 authorizes rule adoption for the purpose of regulating underground storage tanks. Chapter 1071, Oregon Law 1989 (HB3080) authorizes the Commission to adopt rules establishing a reimbursement grant, loan guarantee, and interest subsidy program to provide financial assistance to persons responsible for underground storage tanks, containing an accumulation of motor fuel, so that they may meet Environmental Protection Agency (EPA) requirements and obtain financial responsibility coverage.

Need for the Rules

The proposed rules are needed to carry out the authority given to the Commission to adopt rules for establishing the loan guarantee and interest rate subsidy program for commercial lending institutions who provide loans for soil remediation and upgrading or replacing underground storage tanks that contain an accumulation of motor fuel. The loan guarantee is limited to eighty percent (80%) of the loan principal, up to a maximum of $64,000. The borrower must provide a twenty percent (20%) down payment. 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 seven and one half percent (7.5%) loan and three percent (3%) above the prime rate of either the United States National Bank of Oregon or First Interstate Bank of Oregon, N.A. selected on the date of the initial loan by the commercial lending institution.

Failure to adopt the rules will result in serious prejudice to the public interest, and particularly to persons responsible for underground storage tanks containing motor fuel, because reduced financial assistance could cause significant financial hardship to the tank owner resulting in closure of businesses retailing motor fuel. Closure of retail motor fuel facilities would reduce fuel supplies to the motoring public, particularly in the rural and remote areas of Oregon.

Principal Documents Relied Upon

OAR 466.705 through 466.835, 466.895 and 466.995, 1989.

40 CFR 280, September 23, 1988.

Fiscal and Economic Impact

Fiscal Impact

The revenue for the reimbursement grant and loan guarantee program is generated by a regulatory fee on petroleum products of $10 per withdrawal from a bulk loading facility. The revenue is expected to total $3,000,000 per year. Failure to adopt the rules would allow the Department to use the revenue set aside for the loan guarantee and interest rate reimbursement program for other expenses of the underground storage tank program.

Small Business Impact

The majority of businesses owning and operating underground storage tanks (USTs) are classified as small business. Federal regulations require owners and operators of underground storage tanks to demonstrate financial responsibility of up to $1,000,000 by October 26, 1990 for cleanup and third party damages resulting from a release from an underground storage tank. Underwriters will likely require a contamination free facility plus requiring that the tanks be upgraded to federal standards for new tanks. The proposed loan guarantee and interest rate subsidy program will encourage commercial lending institutions to provide loans for upgrading underground storage tanks to businesses that would not otherwise qualify because of the environmental risk associated with underground storage tanks. The program allows the Department to guarantee up to sixty four percent of the project cost to a maximum of $64,000 on a loan made by a commercial lending institution for soil remediation and upgrading or replacement of USTs. Additionally, the program may provide interest rate an subsidy for the difference between seven and one half percent interest rate and the interest rate that would be charged for a nonsubsidized loan made under like terms and conditions at the same institution. This program will allow qualified persons to upgrade their facility and qualifying for insurance to meet the financial responsibility requirements of the EPA regulations. The program will be able to provide loan guarantees and interest rate subsidies for 245 facilities, an expenditure of $4,462,000.

February 12, 1990
NDFSCLN2.302

NEIL GOLDSCHMIDT
GOVERNOR

Attachment C
Agenda Item I-2
3-2-90 EQC Meeting

Department of Environmental Quality

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

DATE: February 12, 1990

TO: Environmental Quality Commission

FROM: Larry D. Frost

SUBJECT: Hearing Report Summary
and
Responsiveness Summary

On September 8, 1989, the Environmental Quality Commission authorized five Public Hearings on proposed rules for the underground storage tank loan guarantee and interest rate subsidy rules. Public hearings were held at 3:30 P.M. on:

- o December 11, 1989 in Bend, Oregon
- o December 12, 1989 in Pendleton, Oregon
- o December 12, 1989 in Portland, Oregon
- o December 14, 1989 in Medford, Oregon
- o December 15, 1989 in Eugene, Oregon

A thirty minute informational meeting was held prior to each hearing to describe and answer questions on the loan guarantee and interest rate subsidy programs.

The following persons either testified verbally at one of the hearings or submitted written comments as shown below:

Name/Representing	Verbal	Written/Date
Cedric L. Hayden State Representative, District 38		December 30, 1989
Steven Wilson Cascade Earth Sciences, Ltd.		December 22, 1989
H.C. Wright Wright Chevrolet	*	December 12, 1989

Bernard G. Younker Corbett, Oregon		December 12, 1989
Mike Hawkins Hawk Oil Company	*	December 14, 1989
Steve Wilson Cascade Earth Sciences, Ltd.	*	December 12, 1989
Victor A. Klinger Lexington Chevron	*	December 12, 1989

COMMENT AND RESPONSE TO COMMENTS ON PROPOSED RULES

Qualifying for Loan Guarantee

COMMENT (Wilson): An owner should be able to qualify for a loan on an existing tank upgrade or replacement if the work was done after September 1, 1989.

DEPARTMENT RESPONSE: The facility upgrade or replacement performed after September 1, 1989 would qualify for the loan guarantee and interest rate subsidy program if all other qualifications were met.

The loans Should Be Financed 90% or 100%

COMMENT (Barnett, Hayden) More small business retailers would be helped with a higher loan guarantee (perhaps 90%). The loans should be guaranteed at 100 percent so an owner could obtain 100% bank financing.

DEPARTMENT RESPONSE: The loan guarantee was set at a maximum of 80 percent by the statute. The Department could issue guarantees at less than 80 percent.

Qualification of Cardlock and Keylock Fueling Operations

COMMENT (Klinger): The legislation was set up to provide grants to facilities that retail gasoline to the general public. Cardlock and keylock operations do not qualify as retail motor fuel facilities. The DEQ will not be operating within the scope of the law if loan guarantees and interest rate subsidies are given to cardlock operations.

DEPARTMENT RESPONSE: For the purpose of these rules the Office of the Attorney General has determined that cardlock and keylock operations do not

meet the requirements for a facility retailing motor fuel to the general public. Cardlock/keylock operations will still qualify for a loan guarantee, however, will not qualify for as many points as a retail facility. The cardlock/key lock facility will qualify for an interest rate subsidy on a first come first serve basis like other motor fuel facilities.

The Point Evaluation System is Unfair

COMMENT (Hayden): The point evaluation system is not fair to the small retail service station. The points should be distributed in accordance with the ability to pay rather than gross income and motor fuel throughput.
DEPARTMENT RESPONSE: The Department developed the point evaluation system in response to the statute, by giving priority to small businesses that retail motor fuel by assigning maximum points for low sales and motor fuel throughput. The commercial lending institutions are responsible for evaluating the borrowers ability to repay the loan.

COMMENT (Hayden): Rural towns located away from large towns are not treated fairly by the point system. A town standing alone in a rural area should be given additional points.

DEPARTMENT RESPONSE: It is true that a small rural incorporated town with two other gas stations may not receive maximum points, thus may be at a disadvantage to another unincorporated town with only one gas station. The Department does not believe this will occur often enough to warrant changing the point system. The point system was designed to allow small rural businesses to qualify for a loan guarantees in preference to large urban businesses.

COMMENT (Hawkins): The priority system does not benefit the small retail fuel operations that are located adjacent to metropolitan areas. Most of those businesses do not have the money to upgrade their tanks without some financial help. The loan guarantee and interest rate subsidy programs should be designed to help them. I would like to seem these stations qualify within Category 1 or Category 2.

DEPARTMENT RESPONSE: The statute requires the program to give preference to small retail facilities in rural locations so that fuel will be available throughout the state. Unfortunately, a retail fueling facility within a large metropolitan area does not meet these criteria.

COMMENT (Hayden): Add a numerical category that would take into account community effects so that historical neighbor patterns of use can be considered.

DEPARTMENT RESPONSE: The Department does not know how this could be

accomplished without developing another method of weighting each of the applications.

COMMENT (Younker): The rules giving priority to retail motor fuel locations are too restrictive. Other tanks, such as heating oil tanks and small residential tanks, should be regulated and included in the scope of these rules.

DEPARTMENT RESPONSE: The statute limits these financial assistance programs to facilities with underground storage tanks containing motor fuel.

Program Benefits

COMMENT (Wright): The rules, as written, will not help very many of the small businesses, particularly those in Eastern Oregon. In a survey I conducted of seventeen service stations in nine towns, all indicated that they would not be able to afford to upgrade their tanks to meet the new requirements. They would not be helped with the loan guarantee/interest rate subsidy programs since they could not afford to make the loan payments.

DEPARTMENT RESPONSE: Unfortunately the statute and these programs are designed to help those businesses who have adequate income to pay back the loans.

February 12, 1990
COMLNSM.302

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: March 2, 1990
Agenda Item: J
Division: Regional Operations
Section: Enforcement

SUBJECT:

Department Enforcement Policy and Civil Penalty Procedure: Request for Adoption of Proposed Amendments.

PURPOSE:

Adopt revisions to the Department of Environment Quality's (Department) current enforcement and civil penalty rules based on the experience of working with the new system in order to improve it. Also to make the field burning program subject to the same enforcement policy and procedures as the rest of the Department's programs.

ACTION REQUESTED:

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

___ Authorize Rulemaking Hearing
_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:

On March 3, 1989, the Environmental Quality Commission (Commission) adopted rules which codified the Department's enforcement policy and drastically changed the Department's civil penalty determination procedures. At that time, the Commission requested that the Department report within six months on how the new rules were working and on the need for any changes.

On October 19, 1989, the Department reported to the Commission on the implementation of the rules and recommended changes based on the Department's experience in working with the rules.

On December 1, 1989, the Commission authorized the Department to conduct public hearings on the proposed rules in order to receive public testimony. The hearings were held on January 5 and 8, 1990, in Portland, Oregon. The Hearings Officer's Report is attached (Attachment G). Public comments were received until January 16, 1990. The Department's response to the comments and oral testimony received at the hearings is attached (Attachment H).

At this time, the Department is requesting the Commission to adopt the proposed rules as modified after consideration of public comments and further review by the Department. The changes are necessary to clarify some areas of confusion, to make Chapter 340, Division 12 (Enforcement Procedures and Civil Penalties) applicable to the field burning program, to classify new violations in the areas of oil transport and oil spills, and to make housekeeping changes. The changes are described more fully in the October 19, 1989, report to the Commission (Attachment J).

AUTHORITY/NEED FOR ACTION:

x	Required by Statute:	House Bill 3493 & Senate Bill 1038 Amending ORS 468.130, 468.140 & 468.780 - 468.815	Attachment E
	Enactment Date:	1989	
x	Statutory Authority:	ORS 468.130 & 468.140	Attachment F
___	Pursuant to Rule:	_____	Attachment ___

___ Pursuant to Federal Law/Rule: _____ Attachment ___

___ Other: Attachment ___

___ Time Constraints: (explain)

DEVELOPMENTAL BACKGROUND:

___ Advisory Committee Report/Recommendation Attachment ___
_x_ Hearing Officer's Report/Recommendations Attachment G
_x_ Response to Testimony/Comments Attachment H
_x_ Prior EQC Agenda Items: (list)
Agenda Item R, December 1, 1989 Attachment I
_x_ Other Related Reports/Rules/Statutes:
Attachment J
___ Supplemental Background Information Attachment ___

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The rule revisions do not affect the major thrust of the enforcement program and should have little or no effect on the majority of the regulated community. The regulated community is generally aware of the rules and how they work. However, the field burning program was originally exempted from the rules. The Department is now proposing to make that program subject to the rules. Subjecting the field burning program to these rules would assure that all the members of the regulated community are treated similarly.

PROGRAM CONSIDERATIONS:

The Department believes that the enforcement rules have achieved much of the consistency for which the Department has been striving. It has helped the Department prioritize violations and its enforcement actions. It has also provided more consistency in determining penalty amounts. However, the implementation of the rules has demonstrated the need for clarification and changes in several areas. Review of the rules demonstrates that several housekeeping changes are necessary also.

The Department believes that all programs under its jurisdiction should be enforced in a fair and consistent manner. This requires that field burning enforcement and civil penalty determinations be incorporated into the rules.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Revise Division 12 as modified consistent with public testimony and further review, and repeal OAR 340-26-025 (Attachment K, Chapter 340, Division 26, Field Burning Schedule of Civil Penalties). Revising the rules as modified would result in the current enforcement procedures being applicable to all the Department's programs. This will aid the Department in achieving its goal of overall consistency in enforcement. Revising the rules would also add the newly authorized civil penalties in areas created by the 1989 legislature and allow the Department to make necessary housekeeping changes.

2. Revise Division 12 as originally proposed and repeal OAR 340-26-025. This alternative would achieve the same goals as alternative 1 but would leave out changes that the Department believes would be helpful to the rules' overall effectiveness.

3. Do not revise Division 12. If the rules are not revised, enforcement procedures governing the field burning program would be inconsistent with those governing the rest of the Department's programs. Failure to revise the rules would also limit the Department's ability to assess civil penalties under new laws passed by the 1989 legislature.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission adopt the rules as modified (Alternative 1).

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

At the time the current enforcement rules were adopted, the Commission requested the Department to report to the Commission within six months on how the rules were working. That report was presented to the Commission at its October 19, 1989 workshop. The proposed revisions are the result of the Commission's review and are consistent with the Commission's directive and its strategic plan.

ISSUES FOR COMMISSION TO RESOLVE:

Whether the Commission concurs with staff responses to public comments and subsequent modifications to the proposed rules.

INTENDED FOLLOWUP ACTIONS:

File adopted rules with the Secretary of State.

Implement adopted rules when effective.

Approved:

Section: Dan A. Kollias

Division: Ed Woods for TR Bispham

Director: Fred Hansen

Report Prepared By: Yone C. McNally

Phone: 229-5152

Date Prepared: January 31, 1990

YCM:ycm
EQCMAR2S.REP
February 14, 1990

Attachment A

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

ENFORCEMENT PROCEDURE AND CIVIL PENALTIES

POLICY
340-12-026
(1) The goal of enforcement is to:
(a) Obtain and maintain compliance with the Department's statutes, rules, permits and orders;
(b) Protect the public health and the environment;
(c) Deter future violators and violations; and
(d) Ensure an appropriate and consistent statewide enforcement program.
(2) Except as provided by 340-12-040(3), the Department shall [will] endeavor by conference, conciliation and persuasion to solicit compliance. [prior to initiating and following issuance of any enforcement action.]
(3) Subject to subsection (2) of this section, the Department shall address all documented violations in order of seriousness at the most appropriate level of enforcement necessary to achieve the goals set forth in subsection (1) of this section under the particular circumstances of each violation.
(4) Violators who do not comply with initial enforcement action shall be subject to increasing levels of enforcement until compliance is achieved.
(Statutory Authority: ORS CH 468)

DEFINITIONS
340-12-030
Unless otherwise required by context, as used in this Division:
(1) "Class One Equivalent" or "Equivalent" means two Class Two violations or one Class Two and two Class Three violations or three Class Three violations.
(2)[(1)] "Commission" means the Environmental Quality Commission.
(3)[(2)] "Compliance" means meeting the requirements of the Commission's and Department's statutes, rules, permits or orders.
(4)[(3)] "Director" means the Director of the Department or the Director's authorized deputies or officers.
(5)[(4)] "Department" means the Department of Environmental Quality.
(6)[(5)] "Documented Violation" means any violation which the Department or other government agency verifies through observation, investigation or data collection.
(7)[(6)] "Enforcement" means any documented action taken to address a violation.
(8)[(7)] "Flagrant" means any documented violation where the respondent had actual knowledge of the law and had consciously set out to commit the violation.
(9)[(8)] "Formal Enforcement" means an administrative action signed by the Director or Regional Operations Administrator [or authorized representatives or deputies] which is issued to a Respondent on the basis that a violation has been documented, requires the Respondent to take specific action within a specified time frame and states consequences for continued noncompliance.

(10)[(9)] "Intentional", [when used with respect to a result or to conduct described by a statute, rule, permit, standard or order defining a violation,] means Respondent consciously and voluntarily took an action or omitted to take action and knew the probable consequences of so acting or omitting to act [that a person acts with a conscious objective to cause the result or to engage in the conduct so described].

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

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

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

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

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

(14)[(13)] "Prior [Violation] Significant Action" means any violation proven pursuant to a contested case hearing, or established with or without admission of a violation by payment of a civil penalty, by an order of default, or a stipulated or final order of the Commission or the Department.

(15) "Residential Opening Burning" means the open burning of any wastes, except rubber and petroleum based products prohibited by OAR 340-23-042(2), generated by a single family dwelling and conducted by an occupant of the dwelling.

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

(17)[(15)] "Risk of Harm" means the level of risk created by the likelihood of exposure, either individual or cumulative, or the actual damage, either individual or cumulative, caused by a violation to public health or the environment. Risk of harm shall be categorized as major, moderate or minor.

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

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

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

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

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

(Statutory Authority: ORS CH 468)

CONSOLIDATION OF PROCEEDINGS
340-12-035
Notwithstanding that each and every violation is a separate and distinct offense, and in cases of continuing violation, each day's continuance is a separate and distinct violation, proceedings for the assessment of multiple civil penalties for multiple violations may be consolidated into a single proceeding.
(Statutory Authority: ORS CH 468)

PRIOR NOTICE AND EXCEPTIONS [NOTICE OF VIOLATION]
340-12-040
(1) Except as provided in subsection (3) of this section, prior to the assessment of any civil penalty the Department shall serve a Notice of Violation upon the respondent. Service shall be in accordance with rule 340-11-097.
(2) A Notice [of Violation] shall be in writing, specify the violation and state that the Department will assess a civil penalty if a [the] violation continues or occurs after five days following receipt of the notice.
(3) (a) [A] The above Notice [of Violation] shall not be required where the respondent has otherwise received actual notice of the violation not less than five days prior to the violation for which a penalty is assessed.
(b) No advanced notice, written or actual, shall be required under subsections (1) and (2) of this section if:
(A) The act or omission constituting the violation is intentional;
(B) The violation consists of disposing of solid waste or sewage at an unauthorized disposal site;
(C) The violation consists of constructing a sewage disposal system without the Department's permit;
(D) The water pollution, air pollution, or air contamination source would normally not be in existence for five days;
(E) The water pollution, air pollution, or air contamination source might leave or be removed from the jurisdiction of the Department;
(F) The penalty to be imposed is for a violation of ORS 466.005 to 466.385 relating to the management and disposal of hazardous waste or polychlorinated biphenyls, or rules adopted or orders or permits issued pursuant thereto.; or
(G) The penalty to be imposed is for a violation of ORS 468.893(8) relating to the control of asbestos fiber releases into the environment, or rules adopted thereunder.
(Statutory Authority: ORS CH 459, 466 & 468)

ENFORCEMENT ACTIONS
340-12-041
(1) Notice of Noncompliance. An enforcement action which:
(a) Informs a person of the existence of a violation, the actions required to resolve the violations and the consequences of continued noncompliance. The notice may specify a time by which compliance is to be achieved and that the need for formal enforcement action will be evaluated;
(b) Shall be issued under the direction of the appropriate Regional Manager, or Section Manager or authorized representative;

(c) Shall be issued for[, but is not limited to,] all classes of documented violations[.] ;

(d) Satisfies the requirements of OAR 340-12-026(2).

(2) Notice of Violation and Intent to Assess a Civil Penalty. A formal enforcement action which:

(a) Is issued pursuant to OAR 340-12-040;

(b) May include a time schedule by which compliance is to be achieved;

(c) Shall be issued by the Regional Operations Administrator;

(d) Shall be issued for [, but is not limited to,] the first occurrence of a documented Class One violation which is not excepted under OAR 340-12-040(3)(b), or the repeated or continuing occurrence of documented Class Two or Three violations where a Notice of Noncompliance has failed to achieve compliance or satisfactory progress toward compliance.

(3) Notice of Violation and Compliance Order. A formal enforcement action which:

(a) Is issued pursuant to ORS 466.190 for violations related to the management and disposal of hazardous waste;

(b) Includes a time schedule by which compliance is to be achieved;

(c) Shall be issued by the Director;

(d) May be issued for[, but is not limited to,] all [classes of] documented violations related to hazardous waste [which require more than sixty (60) days after the notice to correct].

(4) Notice of Civil Penalty Assessment. A formal enforcement action which:

(a) Is issued pursuant to ORS 468.135, and OAR 340-12-042 and 340-12-045;

(b) Shall be issued by the Director;

(c) May be issued for[, but is not limited to,] the occurrence of any Class of documented violation excepted by OAR 340-12-040(3), for any class of repeated or continuing documented violations or where a person has failed to comply with a Notice of Violation and Intent to Assess a Civil Penalty or Order.

(5) Enforcement Order. A formal enforcement action which:

(a) Is issued pursuant to ORS Chapters 183, 454, 459, 466, 467 or 468;

(b) May be in the form of a Commission or Department Order, or a Stipulated Final Order;

(A) Commission Orders shall be issued by the Commission, or the Director on behalf of the Commission;

(B) Department Orders shall be issued by the Director;

(C) Stipulated Final Orders:

(i) May be negotiated between the Department and the subject party;

(ii) Shall be signed by the Director on behalf of the Department and the authorized representative of the subject party; and

(iii) Shall be approved by the Commission or by the Director on behalf of the Commission.

(c) May be issued for, but is not limited to, Class One or Two violations.

(6) The formal enforcement actions described in subsection (1) through (5) of this section in no way limit the Department or Commission from seeking legal or equitable remedies in the proper court as provided by ORS Chapters 454, 459, 466, 467 and 468.

(Statutory Authority: ORS CHS 454, 459, 466, 467 and 468)

CIVIL PENALTY SCHEDULE MATRICES

340-12-042

In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to the Commission's or Department's statutes, regulations, permits or orders by service of a written notice of assessment of civil penalty upon the respondent. The amount of any civil penalty shall be determined through the use of the following matrices in conjunction with the formula contained in OAR 340-12-045:

(1)

$10,000 Matrix

← Magnitude of Violation

Class 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 the 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;

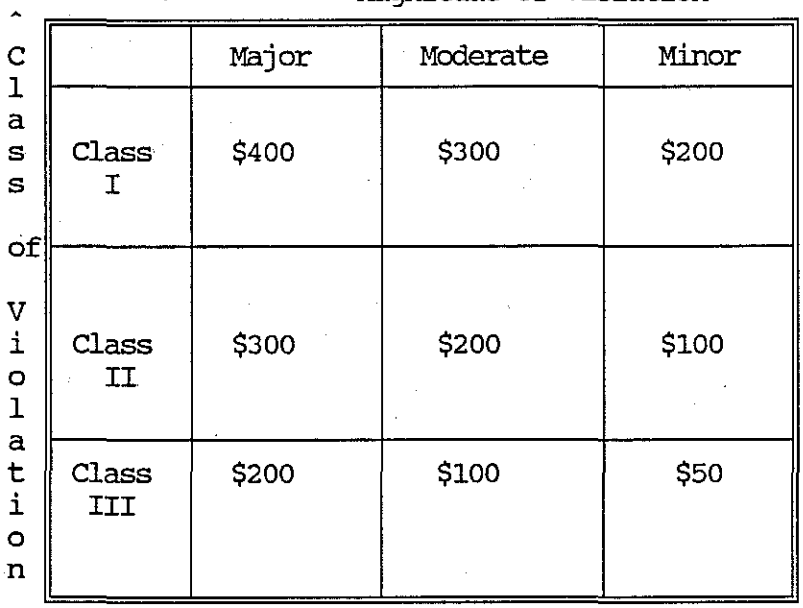
(g) Any violation related to polychlorinated biphenyls management and disposal statutes; and

(h) Any violation ORS 466.540 to 466.590 related to environmental cleanup [remedial action] statutes, rules, agreements or orders.

(2) Persons causing oil spills through an intentional or negligent act shall incur a civil penalty of not less then one hundred dollars ($100) or more than twenty thousand dollars ($20,000). The amount of the penalty shall be determined by doubling the values contained in the matrix in subsection (a) of this rule in conjunction with the formula contained in 340-12-045.

(3)

$500 Matrix



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)

CIVIL PENALTY DETERMINATION PROCEDURE

340-12-045

(1) When determining the amount of civil penalty to be assessed for any violation, the Director shall apply the following procedures:

(a) Determine the class of violation and the magnitude of each violation;

(b) Choose the appropriate base penalty established by the matrices of 340-12-042 based upon the above finding;

(c) Starting with the base penalty (BP), determine the amount of penalty through application of the formula BP + [(.1 x BP)(P + H + E + O + R + C)] where:

(A) "P" is whether the respondent has any prior [violations] significant actions relating to [of] statutes, rules, orders and permits pertaining to environmental quality or pollution control. The values for "P" and the finding which supports each are as follows:

(i) 0 if no prior [violations] significant actions, the prior [~~violation~~] significant action described in [~~subsection~~] subparagraph (ii) is greater than three years old, or there is insufficient information on which to base a finding;

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

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

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

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

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

(vii) 6 if the prior [violations] significant actions are [two or more unrelated Class Ones, three or more unrelated Class Twos, six or more unrelated Class Threes, an identical Class One, two identical Class Twos or five identical Class Threes] five Class Ones or equivalents, or the prior ~~[violations]~~ significant actions described in ~~[subsection]~~ subparagraph (viii) are greater than three years old;

(viii) 7 if the prior ~~[violations]~~ significant actions are six Class Ones of equivalents, or the prior ~~[violations]~~ significant actions described in ~~[subsection]~~ subparagraph (ix) are greater than three years old;

(ix) [(viii)] 8 if the prior [violations] significant actions are [two or more identical Class Ones, three or more identical Class Twos, or six or more identical Class Threes.] seven Class Ones or equivalents, of the prior ~~[violations]~~ significant actions described in ~~[subsection]~~ subparagraph (x) are greater than three years old;

(x) 9 if the prior ~~[violations]~~ significant actions are eight Class Ones or equivalents, or the prior ~~[violations]~~ significant actions described in ~~[subsection]~~ subparagraph (xi) are greater than three years old;

(xi) 10 if the prior ~~[violations]~~ significant actions are nine Class Ones of equivalents.

(B) "H" is past history of the respondent taking all feasible steps or procedures necessary or appropriate to correct any prior significant actions [violations]. The values for "H" and the finding which supports each are as follows:

(i) -2 if violator took all feasible steps to correct any violation;

(ii) 0 if there is no prior history or insufficient information on which to base a finding;

(iii) 1 if violator took some, but not all, feasible steps to correct a Class Two or Three violation;

(iv) 2 if violator took some, but not all, feasible steps to correct a Class One violation;
(v) 3 no action to correct prior significant actions [violations].

(C) "E" is the economic condition of the respondent. The values for "E" and the finding with supports each are as follows:
(i) 0 to -4 if economic condition is poor, subject to subsection (4) of this section;
(ii) 0 if there is insufficient information on which to base a finding, [or] the respondent gained no economic benefit through noncompliance, or the respondent is economically sound;
(iii) 2 if the respondent gained a minor to moderate economic benefit through noncompliance;
(iv) 4 if the respondent gained a significant economic benefit through noncompliance.

(D) "O" is whether the violation was a single occurrence or was repeated or continuous during the period resulting in the civil penalty assessment. The values for "O" and the finding which supports each are as follows:
(i) 0 if single occurrence;
(ii) 2 if repeated or continuous.

(E) "R" is whether the violation resulted from an unavoidable accident, or a negligent or intentional act of the respondent. The values for "R" and the finding which supports each are as follows:
(i) -2 if unavoidable accident;
(ii) 0 if insufficient information to make any other finding;
(iii) 2 if negligent;
(iv) 4 if grossly negligent;
(v) 6 if intentional;
(vi) 10 if flagrant.

(F) "C" is the violator's cooperativeness in correcting the violation. The values for "C" and the finding which supports each are as follows:
(i) -2 if violator is cooperative;
(ii) 0 if violator is neither cooperative nor uncooperative or there is insufficient information on which to base a finding;
(iii) 2 if violator is uncooperative.

(2) In addition to the factors listed in subsection (1) of this rule, the Director may consider any other relevant rule of the Commission and shall state the affect the consideration had on the penalty. On review, the Commission shall consider the factors contained in subsection (1) of this rule and any other relevant rule of the Commission.

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

(4) In any contested case proceeding or settlement in which Respondent has raised economic condition as an issue, Respondent has the responsibility of providing [written or other] documentary evidence concerning its economic condition. In determining whether to mitigate a penalty based on economic condition, the Commission or Department may consider the causes and circumstances of Respondent's economic condition.
(Statutory Authority: ORS CH 468)

WRITTEN NOTICE OF ASSESSMENT OF CIVIL PENALTY; WHEN PENALTY PAYABLE
340-12-046

(1) A civil penalty shall be due and payable when the respondent is served a written notice of assessment of civil penalty signed by the Director. Service shall be in accordance with rule 340-11-097.

(2) The written notice of assessment of civil penalty shall substantially follow the form prescribed by rule 340-11-098 for a notice of opportunity for a hearing in a contested case, and shall state the amount of the penalty or penalties assessed.

(3) The rules prescribing procedure in contested case proceedings contained in Division 11 shall apply thereafter.
(Statutory Authority: ORS CH 468)

COMPROMISE OR SETTLEMENT OF CIVIL PENALTY BY DIRECTOR
340-12-047

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

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

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

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

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

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

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

(f) The relative strength or weakness of the Department's case;
(Statutory Authority: ORS CH 468)

STIPULATED PENALTIES
340-12-048

Nothing in OAR Chapter 340 Division 12 shall affect the ability of the Commission or Director to include stipulated penalties in a Stipulated Final Order or any agreement issued under ORS 466.570 or 466.577, or ORS Chapters 454, 459, 466, 467 or 468. [of up to $10,000 per day for each violation of such orders or agreements issued pursuant to ORS Chapters 466 or 468, or of

up to $500 per day for each violation of such orders or agreements issued pursuant to ORS Chapters 454, 459 or 467.]
(Statutory Authority: ORS CH 454, 459, 466, 467 & 468)

CIVIL PENALTY FOR VIOLATIONS NOT SUBJECT TO OAR 340-12-042 AND OAR 340-12-045 ~~[CIVIL PENALTY FOR DAMAGE CAUSED BY OIL SPILL]~~
340-12-049
In addition to any other penalty provided by law, the following violations are subject to the civil penalties specified below:

(1) Any person who wilfully of negligently causes an oil spill shall incur a civil penalty commensurate with the amount of damage incurred. The amount of the penalty shall be determined by the Director with the advice of the Director of Fish and Wildlife. In determining the amount of the penalty, the Director may consider the gravity of the violation, the previous record of the violator and such other considerations the Director deems appropriate.

(2) Any person planting contrary to the restriction of subsection (1) of ORS 468.465 pertaining to the open field burning of cereal grain acreage shall be assessed by the Department a civil penalty of $25 for each acre planted contrary to the restrictions.

(3) Whenever an underground storage tank fee is due and owing under ORS 466.785 or 466.795, the Director may issue a civil penalty not less twenty-five dollars ($25) nor more than one hundred dollars ($100) for each day the fee is due and owing.

(4) Any owner or operator of a confined animal feeding operation who has not applied for or does not have a permit required by ORS 468.740 shall be assessed a civil penalty of $500.

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

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

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

(c) Each elk, $750.

(d) Each silver gray squirrel, $10.

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

(f) Each wild turkey, $50.

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

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

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

(j) Each bobcat or fisher, $350.

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

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

~~[In addition to any other penalty provided by law, any person who wilfully or negligently causes an oil spill shall incur a civil penalty commensurate with the amount of damage incurred. Notwithstanding OAR 340 12 042(2) and OAR 340 12 045, the amount of the penalty shall be determined by the Director with the advice of the Director of Fish and Wildlife. In determining the amount of the penalty, the Director may consider the gravity of the violation, the previous record of the violator and such other considerations the Director deems appropriate.]~~
(Statutory Authority: ORS CHS 466 & 468)

AIR QUALITY CLASSIFICATION OF VIOLATIONS
340-12-050
Violations pertaining to air quality shall be classified as follows:
(1) Class One:
(a) [(n)] Violation of a Commission or Department Order, or variance;
(b) [(a)] Exceeding an allowable emission level such that an ambient air quality standard is exceeded.
(c) [(b)] Exceeding an allowable emission level [such that emissions of potentially dangerous amounts] of a [toxic or otherwise] hazardous air pollutant [substance are emitted].
(d) [(c)] Causing emissions that are [potentially] a hazard to public safety;
(e) [(d)] Failure to comply with Emergency Action Plans or allowing excessive emissions during emergency episodes;
(f) [(e)] Constructing or operating a source without an Air Contaminant Discharge Permit;
(g) [(f)] Modifying a source with an Air Contaminant Discharge Permit without first notifying and receiving approval from the Department;
(h) [(g)] Violation of a compliance schedule in a permit;
(i) [(h)] Violation of a work practice requirement which results in or creates the likelihood for public exposure to asbestos or release of asbestos into the environment;
(j) [(i)] Storage of friable asbestos material or asbestos-containing waste material from an asbestos abatement project which results in or creates the likelihood for public exposure to asbestos or release of asbestos into the environment;
(k) [(j)] Visible emissions of asbestos during an asbestos abatement project or during collection, processing, packaging, transportation, or disposal of asbestos-containing waste material;
(l) [(k)] Violation of a disposal requirement for asbestos-containing waste material which results in or creates the likelihood of exposure to asbestos or release of asbestos into the environment;
(m) [(l)] Advertising to sell, offering to sell or selling an uncertified wood stove;
(n) [(m)] Illegal open burning, including stack burning, which poses a major risk of harm to public health or the environment [~~[Illegal] open burning of materials prohibited by OAR 340 23 042(2)]~~;
[(n) Violation of a Commission or Department Order;]
(o) Causes or allows open field burning without first obtaining ~~[and readily demonstrating]~~ a valid open field burning permit;

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

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

(r) Fails to immediately and actively extinguish all flames and smoke sources when any propane flaming results in visibility impairment on any Interstate Highway or Roadway specified in OAR 837-110-080(1) and (2);

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

(t) [(o)] Any other violation related to air quality which poses a major risk to public health or the environment.

(2) Class Two:

(a) Allowing discharges of a magnitude that, though not actually likely to cause an ambient air violation, may have endangered citizens;

(b) Exceeding emission limitations in permits or [air quality] rules;

(c) Exceeding opacity limitations in permits or [air quality] rules;

(d) Violating standards for fugitive emissions [dust], particulate deposition, or odors in permits or [air quality] rules;

(e) Illegal open burning, including stack burning, which poses a moderate risk of harm to public health or the environment [other than field burning, not otherwise classified];

[(f) Illegal residential open burning;]

(f)[(g)] Failure to report upset or breakdown of air pollution control equipment, or an emission limit violation;

(g)[(h)] Violation of a work practice requirement for asbestos abatement projects which are not likely to result in public exposure to asbestos or release of asbestos into the environment;

(h)[(i)] Improper storage of friable asbestos material or asbestos-containing waste material from an asbestos abatement project which is not likely to result in public exposure to asbestos or release of asbestos into the environment;

(i)[(j)] Violation of a disposal requirement for asbestos-containing waste material which is not likely to result in public exposure to asbestos or release of asbestos to the environment;

(j)[(k)] Conduct of an asbestos abatement project by a contractor not licensed as an asbestos abatement contractor;

(k)[(l)] Failure to provide notification of an asbestos abatement project;

(l)[(m)] Failure to display permanent labels on a certified woodstove;

(m)[(n)] [Any] [a]Alteration of a certified woodstove permanent label;

(n) ~~[(o)]~~ Failure to use vapor control equipment when transferring fuel;

(o) ~~[(p)]~~ Failure to file a Notice of Construction or permit application;

(p) ~~[(q)]~~ Failure to submit a report or plan as required by permit;

(q) ~~[(r)]~~ 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 ~~[Violation of any other requirement of OAR Chapter 340, Division 26 pertaining to open field burning not otherwise classified]~~;

(r) ~~[(s)]~~ Causing or allowing a propane flaming operation to be conducted in a manner which causes or allows an open flame to be sustained;

(s) [(o)] Any other violation related to air quality which poses a moderate risk of harm to public health or the environment.

(3) Class Three:

[(a) Failure to file a Notice of Construction or permit application;]

[(b) Failure to report as a condition of a compliance order or permit;]

(a) [(c)] Illegal open burning, including stack burning, which poses a minor risk of harm to public health or the environment [[Any] ~~[v]Violation of a hardship permit for open burning of yard debris]~~;

(b) [(d)] Improper notification of an asbestos abatement project;

(c) [(e)] Failure to comply with asbestos abatement certification, licensing, certification, or accreditation requirements not elsewhere classified;

(d) [(f)] Failure to display a temporary label on a certified wood stove;

[(g) Failure to notify Department of an emission limit violation on a timely basis;]

[(h) Failure to submit annual or monthly reports required by rule or permit;]

(e) Violation of any other requirement of OAR Chapter 340, Division 26 pertaining to open field burning and propane flaming operations which is not otherwise classified;

(f) [(i)] Any other violation related to air quality which poses a minor risk of harm to public health or the environment.

~~[(4) In addition to any other penalty provided by law, any person planting contrary to the restriction of subsection (1) of ORS 468.465 pertaining to the open field burning of cereal grain acreage shall be assessed by the Department a civil penalty of $25 for each acre planted contrary to the restrictions.]~~

(Statutory Authority: ORS CH 468)

NOISE CONTROL CLASSIFICATION OF VIOLATIONS

340-12-052

Violations pertaining to noise control shall be classified as follows:

(1) Class One:

(a) Violation of a Commission or Department order or variance;

(b) [(a)] Violations that exceed [daytime or night time ambient] noise standards by ten (10) decibels or more;

(c) [(b)] Exceeding the ambient degradation rule by five (5) decibels or more;

[(c) Significant noise emission standards violations of either duration or magnitude due to sources or activities not likely to remain at the site of the violation;]

[(d) Any violation of a Commission or Department order or variances;] or

(d) Failure to submit a compliance schedule required by OAR 340-35-035(2);

(e) Operating a motor sports vehicle without a properly installed or well-maintained muffler or exceeding the noise standards set forth in OAR 340-35-040(2);

(f) Operating a new permanent motor sports facility without submitting and receiving approval of projected noise impact boundaries;

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

(h) Violation of motor racing curfews set forth in OAR 340-35-040(6);

(i) [(f)] Any other violation related to noise control which poses a major risk of harm to public health or the environment.

(2) Class Two:

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

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

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

(3) Class Three:

(a) Violations that exceed noise standards by one (1) or two (2) decibels; [Activities that threaten or potentially threaten to violate rules and standards;]

[(b) Failure to meet administrative requirements that have no direct impact on the public health, welfare, or environment;]

[(c) Single violations of noise standards that are not likely to be repeated;]

(b) [(d)] Any other violation of related to noise control which poses a minor risk of harm to public health or the environment.

(Statutory Authority: ORS CH 467 & 468)

WATER QUALITY CLASSIFICATION OF VIOLATIONS

340-12-055

Violations pertaining to water quality shall be classified as follows:

(1) Class One:

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

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

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

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

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

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

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

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

(i) Failure of any ship carrying oil to have financial assurance as required in ORS 468.780 to 468.815 or rules adopted thereunder;

(j) [(h)] Any other violation related to water quality which poses a major risk of harm to public health or the environment.

(2) Class Two:

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

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

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

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

(e) Failure by any ship carrying oil to keep documentation of financial assurance on board or on file with the Department as required by ORS 468.780 to 468.815 or rules adopted thereunder;

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

(3) Class Three:

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

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

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

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

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

(Statutory Authority: ORS CH 468)

ON-SITE SEWAGE DISPOSAL CLASSIFICATION OF VIOLATIONS

340-12-060

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

(1) Class One:

(a) Violation of a Commission or Department order;

(b)[(a)] Performing, advertising or representing one's self as being in the business of performing sewage disposal services without first obtaining and maintaining a current sewage disposal service license from the Department, except as provided by statute or rule;

(c)[(b)] Installing or causing to be installed an on-site sewage disposal system or any part thereof, without first obtaining a permit from the Agent;

(d)[(c)] Disposing of septic tank, holding tank, chemical toilet, privy or other treatment facility contents in a manner or location not authorized by the Department;

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

[(e) Operating or using an on-site sewage disposal system which is failing by discharging sewage or effluent onto the ground surface or into surface public waters;]

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

[(g) Any violation of a Commission or Department order;]

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

(f) [(h)] Any other violation related to on-site sewage disposal which poses a major risk of harm to public health, welfare, safety or the environment.

(2) Class Two:

(a) Installing or causing to be installed an on-site sewage disposal system, or any part thereof, which fails to meet the requirements for satisfactory completion within thirty (30) days after written notification or posting of a Correction Notice at the site;

(b) Operating or using a nonwater-carried waste disposal facility without first obtaining a letter of authorization from the Agent therefore;

(c) Operating or using a newly constructed, altered or repaired on-site sewage disposal system, or part thereof, without first obtaining a Certificate of Satisfactory Completion from the Agent, except as provided by statute or rule;

(d) As a licensed sewage disposal service worker, provides any sewage disposal service in violation of the rules of the Commission;

(e) Failing to obtain an authorization notice from the agent prior to affecting change to a dwelling or commercial facility that results in the potential increase in the projected peak sewage flow from the dwelling or commercial facility in excess of the sewage disposal systems peak design flow.

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

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

(h) Operating or using an on-site sewage disposal system which is failing by discharging sewage or effluent onto the ground surface or into surface public water;

(i) [(f)] Any other violation related to on-site sewage disposal which poses a moderate risk of harm to public health, welfare, safety or the environment.

(3) Class Three:

(a) In situations where the sewage disposal system design flow is not exceeded, placing an existing system into service, or changing the dwelling or type of commercial facility, without first obtaining an

authorization notice from the agent, except as otherwise provided by rule or statute;

(b) Any other violation related to on-site sewage disposal which poses a minor risk of harm to public health, welfare, safety or the environment.

(Statutory Authority: ORS CH 468)

SOLID WASTE MANAGEMENT CLASSIFICATION OF VIOLATIONS

340-12-065

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

(1) Class One:

(a) Violation of a Commission or Department Order;

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

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

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

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

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

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

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

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

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

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

(k) [(i)] Any other violation related to the management and disposal of solid waste which poses a major risk to public health or the environment.

(2) Class Two:

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

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

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

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

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

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

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

(h) Any other violation related to the management and disposal of solid waste which poses a moderate risk of harm to public health or the environment.

(3) Class Three:

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

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

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

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

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

(f) [Any] [f]Failure to comply with recycling requirements;

(g) Any other violation related to the management and disposal of solid waste which poses a minor risk of harm to public health or the environment.

(Statutory Authority: ORS CH 459)

SOLID WASTE TIRE MANAGEMENT CLASSIFICATION OF VIOLATIONS

340-12-066

Violations pertaining to the storage, transportation and management of waste tires shall be classified as follows:

(1) Class One:

(a) Violation of a Commission or Department order;

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

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

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

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

(e) Hiring or otherwise using an unpermitted waste tire carrier to transport waste tires[, except as provided by statute or rule];

(f) Failure to provide access to premises or records; [Any violation of a Commission or Department order;]

(g) Any other violation related to the storage, transportation or management of waste tires which poses a major risk of harm to public health or the environment.

(2) Class Two:

(a) [Any] [v]Violation of a waste tire storage site or waste tire carrier permit other than a specified Class One or Class Three violation;

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

(c) [(b)] Any other violation related to the storage, transportation or management of waste tires which poses a moderate risk of harm to public health or the environment.

(3) Class Three:

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

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

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

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

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

(f) Any other violation related to the storage, transportation or management of waste tires which poses a minor risk of harm to public health or the environment.

(Statutory Authority: ORS CH 459)

UNDERGROUND STORAGE TANK CLASSIFICATION OF VIOLATIONS

340-12-067

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

(1) Class One:

(a) Violation of a Commission or Department Order;

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

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

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

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

(f) [(d)] Installation of an underground storage tank in violation of the standards or procedures adopted by the Department;

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

(g) [(f)] Providing installation, retrofitting, decommissioning or testing services on an underground storage tank without first registering or obtaining an underground storage tank service providers license;

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

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

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

(k) [(h)] Any other violation related to underground storage tanks which poses a major risk of harm to public health and the environment.

(2) Class Two:

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

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

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

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

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

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

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

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

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

(j) [(g)] Failure by a seller or distributor to obtain the tank permit number prior to depositing product into the underground storage tank or failure to maintain a record of the permit numbers;

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

(l) [(i)] Any other violation related to underground storage tanks with poses a moderate risk of harm to public health or the environment.

(3) Class Three:

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

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

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

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

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

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

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

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

(i) [(e)] Failure to maintain adequate decommissioning records;

(j) [(f)] Failure by the tank owner to provide the permit number to persons depositing product into the underground storage tank;

(k) [(g)] Any other violation related to underground storage tanks which poses a minor risk of harm to public health and the environment.

[(4) Whenever an underground storage tank fee is due and owing under ORS 466.785 or 466.795, the Director may issue a civil penalty not less twenty-five dollars ($25) nor more than one hundred dollars ($100) for each day the fee is due and owing.]
(Statutory Authority: ORS Chapter 466)

HAZARDOUS WASTE MANAGEMENT AND DISPOSAL CLASSIFICATION OF VIOLATIONS
340-12-068
Violations pertaining to the management and disposal of hazardous waste shall be classified as follows:

(1) Class One:

(a) Violation of a Department or Commission order;

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

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

(d)[(c)] Failure to comply with the ninety (90) day storage limit by a fully regulated generator where there is a gross deviation from the requirement;

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

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

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

(h)[(g)] Failure to prevent the unknown entry or prevent the possibility of the unauthorized entry of persons or livestock into the waste management area of a TSD facility;

(i)[(h)] Failure to properly handle ignitable, reactive, or incompatible wastes as required under 40 CFR Part 264 and 265.17(b)(1), (2), (3), (4) and (5);

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

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

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

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

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

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

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

(q)[(p)] Failure of an owner/operator of a TSD facility to retain an independent registered professional engineer to oversee closure activities and certify conformance with an approved closure plan;

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

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

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

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

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

(w)[(v)] Failure to label hazardous waste containers where such failure could cause an inappropriate response to a spill or leak and substantial harm to public health or the environment;

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

(y)[(x)] Failure to comply with the export requirements;

[(y) Violation of a Department or Commission order;]

(z) Violation of a Final Status Hazardous Waste Management Permit;

(aa) Systematic failure to comply with OAR 340-102-041, generator quarterly reporting requirements;

(bb) Systematic failure to comply with OAR 340-104-075, Treatment, Storage, Disposal and Recycling facility periodic reporting requirements;

(cc) Construct or operate a new treatment, storage or disposal facility without first obtaining a permit;

(dd) Installation of inadequate groundwater monitoring wells such that detection of hazardous waste or hazardous constituents that migrate from the waste management area cannot be immediately be detected;

(ee) Failure to install any groundwater monitoring wells;

(ff) Failure to develop and follow a groundwater sampling and analysis plan using proper techniques and procedures;

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

(hh) [(gg)] Any other violation related to the generation, management and disposal of hazardous waste which poses a major risk of harm to public health or the environment.

(2) Any other violation pertaining to the generation, management and disposal of hazardous waste which is either not specifically listed as, or otherwise meets the criteria for, a Class One violation is considered a Class Two violation.

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

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

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

(c) Each elk, $750.

(d) Each silver gray squirrel, $10.

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

(f) Each wild turkey, $50.

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

(h) Each salmon or steelhead trout, $125.
(i) Each fur-bearing mammal other than bobcat or fisher, $50.
(j) Each bobcat or fisher, $350.
(k) Each specimen of any wildlife species whose survival is specified by the wildlife laws or the laws of the United States as threatened or endangered, $500.
(l) Each specimen of any wildlife species otherwise protected by the wildlife laws or the laws of the United, but not otherwise referred to in this section, $25.]
(Statutory Authority: ORS CH 466)

OIL AND HAZARDOUS MATERIAL SPILL AND RELEASE CLASSIFICATION OF VIOLATIONS
340-12-069
Violations pertaining to spills or releases of oil or hazardous materials shall be classified as follows:
(1) Class One:
(a) Violation of a Commission or Department Order;
(b) Failure to provide access to premises or records;
(c)[(a)] Failure by any person having ownership or control over oil or hazardous materials to immediately cleanup spills or releases or threatened spills or releases [as required by ORS 466.205, 466.645, 468.795 and OAR Chapter 340, Divisions 47 and 108];
[(b) Any violation of a Commission or Department Order;]
(d) Failure by any person having ownership or control over oil or hazardous materials to immediately report all spills or releases or threatened spills or releases in amounts greater than the reportable quantity;
(e) [(c)] Any other violation related to the spill or release of oil or hazardous materials which poses a major risk of harm to public health or the environment.
(2) Any other violation related to the spill or release of oil or hazardous materials which poses a moderate risk of harm to public health or the environment is a Class Two violation.
[Class Two:
(a) Failure by any person having ownership or control over oil or hazardous materials to immediately report all spills or releases or threatened spills or releases in amounts greater than the reportable quantity listed in OAR 340-108-010 to the Oregon Emergency Management Division;
(b) Any other violation related to the spill or release of oil or hazardous materials which poses a moderate risk of harm to public health or the environment.]
(3) Any other violation related to the spill or release of oil or hazardous materials which poses a minor risk of harm to public health or the environment is a Class Three violation.
[Class Three:
(a) Any other violation pertaining to the spill or release of oil or hazardous materials which poses a minor risk of harm to public health or the environment.]
(Statutory Authority: ORS CH 466)

PCB CLASSIFICATION OF VIOLATIONS
340-12-071
Violations pertaining to the management and disposal of polychlorinated biphenyls (PCB) shall be classified as follows:

(1) Class One:

(a) Violation of a Commission or Department Order;

(b)[(a)] Treating or disposing of PCBs anywhere other than at a permitted PCB disposal facility:

(c)[(b)] Establishing, constructing or operating a PCB disposal facility without first obtaining a permit;

[(c) Any violation of an order issued by the Commission or the Department;]

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

(e) [(d)] Any other violation related to the management and disposal of PCBs which poses a major risk of harm to public health or the environment.

(2) Class Two:

(a) Violating [any] a condition of a PCB disposal facility permit;

(b) Any other violation related to the management and disposal of PCBs which poses a moderate risk of harm to public health or the environment.

(3) Any other violation related to the management and disposal of PCBs which poses a minor risk of harm to public health or the environment is a Class Three violation.

[Class Three:

(a) Any other violation related to the management and disposal of PCBs which poses a minor risk of harm to public health or the environment.]
(Statutory Authority: ORS Chapter 466)

ENVIRONMENTAL CLEANUP CLASSIFICATION OF VIOLATIONS
340-12-073
Violations of ORS 466.540 through 466.590 and related rules or orders pertaining to environmental cleanup shall be classified as follow:

(1) Class One:

(a) Violation of a Commission or Department order;

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

[(a) Failure to allow entry under ORS 466.565(2);]

[(b) Violation of an order requiring remedial action;]

[(c) Violation of an order requiring removal action;]

(c) [(d)] Any other violation related to environmental cleanup which poses a major risk of harm to public health or the environment.

(2) Class Two:

(a) Failure to provide information under ORS 466.565(1);

[(b) Violation of an order requiring a Remedial Investigation/ Feasibility Study;]

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

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

[Class Three:
(a) Violation of an order requiring a preliminary assessment;
(b) Any other violation related to environmental cleanup which poses a minor risk of harm to public health or the environment.]
(Statutory Authority: ORS Chapter 466)

SCOPE OF APPLICABILITY
340-12-080
[The a]Amendments to OAR 340-12-026 to 12-080 shall only apply to formal enforcement actions issued by the Department on or after the effective date of such amendments and not to any contested cases pending or formal enforcement actions issued prior to the effective date of such amendments. Any contested cases pending or formal enforcement actions issued prior to the effective date of [the] any amendments shall be subject to OAR [340-12-030] 340-12-026 to [12-073] 340-12-080 as prior to amendment.

ATTACHMENT B
Agenda Item J
3/2/90 EQC Meeting

STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS 183.335(1), this statement provides information on Environmental Quality Commission's intended action to adopt a rule.

(1) Legal Authority:

ORS 468.130 requires the Commission to adopt civil penalty schedules in order to effectuate its civil penalty authority.

Senate Bill 1038 authorizes the Department to seek civil penalties for violations related to the failure of a ship carrying oil to have financial assurance.

House Bill 3493 authorizes the Department to seek civil penalties in the amount commensurate to damage caused by a willfull or negligent oil spill.

(2) Need for Rule:

On March 3, 1989, the Commission adopted rules which codified the Department's enforcement policy and drastically changed the Department's civil penalty detertemination procedures. At that time, the Commission requested that the Department report within in six months on how the new rules were working and on the need for any changes. The Department reported to the Commission on October 19, 1989. The proposed revisions are based on the Department's experience in working with the rules.

(3) Principal Documents Relied Upon:

Senate Bill 1038; House Bill 3493; ORS Chapters 454, 459, 466, and 468; Report to the Environmental Quality Commission, October 19, 1989. These documents are available for review at the Department of Environmental Quality, Regional Operations, 10th floor, 811 SW Sixth Avenue, Portland, OR 97204.

LAND USE CONSISTENCY STATEMENT

The proposed rule does not affect land use as defined in the Department's coordination program approved by the Land Conservation and Development Commission.

Yone C. McNally
229-5152
January 31, 1990

Attachment C
Agenda Item J
3/2/90 EQC Meeting

FISCAL AND ECONOMIC IMPACT STATEMENT

The newly proposed rules, as the current rules, would have no direct fiscal or economic impact on individuals, public entities, and small and large businesses as the adoption of these rules set forth the procedure that Department is to follow. The adoption of these rules, by itself, will not require the expenditure of funds by any group within the regulated community as these rules do not require an affirmative act in order to come into compliance. The rules do not place any additional duties on the regulated communities in order to maintain compliance. There is no fiscal or economic on small business as a result of these rules.

The fiscal and economic impact of the proposed rules will come into play when a violation occurs. The actual fiscal impact would then depend on the type of violation, its seriousness and other factors including the violator's compliance history. In many instances, a violation would result in no fiscal impact as a civil penalty would not be assessed due to advance notice requirements. Thus, the fiscal and economic impact of the proposed rules would be highly individualized depending on the type of violation and the circumstances surrounding it. Depending on the activity engaged in, the total fiscal impact would be no greater than $500 or $10,000 per day of violation.

The fiscal and economic impact on small business would also be individualized. A small business is treated the same as all other regulated entities, including individuals, under these rules. Thus, a small business would only be affected if a violation warranted a civil penalty. The economic condition of each entity receiving a civil penalty is taken consideration when determining the penalty amount.

Yone C. McNally
229-5152
January 31, 1990

ATTACHMENT D
Agenda Item J
3/2/90 EQC Meeting

PROPOSED REVISION OF OREGON ADMINISTRATIVE RULES CHAPTER 340, DIVISION 12, CIVIL PENALTY RULES

NOTICE OF PUBLIC HEARING

Date Prepared: October 29, 1989
Hearing Date: January 8, 1990
Comments Due: January 16, 1990

WHO IS AFFECTED: People to whom Oregon's air quality, noise pollution, water quality, solid waste, on-site sewage disposal and hazardous waste and materials regulations may apply.

WHAT IS PROPOSED: The DEQ is proposing to revise the civil penalty rules, OAR 340-12-026 through 12-080.

WHAT ARE THE HIGHLIGHTS:

1. Proposed State Rule Revisions:

>The application of the Department's enforcement policy and civil penalty procedures to field burning violations.
>The classification of violations related to the transporting of oil by ships which fail to obtain financial assurance as required by Senate Bill 1038.
>The authority to assess civil penalties in the amount commensurate with damage caused by willful or negligent oil spills as authorized by House Bill 3493.

HOW TO COMMENT: Copies of the complete proposed rule package may be obtained from the Regional Operations Division, Enforcement, in Portland (811 S.W. Sixth Avenue, Tenth Floor) or the regional office nearest you. For further information, contact Van A. Kollias at 229-6232.

A public hearing will be held before a hearings officer at:

2:00 p.m.
Friday, January 8, 1990
DEQ Offices, Fourth Floor
811 S.W. Sixth Avenue, Portland, Oregon

Oral and written comments will be accepted at the public hearing. Written comments may be sent to the DEQ Enforcement Section, 811 S.W. Sixth Avenue, Tenth Floor, Portland, OR

97204. Written comments must be received no later than 5:00 p.m., January 16, 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 may come on February 23, 1990, as part of the agenda of the regularly scheduled Commission meeting. A Statement of Need, Fiscal and Economic Impact Statement, and Land Use Consistency Statement are attached to this notice.

div12pn2

Attachment G

MEMORANDUM

To: Environmental Quality Commission

From: Nancy L. Hogan, Hearings Officer Nancy L. Hogan

Subject: Agenda Item J, March 2, 1990 EQC Meeting

Hearings Officer's Report on Proposed Revisions to Oregon Administrative Rule Chapter 340, Division 12, Enforcement Policy and Civil Procedures

Public hearings were held at 2:00 p.m. on Friday, January 5, 1990 and Monday, January 8, 1990 to receive testimony concerning proposed changes to Chapter 340, Division 12, Civil Penalty Rules. The proposed changes were necessary to make Division 12 applicable to the field burning program, to classify new violations in the areas of oil transport and oil spills and to make housekeeping changes. No testimony was received on January 5, 1990. Testimony was received on January 8, 1990 from interested people and is summarized below.

Lee Poe, Chairperson of the North Portland Odor Abatement Committee, stated that odor should be considered a pollutant and not a nuisance; odor pollution is easier to measure than previously thought and is certainly easier to control than noise pollution; DEQ should consider the fiscal and economic impact that odor and noise have on the residential area of North Portland; and DEQ should also respond to the topic of livability for communities, keeping in mind the emotional and psychological effect that odors and noise have on citizens.

Harry Demaray resubmitted written comments submitted during the comment period for the previous revisions to Division 12 (adopted March 3, 1989), and provided oral testimony concerning additional changes. Mr. Demaray suggested changes to the Department's policy, definitions, and enforcement concerning oil spills. Mr. Demaray's written testimony is attached to this report.

Michael Vernon stated that the proposed rule changes should take into account air quality with regard to odor; the rules adopted on March 3, 1989 side stepped House Bill 2931 which would have given the Department civil penalties by law with respect to odor violations; House Bill 2931 was defeated because Representative Ron Cease did not hold public hearings on the bill; DEQ's in-house rules have never been used in North Portland; and DEQ and EQC should concern itself less with the interests of industry and more with the environmental interests of the state.

No further testimony was offered. The public hearing record was closed at 3:15 p.m. The record was left open to receive written comments until 5 p.m., January 16, 1990.

Attachment H
Agenda Item J
3/2/90 EQC Meeting

SUMMARY AND RESPONSE TO WRITTEN COMMENTS
AND COMMENTS RECEIVED AT THE PUBLIC HEARING

OAR 340-12-026 POLICY

Comment: Environmental Quality Commission should determine whether civil penalties should be assessed.

Harry Demaray commented that an additional section be added to the rules which requires the Environmental Quality Commission (EQC) to review all enforcement referrals for which Department staff recommended a civil penalty but for which no penalty was issued. This section would authorize the EQC to determine whether the Department should assess a civil penalty.

Response:

The Department believes that such a practice would violate due process of law. The EQC acts as the appeal body for all civil penalties issued by the Department. Due process guarantees an impartial body for purposes of appeal. If the EQC were given the authority to decide whether penalties should be issued, that authority would interfere with its ability to act as an impartial appeals body.

OAR 340-12-030 DEFINITIONS

Comment: Changes to "intentional" and "flagrant".

Mr. Demaray commented that the Department should change the definition of "flagrant" to include situations where reasonable knowledge of the law could be inferred. Mr. Demaray also proposed that the Department not make any changes to the definition of "intentional".

Response:

While the Department agrees that ignorance of the law is no excuse, the Department proposes not to make any changes to the definition of "flagrant". Under the Department's laws, a violator is strictly liable in most cases for any violations caused. The term "flagrant" has no purpose but to help the Department determine the amount of a penalty to assessed, not whether a penalty should be assessed. As it only applies to the amount of the penalty, the Department believes it should only be used in the worst situations where a violator has demonstrated utter disregard for the environment and the Department's authority.

The Department believes that it is necessary to change the definition of intentional. As explained in the Department's October, 1989 Report to the Commission (contained in Attachment I), it believes that the change is more in keeping with the civil nature of the Department's authority. The current definition comes from the Oregon Criminal Code and is more stringent than is necessary for the Department's purposes. The definition is also designed to cover narrow forms of conduct and thus does not work well when applied to the Department's laws where conduct is described in very broad terms. Experience with the current definition has determined that it is almost impossible to prove intent unless the violator specifically admits intent to violate the environmental laws.

Comment: Changes to the definition of "Prior Violation".

Mr. Demaray commented that the definition be changed to include any violation documented by the Department. Terrence Virnig of Chem Security Systems, Inc., commented that the phrase be changed from "prior violation" to "prior significant action" and the definition changed to include formal enforcement actions that do not result in an admission of a violation by a respondent.

Response:

The Department disagrees with Mr. Demaray. The current definition includes only violations which have been established through the due process of law. The Department firmly believes that this is necessary before any violation can be used to elevate subsequent penalties.

The Department agrees with changes proposed by Mr. Virnig and proposes to change the term to "prior significant actions" and change the definition to include formal enforcement actions regardless of whether a violation is admitted. This change will allow the Department the ability to count any prior civil penalty action or order in later civil penalty determinations.

Comment: Definition of "Magnitude" lacks technical data and refinement.

State Representative Cedric Hayden commented that the definition of "magnitude" is imprecise and requires a supporting technical framework.

Response:

The weakness of the term "magnitude" has been known to the Department since its proposal in November, 1988. To date, the

Department has found no better definition, nor have any been suggested. Attempts at a technically based definition have proved cumbersome at best because of the number of variables involved in determining magnitude in any given case. Thus, the current method the Department uses is one in which current cases are compared with similar past cases in order to assure that findings of magnitude are consistent statewide. It is at this point that any technical data available is used to support the magnitude finding. For a further discussion, see Attachment J.

OAR 340-12-040 PRIOR NOTICE AND EXCEPTIONS

Comment: Change Language.

Mr. Demaray commented that subsection (1) of this rule should be changed to read "Notice of Noncompliance" from "Notice of Violation".

Response:

A Notice of Noncompliance is a specific kind of enforcement action created by OAR 340-12-041(1) in order to better implement the Department's statutory mission. It is not statutorily created. The action described by OAR 340-12-040(1) is a legal requirement of Oregon Revised Statute (ORS) 468.125(1) in situations where the Department is not authorized to seek civil penalties without prior notice. The Department does not believe that the Notice of Noncompliance created by OAR 340-12-041(1) meets the requirements of OAR 340-12-040(1) or ORS 468.125(1) and does not constitute prior notice as described by this rule. Thus, the Department believes that changing the language of this rule as suggested would result in the confusion the Department was attempting to eliminate by changing the heading of the section.

OAR 340-12-042 CIVIL PENALTY MATRICES

Comment: Use of the Matrix System.

Mr. Hayden commented that the matrix system treats dissimilar violations similarly and should be weighted to reflect that some programs have more serious violations than others. Donald Haagensen, writing for the Oregon Seed Council, commented that the $10,000 matrix should be halved for field burning regulations. Mr. Haagensen argues that a halving of the matrix would allow field burning penalties to remain at their "historical" level.

Response:

The Department believes that Division 12, as a whole, does represent a weighted enforcement system and recognizes that some violations represent more serious long range problems than others. The Department has statutory authority to seek civil penalties up to $10,000 in the areas listed under OAR 340-12-042(1). The Department believes that it is extremely important to exercise this authority to its full extent. The Department admits that since the matrix applies to all programs, it appears that violations which may have more serious long range effects are treated no more harshly than other violations. If one examines the specific classifications, if becomes clear that many violations, for example in the areas of hazardous waste and asbestos, are considered Class I violations even though there may be no tangible harm at the time the violation occurs. Violations in other areas regulated by the Department, especially air and water pollution, generally result in immediate harm. The Department believes that the enforcement procedures represent a weighted system because the classification system recognizes the existence of long term risk and treats them seriously before the harm becomes tangible.

The Department disagrees that field burning violations should be covered by a separate matrix which halves the $10,000 matrix. The Department has the authority to seek civil penalties up to $10,000 for field burning violations pursuant to ORS 468.140(3). It does not see any reason to treat the field burning industry any differently than any other regulated entity, including small business, other agriculturally based industries and individuals. Since March, 1989, civil penalties have increased in all areas covered by the $10,000 matrix. Prior to March, 1989, penalties issued to farmers engaged in confined animal feeding operations ranged between $1,500 and $2,500. After March, 1989, similar violations received penalties as high as $8,000. The Department recognized that Division 12 would result in higher penalties at the time the rules were originally proposed (Attachment J). The Department also recognized that Division would have the same effect on field burning penalties (see page 3, Attachment I).

OAR 340-12-045 CIVIL PENALTY DETERMINATION PROCEDURE

Comment: Changes to the Prior Violation formula factor.

Mr. Demaray commented that the prior violation formula factor contained in subsection (1)(c)(A) should not be changed to reflect the fact that a violator has not had any violations for at least three years. Mr. Demaray stated that he saw no reason to give violators credit for previously complying with the law. Mr.

Virnig of CSSI suggested changes in line with his comments outlined on page 2.

Response:

The Department fully discussed its reasoning for the changes to the Prior Violation formula factor in its October Report to the EQC. See pages G4 & G5, Attachment I for that discussion.

As the Department has accepted Mr. Virnig's suggestions concerning changes to the definition of "Prior Violation", it also accepts his suggested changes for this section. See page 2 for a discussion of this issue.

OAR 340-12-050 AIR QUALITY CLASSIFICATION OF VIOLATIONS.

Comment: Changes to the classifications.

Mr. Demaray suggested several changes concerning the classification of open burning violations. He suggested elevating the open burning of construction and demolition debris to a Class I violation. He also suggested eliminating any reference to violations of open burning hardship permits.

Mr. Haagensen commented that it is unfair to classify the failure of a grower to "readily demonstrate" a valid open field burning permit as a Class I violation. He also stated that the classification of a propane flaming operation which results in a visibility impairment on a roadway should require the impairment to be "significant" before it can be considered a Class I violation. He also stated that failure to actively extinguish an open field burn should be considered a Class II violation and all other unspecified field burning violations be considered Class III violations.

Response:

The Department agrees with Mr. Demaray concerning the open burning hardship permits. Mr. Demaray is correct that any violations of such permits are included under other general classifications and the Department proposes to delete this reference.

The Department disagrees that the open burning of construction and demolition debris should be elevated to a Class I violation. The open burning of such waste is permissible in some areas and should not be treated as always presenting a major risk of harm. However, the Department does believe that the harm caused by open burning of any waste may be situational. Therefore, the Department proposes to place illegal open burning of any waste

under each class and make a determination in each case as to actual risk of harm. Thus, it will be possible for open burning of construction and demolition debris to be a Class I violation if such open burning results in a major risk of harm to public health or the environment.

The Department agrees with Mr. Haagensen that the failure to "readily demonstrate" a valid open field burning permit should not be considered a Class I violation. A grower either has a permit to burn, in which case the grower is in compliance, or the grower does not. It is the failure of the grower to register the field or obtain a permit that the Department is concerned with, not an individual grower's ability to produce one. The Department proposes to delete the phrase "readily demonstrate".

OAR 340-26-045(1)(b)(F) makes it a violation for a propane burning operation to cause any visibility impairment on any roadway listed in OAR 837-110-080. The propane flaming operation rules do not make any reference to "significant" visibility impairments. Propane flaming operations are permitted to burn right next to roadways and can cause a significant amount of smoke. It is exactly because this rule is based on public safety that the Department considers it a Class I.

The Department has traditionally treated "failure to actively extinguish" as a less serious violation than the open field burning of unregistered acreage or without a permit. Therefore, the Department agrees that such violations should be treated as a Class II. The Department also believes that it has articulated and classified the field burning violations of greatest significance and agree with Mr. Haagensen that all unspecified field burning violations be treated as Class III violations.

OAR 340-12-068 HAZARDOUS WASTE CLASSIFICATION OF VIOLATIONS

Comment: Hazardous waste needs Class III violations.

Mr. Virnig commented that because the hazardous waste regulations have so may requirements, many of which are of an administrative nature and pose no environmental risk, a general Class III category should be created for hazardous waste. Mr. Virnig also commented that the classification of all hazardous waste facility permit violations as a Class I should be deleted so that risk of harm of any permit violation can be taken into account in each incident.

Response:

The Department received similar comments during its original proposal of Division 12. The Department responded to those comments at that time and still believe the response to be valid. For the full discussion, see page 12, Attachment J.

GENERAL COMMENTS.

Comment: Effect of Division on odor pollution.

Lee Poe, Chairwoman of the North Portland Odor Abatement Committee, and Michael Vernon, a member of that organization presented oral testimony at public concerning how Division 12 handles odor pollution. They commented that Division 12 should treat odors as seriously as any other pollutant regulated by the Department since Division 12 was adopted to sidestep proposed legislation intended to regulate odors.

Response:

The Department has the authority to assess civil penalties for up to $10,000 per day of each violation for violations related to air pollution. Currently, the Department regulates odor as a subcategory of air pollution. Division 12 classifies odor pollution violations as a Class II violation under the Air Quality Classification of Violations (OAR 340-12-050(2)(d)). The maximum penalty for a single Class II violation under the Department's penalty determination system would be $7,800.

The Division 12 which currently governs the Department's enforcement and civil penalty determination procedures were originally proposed to the EQC in November, 1988. The proposal came out of an issue paper on enforcement presented to the EQC in August, 1988. Division 12 was developed under existing statutory authority and not in conjunction with or in lieu of any legislation proposed during the 1989 Legislative Session. Division 12 governs the Department's enforcement procedure and civil penalty determination procedure. These are solely procedural rules. They do not affect the substantive requirements of other rules. If the Department lacks substantive rules or statutes in a given area, Division 12 has no affect. It only defines the procedure to be followed if a substantive rule is violated. Changes to Division 12 can not be used to make substantive changes to other areas of regulation.

Comment: Placement of Field Burning Rules into Division 12.

State Representative Liz VanLeeuwen commented that she did not see any authority for moving field burning regulations into Division 12 as the 1989 Oregon State Legislature passed no legislation effecting field burning. She commented that adopting higher civil penalties for field burning violations was contrary to the policy expressed in ORS 468.455 and further constrained an already over regulated industry. Ms. VanLeeuwen also commented that she saw no authority for adopting new regulations concerning propane flaming operations.

Floyd and Betty Jo Smith requested that field burning penalties not be increased.

Response:

The revision of Division 12 in 1989 did not stem from any new legislation. It came from existing law, ORS 468.090 through ORS 468.140. As with all other areas of air pollution, the Department has had the authority to assess civil penalties of up to $10,000 per day of each violation for field burning violations since 1979. This is reflected in the penalty range system currently contained in OAR 340-26-025. When the revisions to Division 12 were drafted in late 1988, the Department consciously chose not to include field burning because of possible changes to that program during the 1989 legislative session. As no substantive changes to the Department's penalty authority occurred, the Department believes it is now necessary to apply the matrix system to field burning violations as well. The Department believes that this action is necessary to assure that the Department's enforcement program is applied in an equitable fashion to all its programs.

Division 12 contains procedural rules governing the Department's enforcement program and the assessment of civil penalties. It does not and can not create any new violations or make any substantive changes to any program. The violations listed concerning propane flaming operations relate to substantive requirements contained in OAR 340-26-045, the Department's alternative method rules.

Comment: Resubmittal of comments.

Mr. Demaray resubmitted comments that he had submitted during the comment period for the Division 12 revisions adopted in March, 1989.

Response:

The Department reviewed Mr. Demaray's comments prior to Division 12's adoption in 1989. It responded to Mr. Demaray's comments at that time and still believe its responses to be valid. For a full discussion of Mr. Demaray's comments and the Department's response, see Attachment J.

Attachments:

1. Written comments provided by Harry Demaray
2. Written comments provided by Oregon State Representative Liz VanLeeuwen
3. Written comments provided by Terrence Virnig of Chem Security Systems, Inc.
4. Written comments provided by Don Haagensen of Schwabe, Williamson and Wyatt on behalf of the Oregon Seed Council
5. Written comments provided Floyd and Betty Jo Smith
6. Written comments provided Oregon State Representative Cedric L. Hayden

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMO

TO: Nancy Hogan
Enforcement Section

DATE: February 1, 1990

FROM: Harry Demaray Harry M. Demaray 2/1/90

SUBJECT: Proposed Revisions, OAR 340-12-

The revisions I proposed by memo on February 28, 1989 are again submitted for your reconsideration. In my opinion, the reasons stated for rejection are not accurate or reasonable.

A copy is attached.

New proposed revisions follow, including one late addition.

RY100249

DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
FEB 1 1990

POLICY

340-12-026

(5) All enforcement referrals which did not result in the assessment of a civil penalty shall be submitted to the Commission, along with an explanation of the disposition. The Commission will review these unpenalized referrals along with the agenda item for negotiated settlements of civil penalties.

340-12-030 Definitions:

(8) Flagrant, change to "means any documented violation where the respondent had, or reasonably could have had, actual knowledge of the law . . . violation.

(10) Intentional, do not change. The proposed language would require the state to show that the violator knew every detail of the provisions of OAR 340-12-026 through 080 which is not likely or reasonable. The existing definition is fair and workable because it separates accidental happenings from planned events.

(14) "Prior Violation" change to read "means any violation established by the records of the DEQ or any other public agency. Delete remainder.

(15) "Residential Open Burning" means the domestic open burning of yard debris, only

340-12-040

(1) Change the word violation in 3rd sentence to Noncompliance.

340-12-041 (2)(d) (late addition, after the January 16, 1990 deadline) Delete the phrase, [which is not excepted under OAR 340-12-040(3)(b),] and replace with, for which a civil penalty is not assessed.

340-12-045 (1)(c)

(A) (i) to (xi) delete all reference to the prior violation being greater than three years old. These are not reasonable changes. Why should the passage of time since the last violation tend to mitigate a current violation? If the passage of time should have any effect on the current violation, it should increase rather than reduce the penalty because of the increased opportunity to learn about the rule violated.

(C) Change title to "E" is the economic benefit gained

(i) & (ii) Delete all reference to economic condition and change to economic benefit.

340-12-050

(1) Class One:

(n) change to read, "Illegal open burning of construction or demolition waste or materials prohibited by OAR 340-12-042(2);

(3) Class Three

(c) Delete any reference to hardship permits, they can be processed under Classes One and Two, as applicable.

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMO

TO: Ms. Yone McNally
DEQ Enforcement Section

DATE: February 28, 1989

FROM: Harry Demaray Harry M. Demaray

SUBJECT: OAR 340-12-026 through 73,
Proposed Revisions

340-12-026(1) Delete the "To" at the beginning of sentences (b), (c) and (d). Add sentences (e) and (f) as follows:

(e) Deny by penalty any monetary gain to violators from infraction of rules or statutes.

(f) Recover from the violator by penalty the full cost of investigating and prosecuting the violation.

(9) Change to read: "Prior violation means any act or omission of the violator documented by the Department."

(11) Change to read: "Risk means the level of harm or danger created by...." "Risk shall be separated into three levels."

340-12-040(3)(b) Add new sentence:

"(H) The violation consists of an oil spill caused by intent or neglect as described in 340-12-042(2)."

340-12-042(2) Change to read: "Persons causing oil spills through an intentional or negligent act shall be assessed by the Department a civil penalty of not less than...." "The amount of the penalty shall be determined by doubling the values contained in the $10,000 matrix in Section (1) of this rule...." Explanation of change: The weasel-word, "incur," must be replaced by the term "shall be assessed by the Department" to match the language and the command of the Clean Water Act, Sec. 311(b)(6)(A), 33 U.S.C. 466. The word "incur" has been defined by the Oregon Attorney General to mean, "subject to," which is weak and not in keeping with the general requirement that a state law cannot be less restrictive than the basic Federal law that applies.

340-12-045(1)(c) Change the order of the letters in the formula to spell PHORCE. This acronym is easily remembered and fitting. With this change it can be said the penalty amount equals the base penalty, plus the product of one-tenth the base penalty, multiplied by the PHORCE. The order of the

paragraphs defining the letters ORCE should be rearranged; (C) to (F), (D) to (C), (E) to (D) and (F) to (E).

340-12-055(1)(e) Change to read, "Any unpermitted discharge that causes pollution of any waters of the state. This wording comes from ORS 468.270(1)(a).

General Comments:

The permissive "shall incur" wording in the state oil spill statute ORS 468.140(3)(a) is inconsistent and in conflict with the unequivocal "shall be assessed" language of the Clean Water Act, Sec. 311(b)(6)(A) 33 U.S.C. 466. The kind of conflict of law described here is governed by ORS 468.815 Effect of federal regulations of oil spillage, which reminds us that the state law cannot conflict with applicable federal law. The conflict being the relative permissiveness of state law compared to federal law.

HMD:y
RY8251

LIZ VanLEEUWEN
LINN COUNTY
DISTRICT 37
REPLY TO ADDRESS INDICATED:
☐ House of Representatives
Salem, Oregon 97310-1347
☑ 27070 Irish Bend Loop
Halsey, Oregon 97348

Home Phone
369-254
Capitol Messag
378-877

HOUSE OF REPRESENTATIVES
SALEM, OREGON
97310-1347

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
JAN 10 1990
OFFICE OF THE DIRECTOR

TO: Fred Hansen, Director, DEQ

FROM: Rep. Liz VanLeeuwen

DATE: January 5, 1990

RE: Revision of Civil Penalty Rules, OAR 340-12-026 through 340-12-080

Dear Fred,

According to material I have received, you have a hearing scheduled regarding the above OAR, on Friday, January 8, 1990. I assume the hearing is on Monday, which is January 8, and written material will be accepted until the January 16th.

One concern is that you are mixing two bills dealing with oil spills (SB1038 and HB3493), with field burning, when no field burning bill passed in the 1989 Legislative Session.

ORS 468.455 defines the State of Oregon's policy for field burning as follows:

"ORS 468.455 Policy. In the interest of public health and welfare it is declared to be the public policy of the state to control, reduce and prevent air pollution caused by the practice of open field burning. Recognizing that open field burning is a nontraditional area source of air pollution that is not confined to a single point of emission and recognizing that limitation or bar of the practice at this time, without having found reasonable and economically feasible alternatives to the practice could seriously impair the public welfare, the Legislative Assembly declares it to be the public policy of the state to reduce air pollution from open field burning by smoke management and to continue to seek and encourage by research and development reasonable and economically feasible alternatives to the practice of annual open field burning, all consistent with ORS 468.280."

Looking at the above policy, I see no justifiable reason for moving the Rules for Open Field Burning from Division 26. You and I both know there has been much less open field burning in the last few years, and in general, the hours of smoke impact from burning have been reduced.

Therefore, I see no demonstrated reason for the increased pressure on the growers, most of whom are already trying for all they are worth to solve the problems associated with open field burning. That "for all they are worth," includes tremendous expense for the growers in time, effort and money.

I am asking you **not** to increase the fines and change the categories on field burning. There are so many things to consider such as so much variability and so much possibility for error and such differing interpretations when you weigh all the variables and rapid change in the elements involved: wind, humidity, temperature, equipment, location and the extremely

short time frames in which notification of and open field burning are required to take place.

Another problem I have in trying to read the new proposal is what it does as far as <u>new rules</u> on propane flaming and stack burning are concerned. One of your staff people told me there is no change on propaning, however, I see propaning addressed on p. A-11 (q) and p. A-12 (r).

Please, let's look at what these proposals will do to the growers who are really trying before we squeeze down on them any further. The majority of the growers are not "bad guys." They have made tremendous progress, through enormous effort and expense. A drive through the area, just viewing all the huge straw storage buildings and expensive straw removal and processing equipment should make that obvious. Please, never forget that it may take as much as two (2) days to propane what could be open burned in 30 minutes. In addition to the time and cost of propaning, the grower also has the cost and time of raking, baling, hauling bales away, and re-raking, before propaning.

In conclusion, I repeat my request that, for now, you leave the field burning rules as they are, since significant improvement has been made and there is no justifiable reason to change.

Sincerely,

Liz VanLeeuwen

Liz VanLeeuwen
State Representative
District 37

LVL/dc

Chem-Security Systems, Inc.
200 S.W. Market Street, Suite 925
Portland, Oregon 97201
503/223-1912

MEMORANDUM

DEPARTMENT OF ENVIRONMENTAL
RECEIVED
JAN 19

TO: Department of Environmental Quality
Enforcement Section
811 SW Sixth Avenue
Tenth Floor
Portland, Oregon 97204

FROM: Terrence T. Virnig
Chem-Security Systems, Inc.

RE: **Proposed Amendments to Civil Penalty Rules, OAR 340-12-026 through 340-12-080**

DATE: January 16, 1990

Chem-Security Systems, Inc. submits the following comments on the amendments to proposed civil penalty rules dated December 1, 1989, OAR 340-12-026 through 340-12-080. In the comments the part of the proposed rule at issue is quoted in full and then followed by a discussion of the proposed rule and suggested changes to the proposed rule. Language recommended to be deleted from the proposed rule is enclosed by brackets and language to be added underlined.

1. Proposed Rule 340-12-030(14)

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

Comment

This proposed rule defining "Prior Violation" is important in the civil penalty rules only for its use in 340-12-045 in determining whether additions should be made to a base penalty because of a past violation in establishing a total civil penalty to be assessed for a particular violation. Establishing that a past action is a "violation," however, has ramifications far beyond civil penalty assessments.

For companies doing business only in Oregon, a determination that a past action is a violation can mean significant, additional reporting or accounting to federal, Oregon or local regulatory agencies. For companies with operations in other states, such a determination can mean significant,

additional reporting not only to federal, Oregon or local regulatory agencies but to other states' agencies as well.

If this past action has been proven to be a violation pursuant to a contested case hearing or established as a violation by an order of default, the scheme makes sense. In this case a violation has been established beyond doubt. If, however, the past action involves settlement with the EQC or the DEQ of what is alleged by the agency to be a violation but the respondent strongly disputes the allegation, the same logic does not apply. In such a case, the alleged violation has never been proven and its occurrence is open to doubt. The proposed rules, however, classify this settlement or compromise situation as a prior violation. The DEQ staff is also taking the position that in such a settlement situation the respondent must admit the alleged violation in order for the settlement to occur.

It is the very rare situation in civil litigation that a compromise or settlement of a suit requires one party to admit the allegations of the suit (that is, that that party is liable in the way alleged by the other party). It is rare because actual determinations of liability can be made only after completion of the suit. It is also rare because such determinations can be used against the liable party in other proceedings.

A settlement or compromise is just that, a compromise by both parties. If the respondent in every case must admit a violation in order to settle, the major incentive for settlement will be gone. Requiring admission of a violation as a condition of settlement not only threatens the possibility of future settlements but precludes settlements by any party who is knowledgeable about the significance of admitting a violation. Contested case hearings will be held in cases where they would not otherwise occur, requiring an unnecessary expenditure of time and resources by the DEQ as well as the respondent.

This proposed rule should be amended as set forth below to allow the DEQ to take into account past significant actions in assessing civil penalties without requiring a violation to be admitted in compromise or settlement situations.

<u>Suggested Change to Proposed Rule 340-12-030(14)</u>

"(14) 'Prior [Violation] <u>Significant Action</u>' means any violation proven pursuant to a contested case hearing, or established <u>with or without admission of a violation</u> by payment of a civil penalty, by an order of default, or a stipulated or final order of the Commission or the Department."

2. Proposed Rule 340-12-045(1)(c)(A)

"(A) 'P' is whether the respondent has any prior violations of statutes, rules, orders and permits pertaining to environmental quality or pollution control. The values for 'P' and the finding which supports each are as follows:

"(i) 0 if no prior violations, the prior violation described in subsection (ii) is greater than three years old, or there is insufficient information on which to base a finding;

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

"(iii) 2 if the prior violation(s) is one Class One or equivalent or the prior violations described in subsection (iv) are greater than three years old;

"(iv) 3 if the prior violations are two Class Ones or equivalents, or the prior violations described in subsection (v) are greater than three years old;

"(v) 4 if the prior violations are three Class Ones or equivalents, or the prior violations described in subsection (vi) are greater than three years old;

"(vi) 5 if the prior violations are four Class Ones or equivalents, or the prior violations described in subsection (vii) are greater than three years old;

"(vii) 6 if the prior violations are five Class Ones or equivalents, or the prior violations described in subsection (viii) are greater than three years old;

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

"(ix) 8 if the prior violations are seven Class Ones or equivalents, or the prior

violations described in subsection (x) are greater than three years old;

"(x) 9 if the prior violations are eight Class Ones or equivalents, or the prior violations described in subsection (xi) are greater than three years old;

"(xi) 10 if the prior violations are nine Class Ones or equivalents."

Comment

See the comment under Proposed Rule 340-12-030(14) above.

2. Suggested Change to Proposed Rule 340-12-045(1)(c)(A)

"(A) 'P' is whether the respondent has any prior [violations of statutes, rules, orders and permits] significant actions pertaining to environmental quality or pollution control. The values for 'P' and the finding which supports each are as follows:

"(i) 0 if no prior [violations] significant actions, the prior [violation] significant action described in subsection (ii) is greater than three years old, or there is insufficient information on which to base a finding;

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

"(iii) 2 if the prior [violation(s)] significant action(s) is one Class One or equivalent or the prior [violations] significant actions described in subsection (iv) are greater than three years old;

"(iv) 3 if the prior [violations] significant actions are two Class Ones or equivalents, or the prior [violations] significant actions described in

subsection (v) are greater than three years old;

"(v) 4 if the prior [violations] significant actions are three Class Ones or equivalents, or the prior [violations] significant actions described in subsection (vi) are greater than three years old;

"(vi) 5 if the prior [violations] significant actions are four Class Ones or equivalents, or the prior [violations] significant actions described in subsection (vii) are greater than three years old;

"(vii) 6 if the prior [violations] significant actions are five Class Ones or equivalents, or the prior [violations] significant actions described in subsection (viii) are greater than three years old;

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

"(ix) 8 if the prior [violations] significant actions are seven Class Ones or equivalents, or the prior [violations] significant actions described in subsection (x) are greater than three years old;

"(x) 9 if the prior [violations] significant actions are eight Class Ones or equivalents, or the prior [violations] significant actions described in subsection (xi) are greater than three years old;

"(xi) 10 if the prior [violations] significant actions are nine Class Ones or equivalents."

3. Proposed Rule 340-12-068

"340-12-068

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

"(1) Class One:

"(a) Violation of a Department or Commission order;

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

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

"(d) Failure to comply with the ninety (90) day storage limit by a fully regulated generator where there is a gross deviation from the requirement;

"(e) Shipment of hazardous waste without a manifest;

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

"(g) Failure to satisfy manifest discrepancy reporting requirements;

"(h) Failure to prevent the unknown entry or prevent the possibility of the unauthorized entry of persons or livestock into the waste management area of a TSD facility;

"(i) Failure to properly handle ignitable, reactive, or incompatible wastes as required under 40 CFR Part 264 and 265.17(b)(1), (2), (3), (4) and (5);

"(j) Illegal disposal of hazardous waste;

"(k) Disposal of waste in violation of the land disposal restrictions;

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

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

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

"(o) Failure to comply with the tank certification requirements;

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

"(q) Failure of an owner/operator of a TSD facility to retain an independent registered professional engineer to oversee closure activities and certify conformance with an approved closure plan;

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

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

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

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

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

"(w) Failure to label hazardous waste containers where such failure could cause an inappropriate response to a spill or

leak and substantial harm to public health or the environment;

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

"(y) Failure to comply with the export requirements;

"(z) Violation of a Final Status Hazardous Waste Management Permit;

"(aa) Systematic failure to comply with OAR 340-102-041, generator quarterly reporting requirements;

"(bb) Systematic failure to comply with OAR 340-104-075, Treatment, Storage, Disposal and Recycling facility periodic reporting requirements;

"(cc) Construct or operate a new treatment, storage or disposal facility without first obtaining a permit;

"(dd) Installation of inadequate groundwater monitoring wells such that detection of hazardous waste or hazardous constituents that migrate from the waste management area cannot be immediately be detected;

"(ee) Failure to install any groundwater monitoring wells;

"(ff) Failure to develop and follow a groundwater sampling and analysis plan using proper techniques and procedures;

"(gg) Failure to provide access to premises or records;

"(hh) Any other violation related to the generation, management and disposal of hazardous waste which poses a major risk of harm to public health or the environment.

"(2) Any other violation pertaining to the generation, management and disposal of hazardous waste which is either not specifically listed as, or otherwise meets the

criteria for, a Class One violation is considered a Class Two violation.

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

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

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

"(c) Each elk, $750.

"(d) Each silver gray squirrel, $10.

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

"(f) Each wild turkey, $50.

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

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

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

"(j) Each bobcat or fisher, $350.

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

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

"(Statutory Authority: ORS CH 466)"

Comment

The classifications of violations for every area regulated by DEQ except one designate Class Three violations in addition to Class One and Two violations. Air quality, noise control, water quality, on-site sewage disposal, solid waste management, solid waste tire management, underground storage tanks, oil and hazardous material spill and release, PCB and environmental cleanup have Class Three violations. See 340-12-050(3), 340-12-052(3), 340-12-055(3), 340-12-060(3), 340-12-065(3), 340-12-066(3), 340-12-067(3), 340-12-069(3), 340-12-071(3), 340-12-073(3). Hazardous waste management and disposal is the exception and has only Class One and Two violations. See 340-12-068.

Because Class Three violations, when they occur, subject a party to a lower potential amount of penalty (see 340-12-042), hazardous waste management and disposal violations subject the party involved to potential penalties of a greater amount than any other area regulated by DEQ. There is no logical reason for this increased potential penalty exposure.

In addition, Class Three violations are generally specified for any violation which poses a minor risk of harm to public health or the environment. E.g., 340-12-069(3). Certainly, there are violations involving hazardous waste management and disposal that create no more than a minor risk of harm to public health or the environment. The proposed values should be revised as shown below to treat hazardous waste management and disposal like other regulated activities for purposes of the civil penalty rules.

Proposed rule 340-12-068(1)(z) also makes violation of any condition or term of a hazardous waste management permit a Class One violation. No other area of DEQ regulation makes violation of a permit a Class One violation.

All other areas of regulation generally group violations that pose a major risk of harm to public health or the environment as Class One violations, moderate risks as Class Two and minor risks as Class Three. E.g., 340-12-069(1)(d), (2)(b), (3)(a). For hazardous waste permittees, however, the proposed rules designate all permit violations as Class One violations even though they may pose a moderate or minor risk of harm to public health or the environment.

Proposed rule 340-12-068(1)(z) should be deleted so that moderate risks of harm from a permit violation are Class Two violations and minor risks of harm from a permit violation are Class Three violations.

Suggested Change to Proposed Rule 340-12-068

"340-12-068

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

"(1) Class One:

"(a) Violation of a Department or Commission order;

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

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

"(d) Failure to comply with the ninety (90) day storage limit by a fully regulated generator where there is a gross deviation from the requirement;

"(e) Shipment of hazardous waste without a manifest;

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

"(g) Failure to satisfy manifest discrepancy reporting requirements;

"(h) Failure to prevent the unknown entry or prevent the possibility of the unauthorized entry of persons or livestock into the waste management area of a TSD facility;

"(i) Failure to properly handle ignitable, reactive, or incompatible wastes as required under 40 CFR Part 264 and 265.17(b)(1), (2), (3), (4) and (5);

"(j) Illegal disposal of hazardous waste;

"(k) Disposal of waste in violation of the land disposal restrictions;

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

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

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

"(o) Failure to comply with the tank certification requirements;

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

"(q) Failure of an owner/operator of a TSD facility to retain an independent registered professional engineer to oversee closure activities and certify conformance with an approved closure plan;

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

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

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

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

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

"(w) Failure to label hazardous waste containers where such failure could cause an inappropriate response to a spill or

leak and substantial harm to public health or the environment;

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

"(y) Failure to comply with the export requirements;

"[(z) Violation of a Final Status Hazardous Waste Management Permit;]

"[(aa)](z) Systematic failure to comply with OAR 340-102-041, generator quarterly reporting requirements;

"[(bb)](aa) Systematic failure to comply with OAR 340-104-075, Treatment, Storage, Disposal and Recycling facility periodic reporting requirements;

"[(cc)](bb) Construct or operate a new treatment, storage or disposal facility without first obtaining a permit;

"[(dd)](cc) Installation of inadequate groundwater monitoring wells such that detection of hazardous waste or hazardous constituents that migrate from the waste management area cannot be immediately be detected;

"[(ee)](dd) Failure to install any groundwater monitoring wells;

"[(ff)](ee) Failure to develop and follow a groundwater sampling and analysis plan using proper techniques and procedures;

"[(gg)](ff) Failure to provide access to premises or records;

"(hh)(gg) Any other violation related to the generation, management and disposal of hazardous waste which poses a major risk of harm to public health or the environment.

"(2) Any other violation pertaining to the generation, management and disposal of hazardous waste which [is either not specifically listed as, or otherwise meets the

criteria for, a Class One violation] poses a moderate risk of harm to the public health or the environment is considered a Class Two violation.

"(3) Any other violation pertaining to the generation, management and disposal of hazardous waste which poses a minor risk of harm to public health or the environment is considered a Class Three violation.

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

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

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

"(c) Each elk, $750.

"(d) Each silver gray squirrel, $10.

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

"(f) Each wild turkey, $50.

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

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

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

"(j) Each bobcat or fisher, $350.

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DONALD A. HAAGENSEN

RECEIVED
JAN 17 1990

MEMORANDUM

TO: Department of Environmental Quality
Enforcement Section
811 SW Sixth Avenue
Tenth Floor
Portland, Oregon 97204

FROM: Donald A. Haagensen
For the Oregon Seed Council

RE: **Proposed Amendments to Civil Penalty Rules, OAR 340-12-026 through 340-12-080**

DATE: January 16, 1990

The Oregon Seed Council submits the following comments on the amendments to proposed civil penalty rules dated December 1, 1989, OAR 340-12-026 through 340-12-080. In the comments the part of the proposed rule at issue is quoted in full and then followed by a discussion of the proposed rule and suggested changes to the proposed rule. Language recommended to be deleted from the proposed rule is enclosed by brackets and language to be added underlined.

1. Proposed Rule 340-12-042

"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;

"(b) Any violation related to ORS 468.875 to 468.899 relating to asbestos abatement projects;

"(c) Water quality statutes, rules permits or orders, except for violations of ORS 164.785(1) relating to the placement of offensive substances into waters of the state;

"(d) Any violation related to underground storage tanks statutes, rules, permits or orders, except for failure to pay a fee due and owing under ORS 466.785 and 466.795;

"(e) Any violation related to hazardous waste management statutes, rules, permits or orders, except for violations of ORS 466.890 related to damage to wildlife;

"(f) Any violation related to oil and hazardous material spill and release statutes, rules and orders, except for negligent or intentional oil spills;

"(g) Any violation related to polychlorinated biphenyls management and disposal statutes; and

"(h) Any violation ORS 466.540 to 466.590 related to environmental cleanup statutes, rules, agreements or orders.

"(2) Persons causing oil spills through an intentional or negligent act shall incur a civil penalty of not less than one hundred dollars ($100) or more than twenty thousand dollars ($20,000). The amount of the penalty shall be determined by doubling the values contained in the matrix in subsection (a) of this rule in conjunction with the formula contained in 340-12-045.

"(3)

$500 Matrix
←----------Magnitude of Violation

Class of Violation	Major	Moderate	Minor
Class I	$400	$300	$200
Class II	$300	$200	$100
Class III	$200	$100	$50

"No civil penalty issued by the Director pursuant to this matrix shall be less than fifty dollars ($50) or more than five hundred dollars ($500) for each day of each violation. This matrix shall apply to the following types of violations:

"(a) Any violation related to residential open burning;

"(b) Any violation related to noise control statutes, rules, permits and orders;

"(c) Any violation related to on-site sewage disposal statutes, rules, permits, licenses and orders;

"(d) Any violation related to solid waste statutes, rules, permits and orders;

"(e) Any violation related to waste tire statutes, rules, permits and orders; and

"(f) Any violation of ORS 164.785 relating to the placement of offensive substances into the waters of the state or on to land."

(Statutory Authority: ORS Ch. 454, 459, 466, 467 & 468).

DISCUSSION

The intent for including open field burning in the proposed rules is to achieve consistency and fairness. DEQ Memorandum, p.3,4. There is no indication of an intent to increase the civil penalties to which open field burning is subject nor is there a need for such an increase.

The field burning enforcement program in current 340-26-025 has functioned as well as or better than other areas regulated by DEQ. For example, the field burning enforcement program (although only one of several air quality enforcement programs) has been assessed 33% of the total amount of civil penalties in the air quality area and 15% of the total amount of civil penalties for all DEQ areas during the period from 1981 through 1988. See DEQ Memorandum, Attachment 5. Obviously, increased penalty amounts are not needed.

As a result, if open field burning is incorporated into Division 12 for purposes of fairness and consistency, it must be made clear that civil penalties for open field burning do not increase. The matrix in 340-12-042(1), however, which the proposed rules use for open field burning violations will substantially increase civil penalties for open field burning.

Historically, burning without a permit has been subject to a $1500 civil penalty for the first violation with the amount

doubling, at a minimum, for repeat violations. Prior to 1984, the field burning rules specifically set forth this scheme. A copy of this rule is attached as Exhibit A. Although the rules were revised in 1984 to their current form providing for not less than $500 nor more than $10,000 for burning without a permit, the civil penalties assessed for first time violations were still generally set at about $1500.

In contrast, burning without a permit under the matrix in 340-12-042(1) starts at $5,000 if the magnitude of the violation is major, $2,500 if the magnitude of the violation is moderate and $1000 if the magnitude of the violation is minor. This penalty scheme exceeds DEQ's current penalty practice for open field burning.

The historical civil penalty practice for field burning should be continued. To do this, the matrix set forth in 340-12-042(1) can be used but its values should be halved so that field burning civil penalties will not be increased as a result of the DEQ's attempts to achieve fairness and consistency. The following suggested language achieves this result.

Suggested Change to Proposed Rule 340-12-042

"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

Class of Violation	Magnitude 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 open field burning;

"(b) Any violation related to ORS 468.875 to 468.899 relating to asbestos abatement projects;

"(c) Water quality statutes, rules permits or orders, except for violations of ORS 164.785(1) relating to the placement of offensive substances into waters of the state;

"(d) Any violation related to underground storage tanks statutes, rules, permits or orders, except for failure to pay a fee due and owing under ORS 466.785 and 466.795;

"(e) Any violation related to hazardous waste management statutes, rules, permits or orders, except for violations of ORS 466.890 related to damage to wildlife;

"(f) Any violation related to oil and hazardous material spill and release statutes, rules and orders, except for negligent or intentional oil spills;

"(g) Any violation related to polychlorinated biphenyls management and disposal statutes; and

"(h) Any violation ORS 466.540 to 466.590 related to environmental cleanup statutes, rules, agreements or orders.

"(2) Any violation related to open field burning, stack burning or propane flaming of grass seed or cereal grain crops or associated residue within the Willamette Valley shall be subject to a civil penalty of not less than fifty dollars ($50) or more than ten thousand dollars ($10,000). The amount of that penalty shall be determined by halving the values contained in the matrix in subsection (1) of this rule in conjunction with the formula contained in 340-12-045.

"(3) Persons causing oil spills through an intentional or negligent act shall incur a civil penalty of not less than one hundred dollars ($100) or more than twenty thousand dollars ($20,000). The amount of the penalty shall be determined by doubling the values contained in the matrix in subsection (a) of this rule in conjunction with the formula contained in 340-12-045.

"[(3)](4)

$500 Matrix

Class of Violation	Magnitude of Violation: Major	Moderate	Minor
Class I	$400	$300	$200
Class II	$300	$200	$100
Class III	$200	$100	$50

"No civil penalty issued by the Director pursuant to this matrix shall be less than fifty dollars ($50) or more than five hundred dollars ($500) for each day of each violation. This matrix shall apply to the following types of violations:

"(a) Any violation related to residential open burning;

"(b) Any violation related to noise control statutes, rules, permits and orders;

"(c) Any violation related to on-site sewage disposal statutes, rules, permits, licenses and orders;

"(d) Any violation related to solid waste statutes, rules, permits and orders;

"(e) Any violation related to waste tire statutes, rules, permits and orders; and

"(f) Any violation of ORS 164.785 relating to the placement of offensive substances into the waters of the state or on to land."

(Statutory Authority: ORS Ch. 454, 459, 466, 467 & 468).

2. Proposed Rule 340-12-050

"340-12-050

Violations pertaining to air quality shall be classified as follows:

"(1) Class One:

"(a) Violation of a Commission or Department Order, or variance;

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

"(c) Exceeding an allowable emission level of a hazardous air pollutant;

"(d) Causing emissions that are a hazard to public safety;

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

"(f) Constructing or operating a source without an Air Contaminant Discharge Permit;

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

"(h) Violation of a compliance schedule in a permit;

"(i) Violation of a work practice requirement which results in or creates the likelihood for public exposure to asbestos or release of asbestos into the environment;

"(j) Storage of friable asbestos material or asbestos-containing waste material from an asbestos abatement project which results in or creates the likelihood for public exposure to asbestos or release of asbestos into the environment;

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

"(l) Violation of a disposal requirement for asbestos-containing waste material which results in or creates the likelihood of exposure to asbestos or release of asbestos into the environment;

"(m) Advertising to sell, offering to sell or selling an uncertified wood stove;

"(n) Open burning of materials prohibited by OAR 340-23-042(2);

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

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

"(q) Causes or allows to maintain any propane flaming which results in visibility impairment on any Interstate Highway or Roadway specified in OAR 837-100-080(1) and (2) or fails to immediately and actively extinguish all flames and smoke sources when visibility impairment occurs;

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

"(s) Any other violation related to air quality which poses a major risk to public health or the environment.

"(2) Class Two:

"(a) Allowing discharges of a magnitude that, though not actually likely to cause an ambient air violation, may have endangered citizens;

"(b) Exceeding emission limitations in permits or 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, other than field burning, not otherwise classified;

"(f) Illegal residential open burning;

"(g) Failure to report upset or breakdown of air pollution control equipment or an emission limit violation;

"(h) Violation of a work practice requirement for asbestos abatement projects which are not likely to result in public exposure to asbestos or release of asbestos into the environment;

"(i) Improper storage of friable asbestos material or asbestos-containing waste material from an asbestos abatement project which is not likely to result in public exposure to asbestos or release of asbestos into the environment;

"(j) Violation of a disposal requirement for asbestos-containing waste material which is not likely to result in public exposure to asbestos or release of asbestos to the environment;

"(k) Conduct of an asbestos abatement project by a contractor not licensed as an asbestos abatement contractor;

"(l) Failure to provide notification of an asbestos abatement project;

"(m) Failure to display permanent labels on a certified woodstove;

"(n) Alteration of a certified woodstove permanent label;

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

"(p) Failure to file a Notice of Construction or permit application;

"(q) Failure to submit a report or plan as required by permit;

"(r) Violation of any other requirement of OAR Chapter 340 Division 26 pertaining to open field burning not otherwise classified;

"(s) Any other violation related to air quality which poses a moderate risk of harm to public health or the environment.

"(3) Class Three:

"(a) Violation of a hardship permit for open burning of yard debris;

"(b) Improper notification of an asbestos abatement project;

"(c) Failure to comply with asbestos abatement certification; licensing, certification, or accreditation requirements not elsewhere classified;

"(d) Failure to display a temporary label on a certified wood stove;

"(e) Any other violation related to air quality which poses a minor risk of harm to public health or the environment.

"(4) In addition to any other penalty provided by law, any person planting contrary to the restrictions of subsection (1) of ORS 468.465 pertaining to the open burning of cereal grain acreage shall be assessed by the Department a civil penalty of $25 for each acre planted contrary to the restrictions.

(Statutory Authority: ORS Ch 468)"

DISCUSSION

As stated previously, the design of the proposed amendments to the civil penalty rules is consistency and fairness. It is for this reason that the DEQ proposes to include field

burning in the Division 12 civil penalty rules. DEQ Memorandum, p. 3,4.

If field burning is to be included in Division 12, in keeping with the DEQ goals of fairness and consistency, the activities that are specifically designated in the rules as Class One or Class Two violations should parallel other DEQ regulated areas and especially the air quality area. To achieve DEQ's goal of consistency and fairness, the changes shown below must be made.

Proposed rule 340-12-050(1)(o) should be revised so that failure to obtain a permit is a Class One violation, but failure to "readily demonstrate" a permit is not. No other regulated area is subject to a Class One violation for failure to readily demonstrate a permit. See e.g., 340-12-050(1)(f). The phrase "readily demonstrating" should be deleted.

Proposed rule 340-12-050(1)(q) designates any visibility impairment from propane flaming on specified roads as a Class One violation. No other regulated area is subject to such an absolute penalty provision in the proposed rules.

Propane flaming is regulated pursuant to Chapter 340 Division 26. The purpose of the existing rules in Division 26 is to protect public safety on the specified roads from visibility impairment. In keeping with this purpose, any visibility impairment from propane flaming should not be designated a Class One violation but Class One violations should be restricted to only significant visibility impairment, that is, visibility impairment that has an effect on public safety. Proposed rule 340-12-050(1)(q) should be revised as suggested below to specify significant visibility impairment.

Proposed rule 340-12-050(2)(r) designates every other violation of the rules regulating open field burning as a Class Two violation. No Class Three violations are designated for open field burning.

Every other air quality area has Class Three violations for violations that pose a minor risk of harm to public health or the environment. E.g., 340-12-050(3)(e). Noise control and water quality provide additional examples of areas with Class Three violations. See 340-12-052(3), 340-12-055(3).

Because Class Three violations, when they occur, subject a party to a lower potential amount of penalty (see 340-12-042), open field burning violations subject the party involved to potential penalties of a greater amount than other areas regulated by DEQ. There is no logical reason for this increased penalty exposure.

In addition, the current civil penalty rules for open field burning recognize failure "to actively extinguish all flames and major smoke sources when prohibition conditions are imposed by the Department or when instructed to do so by any agent or employee of the Department" as the second most serious violation - a Class Two violation. See OAR 340-26-025(2)(b). The proposed civil penalty rules do not designate this violation as a Class Two violation.

The proposed rules should be revised to designate failure to actively extinguish as a Class Two violation and all other violations of the Division 26 rules as Class Three violations.

Suggested Change to Proposed Rule 340-12-050

"340-12-050

Violations pertaining to air quality shall be classified as follows:

(1) Class One:

"(a) Violation of a Commission or Department Order or variance;

"(b) Exceeding an allowable emission level such that an ambient air quality standard is exceeded;

"(c) Exceeding an allowable emission level of a hazardous air pollutant;

"(d) Causing emissions that are a hazard to public safety;

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

"(f) Constructing or operating a source without an Air Contaminant Discharge Permit;

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

"(h) Violation of a compliance schedule in a permit;

"(i) Violation of a work practice requirement which results in or creates the likelihood for public exposure to asbestos or release of asbestos into the environment;

"(j) Storage of friable asbestos material or asbestos-containing waste material from an asbestos abatement project which results in or creates the likelihood for public exposure to asbestos or release of asbestos into the environment;

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

"(l) Violation of a disposal requirement for asbestos-containing waste material which results in or creates the likelihood of exposure to asbestos or release of asbestos into the environment;

"(m) Advertising to sell, offering to sell or selling an uncertified wood stove;

"(n) Open burning of materials prohibited by OAR 340-23-042(2);

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

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

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

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

"(s) Any other violation related to air quality which poses a major risk to public health or the environment.

(2) Class Two:

"(a) Allowing discharges of a magnitude that, though not actually likely to cause an ambient air violation, may have endangered citizens;

"(b) Exceeding emission limitations in permits or 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, other than field burning, not otherwise classified;

"(f) Illegal residential open burning;

"(g) Failure to report upset or breakdown of air pollution control equipment, or an emission limit violation;

"(h) Violation of a work practice requirement for asbestos abatement projects which are not likely to result in public exposure to asbestos or release of asbestos into the environment;

"(i) Improper storage of friable asbestos material or asbestos-containing waste material from an asbestos abatement project which is not likely to result in public exposure to asbestos or release of asbestos into the environment;

"(j) Violation of a disposal requirement for asbestos-containing waste material which is not likely to result in public exposure to asbestos or release of asbestos to the environment;

"(k) Conduct of an asbestos

abatement project by a contractor not licensed as an asbestos abatement contractor;

"(l) Failure to provide notification of an asbestos abatement project;

"(m) Failure to display permanent labels on a certified woodstove;

"(n) Alteration of a certified woodstove permanent label;

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

"(p) Failure to file a Notice of Construction or permit application;

"(q) Failure to submit a report or plan as required by permit;

"(r) [Violation of any other requirement of OAR Chapter 340 Division 26 pertaining to open field burning not otherwise classified] 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 employee of the Department;

"(s) Any other violation related to air quality which poses a moderate risk of harm to public health or the environment.

(3) Class Three:

"(a) Violation of a hardship permit for open burning of yard debris;

"(b) Improper notification of an asbestos abatement project;

"(c) Failure to comply with asbestos abatement certification, licensing, certification, or accreditation requirements not elsewhere classified;

"(d) Failure to display a temporary label on a certified wood stove;

"(e) Violation of any other requirement of OAR Chapter 340 Division 26 pertaining to open field burning not otherwise classified;

"(f) Any other violation related to air quality which poses a minor risk of harm to public health or the environment.

(4) In addition to any other penalty provided by law, any person planting contrary to the restrictions of subsection (1) of ORS 468.465 pertaining to the open burning of cereal grain acreage shall be assessed by the Department a civil penalty of $25 for each acre planted contrary to the restrictions.

(Statutory Authority: ORS CH 468)

(b) Certain Burning Allowed Under Prohibition Conditions. Under prohibition conditions no permits for agricultural open burning may be issued and no burning may be conducted, except where an auxiliary liquid or gaseous fuel is used such that combustion is essentially complete, or an approved field sanitizer is used.

(c) Priority for Burning on Marginal Days. Permits for agricultural open burning may be issued on each marginal day in each permit jurisdiction in the Willamette Valley, following the priorities set forth in ORS 468.450 which gives perennial grass seed fields used for grass seed production first priority, annual grass seed fields used for grass seed production second priority, grain fields third priority and all other burning fourth priority.

26-025 CIVIL PENALTIES.

In addition to any other penalty provided by law:

(1) Any person who intentionally or negligently causes or permits open field burning contrary to the provisions of ORS 468.450, 468.455, 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.

(2) In lieu of any per-acre civil penalty assessed pursuant to Subsection (1) of this section, the Director may assess a specific civil penalty for any violation pertaining to agricultural burning operations by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(a) $1500 upon any person who:

(A) Conducts open field burning on any acreage which has not been registered with the Department for such purposes.

(B) Conducts open field burning on any acreage without first obtaining and readily demonstrating a valid open field burning permit for all acreage so burned.

(b) $1000 upon any person who:

(A) Fails to report with reasonable accuracy all acreage burned in association with or as a direct result of a permitted open field burning operation.

(B) Fails to actively extinguish all flames and major smoke sources when prohibition conditions are imposed by the Department.

(C) Conducts burning using an approved alternative burning method contrary to any specific conditions or provisions governing such operation.

(c) $500 upon any person who:

(A) Initiates an open field burn after expiration of the designated permit period.

(B) Conducts an agricultural open burning operation which does not comply with any specific restrictions established by the Department related to required burning techniques, field and fuel conditions, or field and fuel treatments.

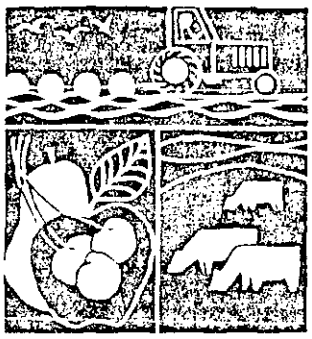
(d) $300 upon any person who:

(A) Fails to readily demonstrate at the site of the burn operation the capability to monitor the Department's field burning schedule broadcasts.

(e) Not less than $50 nor more than $10,000 upon any person who commits any other violation pertaining to agricultural burning operations or the rules of this Division.

(f) The civil penalty for each repeat offense which occurs within five years of a previous violation shall be at a minimum, double the amount previously assessed but not more than $10,000.

(3) Any person planting contrary to the restrictions of subsection (1) of ORS 468.465 shall be assessed by the Department a civil penalty of $25 for each acre planted contrary to the restrictions.



"Agriculture is the most . . . useful, the most noble employment of man."
George Washington

Floyd & Betty Jo Smith
29610 Brattain Drive
Shedd, Oregon 97377
(503) 491-3811

Shedd, Ore.
Jan 13, 90

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
JAN 16 1990
OFFICE OF THE DIRECTOR

Mr Fred Hansen, Director
Dept. of Environmental Quality
811 S W Sixth ave.
Portland, Or 97204

Dear Mr Hansen,

Am writting in regards to the proposed State Rule Revisions OAR 340-12-026 through 12-080

I know of no other independant business that have taped themselves to the extents that the grass seed industry has to reduce the hours of field burning smoke. I hope your Dept. is informed of the many, many hrs, wear an tear on equipment, the using up of fields and enormous expenses each farmer family has endured to accomplish the reduced smoke hours.

Therfore I feel at this time it would be unnessary to revise the civil penalty rules. Am asking that you do not increase the fines or change the categories on field burning.

It would be nice for the seed industry to be given some credit for the fields - these plants are purifying the air for us to breath - close to 330 days of the year. Thousand of acreage doing this for us - you + me, day after day, black tops, houses, roads and cars are unable to do this for us - purify the air.

In conclusion, we repeat that the field burning rules be

Thanks you for your time.

Very Sincerely,

Floyd + Betty J. Smith

CEDRIC L. HAYDEN
EASTERN PORTIONS OF
CLACKAMAS, LANE, LINN,
AND MARION COUNTIES
DISTRICT 38

REPLY TO ADDRESS INDICATED:
☐ House of Representatives
Salem, OR 97310
☐ PO Box 28
Fall Creek, OR 97438

COMMITTEES
Labor
Transportation
Executive Committee
House Minority Caucus

PAST SESSIONS
Interim Joint Labor
Interim Occupational Safety
Human Resources

HOUSE OF REPRESENTATIVES

ASSISTANT MINORITY LEADER

January 15, 1990

DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
JAN 1 0

Van Kollias
Oregon Dept. Environmental Quality
811 SW 6th Ave
Portland, Oregon 97204

Dear Mr. Kollias:

Re: Proposed revision Administrative Rules
Chapter 340, Division 12, Civil Penalty Rules

I am aware that the Department wishes by these proposals to make its enforcement rules more uniform in procedure and application. While this is an important administrative goal, I wish to comment on two important consequences of the proposed matrix related system.

First, it is impossible to equally compare damages from long-term hazardous dioxin spills and barnyard run-off of organic fertilizer no matter how large the matrix chart is crafted. These potential violations are too unlike to warrant over-simplified comparisons. Implementation of a "cats vs dogs" comparison system may result in assigning less importance to the more serious violations, and greater relative importance to the less serious violations.

As a practicing health professional with an MPH, I believe the public deserves and expects a weighted enforcement system that truly pursues the hazards of greatest potential.

Second, the proposals do not adequately identify technical data on which the degree of hazard is to be assessed. If the goal is to make these determinations "objective", what precision will be applied to determine the difference between "minor", "moderate", and "major" degrees of violation. I believe a strong supporting technical framework needs to be added to this proposal.

These rules are very important in my large forest and agriculture based district. Our citizens make their livelihoods by having a responsible respect for our lands. We all wish to have the fairest and best operating regulation possible. If there is any further information or assistance I can provide, please allow me to do so.

CEDRIC L. HAYDEN
State Representative Dist 38

Attachment E
I.: VanKollias
Reg Opns

A-Engrossed
House Bill 3493

Ordered by the House June 15
Including House Amendments dated June 15

Sponsored by Representatives DWYER, CEASE, AGRONS, CALHOON, CARTER, COURTNEY, DIX, DOMINY, EDMUNSON, GERSHON, HANLON, HANNEMAN, HOSTICKA, HUGO, KOTULSKI, MANNIX, MARKHAM, McTEAGUE, PICKARD, RIJKEN, ROBERTS, SCHOON, SHIPRACK, SOWA, WHITTY, Senators BRADBURY, BUNN, COHEN, McCOY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Punishes persons intentionally or negligently discharging oil unlawfully into Oregon waters by making violation Class [*B felony*] **A misdemeanor** punishable by maximum fine of [*$100,000*] **$2,500**, maximum imprisonment for [*10 years*] **one year**, or both. **Imposes civil penalty in addition to any other penalty provided by law, commensurate with amount of damage.**

Establishes Oil Spillage Control Fund in General to receive penalties. Appropriates moneys from spillage fund to Department of Environmental Quality for cleanup and rehabilitation of affected fish and wildlife.

Declares emergency, effective July 1, 1989.

A BILL FOR AN ACT

Relating to water pollution; creating new provisions; amending ORS 468.990; appropriating money; and declaring an emergency.

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

SECTION 1. Sections 2 to 5 of this Act are added to and made a part of ORS 468.780 to 468.815.

SECTION 2. The commission shall adopt rules necessary to carry out the provisions of sections 3 to 5 of this 1989 Act.

SECTION 3. Any person who wilfully or negligently causes or permits the discharge of oil into the waters of the state shall incur, in addition to any other penalty provided by law, a civil penalty commensurate with the amount of damage incurred. The amount of the penalty shall be determined by the Director of the Department of Environmental Quality with the advice of the State Fish and Wildlife Director after taking into consideration the gravity of the violation, the previous record of the violator in complying, or failing to comply, with the provisions of sections 2 to 5 of this 1989 Act, and such other considerations as the director considers appropriate. The penalty provided for in this section shall be imposed and enforced in accordance with ORS 468.135.

SECTION 4. (1) There is established an Oil Spillage Control Fund within the General Fund. This account shall be a revolving fund, the interest of which accrues to the Oil Spillage Control Fund.

(2) All penalties recovered under section 3 of this 1989 Act shall be paid into the Oil Spillage Control Fund. Such moneys are continuously appropriated to the Department of Environmental Quality for the advancement of costs incurred in carrying out cleanup activities and for the rehabilitation of affected fish and wildlife as provided under ORS 468.745.

(3) With the approval of the commission, the moneys in the Oil Spillage Control Fund may be invested as provided by ORS 293.701 to 293.776, and earnings from such investment shall be credited

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

Attachment E

A-Engrossed
Senate Bill 1038

Ordered by the Senate May 23
Including Senate Amendments dated May 23

Sponsored by COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Establishes financial assurance [~~*requirements*~~] **provisions** for [~~*person having control over*~~] **ships over 300 gross tons that transport bulk** oil [~~*or hazardous material transported*~~] in waters of state. **Specifies methods by which assurance may be established.** [~~*Requires port authority to suspend operation of ship until demonstration of proof that requirements have been met.*~~] **Requires Environmental Quality Commission, by January 1, 1990, to adopt rules to carry out Act. Allows required documentation of compliance to be kept on ship or filed with Department of Environmental Quality. Requires owner or operator to maintain on ship certificate of compliance with Federal Water Pollution Control Act. Requires maritime pilot to report to department owner or operator of ship carrying oil without required financial assurances.**

[*Declares emergency, effective on passage.*]

A BILL FOR AN ACT

Relating to oil spills; creating new provisions; and amending ORS 468.140.

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

SECTION 1. Sections 2 to 5 of this Act are added to and made a part of ORS 468.780 to 468.815.

SECTION 2. The Legislative Assembly finds that oil spills, hazardous material spills and other forms of incremental pollution present serious danger to the fragile marine environment of the state. Therefore, it is the intent of sections 2 to 5 of this 1989 Act to establish financial assurance for ships that transport oil and other hazardous material in the waters of the state.

SECTION 3. (1) Any ship over 300 gross tons, that transports oil in bulk as cargo, using any port or place in this state or the waters of the state shall establish, under rules adopted by the Environmental Quality Commission, evidence of financial assurance in the amount of the greater of:

(a) $1 million; or

(b) $150 per gross ton of the ship.

(2) The financial assurance established under subsection (1) of this section shall meet the liability to the State of Oregon for:

(a) Actual costs for removal of spills of oil;

(b) Civil penalties and fines imposed in connection with the spill of oil; and

(c) Natural resource damages.

SECTION 4. (1) Financial assurance may be established by any of the following methods or a combination of these methods acceptable to the Environmental Quality Commission:

(a) Evidence of insurance;

(b) Surety bond;

(c) Qualifications as a self-insurer; or

(d) Any other evidence of financial assurance approved by the commission.

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

A-Engrossed
Senate Bill 1038

Ordered by the Senate May 23
Including Senate Amendments dated May 23

Sponsored by COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

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[*Declares emergency, effective on passage.*]

A BILL FOR AN ACT

Relating to oil spills; creating new provisions; and amending ORS 468.140.

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(a) $1 million; or

(b) $150 per gross ton of the ship.

(2) The financial assurance established under subsection (1) of this section shall meet the liability to the State of Oregon for:

(a) Actual costs for removal of spills of oil;

(b) Civil penalties and fines imposed in connection with the spill of oil; and

(c) Natural resource damages.

SECTION 4. (1) Financial assurance may be established by any of the following methods or a combination of these methods acceptable to the Environmental Quality Commission:

(a) Evidence of insurance;

(b) Surety bond;

(c) Qualifications as a self-insurer; or

(d) Any other evidence of financial assurance approved by the commission.

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

(2) Any bond filed shall be issued by a bonding company authorized to do business in the United States.

(3) Documentation of the financial assurance shall be kept on the ship or filed with the department. The owner or operator of any other ship shall maintain on the ship a certificate issued by the United States Coast Guard evidencing compliance with the requirements of section 311 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

SECTION 5. The maritime pilot piloting a ship subject to the provisions of section 3 of this 1989 Act shall report to the Department of Environmental Quality any ship owner or operator having control over oil who does not provide financial assurance as required under sections 3 and 4 of this 1989 Act.

SECTION 6. Not later than January 1, 1990, the Environmental Quality Commission shall adopt rules to carry out the provisions of sections 2 to 5 of this Act.

SECTION 7. 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).

(f) The financial assurance requirement under sections 3 and 4 of this 1989 Act or any rule related to the financial assurance requirement under section 3 of this 1989 Act.

(2) Each day of violation under subsection (1) of this section constitutes a separate offense.

(3)(a) In addition to any other penalty provided by law, any person who intentionally or negligently causes or permits the discharge of oil into the waters of the state shall incur a civil penalty not to exceed the amount of $20,000 for each violation.

(b) In addition to any other penalty provided by law, any person who violates the terms or conditions of a permit authorizing waste discharge into the air or waters of the state or violates any law, rule, order or standard in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter relating to air or water pollution shall incur a civil penalty not to exceed the amount of $10,000 for each day of violation.

(4) Paragraphs (c) and (e) of subsection (1) of this section do not apply to violations of motor vehicle emission standards which are not violations of standards for control of noise emissions.

(5) Notwithstanding the limits of ORS 468.130 (1) and in addition to any other penalty provided by law, any person who intentionally or negligently causes or permits open field burning contrary to the provisions of ORS 468.450, 468.455 to 468.480, 476.380 and 478.960 shall be assessed by the department a civil penalty of at least $20 but not more than $40 for each acre so burned. Any fines

collected by the department pursuant to this subsection shall be deposited with the State Treasurer to the credit of the General Fund and shall be available for general governmental expense.

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.

Attachment F

period, or unless the person incurring the penalty shall otherwise have received actual notice of the violation not less than five days prior to the violation for which a penalty is imposed.

(2) No advance notice shall be required under subsection (1) of this section if:

(a) The violation is intentional or consists of disposing of solid waste or sewage at an unauthorized disposal site or constructing a sewage disposal system without the department's permit.

(b) The water pollution, air pollution or air contamination source would normally not be in existence for five days, including but not limited to open burning.

(c) The water pollution, air pollution or air contamination source might leave or be removed from the jurisdiction of the department or regional air quality control authority, including but not limited to ships.

(d) The penalty to be imposed is for a violation of ORS 466.005 to 466.385.

(e) The penalty to be imposed is for a violation of ORS 468.893 (8) relating to the control of asbestos fiber releases into the environment. [Formerly 449.967; 1977 c.317 §2; 1983 c.703 §17; 1985 c.735 §3; 1987 c.741 §19]

468.130 Schedule of civil penalties; factors to be considered in imposing civil penalties. (1) The commission shall adopt by rule a schedule or schedules establishing the amount of civil penalty that may be imposed for a particular violation. Except as provided in ORS 468.140 (3), no civil penalty shall exceed $500 per day. Where the classification involves air pollution, the commission shall consult with the regional air quality control authorities before adopting any classification or schedule.

(2) In imposing a penalty pursuant to the schedule or schedules authorized by this section, the commission and regional air quality control authorities shall consider the following factors:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(b) Any prior violations of statutes, rules, orders and permits pertaining to water or air pollution or air contamination or solid waste disposal.

(c) The economic and financial conditions of the person incurring a penalty.

(d) The gravity and magnitude of the violation.

(e) Whether the violation was repeated or continuous.

(f) Whether the cause of the violation was an unavoidable accident, negligence or an intentional act.

(g) The violator's cooperativeness and efforts to correct the violation.

(h) Any relevant rule of the commission.

(3) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the commission or regional authority considers proper and consistent with the public health and safety.

(4) The commission may by rule delegate to the department, upon such conditions as deemed necessary, all or part of the authority of the commission provided in subsection (3) of this section to remit or mitigate civil penalties. [Formerly 449.970; 1977 c.317 §3; 1987 c.266 §2]

468.135 Procedures to collect civil penalties. (1) Subject to the advance notice provisions of ORS 468.125, any civil penalty imposed under ORS 468.140 shall become due and payable when the person incurring the penalty receives a notice in writing from the director of the department, or from the director of a regional air quality control authority, if the violation occurs within its territory. The notice referred to in this section shall be sent by registered or certified mail and shall include:

(a) A reference to the particular sections of the statute, rule, standard, order or permit involved;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed; and

(d) A statement of the party's right to request a hearing.

(2) The person to whom the notice is addressed shall have 20 days from the date of mailing of the notice in which to make written application for a hearing before the commission or before the board of directors of a regional air quality control authority.

(3) All hearings shall be conducted pursuant to the applicable provisions of ORS 183.310 to 183.550.

(4) Unless the amount of the penalty is paid within 10 days after the order becomes final, the order shall constitute a judgment and may be filed in accordance with the provisions of ORS 18.320 to 18.370. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

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ATTACHMENT E

(5) All penalties recovered under ORS 468.140 shall be paid into the State Treasury and credited to the General Fund, or in the event the penalty is recovered by a regional air quality control authority, it shall be paid into the county treasury of the county in which the violation occurred. [Formerly 449.973]

468.140 Civil penalties for specified violations. (1) In addition to any other penalty provided by law, any person who violates any of the following shall incur a civil penalty for each day of violation in the amount prescribed by the schedule adopted under ORS 468.130:

(a) The terms or conditions of any permit required or authorized by law and issued by the department or a regional air quality control authority.

(b) Any provision of ORS 164.785, 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745, ORS chapter 467 and this chapter.

(c) Any rule or standard or order of the commission adopted or issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745, ORS chapter 467 and this chapter.

(d) Any term or condition of a variance granted by the commission or department pursuant to ORS 467.060.

(e) Any rule or standard or order of a regional authority adopted or issued under authority of ORS 468.535 (1).

(2) Each day of violation under subsection (1) of this section constitutes a separate offense.

(3)(a) In addition to any other penalty provided by law, any person who intentionally or negligently causes or permits the discharge of oil into the waters of the state shall incur a civil penalty not to exceed the amount of $20,000 for each violation.

(b) In addition to any other penalty provided by law, any person who violates the terms or conditions of a permit authorizing waste discharge into the air or waters of the state or violates any law, rule, order or standard in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter relating to air or water pollution shall incur a civil penalty not to exceed the amount of $10,000 for each day of violation.

(4) Paragraphs (c) and (e) of subsection (1) of this section do not apply to violations of motor vehicle emission standards which are not violations of standards for control of noise emissions.

(5) Notwithstanding the limits of ORS 468.130 (1) and in addition to any other penalty provided by law, any person who intentionally or negligently causes or permits open field burning contrary to the provisions of ORS 468.450, 468.455 to 468.480, 476.380 and 478.960 shall be assessed by the department a civil penalty of at least $20 but not more than $40 for each acre so burned. Any fines collected by the department pursuant to this subsection shall be deposited with the State Treasurer to the credit of the General Fund and shall be available for general governmental expense. [Formerly 449.993; 1975 c.559 §14; 1977 c.511 §5; 1979 c.353 §1; 1987 c.513 §1]

POLLUTION CONTROL FACILITIES TAX CREDIT

468.150 Field sanitation and straw utilization and disposal methods as "pollution control facilities." After alternative methods for field sanitation and straw utilization and disposal are approved by the committee and the department, "pollution control facility," as defined in ORS 468.155, shall include such approved alternative methods and persons purchasing and utilizing such methods shall be eligible for the benefits allowed by ORS 468.155 to 468.190. [1975 c.559 §15]

Note: 468.150 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 468 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

468.155 Definitions for ORS 468.155 to 468.190. (1)(a) As used in ORS 468.155 to 468.190, unless the context requires otherwise, "pollution control facility" or "facility" means any land, structure, building, installation, excavation, machinery, equipment or device, or any addition to, reconstruction of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device reasonably used, erected, constructed or installed by any person if:

(A) The principal purpose of such use, erection, construction or installation is to comply with a requirement imposed by the department, the federal Environmental Protection Agency or regional air pollution authority to prevent, control or reduce air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil; or

(B) The sole purpose of such use, erection, construction or installation is to prevent, control or reduce a substantial quantity of air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil.

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(5) All penalties recovered under ORS 468.140 shall be paid into the State Treasury and credited to the General Fund. or in the event the penalty is recovered by a regional air quality control authority, it shall be paid into the county treasury of the county in which the violation occurred. [Formerly 449.973]

468.140 Civil penalties for specified violations. (1) In addition to any other penalty provided by law, any person who violates any of the following shall incur a civil penalty for each day of violation in the amount prescribed by the schedule adopted under ORS 468.130:

(a) The terms or conditions of any permit required or authorized by law and issued by the department or a regional air quality control authority.

(b) Any provision of ORS 164.785, 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745, ORS chapter 467 and this chapter.

(c) Any rule or standard or order of the commission adopted or issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745, ORS chapter 467 and this chapter.

(d) Any term or condition of a variance granted by the commission or department pursuant to ORS 467.060.

(e) Any rule or standard or order of a regional authority adopted or issued under authority of ORS 468.535 (1).

(2) Each day of violation under subsection (1) of this section constitutes a separate offense.

(3)(a) In addition to any other penalty provided by law, any person who intentionally or negligently causes or permits the discharge of oil into the waters of the state shall incur a civil penalty not to exceed the amount of $20,000 for each violation.

(b) In addition to any other penalty provided by law, any person who violates the terms or conditions of a permit authorizing waste discharge into the air or waters of the state or violates any law, rule, order or standard in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter relating to air or water pollution shall incur a civil penalty not to exceed the amount of $10,000 for each day of violation.

(4) Paragraphs (c) and (e) of subsection (1) of this section do not apply to violations of motor vehicle emission standards which are not violations of standards for control of noise emissions.

(5) Notwithstanding the limits of ORS 468.130 (1) and in addition to any other penalty provided by law, any person who intentionally or negligently causes or permits open field burning contrary to the provisions of ORS 468.450, 468.455 to 468.480, 476.380 and 478.960 shall be assessed by the department a civil penalty of at least $20 but not more than $40 for each acre so burned. Any fines collected by the department pursuant to this subsection shall be deposited with the State Treasurer to the credit of the General Fund and shall be available for general governmental expense. [Formerly 449.993; 1975 c.559 §14; 1977 c.511 §5; 1979 c.353 §1; 1987 c.513 §1]

POLLUTION CONTROL FACILITIES TAX CREDIT

468.150 Field sanitation and straw utilization and disposal methods as "pollution control facilities." After alternative methods for field sanitation and straw utilization and disposal are approved by the committee and the department, "pollution control facility," as defined in ORS 468.155, shall include such approved alternative methods and persons purchasing and utilizing such methods shall be eligible for the benefits allowed by ORS 468.155 to 468.190. [1975 c.559 §15]

Note: 468.150 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 468 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

468.155 Definitions for ORS 468.155 to 468.190. (1)(a) As used in ORS 468.155 to 468.190, unless the context requires otherwise, "pollution control facility" or "facility" means any land, structure, building, installation, excavation, machinery, equipment or device, or any addition to, reconstruction of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device reasonably used, erected, constructed or installed by any person if:

(A) The principal purpose of such use, erection, construction or installation is to comply with a requirement imposed by the department, the federal Environmental Protection Agency or regional air pollution authority to prevent, control or reduce air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil; or

(B) The sole purpose of such use, erection, construction or installation is to prevent, control or reduce a substantial quantity of air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil.

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Certificate No. 2120

Date of Issue 3/02/90

Application No. T-2838

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: Charles V. & Catherine F. Grimes 30309 Lassen Lane Junction City, OR 97448	Location of Pollution Control Facility: 33221 Friceboro Drive Harrisburg, OR
As: ☐ Lessee ☒ Owner	
Description of Pollution Control Facility: 100 x 50 x 22' pole construction grass seed straw storage shed	
Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil	
Date Pollution Control Facility was completed: 12/08/89	Placed into operation: 12/28/89
Actual Cost of Pollution Control Facility: $ 17,270.30	
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 2nd day of March, 1990.

Certificate No. 2121

Date of Issue 3/02/90

Application No. T-2902

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: William J. Stellmacher 30416 Stellmacker Drive SW Albany, OR 97321	Location of Pollution Control Facility: 30416 Stellmacher Drive SW Albany, OR
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

108 x 106 x 22' grass straw storage shed

Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil

Date Pollution Control Facility was completed: 11/15/89 Placed into operation: 11/15/89

Actual Cost of Pollution Control Facility: $ 44,179.00

Percent of actual cost properly allocable to pollution control:

52 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 2nd day of March, 1990.

Certificate No. 2122

Date of Issue 3/02/90

Application No. T-3078

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
Far West Fibers, Inc. P.O. Box 503 Beaverton, OR 97075	7979 SE Powell Blvd. Portland, OR
As: ☐ Lessee ☒ Owner	
Description of Pollution Control Facility: Marathon Model RJ-225 compactor and one new Marathon Model RJ-OC Ram Jet 40 cubic yard container.	
Type of Pollution Control Facility: ☐ Air ☐ Noise ☐ Water ☒ Solid Waste ☐ Hazardous Waste ☐ Used Oil	
Date Pollution Control Facility was completed: 8/21/89	Placed into operation: 8/21/89
Actual Cost of Pollution Control Facility: $ 14,408.00	
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 2nd day of March, 1990.

Certificate No. 2123

Date of Issue 3/02/90

Application No. T-3126

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: Willamette Industries KorPine Division 3800 First Interstate Tower 1300 SW 5th Avenue Portland, OR 97201	Location of Pollution Control Facility: Bend, OR
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

Installation of a Carter Day baghouse with pneumafil filters and ancillary equipment on the No. 1 Press Line Former.

Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil

Date Pollution Control Facility was completed: 7/31/89 Placed into operation: 7/31/89

Actual Cost of Pollution Control Facility: $ 103,295.48

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 2nd day of March, 1990.

Certificate No. 2124

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Date of Issue 3/02/90

Application No. T-3128

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: J.S.G., Inc. Steve & Virginia Glaser 32200 Quail Run Tangent, OR 97389	Location of Pollution Control Facility: 32200 Quail Run Tangent, OR
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

Allis-Chalmers 745 HB
Wheel loader and modifications

Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil

Date Pollution Control Facility was completed: 10/26/89 Placed into operation: 11/06/89

Actual Cost of Pollution Control Facility: $ 21,206.22

Percent of actual cost properly allocable to pollution control:

80 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 W P Hutchison Jr

Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on the 2nd day of March, 1990.

Certificate No. 2125

Date of Issue 3/02/90

Application No. T-3132

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
Eder Farms, Inc. 12730 Miller Road NE Gervais, OR 97026	12730 Miller Road NE Gervais, OR
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

Hesston 550 round baler

Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil

Date Pollution Control Facility was completed: 7/89 Placed into operation: 7/89

Actual Cost of Pollution Control Facility: $ 13,600.00

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 2nd day of March, 1990.

Certificate No. 2126

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Date of Issue 3/02/90

Application No. T-3136

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: Oak Park Farms, Inc. Norman Coon, Vernon Coon 31310 Peoria Road Shedd, OR 97377	Location of Pollution Control Facility: Oak Plain Drive, off 99E, 2 miles south of Halsey, OR
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

180 x 106 x 22' pole construction grass seed straw storage shed

Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil

Date Pollution Control Facility was completed: 6/88 Placed into operation: 6/88

Actual Cost of Pollution Control Facility: $ 66,641.00

Percent of actual cost properly allocable to pollution control:

62 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., Inc., Chairman

Approved by the Environmental Quality Commission on

the 2nd day of March, 1990.

Certificate No. 2127

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Date of Issue 3/02/90

Application No. T-3137

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: Oak Park Farms, Inc. Norman Coon, Vernon Coon 31310 Peoria Road Shedd, OR 97377	Location of Pollution Control Facility: Oak Plain Drive off 99E, 2 miles south of Halsey, OR
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

180 x 108 x 22' grass seed straw storage shed

Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil

Date Pollution Control Facility was completed: 7/88 Placed into operation: 7/88

Actual Cost of Pollution Control Facility: $ 66,641.00

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 2nd day of March, 1990.

Certificate No. 2128

Date of Issue 3/02/90

Application No. T-3139

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: Estergard Farms, Inc. Donald Estergard, Lester Estergard 1455 Larkspur Avenue Eugene, OR 97401	Location of Pollution Control Facility: 32022 Priceboro Drive Harrisburg, OR
As: ☐ Lessee ☒ Owner	
Description of Pollution Control Facility: 288 x 76 x 35' galvanized metal pole straw storage shed	
Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil	
Date Pollution Control Facility was completed: 9/01/89	Placed into operation: 10/01/89
Actual Cost of Pollution Control Facility: $94,901.60	
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 2nd day of March, 1990.

Certificate No. 2129

Date of Issue 3/02/90

Application No. T-3141

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: Estergard Farms, Inc. Donald Estergard, Lester Estergard 1455 Larkspur Avenue Eugene, OR 97401	Location of Pollution Control Facility: 32022 Priceboro Drive Harrisburg, OR
As: ☐ Lessee ☑ Owner	

Description of Pollution Control Facility:

One Kuhn flex straw rake
One farm manufactured buck rake
One Rears profane flamer

Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil

Date Pollution Control Facility was completed: 9/01/88 Placed into operation: 9/01/88

Actual Cost of Pollution Control Facility: $ 16,548.91

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 2nd day of March, 19 90.

Certificate No. 2131

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Date of Issue 3/02/90

Application No. T-2941

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: J.S.G., Inc. Steve & Virginia Glaser 32200 Quail Run Tangent, OR 97389	Location of Pollution Control Facility: 32161 Quail Run Tangent, OR
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

Ford 3600 tractor

Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil

Date Pollution Control Facility was completed: 6/27/89 Placed into operation: 6/27/89

Actual Cost of Pollution Control Facility: $ 9,500.00

Percent of actual cost properly allocable to pollution control:

75 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 2nd day of March, 1990.

Certificate No. 2132

Date of Issue 3/02/90

Application No. T-2942

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: J.S.G., Inc. Steve & Virginia Glaser 32200 Quail Run Tangent, OR 97389	Location of Pollution Control Facility: 32161 Quail Run Tangent, OR
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

John Deere 4255 tractor

Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil

Date Pollution Control Facility was completed: 7/30/89 Placed into operation: 7/30/89

Actual Cost of Pollution Control Facility: $ 50,508.67

Percent of actual cost properly allocable to pollution control:

75 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 2nd day of March, 1990.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Cert. No. 1698
Date First Issued 10/07/83
Date Reissued 8/10/84
Appl. No. T-1621
Second reissue date 3/02/90

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
Pleasant Valley Ply. Inc. P.O. Box 454 Sweet Home, Or 97386	Highway 20 Sweet Home, Oregon
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

Exhaust stack ducting, dampers and damper control system for returning veneer dryer gases to furnace for incineration.

Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil

Date Pollution Control Facility was completed: 5/05/78 **Placed into operation:** 5/05/78

Actual Cost of Pollution Control Facility: $ 120,000.00

Percent of actual cost properly allocable to pollution control: 80 percent or more

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.

NOTE: THIS IS A REISSUED CERTIFICATE VALID ONLY FOR THE TIME REMAINING FROM THE DATE OF FIRST ISSUANCE.

Signed _____

Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on the 2nd day of March 19 90.

DEQ-TC/6a 9/82

SP*07063-340

Certificate No. 2113

Date of Issue 3/02/90

Application No. T-2318

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
Teledyne Industries, Inc. Teledyne Wah Chang Albany P.O. Box 460 Albany, OR 97371	1600 Old Salem Road Albany, OR
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

Teledyne scrybber system 87-1007 consisting of a venturi scrubber and a packed bed scrubber, controls and ductwork to control fugitive emissions from research activities related to manufacturing and forming processes of non-ferrous metals.

Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil

Date Pollution Control Facility was completed: 3/08/88 Placed into operation: 3/08/88

Actual Cost of Pollution Control Facility: $ 111,421.00

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 2nd day of March, 1990.

Certificate No. 2114

Date of Issue 3/02/90

Application No. T-2472

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: Willamette Industries, Inc. Duraflake Division 3800 First Interstate Tower 1300 SW 5th Avenue Portland, OR 97201	Location of Pollution Control Facility: Millersburg, OR
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

Western Pneumatics Model #256 baghouse, two 8' diameter cyclones, four 40hp fans and ancillary equipment.

Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil

Date Pollution Control Facility was completed: 7/08/88 Placed into operation: 7/08/88

Actual Cost of Pollution Control Facility: $ 150,699.29

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 2nd day of March, 1990.

Certificate No. 2115

Date of Issue 3/02/90

Application No. T-2536

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: Willamette Industries, Inc. KorPine Division 3800 First Interstate Tower 1300 SW 5th Avenue Portland, OR 97201	Location of Pollution Control Facility: Bend, OR
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

Installation of two Pneumafit "Straight Fire Fitters", Model 11.5-162-12 on a new Kimwood 8-head sander.

Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil

Date Pollution Control Facility was completed: 12/19/88 Placed into operation: 12/19/88

Actual Cost of Pollution Control Facility: $ 260,498.19

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 2nd day of March, 1990.

Certificate No. 2116

Date of Issue 3/02/90

Application No. T-2663

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: South Coast Lumber Co. P.O. Box 670 Brookings, OR 97415	Location of Pollution Control Facility: Brookings, OR
As: ☐ Lessee ☒ Owner	
Description of Pollution Control Facility: 16' diameter Pneumafil bag filter to reduce sanderdust emissions.	
Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil	
Date Pollution Control Facility was completed: 5/15/89	Placed into operation: 5/15/89
Actual Cost of Pollution Control Facility: $ 227,672.00	
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., Chaiman

Approved by the Environmental Quality Commission on the 2nd day of March, 19 90.

Certificate No. 2117

Date of Issue 3/02/90

Application No. T-2670

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
Precision Castparts Corp. Titanium Plant 4600 SE Harney Drive Portland, OR 97206	5001 SE Johnson Cr. Blvd. Milwaukie, OR Clackamas County
As: ☐ Lessee ☒ Owner	
Description of Pollution Control Facility: Containment facility for hazardous materials.	
Type of Pollution Control Facility: ☐ Air ☐ Noise ☒ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil	
Date Pollution Control Facility was completed: 12/86	Placed into operation: 9/22/86
Actual Cost of Pollution Control Facility: $104,887.00	
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 2nd day of March, 1990.

Certificate No. 2118

Date of Issue 3/02/90

Application No. T-2686

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
Walter J. Wilmes 19095 Arbor Grove Road NE Woodburn, OR 97071	19095 Arbor Grove Road NE Woodburn, OR
As: ☐ Lessee ☑ Owner	
Description of Pollution Control Facility: 60' x 169' grass straw storage shed	
Type of Pollution Control Facility: ☑ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil	
Date Pollution Control Facility was completed: 8/15/89	Placed into operation: 8/31/89
Actual Cost of Pollution Control Facility: $ 44,952.00	
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 2nd day of March, 19 90.

Certificate No. 2119

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Date of Issue 3/02/90

Application No. T-2802

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: J.S.G., Inc. Steve & Virginia Glaser 32200 Quail Run Tangent, OR 97389	Location of Pollution Control Facility: 32660 Tangent Drive Tangent, OR
As: ☐ Lessee ☒ Owner	
Description of Pollution Control Facility: 196' x 160' straw storage shed	
Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil	
Date Pollution Control Facility was completed: 10/30/89	Placed into operation: 7/30/89
Actual Cost of Pollution Control Facility: $ 336,785.45	
Percent of actual cost properly allocable to pollution control: 77 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 2nd day of March, 1990.

Certificate No. 2101

Date of Issue 3/02/90

Application No. T-2493

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
Pacific Power and Light Co. 920 SW 6th Avenue Portland, OR 97204	Coos Bay Service Center Corner Broadway & Lockhart Streets Coos Bay, OR Coos County
As: ☐ Lessee ☒ Owner	
Description of Pollution Control Facility: Oil spill containment system consisting of concrete curbs and five oil/water separators.	
Type of Pollution Control Facility: ☐ Air ☐ Noise ☒ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil	
Date Pollution Control Facility was completed: 10/20/88	Placed into operation: 10/20/88
Actual Cost of Pollution Control Facility: $ 14,400.00	
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 2nd day of March, 1990.

Certificate No. 2102

Date of Issue 3/02/90

Application No. T-2693

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
William and Trudy Radke 31014 Green Valley Road Shedd, OR 97377	31014 Green Valley Road Shedd, OR
As: ☐ Lessee ☒ Owner	
Description of Pollution Control Facility: 124' x 180' straw storage building	
Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil	
Date Pollution Control Facility was completed: 5/30/89	Placed into operation: 7/01/89
Actual Cost of Pollution Control Facility: $ 71,018.00	
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 2nd day of March, 19 90.

Certificate No. 2103

Date of Issue 3/02/90

Application No. T-2713

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
Robert Schmidt 16294 Arbor Grove Road NE Woodburn, OR 97071	16294 Arbor Grove Road NE Woodburn, OR
As: ☐ Lessee ☒ Owner	
Description of Pollution Control Facility: 60' x 120' grass straw storage shed.	
Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil	
Date Pollution Control Facility was completed: 8/30/89	Placed into operation: 8/31/89
Actual Cost of Pollution Control Facility: $32,341.00	
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 W P Hutchison Jr

Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on the 2nd day of March, 1990.

Certificate No. 2104

Date of Issue 3/02/90

Application No. T-2742

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: Willamette Industries Western Kraft Group, Beaverton Div. 3700 First Interstate Tower Portland, OR 97201	Location of Pollution Control Facility: 5500 SW Western Avenue Beaverton, OR
As: ☐ Lessee ☒ Owner	
Description of Pollution Control Facility: Automatic horizontal waste paper baler system consisting of Maron Model 325-101 auto tie baler, Toledo scale model 8142, and bale accumulating, weighing and discharge conveyor.	
Type of Pollution Control Facility: ☐ Air ☐ Noise ☐ Water ☒ Solid Waste ☐ Hazardous Waste ☐ Used Oil	
Date Pollution Control Facility was completed: 6/12/89	Placed into operation: 6/12/89
Actual Cost of Pollution Control Facility: $85,341.36	
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 W P Hutchison Jr

Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on the 2nd day of March, 1990.

Certificate No. 2105

Date of Issue 3/02/90

Application No. T-2753

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
Kurt & Ellen Kayner Kayner & Company 26135 Peoria Road Halsey, OR 97348	26135 Peoria Road Halsey, OR
As: ☐ Lessee ☒ Owner	
Description of Pollution Control Facility: 106' x 180' x 22' metal clad straw storage shed	
Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil	
Date Pollution Control Facility was completed: 9/05/89	Placed into operation: 7/27/89
Actual Cost of Pollution Control Facility: $ 62,537.20	
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 2nd day of March, 1990.

Certificate No. 2106

Date of Issue 3/02/90

Application No. T-2758

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
Smith Bros. Farms Don Smith Farms 30736 Peoria Road Shedd, OR 97377	30736 Peoria Road Shedd, OR 97377
As: ☐ Lessee ☒ Owner	
Description of Pollution Control Facility: 80' x 300' straw storage shed	
Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil	
Date Pollution Control Facility was completed: 9/27/89	Placed into operation: 7/24/89
Actual Cost of Pollution Control Facility: $ 164,740.58	
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 W P Hutchison Jr

Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on the 2nd day of March, 1990.

Certificate No. 2107

Date of Issue 3/02/90

Application No. T-2783

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: Far West Fibers P.O. Box 503 Beaverton, OR 97075	Location of Pollution Control Facility: Cub Foods 1222 NE 102nd Avenue Portland, OR
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

Cascade 40 cubic yard octagon style compactor container

Type of Pollution Control Facility: ☐ Air ☐ Noise ☐ Water ☒ Solid Waste ☐ Hazardous Waste ☐ Used Oil

Date Pollution Control Facility was completed: 4/11/89 Placed into operation: 4/11/89

Actual Cost of Pollution Control Facility: $ 4,500.00

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 2nd day of March, 1990.

Certificate No. 2108

Date of Issue 3/02/90

Application No. T-3029

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
Eder Bros., Inc. 11690 Hook Road NE Mount Angel, OR 97362	11690 Hook Road NE Mount Angel, OR
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

Rear's propane flamer.

Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil

Date Pollution Control Facility was completed: 6/29/89 Placed into operation: 8/25/89

Actual Cost of Pollution Control Facility: $7,620.00

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 W P Hutchinson Jr

Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on the 2nd day of March, 1990.

Certificate No. 2109

Date of Issue 3/02/90

Application No. T-3093

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
Christensen Farms Don & Laura Christensen 16201 SW Christensen Road McMinnville, OR 97128	16201 SW Christensen Road McMinnville, OR
As: ☐ Lessee ☑ Owner	

Description of Pollution Control Facility:

Used Hesston Model 4800 (4x4x8) baler and accumulator.

Type of Pollution Control Facility: ☑ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil

Date Pollution Control Facility was completed: 9/07/89 Placed into operation: 9/07/89

Actual Cost of Pollution Control Facility: $ 33,000.00

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 2nd day of March, 1990.

Certificate No. 2110

Date of Issue 3/02/90

Application No. T-3102

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
Edgar L. Hurst ABC Recycling 2645 Avenue G White City, OR 97503	2645 Avenue G White City, OR
As: ☐ Lessee ☒ Owner	
Description of Pollution Control Facility: Miller Manufacturing Glass Crusher	
Type of Pollution Control Facility: ☐ Air ☐ Noise ☐ Water ☒ Solid Waste ☐ Hazardous Waste ☐ Used Oil	
Date Pollution Control Facility was completed: 9/15/89	Placed into operation: 9/15/89
Actual Cost of Pollution Control Facility: $ 2,685.00	
Percent of actual cost properly allocable to pollution control: 47 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 W P Hutchinson Jr

Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on the 2nd day of March, 1990.

Certificate No. 2111

Date of Issue 3/02/90

Application No. T-3129

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
James Van Leeuwen Tom Herndon 27070 Irish Bend Loop Halsey, OR 97348	29702 Nicewood Drive Halsey, OR
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

New Holland 858 round baler with two Crop Saver rake wheels attached and a Rugby five-bale round bale mover.

Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil

Date Pollution Control Facility was completed: 12/23/88 Placed into operation: 7/01/89

Actual Cost of Pollution Control Facility: $19,830.00

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 W P Hutchison Jr

Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on the 2nd day of March, 1990.

Certificate No. 2112

Date of Issue 3/02/90

Application No. T-3130

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
Wallace Zielinski 9740 South Highway 211 Canby, OR 97013	9740 South Highway 211 Canby, OR
As: ☐ Lessee ☒ Owner	
Description of Pollution Control Facility: Case International big baler 8580. Case International accumulator 8581.	
Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil	
Date Pollution Control Facility was completed: 6/30/89	Placed into operation: 8/15/89
Actual Cost of Pollution Control Facility: $ 59,000.00	
Percent of actual cost properly allocable to pollution control: 54 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 W P Hutchison Jr

Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on the 2nd day of March, 1990.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Cert. No. 1635
Date First Issued 8/19/83
Date Reissued 8/10/84
Appl. No. T-1620
Second Reissue Date. 3/02/90

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
Pleasant Valley Ply. Inc. P.O. Box 454 Sweet Home, Or 97386	Highway 20, Sweet Home, Oregon
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

Georgia Pacific air emission scrubber on a Prentice veneer dryer.

Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil

Date Pollution Control Facility was completed: 12/81 **Placed into operation:** 12/81

Actual Cost of Pollution Control Facility: $ 175,048.75

Percent of actual cost properly allocable to pollution control:

80 percent or more

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.

NOTE: THIS IS A REISSUED CERTIFICATE VALID ONLY FOR THE TIME REMAINING FROM THE DATE OF FIRST ISSUANCE.

Signed _____

Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on the 2nd day of March 1990.

DEQ-TC/6a 9/82

SP-07083-340

Certificate No. 2130

Date of Issue 3/02/90

Application No. T-2827

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: Smyth Hereford Ranch Ernest B. Smyth 93461 Smyth Road Junction City, OR 97448	Location of Pollution Control Facility: 93461 Smyth Road Junction City, OR
As: ☐ Lessee ☐ Owner	

Description of Pollution Control Facility:

One 1978 John Deere 4240 tractor
One 1989 Freeman 370 baler
One 1989 The Oregon Roadrunner hay squeeze

Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil

Date Pollution Control Facility was completed: 6/08/89 Placed into operation: 6/10/89

Actual Cost of Pollution Control Facility: $ 114,706.00

Percent of actual cost properly allocable to pollution control:

98 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 2nd day of March, 1990.

Certificate No. 2133

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Date of Issue 3/02/90

Application No. T-3131

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: James VanLeeuwen 27070 Irish Bend Loop Halsey, OR 97348	Location of Pollution Control Facility: 27070 Irish Bend Loop Halsey, OR
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

1977 Ford 8700 tractor

Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil

Date Pollution Control Facility was completed: 7/31/89 Placed into operation: 7/31/89

Actual Cost of Pollution Control Facility: $10,000.00

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 2nd day of March, 1990.

Certificate No. 2134

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Date of Issue 3/02/90

Application No. T-3135

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: Tom Herndon 27252 Irish Bend Loop Halsey, OR 97348	Location of Pollution Control Facility: 29702 Nicewood Drive Halsey, OR
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

1988 John Deere 4650 tractor

Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil

Date Pollution Control Facility was completed: 12/22/88 Placed into operation: 7/01/89

Actual Cost of Pollution Control Facility: $ 52,508.00

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 2nd day of March, 1990.

Certificate No. 2135

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Date of Issue 3/02/90

Application No. T-3140

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: Estergard Farms, Inc. Donald Estergard, Lester Estergard 1455 Larkspur Avenue Eugene, OR 97401	Location of Pollution Control Facility: 32022 Priceboro Drive Harrisburg, OR
As: ☐ Lessee ☒ Owner	
Description of Pollution Control Facility: John Deere 4850 tractor	
Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil	
Date Pollution Control Facility was completed: 6/28/89	Placed into operation: 7/15/89
Actual Cost of Pollution Control Facility: $ 71,401.84	
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 2nd day of March, 1990.

Certificate No. 2095

Date of Issue 3/02/90

Application No. T-2390

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: Pacific Power and Light Company 920 SW 6th Avenue Portland, OR 97204	Location of Pollution Control Facility: Vernon Substation NE 18th & Prescott Portland, OR Multnomah County
As: ☐ Lessee ☒ Owner	
Description of Pollution Control Facility: Oil spill containment system consisting of concrete curbs, concrete vault and an oil stop valve.	
Type of Pollution Control Facility: ☐ Air ☐ Noise ☒ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil	
Date Pollution Control Facility was completed: 4/25/88	Placed into operation: 4/25/88
Actual Cost of Pollution Control Facility: $12,037.00	
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 2nd day of March, 1990.

Certificate No. 2096

Date of Issue 3/02/90

Application No. T-2434

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
Teledyne Industries, Inc. Teledyne Wah Chang Albany 1600 Old Salem Road/P.O. Box 460 Albany, OR 97321	1600 Old Salem Road Albany, OR Linn County
As: ☐ Lessee ☒ Owner	
Description of Pollution Control Facility: Wastewater treatment system for removal of fluoride and molybdenum.	
Type of Pollution Control Facility: ☐ Air ☐ Noise ☒ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil	
Date Pollution Control Facility was completed: 4/06/89	Placed into operation: 3/08/89
Actual Cost of Pollution Control Facility: $1,595,129.41	
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 2nd day of March, 1990.

Certificate No. 2097

Date of Issue 3/02/90

Application No. T-2442

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: Pennwalt Corporation Inorganic Chemicals Division P.O. Box 4102 Portland, OR 97208	Location of Pollution Control Facility: 6400 NW Front Portland, OR
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

The facility consists of approximately 1,075 feet of 48 inch high eathern dikes, 212 feet of 22 inch high earthen dikes, 68 feet of 48 inch high concrete wall and 5 small sections of 48 inch high retaining wall.

Type of Pollution Control Facility: ☐ Air ☐ Noise ☒ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil

Date Pollution Control Facility was completed: 10/06/88 Placed into operation: 10/06/88

Actual Cost of Pollution Control Facility: $44,260.17

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 2nd day of March, 1990.

Certificate No. 2098

Date of Issue 3/02/90

Application No. T-2447

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: Prince Seeds, Inc. 6381 DeConinck Road NE Woodburn, OR 97071	Location of Pollution Control Facility: 6381 DeConinck Road NE Woodburn, OR
As: ☐ Lessee ☒ Owner	
Description of Pollution Control Facility: 21.5 x 75 x 170' straw storage shed	
Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil	
Date Pollution Control Facility was completed: 6/01/88	Placed into operation: 7/01/88
Actual Cost of Pollution Control Facility: $46,395.79	
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 2nd day of March, 1990.

Certificate No. 2099

Date of Issue 3/02/90

Application No. T-2467

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
Portland General Electric Co. 121 SW Salmon Street Portland, OR 97204	North Fork Plant 33831 SE Highway 224 Estacada, OR
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:
Oil spill containment facility consisting of a concrete basin and a 6 inch AFL/Clark oil stop valve.

Type of Pollution Control Facility: ☐ Air ☐ Noise ☒ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil

Date Pollution Control Facility was completed: 11/30/88 Placed into operation: 11/30/88

Actual Cost of Pollution Control Facility: $18,390.44

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 W P Hutchison Jr

Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on the 2nd day of March, 1990.

Certificate No. 2100

Date of Issue 3/02/90

Application No. T-2478

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: Portland General Electric Co. 121 SW Salmon Street Portland, OR 97204	Location of Pollution Control Facility: Faraday Plant 33831 SE Highway 224 Estacada, OR
As: ☐ Lessee ☒ Owner	
Description of Pollution Control Facility: The facility consists of a 4 inch oil stop valve and a sealed lid for a concrete vault.	
Type of Pollution Control Facility: ☐ Air ☐ Noise ☒ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil	
Date Pollution Control Facility was completed: 9/30/88	Placed into operation: 9/30/88
Actual Cost of Pollution Control Facility: $ 7,217.40	
Percent of actual cost properly allocable to pollution control: 100 percent	

Based upon the information contained in the application referenced above, the Environmental Quality Commission certifies that the facility described herein was erected, constructed or installed in accordance with the requirements of ORS 468.175 and subsection (1) of ORS 468.165, and is designed for, and is being operated or will operate to a substantial extent for the purpose of preventing, controlling or reducing air, water or noise pollution or solid waste, hazardous wastes or used oil, and that it is necessary to satisfy the intents and purposes of ORS Chapters 454, 459, 467 and 468 and rules adopted thereunder.

Therefore, this Pollution Control Facility Certificate is issued this date subject to compliance with the statutes of the State of Oregon, the regulations of the Department of Environmental Quality and the following special conditions:

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NOTE — The facility described herein is not eligible to receive tax credit certification as an Energy Conservation Facility under the provisions of Chapter 512, Oregon Law 1979, if the person issued the Certificate elects to take the tax credit relief under ORS 316.097 or 317.072.

Signed _____

Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on the 2nd day of March, 19 90.