OREGON ENVIRONMENTAL QUALITY COMMISSION MEETING MATERIALS 09/21/1990



This file is digitized in *color* using Optical Character Recognition (OCR) in a standard PDF format.

Quality

Standard PDF Creates PDF files to be printed to desktop printers or digital copiers, published on a CD, or sent to client as publishing proof. This set of options uses compression and downsampling to keep the file size down. However, it also embeds subsets of all (allowed) fonts used in the file, converts all colors to sRGB, and prints to a medium resolution. Window font subsets are not embedded by default. PDF files created with this settings file can be opened in Acrobat and Reader versions 6.0 and later.

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

State of Oregon

ENVIRONMENTAL QUALITY COMMISSION

AGENDA

WORK SESSION -- September 20, 1990

DEQ Conference Room 3a 811 S. W. 6th Avenue Portland, Oregon

1:00 p.m. - 1. Third Party Appeals

1:30 p.m. - 2. Deputy Director Position Description

2:00 p.m. - 3. Portland Airport Noise Abatement Plan: Background Discussion

2:45 p.m. - 4. Discussion of Pollution Control Facility Tax Credit Eligibility for Farm Equipment

3:45 p.m. - 5. Stage II Vapor Recovery: Discussion of New Developments and Policy Options

4:30 p.m. - 6. Strategic Plan Performance Indicators

NOTE: The purpose of the work session is to provide an opportunity for informal discussion of the above items.

The Commission will not be making decisions at the work session.

REGULAR MEETING -- September 21, 1990

DEQ Conference Room 3a 811 S. W. 6th Avenue Portland, Oregon 8:30 a.m.

Consent Items

NOTE: These are routine items that may be acted upon 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. When a rulemaking hearing is authorized, a public hearing will be scheduled and held to receive public comments. Following the hearing, the item will be returned to the Commission for consideration and final adoption of rules. When rules are proposed for final adoption as Consent Items, a hearing has been held, no significant issues were raised, and no changes are proposed to the original draft that was authorized for hearing.

A. Approval of Minutes of the August 9-10, 1990 Meeting

- B. Approval of Tax Credit Applications
- C. Accountabilities and Expectations, Director, Department of Environmental Quality
- D. Authorization for Rulemaking Hearing: Proposed Portland Central Business District Parking Offset Rule
- E. Authorization for Rulemaking Hearing: Proposed Amendments to Soil Matrix Rules for Underground Storage Tank Cleanups
- F. Authorization for Rulemaking Hearing: Proposed Amendments to Water Quality Standards as Part of the Triennial Review Required by the Clean Water Act
- G. City of McMinnville: Request for Approval of Program Plan for Reducing Wastewater Discharges and Meeting the Total Maximum Daily Load for Phosphorous for the Yamhill River
- H. City of Ashland: Request for Approval of Program Plan for Reducing Wastewater Discharges and Meeting the Total Maximum Daily Loads for Bear Creek
- I. Waste Tire Pile Cleanup: Request for Approval of Funds from the Waste Tire Recycling Account to Assist Douglas County

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. Individual presentations will be limited to 5 minutes. The Commission may discontinue this forum after a reasonable time if an exceptionally large number of speakers wish to appear.

Action Items

- J. Method and Criteria for Setting Maximum Measurable Levels for Contaminants in Groundwater:
 - (1) Presentation of Recommendation by the Technical Advisory Committee
 - (2) Request for Authorization to Hold Public Hearings on Proposed Rules
- K. North Albany Health Hazard Area: Approval of Final Alternative Plan to Annexation

Rule Adoptions

(None)

Information Items

- L. Commission Member Reports: (Oral Reports)
 - Governor's Watershed Enhancement Board (Hutchison)
 - Technical Specialist Panel (Castle)
 - Quality of Life Benchmarks Working Group (Wessinger)
- M. Director's Report (Oral Report)
- N. Legislative Update (Oral Report)

Special Request Item

- O. City of Coos Bay and Charleston Sanitary District
 - Petition from the City of Coos Bay Requesting Compliance Order and WPCF Permit for Charleston Sanitary District
 - Motion to Intervene to Specifically Appeal Contest Jurisdiction, and Motion to Dismiss forwarded by Charleston Sanitary District

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, November 2, 1990, at DEQ offices in Portland, Oregon. There will be a brief work session at the same location on November 1, 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.

September 6, 1990

Draft 3, 8/22/90

State of Oregon

ENVIRONMENTAL QUALITY COMMISSION

AGENDA

WORK SESSION -- September 20, 1990

DEQ Conference Room 3a 811 S. W. 6th Avenue Portland, Oregon

to author:

1:00 p.m. - Third Party Appeals

1:30 p.m. - 2. Deputy Director Position Description

2:00 p.m. - Portland Airport Noise Abatement Plan: Background Discussion

2:45 p.m. - Discussion of Pollution Control Facility Tax Credit Eligibility for Farm Equipment

3:45 p.m. - 5. Stage II Vapor Recovery: Discussion of New Developments and Policy

4:30 p.m. -? Strategic Plan Performance Indicators

NOTES: The purpose of the work session is to provide an opportunity for informal discussion of the above items.

The Commission will not be making decisions at the work session.

REGULAR MEETING -- September 21, 1990

DEQ Conference Room 3a 811 S. W. 6th Avenue Portland, Oregon 8:30 a.m.

I. Consent Items

NOTE: These are routine items that may be acted upon 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. When a rulemaking hearing is authorized, a public hearing will be scheduled and held to receive public comments. Following the hearing, the item will be returned to the Commission for consideration and final adoption of rules. When rules are proposed for final adoption as Consent Items, a hearing has been held, no significant issues were raised, and no changes are proposed to the original draft that was authorized for hearing.

A. Approval of Minutes of the August 9-10, 1990 Meeting

Approval of Tax Credit Applications

Accountabilities and Expectations, Director, Department of Environmental Quality

Authorization for Rulemaking Hearing: Proposed Portland Central Business District Parking Offset Rule

Authorization for Rulemaking Hearing: Proposed Amendments to Soil Matrix Rules for Underground Storage Tank Cleanups

Authorization for Rulemaking Hearing: Proposed Amendments to Water Quality Standards as Part of the Triennial Review Required by the Clean Water Act

City of McMinnville: Request for Approval of Program Plan for Reducing Wastewater Discharges and Meeting the Total Maximum Daily Load for Phosphorous for the Yamhill River

City of Ashland: Request for Approval of Program Plan for Reducing Wastewater Discharges and Meeting the Total Maximum Daily Loads for Bear Creek

Waste Tire Pile Cleanup; Request for Approval of Funds from the Waste Tire Recycling Account to Assist Douglas County

II. 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. Individual presentations will be limited to 5 minutes. The Commission may discontinue this forum after a reasonable time if an exceptionally large number of speakers wish to appear.

III. Action Items

Method and Criteria for Setting Maximum Measurable Levels for Contaminants in Groundwater:

- (1) Presentation of Recommendation by the Technical Advisory Committee
- (2) Request for Authorization to Hold Public Hearings on Proposed Rules

North Albany Health Hazard Area: Approval of Final Alternative Plan to Annexation

20 Howard Harris X 6086

25 Alan Kiphut X 6834

50 Krystyna Wolniakowski

X 6018 15 Dick Nichols

x 5323

30 Dick Nichols XS323

5 Brad Price X6792

50

25 Richard Santner X 5219

IV. 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.

(None)

V. Informational Items

- L. Commission Member Reports: (Oral Reports)
 - Governor's Watershed Enhancement Board (Hutchison)
 - Technical Specialist Panel (Castle)
 - Quality of Life Benchmarks Working Group (Wessinger)
- M. Director's Report (Oral Report)
- N. Legislative Update (Oral Report)

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, November 2, 1990, at DEQ offices in Portland, Oregon. There will be a brief work session at the same location on November 1, 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.

August 22, 1990

MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

ENVIRONMENTAL QUALITY COMMISSION

Minutes of the Two Hundred and Sixth Meeting August 9-10, 1990

Work Session

The Environmental Quality Commission (Commission or EQC) Work Session was convened at about 11:10 a.m. at the High Desert Museum south of Bend, Oregon. Commission members present were: Chairman Bill Hutchison, Vice Chairman Emery Castle, and Commissioners Bill Wessinger, Genevieve Sage and Henry Lorenzen. Also present were Director Fred Hansen of the Department of Environmental Quality and Department staff.

Item 1: Program Discussion -- Hazardous Waste and Hazardous Materials: Problem Prevention and Problem Correction

Mike Downs, Administrator of the Environmental Cleanup Division, presented an overview of Department programs for prevention and correction of problems related to Hazardous Waste and Hazardous Materials. Brett McKnight, of the Hazardous and Solid Waste Division, provided information on the Resource Conservation and Recovery Act (RCRA) Corrective Action program. Most of the discussion centered on the following three issues posed by the Department.

A. Alternative Drinking Water Supplies -- under what conditions should the Department provide alternative drinking water supplies to parties whose normal water supplies have become contaminated by a release of hazardous substances?

Mike Downs described the background on the issue, and noted in response to a question that the funding for providing an alternative water supply would come from the additional fee on wastes disposed at Arlington that supports environmental cleanup activities.

After some discussion, the Commission concluded that funding for an alternative water supply should be for a limited duration (temporary) and not open ended, that

funding should be limited to the difference in cost between the normal supply and the alternative supply, that the potential for a public agency having to repay funds advanced for an alternative water supply may be appropriate, and that the Department should return to the Commission with proposed rules to clarify the issue.

B. Acceptable Risk -- what is the acceptable level of risk for contracting cancer from exposure to a release of hazardous substances?

Mike Downs provided background information on the issue. The Commission generally agreed that it is desirable to display information in a risk perspective wherever possible and agreed with the direction the Department is moving.

C. Soil Cleanup Standards -- as the Department develops soil cleanup standards for use at sites with hazardous substance contamination limited to soils, how can this approach be structured to be consistent with the current cleanup rules which require cleanup to background where it is feasible?

Mike Downs provided background on the issue and noted that no other state has adopted soil cleanup standards. The Department is proposing to develop soil cleanup standards for sites with contamination limited to soils (no groundwater impact) similar to the UST soil matrix rules. Such standards would facilitate the voluntary cleanup approach. Some environmental organizations view this approach as weakening the clean up to background approach. The Commission agreed with the approach being pursued by the Department.

Rich Reiter of the Hazardous and Solid Waste Division and Lon Revall of the Environmental Cleanup Division provided information on Underground Storage Tank problem cleanup and problem prevention efforts. The Commission directed the Department to pursue development of a mechanism for evaluating the effectiveness of worker training and certification mechanisms that are being relied upon in these programs (and other programs).

Item 2: Oregon Benchmarks: Discussion of Document

The Department had prepared a table displaying comments and potential modifications of the "benchmarks" from the Oregon Benchmarks document that relate to DEQ programs. Jim Zehren, representing the Oregon Progress Board staff, aided the Commission in understanding the background behind the Oregon Benchmarks. The Commission reviewed the table of comments and made suggestions for additions or modifications in several areas. Significant comments included the need to come up with

some measurable benchmark relating to groundwater protection, the need to add a target for reducing the amount of solid waste generated per capita, the need to significantly increase the emphasis on conservation of energy and water, and the need to increase emphasis on education of Oregon residents on the role they play in protecting the quality of Oregon's environment. The Department was directed to revise the comments based on the discussion, circulate the revised draft to the Commission, and forward the final comments to the Oregon Progress Board by September 14, 1990, as requested.

Item 3: Discussion of Commission Meeting and Decision Processes

Commissioner Sage had prepared an outline of potential issues for discussion as part of this item. The issues were related to the format for meetings, the nature of written materials prepared, and the process for decision making. The Commission discussed many of the issues and gave the following direction to the Department:

- The current 1½ day format for meetings and the balance between work session and regular meeting is appropriate.
- A "rolling agenda" of potential future agenda items needs to be maintained to help guide selection of meeting locations and keep Commission members aware of upcoming issues.
- A target for about 3 meetings a year outside the Willamette valley is reasonable.
- The Commission and Department need to jointly make sure that directions given to the Department during Work Sessions are clear.
- The Commission would like to receive a draft of meeting minutes within 10 working days after the meeting. Minutes should be shorter (people can listen to the tape if they want to know more of the details of individual statements or issues).
- The Department is to poll other agencies to determine how they handle "public forum".
- The Commission generally likes the "structured" format for staff reports. The format can be "tweaked" however. Items to be considered include reduced length (volume), elimination of some attachments, elimination of "manufactured alternatives", and potential rearrangement of the order of the sections of the report. The Chairman asked staff to experiment with refinements and share staff drafts with him. Since reports for the September meeting were already being drafted, format changes would not be expected until the November 1-2, 1990, meeting.
- The Commission asked to be provided with updated sets of statutes and rules as soon as possible.

The Work Session was adjourned at about 5:00 p.m.

Regular Meeting

The Environmental Quality Commission regular meeting was convened at about 9:05 a.m. at the High Desert Museum south of Bend, 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.

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. These written materials are incorporated into the minutes of the meeting by reference.

Chairman Hutchison called the meeting to order and welcomed the public to the meeting. He noted the new Commission public input policy, and hoped all those participating were aware of it. He asked people wishing to testify on any item to fill out a witness registration sheet.

The Commission then proceeded through the published agenda.

I. Consent Items

The following items were listed on the agenda as Consent Items:

- A. Minutes of the June 28-29, 1990 Meeting
- B. Approval of Tax Credit Applications

The Department recommended that actions be taken on Pollution Control Facility Tax Credit requests as follows:

1. Approval of Tax Credit Applications:

TC-2745	Russell Oil Company	Installation of	tank monitor	connected to
•		four tanks.		

TC-2745 Russell Oil Company Installation of tank monitor connected to four tanks.

TC-2789	Everett E. Miles, Jr.	Replacement of six steel tanks and piping with five STI-P3 tanks and fiberglass piping, installation of tank monitor, line leak detectors, spill containment basins, overfill vent valves and monitoring wells.
TC-2886	OK's Auto Supply, Inc.	Replacement of five steel tanks and piping with fiberglass tanks and piping, spill containment basins, tank monitor and piping for vapor recovery.
TC-2895	G & P Farms	New Holland 858 Round Baler.
TC-2920	Rodney G. Phelan	Self propelled 370 Freeman Baler.
TC-2921	Gerald E. Phelan	Self propelled 370 Freeman Baler; Oregon Roadrunner Hay Squeeze.
TC-2930	Hyster Company	Installation of vapor monitoring system.
TC-2955	Hyster Company	Replacement of eight steel tanks and piping with six fiberglass tanks and piping, spill containment basins, tank monitor, vapor recovery and monitoring wells.
TC-2961	Clyde Montgomery	144' x 106' x 22' Straw Storage Shed.
TC-3050	Loren J. Smith Farms	New Holland 858 Round Baler.
TC-3110	Raymond T. Davidson	Rear's 30' Propane Flamer.
TC-3143	Lew Ropp	New Holland 858 Round Baler; Hesston Stakhand 60B; John Deere Plow 2700; John Deere Flail 27; and Rear's 30' Propane Flamer.
TC-3144	Scott Miller	Rear's 30' Propane Flamer.
TC-3145	J.S.G., Inc.	Straw refining equipment; Salvage Combine; Feeder wagon, and Blower.
TC-3146	J.S.G., Inc.	Improvements to Rear's Stak Pak.

TC-3147	Loren J. Smith Farms	New Holland 858 Round Baler.
TC-3149	Kirk Century Farms, Inc.	John Deere 300 Stackwagon; used John Deere MEWD Tractor; John Deere 260 Loader; John Deere 2810 7-Bottom Plow; Used 15 Dandl Flail Chopper; and John Deere 530 Round Baler.
TC-3150	Loren J. Smith Farms	Pak Flail Chopper.
TC-3151	Loren J. Smith Farms	Rugby Bale Handler.
TC-3152	Loren J. Smith Farms	Vermeer Double Rake.
TC-3153	Lane International Corp.	Reclaimed plastic product manufacturing facility.
TC-3154	Lane International Corp.	Molding die to produce manhole steps from reclaimed plastic.
TC-3155	Berger Brothers	Drainage Tile Installation.
TC-3156	Berger Brothers	John Deere 4850 Tractor; Rear's 14' Flail Chopper; New Holland 858 Round Baler; and John Deere 500 Loader Tractor.
TC-3169	Oak Creek Farms, Inc.	Big Bud Tractor; Wil Rich Plow; and, Pul-Flail Straw Chopper.
TC-3170	City Garbage Service	Drop Box for storage of plastics; container for plastics collection.
TC-3171	Cersovski Farm	Allis Chalmers 8070 Tractor; Ford Plow; 15' Dandle Flail Chopper; and Ford Tractor with Loader.
TC-3172	Walt Wilmes Farms, Inc.	New Holland 505t Baler.
TC-3173	Valley View Farms, Inc.	Rear's 30' Propane Flamer.
TC-3174	Duane R. Hofer, Jr.	Hesston 4600 Two String Baler.

TC-3181	G & P Farms	Used International 1566 Wheel tractor.	
TC-3182	D.E.W.W. Farms	Hesston 560 Baler.	
TC-3183	Martin A. Miller	Rear's 30' Propane Flamer.	
TC-3185	Far West Fibers	Caterpillar Wheel Loader 926E.	
TC-3188	Bill Terpening, Inc.	Replacement of three steel tanks with fiberglass tanks, installation of cathodic protection on fourth existing steel tank, replacement of all steel piping with fiberglass piping, installation of spill containment basins, monitoring wells, and risers for a tank monitor system.	
TC-3189	Roger F. Neuschwander	John Deere 8630 Tractor, John Deere 2800 Plow.	
TC-3191	Younger Oil Company	Installation of epoxy lining in three steel tanks, spill containment basins, line leak detectors and piping and risers for tank monitor system.	
TC-3192	Younger Oil Company	Installation of epoxy lining in three tanks, fiberglass piping, spill containment basins, line leak detectors, tank monitor and piping for Stage II vapor recovery.	
TC-3193	Davidson Farms, Inc.	Rear's 30' Propane Flamer; Hyster H200E Forklift Squeeze.	
TC-3195	Langmack Seed Co., Inc.	John Deere 4440 Tractor; 16' Pul Flail Chopper.	
TC-3196	Marion L. Knox	Case 1370 Tractor; White 548 Plow; Agriweld 2200 Harrow; Dandl Chopper.	

2. Request for extension to file a final application:

TC-2382 Treasure Chest Request a one-year extension.

Advertising Co., Inc.

3. Request for Transfer of Certificates:

Approve transfer of Certificates 727, 995, 996, 1131, 1132, 1133, 1147, 1219, 1263, 1726 and 1801 from Roseburg Lumber Company to Roseburg Forest Products Company.

C. Waste Tire Financial Assistance: Proposed Rule to Delegate Approval Authority to the Director (Authorization for Rulemaking Hearing)

This item requested authorization to hold a public rulemaking hearing on proposed rule amendments (presented in Attachment A of the staff report) to delegate authority to the Director for approval of financial assistance (to waste tire permittees) for cleanup of waste tire piles. The proposed rules would also establish amounts of financial assistance to local governments.

D. Solid Waste: Out of State Waste Surcharge (Authorization for Rulemaking Hearing)

This item requested authorization to hold a public rulemaking hearing on proposed rule changes (presented in Attachment A of the staff report) to establish a per-ton surcharge on the disposal of out-of-state solid waste in Oregon beginning January 1, 1991. The proposal offered a range of surcharge rates (from \$1.50 to \$3.50 per ton) for public comment.

E. Bear Creek TMDL: Proposed Amendment of Rule Establishing Deadline for Action (Authorization for Rulemaking Hearing)

This item requested authorization to hold a public rulemaking hearing on a proposed rule amendment to the Bear Creek Total Maximum Daily Load (TMDL) rule (OAR 340-41-385). The proposed amendment as presented in Attachment A of the staff report would delay the deadlines for the Department to distribute load allocations and waste load allocations, and for the regulated entities to submit program plans.

F. Waste Tire Pile Cleanup: Approval of Funds from Waste Tire Recycling Account to Assist Steve Wilson Company

This item requested Commission approval for use of funds from the Waste Tire Recycling Account to assist the Steve Wilson Company to expedite cleanup of approximately 500,000 waste tires at a permitted waste tire storage site. The estimated cost for cleanup was \$478,000 with the permittee required to pay 20%.

G. Waste Tire Pile Cleanup: Approval of Funds from Waste Tire Recycling Account to Assist Chuck Haas

This item requested Commission approval for use of funds from the Waste Tire Recycling Account to expedite cleanup of approximately 200,000 waste tires at a permitted waste tire storage site. The estimated cost for cleanup was \$380,000 with the permittee required to pay 10%.

No member of public signed up to testify on any of the consent items.

The Commission removed items B and D from the consent agenda by consensus to allow for discussion.

Action on Consent Items A, C, E, F, & G:

Chairman Hutchison identified the following corrections for the Minutes as presented in Agenda Item A:

• Add the word "be" after the word "should" in the last full line of the second paragraph on page 10. The sentence would read as follows:

She questioned if hearings should be delayed pending resolution of these issues.

• On page 23 under Item AA. Commission Member Reports, change the opening sentence to read as follows:

Chairman Hutchison reported that the Pacific Northwest Hazardous Waste Advisory Council has been disbanded but [agreement and the] a memorandum of understanding perpetuating regionalism and the newly formed Pacific Northwest Pollution Prevention Research Center will survive.

Commissioner Wessinger MOVED that Consent Items A (as amended), C, E, F, and G be approved. Commissioner Castle seconded the motion.

Chairman Hutchison then expressed some discomfort regarding the waste tire funding items (F & G). Commissioner Sage asked if the emphasis on speed was appropriate. It seems that some of these piles could be cleaned up without using public funds if allowed to do so over a longer period of time. The Commission also asked whether use of funds from the Waste Tire Recycling Account for cleanups would shortchange the market incentives (reimbursement) program. The Commission wanted to be certain that financial assistance and immediate cleanups were based on actual legislative intent and statutes.

Director Hansen responded to Commission concerns by noting that the intent of the statute is to spend the funds in the Waste Tire Recycling Account for the statutory purposes including rapid cleanup of waste tire piles that existed prior to enactment of the statute. Staff also indicated that funds are currently available in the account to meet all needs.

Commissioner Lorenzen had questions concerning the financial status of Steve Wilson Company and Mr. Steve Wilson and his family. Mr. Larry Wilson, was present and responded to questions, noting that most of the tires at the site were dumped there by others without permission and the site has now been fenced to prevent dumping.

Chairman Hutchison then called for a vote on the motion to approve consent items A, C, E, F, and G. The motion was unanimously approved.

Consideration of Consent Item B: (Approval of Tax Credit Applications)

Commissioner Lorenzen expressed concern about the tractors that were being claimed for tax credit in 8 of the applications. He suggested that further review and establishment of additional criteria for equipment that is susceptible for use in other farming operations may be appropriate. He questioned the extent to which equipment that is "ordinary and necessary" and normally used in other farm operations should be eligible.

Commissioner Lorenzen suggested that action on the applications with tractors be deferred until the next meeting.

It was MOVED by Commissioner Sage that the Department recommendation on tax credit applications be approved with the exception that action on applications TC-3149,

TC-3156, TC-3169, TC-3171, TC-3181, TC-3189, TC-3195, and TC-3196 be deferred. The motion was seconded by Commissioner Lorenzen and unanimously approved.

Consideration of Consent Item D: (Authorization of Rulemaking Hearing on Out of State Waste Surcharge)

Chairman Hutchison asked whether instead of a range we shouldn't take to the public a "worst case scenario" (from the high end of the range, e.g. the \$3.50 surcharge recommended by the Solid Waste Advisory Committee). It could be treated as a conditional recommendation. Steve Greenwood responded that the Department felt it would get better comments from the public if they weren't just reacting for or against a specific Department proposal.

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

Director Hansen noted that an economic consultant would be employed to review the economic analysis related to the proposed surcharge.

II. Public Forum

H. Regional Managers Report

John Hector, Manager of the Central Region of the Department of Environmental Quality, presented an oral report of significant issues and activities in the Central Region area.

Public Comments

Lisa Brenner, representing Citizens Concerned with Medical Waste Burning in Sherwood, urged the Commission to direct the Department to discontinue processing of the permit application for the medical waste incinerator until the land use issues are resolved. She also questioned the need for an incinerator and accused the Department of promoting the facility.

In response to a question from the Commission, Michael Huston noted that the Department's consistent practice has been to proceed with permit processing once a complete application including a local Land Use Compatibility Statement (LUCS) has been filed unless the LUCS is formally stayed by the Land Use Board of Appeals

(LUBA) pending resolution of an appeal or is withdrawn by the issuing body. Steve Greenwood of the Hazardous and Solid Waste Division reminded the Commission of the legislation passed in 1989 that declares incineration to be the preferred method of disposal for medical wastes. Director Hansen noted that the Department is not promoting the Sherwood incinerator, but is answering technical questions and acting on the permit application as required by law and Commission rules. In response to a question from Commissioner Sage, Gregg Lande of the Air Quality Division explained the modeling done regarding dioxin emissions and the resulting predicted risk levels.

Ms. Brenner asked if the Commission would direct DEQ to stop processing on the permit application for the Sherwood medical waste incinerator. Chairman Hutchison responded that the Commission would not.

Lauri Aunan, representing the Oregon State Public Interest Research Group (OSPIRG), provided written information on the Oregon Recycling Act Initiative which recently qualified for the November ballot. The initiative would involve the Commission and Department in rulemaking and enforcement.

Harry Demaray noted that he had sent two letters to Commission members since the last meeting. He read into the record a recent DEQ staff memorandum relating to one of the enforcement cases he was pursuing when he was terminated from employment with the Department. Chairman Hutchison advised Mr. Demaray that he had chosen a forum to resolve the issues he was concerned about (when he initiated legal action against the Department), that the Commission would defer to the Court in the matter, and that the Commission would not do anything along the way that would prejudice either the Commission's rights or Mr. Demaray's rights.

Jim Britton, representing Asphalt Pavement Association of Oregon, urged continued coordination between the Department of Environmental Quality, the Department of Transportation, Contractors, Equipment Manufactures, the Transportation Research Institute at Oregon State University, and others to further develop the options for using waste tires as an additive to asphalt paving materials. He noted that such modified mixes today can be 60% more costly than standard mix. Costs could come down as use increases and equipment becomes standardized. At present however, continued cooperation is needed to pursue the option.

Mr. Britton also expressed concern that a contractor was recently cited for hauling "waste" tires without proper permits when in fact he was transporting used equipment

tires from one site to another. He expressed general support for the waste tire program and urged continued efforts to fine tune of requirements.

III. Action Items

I. Unified Sewerage Agency Report on Facilities Plan

The purpose of agenda item I was to provide the Unified Sewerage Agency (USA) with an opportunity to summarize their comprehensive wastewater facilities plan for the Commission. John Jackson of USA presented a slide show highlighting the major elements of the plan. No action was required; the item served as an introduction to agenda item J. Discussion after the presentation included a clarification that only a portion (undefined) of the costs presented in the facilities plan are related to the TMDL requirements. Other costs are related to correcting other compliance problems and expansions to accommodate growth.

J. Unified Sewerage Agency of Washington County (USA) Wastewater Facilities Plan: Request for Extension of Compliance Deadline for Durham Facility

The purpose of this agenda item was to consider a request from USA to extend the TMDL compliance date for the Durham facility from June 30, 1993 to May 1, 1994. An opportunity to review the entire USA Facilities Plan was also provided. The extension was needed because of the volume of construction necessary and complex construction management and scheduling problems. The Department recommended granting the requested extension. The Commission had no additional questions (after item I).

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

K. Tualatin Basin Watershed Management Plans: Review and Commission Action

This item recommended that the Commission approve the program plans for controlling nonpoint source pollution in the Tualatin Basin submitted by the Unified Sewerage Agency, Clackamas County and Rivergrove, the City of Portland, the City of Lake Oswego, and the City of West Linn. This item also recommended that action on the plans submitted by the Oregon Department of Agriculture and the Oregon Department of Forestry be deferred pending further action by the agencies.

OAR 340-41-470(3)(i) requires the Commission to approve, reject or defer action on program plans for controlling nonpoint source pollution in the Tualatin River Basin to meet TMDL requirements by the June 30, 1993 compliance date.

Chairman Hutchison also asked for clarification of what had happened since the last EQC meeting when action on Department recommendations was deferred. Staff responded that meetings with the entities had occurred. Information and explanations provided was sufficient to allow many of the earlier proposed conditions to be dropped. Efforts to meet the deadline of the rule precluded this step prior to the last meeting.

There were three main questions raised by the Commission during the discussions on this item:

(1) How will the Department ensure that all entities complete the Nonpoint Source plans and comply with the requirements of the TMDL rule? In particular, how and when will both the Oregon Departments of Agriculture and Forestry's plans be completed?

Staff responded by referring the Commission to the Tualatin River Basin Watershed Management Plan Completion and Implementation Schedule which is attached to each entity's program plan staff recommendation report. Specific tasks and deadlines for completion of the plans, water quality monitoring, implementation measures are listed for each entity in their schedule. A monthly progress report and meeting with the Department is required. If any entity is not completing tasks in a timely manner or not complying with the TMDL requirements, the Department will prepare a compliance order. The Commission asked when the two plans recommended for deferral would be submitted to the Department. Staff noted that both plans would be submitted by November 1990.

(2) What has been the Oregon Department of Forestry (ODF) and the Oregon Board of Forestry's response to the TMDL requirements, and in particular, the Technical Specialist Panel (TSP) report?

A summary of the draft TSP report and the last Board of Forestry's meeting was given by staff which highlighted the need for further policy discussions with the Board. Staff recommended that the Commission adopt the Staff Recommendation without the ODF requested inclusion of the TSP report and the Board recommendation of tying the completion of ODF's Tualatin Basin Nonpoint Source plan with the TSP. The Commission expressed a need for the Department to work with the Department of Forestry and the Board of Forestry to resolve any policy issues remaining for them to complete and implement their Nonpoint Source plan for the Tualatin River Basin. Commissioner Castle noted that the TSP can't resolve

policy issues, therefore it is important to maintain close contact with the Board of Forestry.

(3) Why does the buffer requirement for the protection of all streams, wetlands and ponds not specify a minimum width as suggested by the Oregon Department of Fish and Wildlife, the Audubon Society and others?

Staff response was that the requirement for a protective buffer of preferably 100 feet was included to place the burden of proof of adequacy for protection of water quality on the entities. It clearly states the desire for a wider buffer width in order to adequately protect water quality. Considerable discussion and testimony from the urban entities occurred pointing out the benefits and problems with the Commission establishing specific minimum and maximum buffer widths.

John Jackson, representing USA, stated that the Commission should either rely on the local plans and processes for buffers, or adopt specific rules that the local agencies can rely upon. Lori Faha, representing City of Portland, noted that all entities supported buffers and have included them in their plans, but the variety of local situations makes it appropriate to leave the details of implementation to established local practices. Bruce Erickson, representing Clackamas County Department of Utilities, agreed with John Jackson and Lori Faha.

Director Hansen summarized the situation on buffers as follows:

- The buffer width standard suggested by Fish and Wildlife is a high standard to aim for; it is not set in concrete, but it is a high standard.
- The difference between infill and new development is recognized as it relates to buffer size.
- As new information is developed, more explicit direction on amount of buffer can be developed based on fact rather than subjective judgements.

It was MOVED by Commissioner Castle that the Department recommendation be approved with the understanding of the discussion on buffers. The motion was seconded by Commissioner Lorenzen and unanimously approved.

The meeting was then recessed for lunch. During the lunch break, Donny Kerr, Director of the High Desert Museum welcomed the Commission and provided background information on the philosophy and facilities of the museum.

Also during lunch, Chairman Hutchison presented a plaque to Commissioner Sage and thanked her, on behalf of the Commission and Department for her service on the Commission. (Commissioner Sage's term of appointment ended on June 30, 1990, but

she continued to serve until a replacement was appointed.) Director Hansen also thanked Commissioner Sage for her efforts and contributions to the accomplishments of the Agency.

The meeting was then reconvened.

L. Hazardous Waste: Proposed Temporary Rule to Replace the Extraction Procedure
Toxicity Test (EP Tox) with the Toxicity Characteristics Leaching Procedure (TCLP)
and to Require Treatment and Disposal Facilities Receiving and Managing Toxicity
Characteristic Hazardous Waste to Comply with Permitting and Siting Requirements

This item recommended that the Commission adopt a temporary Toxicity Characteristic (TC) rule requiring hazardous waste generators to use the Toxicity Characteristic Rule and the Toxicity Characteristic Leaching Procedure (TCLP) to determine if wastes containing any of the 14 constituents previously regulated under the Extraction Procedure (EP) toxicity rule are hazardous waste. The temporary rule eliminates the requirement that generators use both the TCLP and the EP toxicity test to make that determination. The temporary rule also requires treatment or disposal facilities receiving TC hazardous wastes from offsite to obtain a final permit before receiving such wastes. The temporary rule would become effective on September 25, 1990. The proposed temporary rule was presented in Attachment A of the staff report.

It was MOVED by Commissioner Sage that the Department recommendation (including statement of need) be approved. The motion was seconded by Commissioner Castle and unanimously approved.

M-1 Pollution Control Bonds: Proposed Adoption of Emergency Rule Amendments to OAR 340-81-005 to 81-100 and Authorization of Public Hearing on Permanent Rule Changes

This item requests that the Commission adopt emergency (temporary) rule amendments to OAR 340-81-005 to 81-100 and authorize a public hearing for permanent rule changes. The proposed temporary rule amendments were presented in Attachment A of the staff report. The statement of need for the temporary rule was presented in Attachment B. The emergency rule amendments allow the Department to recover its actual costs of issuing Pollution Control Bonds and to enter into more complex, long term financing programs. The proposed rule amendments would enable the Department to purchase special assessment improvement bonds from the Cities of Gresham and Portland to assist in financing the Mid-Multnomah County sewer project.

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

M-2 Pollution Control Bonds: Authorization to Issue State of Oregon Pollution Control Bonds, Review of Bond Purchase Agreements, and Authorization of Special Assessment Improvement Bond Purchases for Mid-Multnomah County Sewers

This item requests that the Commission authorize the Department to proceed with the sale of State of Oregon Pollution Control Bonds and approve the Bond Purchase Agreements between the Department and the Cities of Gresham and Portland, under the terms of the master agreement. This constituted the final action the EQC needed to take to complete the first round of financing for the mid-Multnomah County sewering project. The Commission previously approved the master agreements at the June 29, 1990, meeting.

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

IV. Rule Adoptions

N. Chlorofluorocarbons (CFCs) and Halons: Proposed Adoption of Finding and Rules Related to Automobile Air Conditioner Coolant Recovery and Recycling Equipment, and Enforcement Rules for Consumer Product Prohibitions

This item requested the Commission to determine that automobile air conditioner coolant recovery and recycling equipment is available and affordable, and to adopt new rules requiring the use of such equipment to prevent the release of stratospheric ozone depleting chemicals. One year after the determination is made the rules prohibit engaging in the business of installing, servicing, repairing, disposing of, or otherwise handling automobile air conditioners without recovering and recycling the CFC coolant. Small shops are given an additional year to comply.

Gregg Lande of the Air Quality Division, Program Planning Section advised that public hearings had been held on the proposed determination and rules. Public comments, received during the hearing process, suggested amendments which would: 1) allow the use of equipment not certified by Underwriter's Laboratory (UL) which was purchased before rule adoption; and 2) allow coolant to be <u>recovered</u> onsite with subsequent

recycling offsite. The Department recommended that the rules be adopted as proposed, arguing that there is sufficient flexibility to allow these activities.

There was a brief discussion about the mechanism for making the determination of "available and affordable" and it was pointed out that this was made a part of the Purpose and Applicability section of the rules.

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

O. Toxic Use Reduction and Hazardous Waste Reduction Rules (HB 3515)

This item proposed Commission adoption of rules to implement the Toxics Use Reduction and Hazardous Waste Reduction Act of 1989 as presented in Attachment A of the staff report. The primary role of the Department is to provide technical assistance and to monitor and report to the legislature on progress toward reduction in use of toxic substances and generation of hazardous waste. The regulations describe requirements which the regulated community must meet in planning and reporting reduction activities.

The Department recommended adoption of the rules, as modified after receipt of testimony during the public hearing process. Chairman Hutchison indicated he had received an inquiry as to the use of the terms "large quantity generator" in place of "fully regulated generator". Staff explained that EPA is replacing the term "fully regulated generator" with "large quantity generator", as opposed to a "small quantity generator", and that the term is used in the rules to be consistent with EPA terminology.

It was MOVED by Commissioner Castle that the Department recommendation be approved with a modification to OAR 340-135-020 (6) to state "Fully Regulated Generator" or "Large Quantity Generator"...., deletion of OAR 340-135-020 (9) which defines "Large Quantity Generator", and subsequent renumbering of that section of the rule. The motion was seconded by Commissioner Sage and unanimously approved.

Reconvened Public Forum

The Chairman then reconvened the Public Forum to hear from citizens from the Klamath Falls are who had arrived at the meeting after the morning Public Forum section.

Carol Yarbrough from Klamath Falls, representing Citizens for Quality Living, commented regarding the Bio Medical Waste Incinerator near Klamath Falls. She

expressed opposition to incineration of such wastes and urged alternatives that do not create toxic air emissions.

Judy Matthews from Klamath Falls, representing Citizens for Quality Living, also expressed concern for the environmental problems resulting from the air emissions, water discharges, bottom ash and fly ash generated by the Medical Waste Incinerator.

Lisa Anderson from Merrill, representing Movement to Expose Corrupt Environmental Policies, expressed concern regarding for the health of her infant child as a result of dioxins emitted from the Medical Waste incinerator.

Stephanie Hallock, Administrator of the Hazardous and Solid Waste Division, summarized the status of the Bio Medical Waste Incinerator near Klamath Falls. DEQ issued permits for the facility after the County had approved the land use. DEQ believes the citizen concerns are fundamentally land use issues that should be addressed at the local level. Commissioner Castle asked the Department to make an effort to clarify the jurisdictional issue in writing to the people testifying.

P. Used Oil Rules (SB 166)

This item recommends adoption of rules as presented in Attachment A of the staff report, to implement requirements of Chapter 268, Oregon Laws 1989 which regulate the direct application of used oil in the environment. The statute and rule exempt individuals who spread used oil on their own property. The only testimony received during the public hearing process supported the rules, and the Department recommended adoption.

Commissioner Wessinger asked how much used oil was still being spread in the environment. Staff replied that the practice has virtually ceased since the law was passed in 1989, as most people believe the law banned the practice.

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

Q. Land Use Coordination: Proposed Rules

This item requested Commission adoption of proposed rules for implementation of the Department's State Agency Coordination Program for activities affecting land use. The proposed rules were presented in Attachment A of the staff report. Under Oregon law

and the rules of the Land Conservation and Development Commission (LCDC), state agencies are directed to carry out activities affecting land use in compliance with statewide planning goals, and in a manner compatible with local comprehensive plans. State agencies are also directed to develop a State Agency Coordination Program and adopt rules for implementation, and submit the program and rules to LCDC for review and approval. The LCDC review of DEQ's program and rules is scheduled for December 1990.

Roberta Young, of the Management Services Division, advised the Commission of a technical correction in the proposed rules. On page A-5, the marking of paragraph (F) for deletion is in error. The paragraph should be reinstated as (G), and the subsequent paragraph(s) renumbered accordingly.

Chairman Hutchison asked for an explanation of paragraph (G) on page A-5 (now renumbered (H). Michael Huston explained that the intent was to give the Department flexibility to revoke or suspend a permit if deemed necessary, or to leave the permit in place pending exhaustion of appeal options. In general, if the land use approval is invalidated at any step in the appeal process, the activity cannot operate regardless of whether or not DEQ has issued a permit. Department action to initiate revocation or suspension may subject the Department to appeals and administrative actions that are costly and unnecessary in terms of any real effect.

It was MOVED by Commissioner Wessinger that the Department recommendation be approved with the reinstatement of Paragraph (F) on page A-5 and the appropriate renumbering. The motion was seconded by Commissioner Lorenzen and unanimously approved.

Lisa Brenner, representing Citizens Concerned with Medical Waste Burning in Sherwood, again urged the Commission to consider requiring that DEQ stop processing of a permit application pending resolution of all land use appeals.

Reconvened Public Forum

Chairman Hutchison then provided an opportunity for two additional people to provide public forum comments.

Jeff Anderson from Merrill, representing Movement to Expose Corrupt Environmental Policies, expressed opposition to the medical waste incinerator near Klamath Falls because it is within 3/4 miles of a bald eagle refuge and may harm waterfowl.

Maitreya, Citizen of Klamath County, read excerpts from several scientific papers related to dioxin exposure. He also noted that 2420 people in the Klamath County had signed an initiative petition in opposition to the Medical Waste Incinerator because the emissions endanger their lives and livelihoods.

R. Water Quality Rules: Proposed Rules on Use of Reclaimed Water

This agenda item requested Commission adoption of proposed rules which would establish effluent quality limitations, effluent monitoring and other requirements for sewage treatment plant owners that use reclaimed water (sewage treatment plant effluent) for beneficial purposes including agricultural and landscape irrigation. The proposed rules were presented in Attachment A of the staff report.

Dick Nichols of the Water Quality Division was asked if there were any significant issues that needed special attention by the Commission. Mr. Nichols stated no, but said that a member of the technical advisory committee, Mr. Marvin Kennedy, City of Medford, was present and suggested that the Commission ask him for comment. Mr. Kennedy said that he felt the rules were stringent to assure public health protection, but were also workable for sewage treatment plant operators.

Commissioner Sage asked if Mr. Steve Simonson from Clackamas County was present. He was not. She then asked if Mr. Nichols or Mr. Kennedy had seen the letter that Mr. Simonson had sent to the Commission concerning these rules. Neither had seen the letter. A copy was given to Mr. Nichols and Mr. Kennedy to review. The letter stated a concern about the rules being too stringent and, as such, would discourage the use of reclaimed water. Mr. Nichols indicated that this concern had been registered by Clackamas County at the hearings and had been addressed. Specifically, the requirements for irrigation reuse had been made less stringent based upon a review of the requirements in California regulations.

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

V. Informational Items

S. Commission Member Reports

Commissioner Sage noted that the Governor's Watershed Enhancement Board will need to obtain more staff support in the future. To date, the Board has been effective in

creating itself and moving forward without dedicated staff. However, improved results will require improved communications between agencies and additional staff resources.

T. Legislative Update (Oral Report)

John Loewy reported that the Department had gone forward with 11 legislative concepts following previous discussions with the Commission. Following review and discussions with the Governor's Office, nine concepts are being drafted, and two have been dropped from further consideration. (The concepts on Water Fees and Public/Private Environmental Cleanup were dropped.) A more detailed report (including draft copies of the bills) will be presented at the next meeting on the concepts that are currently being drafted by legislative counsel.

and the second of the second o

And the second

There was no further business and the meeting was adjourned.

State of Oregon

Department of Environmental Quality

Memorandum

Date: September 6, 1990

To:

Environmental Quality Commission

From:

Fred Hansen

Subject:

Agenda Item 1, September 20, 1990 EQC Work Session

Third Party Appeals

As background for your discussion on Third Party Appeals, I am attaching the March 21, 1990, letter to Chairman Hutchison on this subject from Michael Huston, Attorney-in-Charge, Natural Resources Section of the Department of Justice.

As you may recall, this item was on the agenda for Work Session discussion in April, but the rescheduling of the meeting into a one day session caused the item to be deferred. The attached letter is a corrected copy of the one provided for the one provided earlier.

This matter was also included as part of the "process" discussion at the August Work Session in Bend. At that time, the Chair asked that it be pushed to the September work session in order to have Mr. Huston's letter available.

In addition, on March 9, 1990, I had forwarded a memorandum to Chairman Hutchison which presented ideas on options for public input, including some thoughts on options relating to third party appeals. Following is the text from that memo that relates to third party appeals:

"PERMITS

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

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

Memo to: Environmental Quality Commission

September 6, 1990

Page 2

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

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

c. Do not change the process. Today, anyone can ask the Commission to review the actions of the Department if they feel an action is inappropriate. The difference between this option and option a above is that the process is not formally defined nor does the review here have to be a formal contested case. The Commission could ask for a briefing on the question at hand by the Department and determine whether or not to proceed to a contested case hearing.

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

I am also attaching a table summarizing data on the number of permits and permit actions in 1989. (This table was also provided earlier for the planned April discussion.) This data may be of some assistance in visualizing the potential impact of various options under consideration.

FH:1

Attachments (2)



DEPARTMENT OF JUSTICE

PORTLAND OFFICE 1515 SW 5th Avenue Suite 410 Portland, OR 97201 Telephone: (503) 229-5725 FAX: (503) 229-5120

March 21, 1990

William P. Hutchison, Chairman Environmental Quality Commission 811 S.W. 6th Avenue Portland, OR 97204

Re: Third Party Appeals of Permits DOJ File No. 340-330-P0063-90

Dear Chairman Hutchison:

You have asked us for legal advice and background information on permit appeal procedures. Specifically, you have asked whether the Environmental Quality Commission may allow persons other than the permittees to request a contested case hearing to challenge permits issued by the Department of Environmental Quality (DEQ). You have also asked us to provide basic background information on the nature of contested case hearings, the consequences for judicial review, and the practices of similar permitting agencies. We provide this information below, concentrating on the options legally available to the commission and the legal ramifications of those options. Of course, we offer no opinion on the policy or administrative questions related to these options.

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

William P. Hutchison, Chairman March 21, 1990 Page Two

QUESTION

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

ANSWER

Yes.

WHAT IS A CONTESTED CASE HEARING?

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

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

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

CURRENT POLICY FOR GRANTING CONTESTED CASE HEARINGS

Currently, by administrative rule, 2 only dissatisfied permittees have the right to demand a contested case hearing

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

William P. Hutchison, Chairman March 21, 1990 Page Three

on pollution discharge permits. Under the present rules, interested persons or groups other than the permittee, often referred to as "third parties," may not request contested case hearings as of right. Instead, the only recourse usually available to third parties will be to challenge the permit in circuit court. It should be noted, however, that when a permittee requests a contested case hearing, third parties may petition to participate in the proceeding. Under the Attorney General's model rules for contested cases, third parties may be given party status if they have a personal interest or represent a public interest in the outcome of the proceeding.

OAR 137-03-005.

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

See ORS 183.310(2)(a)(D).

THE CURRENT STATE OF THE LAW

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

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

OPTIONS FOR CHANGE

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

4/2

William P. Hutchison, Chairman March 21, 1990 Page Four

- (1) Give all persons the right to bring a contested case hearing to challenge the provisions of a permit. For example, this could be accomplished by replacing the word "applicant" with "any person" in OAR 340-14-025(5).
- Give persons other than the permittees the right to request contested case hearings, but make the right subject to certain standing or other limitations. One way to create such a limit would be to require the person or group to have a personal interest or represent a public interest. essentially the same standard which is currently used to determine whether a third party may intervene in an existing contested case proceeding, and it is considered to be a fairly low standard. A slightly stricter standard, used in other areas of administrative law, is to require that a person be "adversely affected of aggrieved" by the issuance of a permit to gain the right to request a hearing. An even stricter standard, which is also used in some instances to determine standing in court, requires a person to demonstrate a "substantial injury" that will be caused by the proposed agency action.
- (3) Expand contested case hearing rights only under certain circumstances or in certain cases. Under this option, the commission would outline certain criteria under which a hearing would be granted. For example, the commission could specify that hearings would be granted only on permits which could cause major environmental effects as defined by the commission. The right to a hearing could also be contingent on the amount or type of pollutant at issue.
- (4) Continue the present practice of granting contested case hearing rights to third parties only on a case-by-case basis.

POTENTIAL EFFECTS ON THE HEARING PROCESS

The most obvious effect of a change of permit procedures would be to extend to third parties an administrative remedy, whereas the current system only allows them a judicial remedy. Arguably, this change would merely shift the "trial" of permits from court to the agency, where greater agency control can be exercised over the proceeding. It is also possible, however, that providing an administrative remedy may increase the number of disputed cases, because an agency contested case is usually

William P. Hutchison, Chairman March 21, 1990 Page Five

less expensive and more accessible than a judicial trial. It is difficult to find empirical evidence of these potential effects. It is clear, however, that DEQ has experienced fairly few judicial challenges to permit decisions.

Many agencies have found contested case proceedings to be time consuming and resource intensive. These problems can often be minimized by using sound hearing techniques, such as requiring similar parties to consolidate their presentations, using pre-hearing conferences to focus the issues, and requiring pre-filed written testimony from witnesses. Most agencies use the legal services of our office in contested case proceedings. The Administrative Procedures Act, however, does permit agencies to represent themselves in contested case hearings under certain conditions. ORS 183.450(7). Current statutes and rules would also allow lay representatives to appear for parties in a DEQ permit proceeding. Oregon Laws 1987, ch 833; OAR 137-03-008.

EFFECT ON JUDICIAL REVIEW

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

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

OTHER AGENCIES' PERMIT PROCEDURES

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

William P. Hutchison, Chairman March 21, 1990 Page Six

(1) Division of State Lands

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

(2) Board of Forestry

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

(3) Water Resources Commission

By statute, the Water Resources Commission is to hold a contested case hearing if a proposed water right will conflict with existing rights or be prejudicial to the public interest. ORS 537.170-.180. Thus, third parties have no absolute right to a contested case hearing, but they may be granted one on a case-by-case basis.

(4) Parks and Recreation Department

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

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

Sincerely,

Michael B. Huston Attorney-in-Charge

Natural Resources Section

MBH:aa #3635H

cc: Fred Hansen Harold Sawyer

Permitted Source Data

Department of Environmental Quality

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

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

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE MEMORANDUM

DATE: September 7, 1990

TO:

Environmental Quality Commission

FROM:

Fred Hansen

SUBJECT: Agenda Item 2, September 20 EQC Work Session

Deputy Director Position Description

This memo begins the process of appointing a Deputy Director. ORS 468.050 requires that the position be approved by the Environmental Quality Commission, and that a written order be filed with the Secretary of State. DEQ had a Deputy position until 1975. I think that the Commission should now reestablish the position.

Since 1984, the Department staff has grown by 54% and the operating budget has more than doubled. In 1984, having a director and no deputy was sufficient. The Department's growth reflects the broader scope and responsibility given to DEQ by the state legislature and the federal government. These include Superfund, Opportunity to Recycle, Toxics Use Reduction, RCRA, asbestos, woodstoves, underground storage tanks, construction grants, and groundwater. It is taking on more complex financial programs, such as in the Underground Storage Tank program and the Water Quality Revolving Loan fund, and DEQ also has a labor union, which gives the Director new negotiation responsibilities. The Department is working closely with other agencies and with neighboring states to protect the environment. Interagency and interstate activities are demanding more time, and thus require higher levels of coordination than they did before.

The nationwide focus on environmental protection makes it likely that DEQ will continue to be asked to assume more responsibilities. In light of the current growth of the Department, it is prudent to create the position of Deputy Director to help guide and coordinate the agency.

The deputy position will dovetail with the director's. The deputy will have the authority to act on my behalf when I am absent. This person will assist in managing the Department and will coordinate efforts within the Department, as well as with other Federal and State agencies. Division Administrators, as well as staff in the Office of the Director will have direct access to me, but I expect that the Director and Deputy will speak with one voice.

Memo to: Environmental Quality Commission September 7, 1990

Page 2

The Deputy will have oversight of the support function of the Office of the Director. In this capacity, the Deputy will ensure that the staff support for the EQC is complete.

This person will also expand proactive scheduling for the Director and the Deputy with the regulated community, federal, state, and local government officials, interest groups, and the public. The Deputy will be in a position to serve as a spokesperson and representative for the agency to the general public, private organizations and local, state and federal governments. Since the Deputy will have the authority to speak for the agency, creating this position will build on our public outreach program.

The Deputy will manage the administrative functions of staff reviews, and serves as final arbitrator on employee grievances. The Deputy will handle performance appraisals for the Hearings Officer, the Management Assistant, and the Clerical Specialist. I will remain responsible for performance appraisals for the Division Administrators, the Public Affairs Manager, the Inter/Intraprogram Coordinator, the Assistant to the Director, and the Deputy.

The Deputy will serve as the Affirmative Action officer. The Deputy will also rule on all conflict of interest matters regarding Department employees.

The Deputy, as assigned by me, will have overall responsibility to assure that Oregon's environmental quality meets or exceeds standards established by the Environmental Quality Commission, the State legislature, or the federal government. The Deputy will share with me the responsibility of making DEQ an exemplary agency by creating an environment that attracts talented and qualified staff.

Creating the deputy position will fill the management gap that has developed as the agency has grown, and continues to grow. It will enhance my position as director by making me available to tackle complex and innovative environmental policy issues, and it will provide for high quality agency administration.

Position descriptions from other agencies are attached for your information.

The funding for the Deputy position comes from the existing resources of the Department.

established by the Environmental Quality Commission, the State legislature, or the federal government.

Staff reporting to the Director and the Deputy Director are:

DIVISION ADMINISTRATORS

Air Quality Division Administrator: Directs a specialized staff in planning and implementing a program to maintain and enhance air quality. Involved is the enforcement of state and federal air quality standards; and regulation of industrial air contaminant sources through approval of plans and specifications and issuance of permits. this Division also develops and implements noise standards; conducts vehicle emission tests; monitor field burning programs and conducts or contracts for research in air pollution problems.

Hazardous and solid Waste Division Administrator: Directs a specialized staff regulating solid waste and hazardous waste disposal. Division responsibilities include the granting of permits to establish and operate solid waste disposal sites; granting permits to the generators of hazardous wastes, oversees the disposal planning including recycling; and operation of an information clearinghouse to promote recovery and reuse of materials; remedial action (Superfund) and the underground storage tank program.

Water Quality Division Administrator: Directs a specialized staff in planning and implementing a program to maintain and improve water quality. Activities include administering a sewage treatment plant construction grant and loan program; enforcing state and federal water quality standards; regulation of contaminant sources through issuance of operating permits for point sources and approval of plans for reduction of pollutants from diffuse sources; regulation of on-site sewage disposal and development and implementing a program to protect underground water supplies.

Regional Operations Division Administrator: Directs five regional and three branch offices in carrying out agency regulations. regional staff assist in plan reviews; draft operating permits; conduct compliance inspections; respond to complaints; conduct administrative prosecution of violators, recommend civil penalties to the Director; and respond to emergency spills of chemical and petroleum products.

Laboratories and Applied Research Division Administrator: Directs specialized laboratory and technical staff in assisting and supporting the Department's Divisions. The Laboratory maintains a statewide air and water quality monitoring network; organic and inorganic laboratory and quality assurance.

Management Services Division Administrator: Directs staff in providing central management services for the agency in accounting, budgeting, personnel, data processing, word

POSITION: Deputy Director CLASS NO.:

AGENCY: Department of Environmental Quality DATE:

POSITION PURPOSE:

Assist in the administration of the Department of Environmental Quality. Coordinate efforts within the Department, as well as with other Federal and State agencies, to ensure acceptable standards of air, water, and ground quality, both now and in the future.

DIMENSIONS:

Employees: 450 FTE Annualized Budget: \$39 million

NATURE AND SCOPE:

The Deputy Director will assist, as assigned by the Director, in managing the Department and will assist in coordinating efforts within the Department, as well as with other Federal and State agencies. Division Administrators, as well as staff in the Office of the Director will have direct access to the Director, but it is expected that the Deputy will speak for the Director. This position reports to the director.

The Deputy manages the Office of the Director by coordinating staff efforts and providing information. The Deputy also has direct oversight of the support function of the Office of the Director. The Deputy will handle performance appraisals for the Hearings Officer, the Management Assistant, and the Clerical Specialist. The Director will remain responsible for performance appraisals for the Division Administrators, the Public Affairs Manager, the Inter/Intraprogram Coordinator, the Assistant to the Director, and the Deputy.

The Deputy, as assigned by the Director, ensures that the divisions work in concert with one another. The Deputy manages the day-to-day operations and administration of the Department, and serves as final arbitrator on employee grievances. The Deputy will serve as the Affirmative Action officer. The Deputy will also rule on all conflict of interest matters regarding Department employees.

In the absence of the Director, the Deputy assumes the authority and acts in the Director's behalf. The Deputy is a spokesperson and representative for the agency with the general public, private organizations and local, state and federal government entities. The Deputy shares with the Director the responsibility to assure that Oregon's environmental quality meets or exceeds standards

processing, purchasing, property control, intergovernmental coordination and the pollution bond fund/tax credit program.

OFFICE OF THE DIRECTOR

Assistant to the Director: Represents the Department/Director to the Legislature, State and Federal agencies, DEQ staff, special interest groups and the public. Responsible for policy development and implementation and in securing legislative support for Department budget and legislative proposals.

<u>Public Affairs Manager:</u> Directs and manages the Department's Public Affairs Program, including design and implementation of public information and education programs, involving a variety of extremely sensitive areas of public concern. Acts as the official Department spokesperson.

Hearings Officer: Hears testimony on technically and legally complex matters in appeals from administrative sections of the agency; develops findings and proposed orders for the Commission (in this role acting independently from the Director). Conducts some public hearings for adoption of administrative rules or for permits of large public interest.

Inter/Intraprogram Coordinator: Serves as principal assistant to the Director y providing coordinated interprogram planning and coordination, rules and policy formation and technical environmental expertise and assessment. This position serves as a focal point in the agency for a coordinated approach to addressing environmental problems which pose serious environmental and health hazards and to coordinate special projects and studies among the Department's Divisions.

Management Assistant to the Director: Provides administrative support to the Director.

<u>Clerical Specialist:</u> Provides clerical support to the Office of the Director and support to the Environmental Quality Commission.

ACCOUNTABILITIES:

- 1. As principal line officer to the Director, assure the carrying out of state policy, subject to statutory authority and to policy direction by the Director, by providing administrative leadership to the Department.
- 2. Manage the day-to-day operations and administration of the Department.
- 3. Fulfill the responsibilities of the Director when the Director is absent.
- 4. Ensure that the agency, as designated by the Director, functions well by coordinating and motivating a qualified staff and by resolving disputes.
- 5. Represent the Department and the Director by participating in or coordinating interagency committees and task forces.
- 6. Manage the support staff in the Office of the Director

POSITION: Deputy Director

AGENCY NUMBER: 635

INCUMBENT: Rollie Rousseau

DATE: September 20, 1987

AGENCY:

Department of Fish and Wildlife

POSITION PURPOSE

To direct the five divisions in a manner that will achieve Department goals, Commission policy, and state law in coordination with the Legislature, Governor's office, state and federal agencies, Indian tribes, and general public.

DIMENSIONS

Positions:

1,143 (880 FTE)*

Operating Budget:

\$106 million*

Annual hunting/fishing licenses: 1.2 million

Annual commercial fishing licenses: 6,500

Revenues collected from all license/poundage fees: \$43,000,000*

NATURE AND SCOPE

The Deputy Director reports directly to the Director. The Deputy is the number two position of authority in the Department.

^{*} Based on 1987-89 budget

The Deputy Director's position in part reflects the duties of the Director. The Deputy directs the five major divisions responsible for the State's fish and wildlife resources. The Deputy represents the Director at interagency meetings where major natural resource policy for the state is implemented. The Deputy directs and coordinates the Department's legislative program at state and federal levels, testifies at hearings and consults with legislative members on natural resource issues. Issues are often complex and contentious because of the many conflicts that result from competing resource uses. The Deputy Director serves as final arbitrator on employee grievances and division disputes prior to Director decisions.

The external focus of the Deputy position is to provide Department representation and input at policy level committees and/or meetings with Governor's office and state and federal agencies on important decisions confronting the state. Many decisions impact thousands of people and can involve millions of dollars in resource value. The Deputy Director is the primary negotiator for the Department on disputed legal issues, Indian agreements, property purchase and other issues of major impacts to the state.

Subordinates reporting to Deputy Director:

Assistant Director, Fish Division Supervises staff fish biologists providing technical assistance, coordination, and planning to seven regions; coordinates fisheries management and propagation functions of regional units; is responsible for development of the state's fisheries program and regulations to be adopted by the Commission; assists the Director and Commission with the development of state, regional, national and international fisheries policy.

Assistant Director, Field Operations Supervises six regions, realty, and engineering staff; directs fish and wildlife management and propagation functions of the regions, coordinating and utilizing assistance of the other divisions; directs the support activities of realty, design and field engineering units; assists the Director and Commission with development of operational policies.

Assistant Director, Wildlife Division Supervises staff wildlife biologists providing technical assistance, coordination, and planning to six regions; coordinates wildlife management and propagation functions of regions; is responsible for development of staff recommendations for wildlife regulations to be adopted by the Commission; administers extensive, computer assisted, special tag selection program; assists the Director and Commission with the development of wildlife policies.

Assistant Director, Habitat Conservation Division Supervises planning and operational functions of the Division, including establishing policies, developing the Division budget, managing personnel and recommending departmental policies for habitat protection. Directs Department activities in forest, land, and water resource habitats.

Assistant Director, Administrative Services Division Supervises

Administrative Services, Fiscal/Accounting, Data Processing, Licensing,

Personnel sections within the division.

Specialties of the position include extensive knowledge of the department's internal operations and fish and wildlife management programs; how the department interrelates to other state and federal resource agencies' laws and programs, and how public policy decisions are ultimately influenced by both the informal and formal political processes of the state and nation. The Deputy must be able to effectively work within these decision making systems.

Work is assigned by the Director or as determined by the Deputy. External requests come from various sources including Governor's office, legislature, other state and federal administrators. Major challenge is to achieve Department goals within the political decision-making process. The Deputy serves on numerous Ad Hoc committees which recommend policy direction to the Governor on state administrative issues, personnel matters, economic development programs, and natural resource policy.

PRINCIPAL ACCOUNTABILITIES

The major job thrust is to represent the Department at Director level at the numerous decison-making meetings and to make program assignments so as to assure implementation of Department's goals and Commission policy.

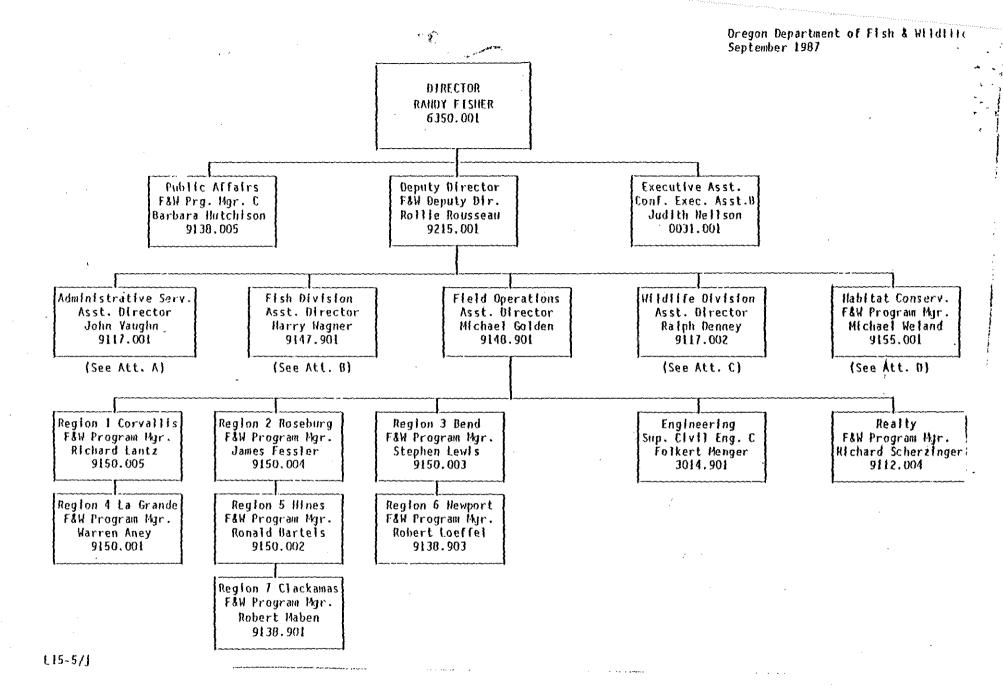
Along with the Director, the Deputy makes all final decisions for the Department's 1,000 employees relative to job selection and assignment, disciplinary action, and training.

The Deputy makes major decisions in an expeditious manner to keep the flow of programs moving in a productive manner. The Deputy is often called upon to resolve disputes among various entities so that positive movement can occur within resource programs.

APPROVED BY:

PD#3/z

10/1/87 Date /6/1/87



POSITION: INCUMBENT:

Deputy State Forester

AGENCY:

Thomas W. Lane Department of Forestry

DATE:

August 28, 1987

POSITION PURPOSE:

To serve as the Deputy to the State Forester and heads the Forestry Department's field operations.

DIMENSIONS:

Administer Oregon's forest laws contained in ORS 321, 477, 526, 527 and 530.

BIENNIAL BUDGET:

808.26

\$68,548,380

NATURE AND SCOPE:

Organization Fit

The Deputy State Forester is appointed by and reports directly to the State Forester, subject to the approval of the State Board of Forestry as per 526.031(2).

2. Job Flavor

The basic purpose of this job is to carry out the goals and objectives of the agency as defined by the Legislature and under the general guidance of the Board of Forestry and State Forester. The Board is statutorily responsible for rule promulgation in the area of forest practices; the department develops programs to administer and enforce these rules. In other areas (i.e., land use planning, forest protection), the Board provides general policy direction that serves as a framework in which the Department develops and administers its programs. In the timber sale program, the State Forester has independent and sole authority.

Seven of the major programs administered by the Department of Forestry are administered by the statewide field organization as follows: (1) fire protection and regulation of state, private, and some federal lands (15,000,000+ acres); (2) insect and disease detection and control; (3) direct management of state-owned lands; (4) technical forestry assistance to forest landowners; (5) contract services for specific forest activities for federal and/or private landowners; (6) administration of the Forest Practices Act legislation on all lands; and (7) forest resource planning.

All of these programs are vital to the economical and environmental protection of the State of Oregon. Lack of appropriate and responsible program planning and administration in any of these areas would result in substantial financial and environmental losses to the State.

3. Subordinate Summaries

Reporting to the Deputy State Forester are the following positions.

Area Directors: Three Area Directors direct the field organization within specific regions of the state (Northwest, Southern and Eastern Oregon). Each Area Director supervises from 4 to 6 District Foresters. There are 16 field districts, ranging in size from 18 FTE to 74 FTE.

There are eight basic programs, each with special problems, carried out in each District. Following are program descriptions and examples of problems encountered:

Fire Protection Program: The fire protection program is concerned with the prevention and suppression of wildfires on approximately 15 million acres of forest land. The Department's fire protection problems are increased due to such factors as varied forest types, rough topography, diverse ownership patterns, encroaching urban growth, and environmental restrictions on slash disposal.

Each of the 15 fire districts has its own organization for the administration of this program. When a district experiences a major wildfire, the incumbent is responsible for providing assistance to the district from local, state and regional, and national resources. In an average year approximately 1,200 fires will burn 7,200 acres of forest land. Biennial losses to fire are approximately \$6 million.

Insect and Disease Control: Forest insects and diseases are monitored and controlled on 11 million acres of private and State forests. They cause an estimated growth and mortality loss to Oregon's State and privately owned forest resources of 2.4 billion board feet annually. The Department conducts surveys and evaluations of insect and disease problems on State and private land and works with the landowner and agencies in the prevention and control of these problems where feasible. The program is funded by General Fund and federal dollars.

State Forest Management: The State of Oregon owns 786,000 acres of forest land. The bulk of these acres is characterized as Board of Forestry lands (654,000 acres). The remaining 132,000 acres are Common School Lands. As directed by the 1983 Legislature, the State Forester has final authority for the timber sale program on Board of Forestry lands. (Formerly the State Forester carried out this marketing activity under supervision of the Board of Forestry.) The Common School Lands are also managed by the State Forester under a contractual arrangement with the State Land Board. In addition to the timber sale marketing program, which brings in approximately \$43,100,000 per year, the State Forester is also responsible for multiple-use activities on these State forest lands. The program is funded from timber sale receipts.

Forest Practices Act: The 1971 Legislature passed this Act, authorizing and directing the Board to regulate operations on forest lands to assure continuous timber production and to protect soil, air, and water resources and fish and wildlife habitat. The Board, as directed by statute, has appointed three regional forest practice committees to recommend forest practice rules to the Board. This program area is a source of conflict between industry and other users of forest lands, but it represents a broadening of the Board's involvement in environmental concerns. The predecessor of this law dealt only with reforestation. Examples of

special problems include coordination with other agencies at both state and federal levels, and the controversy over the application of herbicides in forest management. Through HB 3396, the 1987 Legislative Assembly expanded considerably the responsibility and scope of the Board of Forestry and the State Forester in the area of forest practices. Key changes include civil penalties for violation of forest practice rules, protection of specific inventoried sites, a citizens appeals process on individual forest operations, and expanded coordination and consultation with counties and other state agencies during administrative rule development and on-site administration of forest practice rules to individual operations. The program is funded by General Fund and the Forest Products Harvest Tax.

Resources Evaluation: This is a study program to identify the status of the forest resources of Oregon, to determine needs for the resource, and to estimate the results of various levels of investments in forests. It involves coordinating research study efforts of various agencies, including Oregon State University and the U.S. Forest Service, for the purpose of recommending forest resource policy. The State Forester is responsible for collecting data and reporting on the forest resource.

Service Forestry: There are 25,500 small woodland owners in Oregon. Together, they have 3 1/2 million acres of commercial forest land. This is some of the best timber growing land in the state. However, 80% of this land is not being managed. Service Foresters provide technical advice and assistance to small woodland owners to help them bring their lands under management. They also administer federal funds and tax programs which provide incentives for better forest practices. lands are critical to the forest economy of the State since they represent 40% of all private forest lands. The Department operates a Forest Nursery which, in addition to providing seedlings needed for reforestation on State lands, also grows and markets seedlings for the small woodland owners, industrial and governmental organizations. More than 15MM seedlings are produced annually. The nursery is a self-supporting program with an annual budget of \$2.9MM. It includes 261 acres of owned and leased land and pays county taxes. The program is funded by General Fund, sale of seedlings, and federal dollars.

Cooperative Programs: The incumbent has the authority to assist and cooperate with any federal, state, political subdivision, or person owning or controlling forest land within the state in the preparation of plans for the protection and management of these lands. The incumbent may enter into contracts with these groups under which he will supervise the execution of the plans. Cooperative programs contribute to the effectiveness of the State fire suppression program and provide organized crews to carry out intensive management activities on private and public lands.

Forest Products Marketing: This is a program to assist Oregon wood product producers develop new market or expand existing domestic and foreign market opportunities. Existing efforts by marketing interests historically tended to center on cutting prices, getting individual buyers and sellers together, providing product research, or focusing on marketing issues on a case-by-case manner. These, of course, are vital activities, but there is a need to have a coordinated, action-oriented program to focus on statewide needs that take into account forest policy, management practices, forest product supply, demand and utilization, as well as specific trade and commerce activities. The program is funded by the General Fund.

In addition to administering the described programs throughout the state, the incumbent is responsible for staff work for the Board in its own policy areas: land classification, fire protection assessment rates, contract modifications, permanent rights-of-way and easements on State lands, land exchanges, the conduct of hearings related to these matters, and the publication of rules.

4. Balance

Work assignments for the position originate with the Board of Forestry, State Forester, Legislative Assembly, Governor's office, requests from the public, or at the discretion of the incumbent. The major challenge is managing a mid-size state organization with complex responsibilities spread over most of the state, diverse clientel, multiple revenue sources, and many situations under emergency conditions.

The position requires a good working relationship with the Governor's staff, legislators, legislative committees and task forces, other state agency directors and their deputies, representatives of professional organizations, citizen groups, the news media, other states, other state, federal, and municipal agencies, and the general public.

PRINCIPAL ACCOUNTABILITIES:

1. Make or Break

As principal line officer to the State Forester, coordinates daily activities to accomplish the Department's mission to the citizens of Oregon. Within the guidelines established by the Governor, Board of Forestry, and the State Forester, the Deputy, through his field managers, determines the mix of personal services, services and supplies, and capital outlay that will most effectively accomplish the Department's goals and objectives.

2. Organizational

The Deputy is responsible for the selection, training, development and motivation of personnel for the field operations of the Department. The incumbent makes commitments with final authority, limited only by established policies, statutes and administrative rules.

3. Supportive

- a. Assist State Forester in determining department policy by analyzing all pertinent issues and information; assessing the impact of proposed policy on the provision of services to forest landowners and the general public, and determining the resources necessary to implement such policy in order to ensure the efficient and effective provision of services.
- b. Assist State Forester in determining department program priorities by evaluating the needs of forest landowners and the general public and assessing the availability of human, fiscal and equipment resources in order to implement policy effectively.
- c. Assist State Forester in directing, reviewing and approving the preparation of the department's biennial and fiscal budgets requests by determining priorities among requests from Areas and Divisions.

- Assist State Forester in the administration of department programs by evaluating the quality of services provided through review of reports and conferences with reporting staff, landowners, legislators, interest groups, and Governor's Executive Staff, exploring solutions to problems and selecting the best alternatives; authorizing the redistribution of available resources to meet changing program needs; resolving conflicts between Areas and Divisions on areas of shared responsibility; establishing reporting relationships and administrative controls over program operations; and coordinating activities with other agencies thereof in areas of mutual concern in order to ensure compliance with established policies, objectives, program priorities and applicable laws, rules and regulations.
- Represents the department and State Forester by participating in or coordinating interagency or interstate committees and task forces; and addressing professional organizations and citizen groups to advocate and explain policy and the needs of target populations served.
- Upon the absence of the State Forester, the Deputy is designated as Acting State Forester with full powers to act in the State Foresters behalf (ORS 526.032(2)).

Approved By:

JEB:cb 2613F

POSITION:

Deputy Administrator State Parks Division

CLASS NO.: Z0035

DATE: September 25, 1987

INCUMBENT:

Larry Jacobson

AGENCY:

Department of Transportation

POSITION PURPOSE:

Assist in the administration of the State Parks Division. Oversee park field operations, master planning, design and engineering, central office operations, forestry, park land acquisition and development, concession operations. Assure compliance with all applicable laws, rules, and regulations, state, federal and local.

DIMENSIONS:

Employees:

406 FTE

Annualized Budget:

\$19.5 million

NATURE AND SCOPE:

This position reports to the Administrator. Also reporting to the Administrator are the Assistant Administrator for Program, Planning, Local Government Assistance, Rivers, Trails, Ocean Shores and Historic Preservation; the Public Information Officer; and the Confidential Executive Assistant.

In the absence of the Administrator, incumbent assumes the authority and acts in the Administrator's behalf. The incumbent is a spokesperson and representative for the agency with the general public, private organizations and local, state and federal government entities. The incumbent has overall responsibility to assure that park facilities, operations and maintenance standards adequately provide for the health, welfare and safety of 35 million annual park visitors, and that the natural values within the parks are perpetuated and appropriately managed.

Subordinates reporting to this position are:

<u>Five region supervisors</u>: Responsible for management of all state park field operations, development and maintenance activities in their individual geographic areas. Collectively, the region areas cover the state of Oregon.

Operations Support Manager: Responsible to assure uniformity of operational procedures among the regions. Update and prepare park rules and policies. Oversee personnel operations including recruitment, hiring, training, and employee grievances. Assure compliance with affirmative action and equal opportunity laws. Provide operational support material to the individual park districts and regions. Respond to and resolve visitor complaints.

Assistant Administrator for Master Planning, Design, Forestry and Park Land Supervision: Responsible for preparation of individual park master plans, investigations of potential park areas, and planning and design of park areas and facilities.

Responsible for all forest management activities including planning and implementation of forest rehabilitation, fire, disease and insect control, and preparation of forest resource management plans.

Responsible for land acquisition and property management including concessions, agreements, leases, trusts, etc.

<u>Engineering Unit Manager</u>: Supervises engineering design, specifications, and cost estimates for construction projects, design of utility systems, preparation of engineering surveys and base and utility system maps, and location of park boundaries. Is responsible to assure that water systems operate within State and Federal rules and that the required samples are submitted as necessary.

This position is responsible to assure coordination and attainment of common objectives among the park field organization and the technical Incumbent must be familiar with units in the central office. architecture, engineering, operational landscape planning, recognition of natural and scenic values and programs. Work may be assigned through written or oral instructions from the Administrator, the Director or key subordinates of the Department, Governor's representatives, Transportation Commission, Parks and Advisory Committee, subordinates of this position or self generation. Work may or may not be reviewed for specific results. The results must be responsive to those who initiated it and must be within the parameters established and recognized by Division and Department objectives or standards, statutes and administrative rules.

PRINCIPAL ACCOUNTABILITIES:

- 1. Assure that fiscal resources are allocated in a manner that provides for high quality operation, maintenance, development and rehabilitation of the various park areas and programs for the enjoyment of Oregonians and out-of-state park visitors.
- 2. Monitor program expenditures and resource allocations to assure attainment of Department and Division objectives.
- 3. Develop and/or oversee employee development and training programs that respond to affirmative action goals and objectives for the Department and the Division, employee safety on the job, enhancement of management capabilities, etc.
- 4. Responsible for selection and accountability of managers for the programs or units which report to the Deputy Administrator position.
- 5. Accountable for park area rules and regulations and their enforcement to assure public safety and use of facilities and protection of park resources.

6. Evaluate and approve contracts, utility agreements and other agreements necessary for development, operation and maintenance of park areas within the system.

APPROVED BY:

ncumbent

Supervisor

Date

Date



State of Oregon EXECUTIVE DEPARTMENT PERSONNEL DIVISION

DIVISION	 ☐ Management Service-Super. ☐ Management Service-Confid. ☐ Classified ☐ Unclassified ☒ Executive Service 	
*	□ Now ⊠ Pavisod	

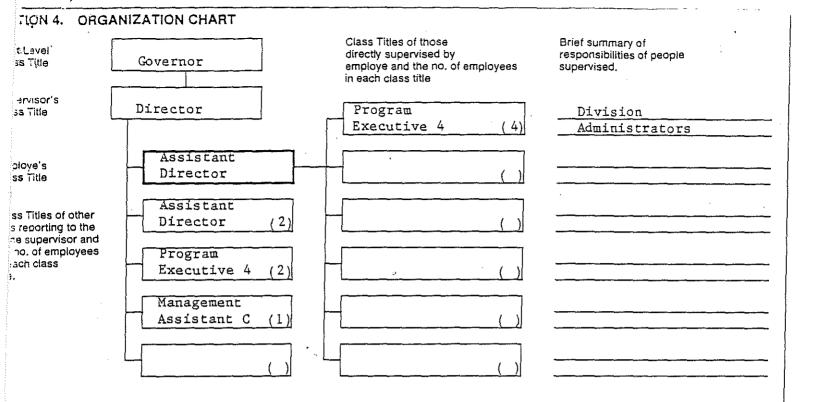
This Position is:

POSITION DESCRIPTION

 $\star\star\star$ Please read instructions before completing this form $\star\star\star$

ssification Title	b. Classification	on No.	c. Effective	Date	d. Position No.	
griculture Assistant Direc	tor	Z8121Z	jai	7/21/	89	0141750
king Title		f. Work Unit		<u> </u>		g. Agency No.
		Admini	stration			603
ency Name	i. Employe	Name	<u>.</u>	j. Wor	k Location (Ci	ty-County)
epartment of Agriculture	Lorn	a Youngs		Sal	em, Mari	on
Permanent Seasonal Limited E		Academic Year Job Share	I. FLSA Exemp	: Non-E	xempt	m. Eligible for Overtime F
						*
escribe the program in which this job agency mission. Department of Agriculture	exists. Includ	e program purp onsible for	r leadership	, servic	e, inspec	i ction, regulation
PROGRAM/POSITION IN Pescribe the program in which this job or agency mission. Department of Agriculture international and domestions the state to insure the comparate and a healthy	exists.Includ is resp c market onsumer o	e program purp onsible for developmen f adequate	r leadership nt of the ag , safe, whol	, servic ricultur esome an	e, inspec al resour	intion, regulation rces and products

(<u>~)</u>	DUTIES
	Recommends new legislation or changes in existing laws to meet shifting or new demands. Appears before legislators, committees and industry groups to support a explain recommendations.
	Meets with leaders of the feed, fertilizer and pesticide manufacturing and application industries and with professionals in the fields of nursery stock production, food and dairy sanitation, laboratory services and commodity inspection. Explains department programs, laws and regulations and needs therefore Solicits input, understanding and support.
	Assists in long range planning and policy development of the department. Keeps advised of happenings and situations requiring executive staff attention or that will materially affect the division's programs, and of proposed solutions to problems.
	Coordinates the activities of the divisions to eliminate duplication and to foster cross utilization of resources, planning and exchange of information.
	Visits work sites and observes application of department policies and accomplishment of objectives. Assures standardization of policy application
	between divisions and maximum effectiveness of effort.
	between divisions and maximum effectiveness of effort. Assists in developing budget recommendations for the divisions and monitors the expenditure of funds to assure economy of operation and uniform direction of
	between divisions and maximum effectiveness of effort. Assists in developing budget recommendations for the divisions and monitors the expenditure of funds to assure economy of operation and uniform direction of effort. Meets with officials of other state departments, other states and the federal
	Assists in developing budget recommendations for the divisions and monitors the expenditure of funds to assure economy of operation and uniform direction of effort. Meets with officials of other state departments, other states and the federal government on mutual problems. Works with and advises division administrators on problem areas in their programs and assists in problem identification and solution.
The second secon	between divisions and maximum effectiveness of effort. Assists in developing budget recommendations for the divisions and monitors the expenditure of funds to assure economy of operation and uniform direction of effort. Meets with officials of other state departments, other states and the federal government on mutual problems. Works with and advises division administrators on problem areas in their programs
	Assists in developing budget recommendations for the divisions and monitors the expenditure of funds to assure economy of operation and uniform direction of effort. Meets with officials of other state departments, other states and the federal government on mutual problems. Works with and advises division administrators on problem areas in their programs and assists in problem identification and solution.
	Assists in developing budget recommendations for the divisions and monitors the expenditure of funds to assure economy of operation and uniform direction of effort. Meets with officials of other state departments, other states and the federal government on mutual problems. Works with and advises division administrators on problem areas in their programs and assists in problem identification and solution.
	Assists in developing budget recommendations for the divisions and monitors the expenditure of funds to assure economy of operation and uniform direction of effort. Meets with officials of other state departments, other states and the federal government on mutual problems. Works with and advises division administrators on problem areas in their programs and assists in problem identification and solution.
	Assists in developing budget recommendations for the divisions and monitors the expenditure of funds to assure economy of operation and uniform direction of effort. Meets with officials of other state departments, other states and the federal government on mutual problems. Works with and advises division administrators on problem areas in their programs and assists in problem identification and solution.
	Assists in developing budget recommendations for the divisions and monitors the expenditure of funds to assure economy of operation and uniform direction of effort. Meets with officials of other state departments, other states and the federal government on mutual problems. Works with and advises division administrators on problem areas in their programs and assists in problem identification and solution.
	Assists in developing budget recommendations for the divisions and monitors the expenditure of funds to assure economy of operation and uniform direction of effort. Meets with officials of other state departments, other states and the federal government on mutual problems. Works with and advises division administrators on problem areas in their programs and assists in problem identification and solution.
	Assists in developing budget recommendations for the divisions and monitors the expenditure of funds to assure economy of operation and uniform direction of effort. Meets with officials of other state departments, other states and the federal government on mutual problems. Works with and advises division administrators on problem areas in their programs and assists in problem identification and solution.



CTION 5. WORKING CONDITIONS

escribe special working conditions, if any, that are a regular part of this job. Include frequency of exposure to these conditions.

ork frequently exceeds 40 hours per week

equent night meetings

ome overnight travel

TION 6. GUIDELINES

List any established guidelines used to do this job, such as state or federal laws or regulations, policies, manuals, or cesk procedures.

agon Revised Statutes

- of Agriculture Rules & Procedures
- ederal Laws & Regulations
- diministrative Rules
- tec. Dept. Policies & Procedures
- How are these guidelines used to perform the job?

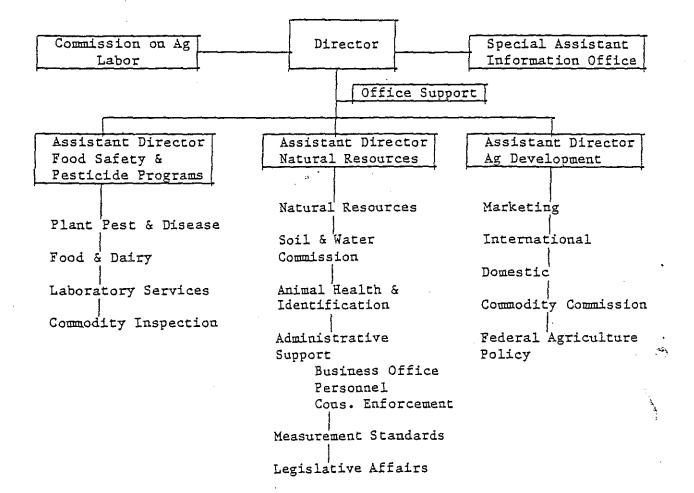
Snowledge and application while managing and performing assigned duties.

THON 7. WORK CONTACTS

in whom outside of co-workers in this work unit must this position regularly come in contact?

-O CONTACTED	HOW	PURPOSE	HOW OFTEN?
sactor of Agriculture	In person	Policy decision/direction Information exchange	As needed
rision Administrators	In person	Information exchange/make assignments/direction	Daily
neral Public	In person/phone	Respond to questions/complaints	Daily
Industry Reps.	In person/phone	Exchange information	As needed
earal Reps.	In person/phone	Exchange information	As needed
gislators	In person/phone	Exchange information	As needed

Who reviews the work of this position? (list classification title and position number) How? How often? Purpose of the review? Director As needed Determine effectiveness ECTION 10. SUPERVISORY DUTIES a. Which of the following supervisory/management activities does this job perform? Plans Work Assigns Work Approves Work Recommends thiring Hires Recommends Salary Adjustments Prepares and Signs Merit Ratin What percentage of time does this position perform these duties? Through Subordinate Supervisors? Through Subordinate Supervisors? CCTION 11. ADDITIONAL JOB-RELATED INFORMATION Introduction of the session. Besides acting as Assistant Director, this position is heavily involved in monitoring the legislative process during the session. Besides acting as Assistant Director, this position is heavily involved in monitoring the legislative process during the session. Besides acting as Assistant Director, this position is heavily involved in monitoring the legislative process during the session. Besides acting as Assistant Director, this position is heavily involved in monitoring the legislative process during the session. Besides acting as Assistant Director, this position is heavily involved in monitoring the legislative process during the session. Besides acting as Assistant Director, this position is heavily involved in monitoring the legislative process during the session. Besides acting as Assistant Director, this position is heavily involved in monitoring the legislative process during the session. Besides acting as Assistant Director, this position is heavily involved in monitoring the legislative process during the session. Besides acting as Assistant Director, this position is heavily involved in monitoring the legislative process during the session. Besides acting as Assistant Director, this position is heavily involved in monitoring the legislative process during the session. Besides acting as Assistant Director, this position perform these during the session.	Describe the kinds of decisions lik	ely to be made by this position.	. Indicate affect of these	decisions where possible.	
Who reviews the work of this position? (list classification title and position number) How? How often? Purpose of the review? Director As needed Determine effectiveness ECTION 10. SUPERVISORY DUTIES a. Which of the following supervisory/management activities does this job perform? Plans Work Assigns Work Assigns Work Asproves Work Recommends Hiring Hires Recommends Salary Adjustments Prepares and Signs Merit Ratin D. What percentage of time does this position perform these duties? Through Subordinate Supervisors? CTION 11. ADDITIONAL JOB-RELATED INFORMATION Introduce comments that would add to an understanding of this position: Resides acting as Assistant Director, this position is heavily involved in monitoring the lagislative process during the session. Date Date Supervisor Signature Date Supervisor Signature Date CTION 12. REQUIREMENTS: List any special recruiting requirements for this position: Killed in public relations, communications, organizational planning and large operations oordinations. CEST AUTHORITY: If this position has authority to commit agency operating money, indicate in what area, how much (biennially) type of funds: ay authorize expenditures in assigned divisions within the department. Biennial operating udget totals \$30.2 million.	Division expenditure d	lecisions	nvolved		
Who reviews the work of this position? (list classification title and position number) How? How often? Purpose of the review? Director As needed Determine effectiveness ECTION 10. SUPERVISORY DUTIES a. Which of the following supervisory/management activities does this job perform? Plans Work Assigns Work Assigns Work Asproves Work Recommends to Grievances Disciplines/Reward Recommends Hiring Hires Recommends Salary Adjustments What percentage of time does this position perform these duties? Now many employees are directly supervised by this position? Through Subordinate Supervisors? CITION 11. ADDITIONAL JOB-RELATED INFORMATION In youther comments that would add to an understanding of this position: Sesides acting as Assistant Director, this position is heavily involved in monitoring the legislative process during the session. Date Supervisor Signature Date Supervisor Signature Date CITION 12. REQUIREMENTS: List any special recruiting requirements for this position: Killed in public relations, communications, organizational planning and large operations accidinations. CICICAL REQUIREMENTS: If this position has authority to commit agency operating money, indicate in what area, how much (biennially) type of funds: EXCITAL HORITY: If this position has authority to commit agency operating money, indicate in what area, how much (biennially) type of funds: EXILITED TO ALL STATEMENTS: Used any special recruiting requirements for this position: Biential operating dedget totals \$30.2 million.		_			
Who reviews the work of this position? (list classification title and position number) How? How often? Purpose of the review? Director As needed Determine effectiveness ECTION 10. SUPERVISORY DUTIES A. Which of the following supervisory/management activities does this job perform? Plans Work Assigns Work Assigns Work Asproves Work Recommends Firing Heres Recommends Salary Adjustments Prepares and Signs Merit Ratin D. What percentage of time does this position perform these duties? Now many employes are directly supervised by this position? Through Subordinate Supervisors? CTION 11. ADDITIONAL JOB-RELATED INFORMATION Introduce comments that would add to an understanding of this position: Resides acting as Assistant Director, this position is heavily involved in monitoring the legislative process during the session. Register of the review? Date Supervisor Signature Date Supervisor Signature Date CTION 11. ADDITIONAL JOB-RELATED INFORMATION Introduce the review? Date Supervisor Signature Date Supervisor Signature Date CTION 12. REQUIREMENTS: List any special recruiting requirements for this position: Reliable in public relations, communications, organizational planning and large operations coordinations. CREST AUTHORITY: If this position has authority to commit agency operating money, indicate in what area, how much (biennially) type of funds: Page 4. Page 4. Page 5. Page 6.					
Who reviews the work of this position? (list classification title and position number) How? How often? Purpose of the review? Director As needed Determine effectiveness ECTION 10. SUPERVISORY DUTIES a. Which of the following supervisory/management activities does this job perform? Plans Work Assigns Work Assigns Work Asproves Work Recommends Hiring Hires Recommends Salary Adjustments Prepares and Signs Merit Ratin D. What percentage of time does this position perform these duties? Through Subordinate Supervisors? CTION 11. ADDITIONAL JOB-RELATED INFORMATION Introduce comments that would add to an understanding of this position: Resides acting as Assistant Director, this position is heavily involved in monitoring the lagislative process during the session. Date Date Supervisor Signature Date Supervisor Signature Date CTION 12. REQUIREMENTS: List any special recruiting requirements for this position: Killed in public relations, communications, organizational planning and large operations oordinations. CEST AUTHORITY: If this position has authority to commit agency operating money, indicate in what area, how much (biennially) type of funds: ay authorize expenditures in assigned divisions within the department. Biennial operating udget totals \$30.2 million.		•			
BECTION 10. SUPERVISORY DUTIES a. Which of the following supervisory/management activities does this job perform? As plans Work Assigns Work Approves Work Approves Work Approves Jalanting What percentage of time does this position perform these duties? What percentage of time does this position perform these duties? What percentage of time does this position perform these duties? Through Subordinate Supervisors? CCTION 11. ADDITIONAL JOB-RELATED INFORMATION may other comments that would add to an understanding of this position: Besides acting as Assistant Director, this position is heavily involved in monitoring the legislative process during the session. Besides acting as Assistant Director, this position is heavily involved in monitoring the legislative process during the session. Date Date CALL REQUIREMENTS: List any special recruiting requirements for this position: Killed in public relations, communications, organizational planning and large operations approximations. CALL REQUIREMENTS: List any special recruiting requirements for this position: Killed in public relations, communications, organizational planning and large operations approximations. CALL REQUIREMENTS: If this position has authority to commit agency operating money, indicate in what area, how much (biennially) type of funds: Approximate Approximation of the protein assigned divisions within the department. Biennial operating degret totals \$30.2 million.					
ECTION 10. SUPERVISORY DUTIES a. Which of the following supervisory/management activities does this job perform? A proves Work Approves Work Approves to Grievances Disciplines/Reward Recommends Hiring Abilities Recommends Salary Adjustments Approves and Signs Merit Ratin D. What percentage of time does this position perform these duties? Through Subordinate Supervisors? Thr			position number) How?	How often? Purpose of the review?	
a. Which of the following supervisory/management activities does this job perform? A Plans Work Assigns Work Approves Work Responds to Grievances Disciplines/Reward Recommends Hiring A Hires Recommends Salary Adjustments A Prepares and Signs Merit Ratin D. What percentage of time does this position perform these duties? Through Subordinate Supervisors? Through Subordinate Su	Director	As	needed	Determine effectiveness	
a. Which of the following supervisory/management activities does this job perform? A Plans Work Assigns Work Approves Work Responds to Grievances Disciplines/Reward Recommends Hiring A Hires Recommends Salary Adjustments A Prepares and Signs Merit Ratin D. What percentage of time does this position perform these duties? Through Subordinate Supervisors? Through Subordinate Su	·				
Accommends Hiring Hires Recommends Salary Adjustments Prepares and Signs Merit Ratin December of time does this position perform these duties? Through Subordinate Supervisors? Through Subordinate Supervis			this job perform?		
Through Subordinate Supervisors? Throug	☑ Plans Work Assign	ns Work 🛮 Approves W	Vork 🗵 Respo	nds to Grievances 🔀 Disciplines/Rewa	ards
Through Subordinate Supervisors? ACC ECTION 11. ADDITIONAL JOB-RELATED INFORMATION Any other comments that would add to an understanding of this position: Besides acting as Assistant Director, this position is heavily involved in monitoring the legislative process during the session. Besides acting as Assistant Director, this position is heavily involved in monitoring the legislative process during the session. Belgislative process during the session. Bate At THIS SECTION FOR APPOINTING AUTHORITY ONLY * * * ECIAL REQUIREMENTS: List any special recruiting requirements for this position: Existing in public relations, communications, organizational planning and large operations coordinations. COSET AUTHORITY: If this position has authority to commit agency operating money, indicate in what area, how much (biennially) type of funds: Bay authorize expenditures in assigned divisions within the department. Biennial operating udget totals \$30.2 million. Date	☑ Recommends Hiring	⊠ Hires ⊠ Reco	mmends Salary Adjustmer	pts Prepares and Signs Merit Ra	iting
Through Subordinate Supervisors? Through Subordinate S	. What percentage of time does th	is position perform these duties	s? <u>50</u> %		•
ECTION 11. ADDITIONAL JOB-RELATED INFORMATION Any other comments that would add to an understanding of this position: Besides acting as Assistant Director, this position is heavily involved in monitoring the Lagislative process during the session. Date Supervisor Signature Date Supervisor Signature Date ** * THIS SECTION FOR APPOINTING AUTHORITY ONLY * * * ECIAL REQUIREMENTS: List any special recruiting requirements for this position: killed in public relations, communications, organizational planning and large operations oordinations. DEET AUTHORITY: If this position has authority to commit agency operating money, indicate in what area, how much (biennially) type of funds: ay authorize expenditures in assigned divisions within the department. Biennial operating adget totals \$30.2 million.	. How many employes are directly	supervised by this position?	Through	Subordinate Supervisors? 250	J,
** THIS SECTION FOR APPOINTING AUTHORITY ONLY ** ECIAL REQUIREMENTS: List any special recruiting requirements for this position: killed in public relations, communications, organizational planning and large operations coordinations. DGET AUTHORITY: If this position has authority to commit agency operating money, indicate in what area, how much (biennially) type of funds: ay authorize expenditures in assigned divisions within the department. Biennial operating udget totals \$30.2 million.	legislative process duri	ng the session.		•	
* * THIS SECTION FOR APPOINTING AUTHORITY ONLY * * * ECIAL REQUIREMENTS: List any special recruiting requirements for this position: Ricilled in public relations, communications, organizational planning and large operations coordinations. CGET AUTHORITY: If this position has authority to commit agency operating money, indicate in what area, how much (biennially) type of funds: ay authorize expenditures in assigned divisions within the department. Biennial operating audget totals \$30.2 million.	nploye Signature	Date	Supervisor Signature	Date	
ECIAL REQUIREMENTS: List any special recruiting requirements for this position: Skilled in public relations, communications, organizational planning and large operations coordinations. DGET AUTHORITY: If this position has authority to commit agency operating money, indicate in what area, how much (biennially) type of funds: Lay authorize expenditures in assigned divisions within the department. Biennial operating undget totals \$30.2 million. Date	Loura Lyoung	July 21, 1989			
CGET AUTHORITY: If this position has authority to commit agency operating money, indicate in what area, how much (biennially) type of funds: ay authorize expenditures in assigned divisions within the department. Biennial operating audget totals \$30.2 million.	***	THIS SECTION FOR APPO	DINTING AUTHORITY	ONLY ***	
OGET AUTHORITY: If this position has authority to commit agency operating money, indicate in what area, how much (biennially) type of funds: ay authorize expenditures in assigned divisions within the department. Biennial operating adget totals \$30.2 million. Date	ECIAL REQUIREMENTS: List any s	pecial recruiting requirements f	for this position:		
type of funds: ay authorize expenditures in assigned divisions within the department. Biennial operating udget totals \$30.2 million. Date		ons, communications, o	organizational pl	anning and large operations	
pounting Authority Signature Date	•	has authority to commit agency	operating money, indic	ate in what area, how much (biennially)	
			ns within the de	partment. Biennial operating	
	nounting Authority Stanature		∩ata		_
3 - Mule Martin	D D I D			1/2 /00	
	8 11100 1	<u>i Mair</u>		; =1 ; /)	



vbM14U



State of Oregon EXECUTIVE DEPARTMENT PERSONNEL DIVISION

-	\sim	0	7	\sim		-	ES		7	רחו	-1 /	\sim	1
-	IJ			C JE	v	LJ	-	۱.	~	~	11	JE	v

	-
	This Position is:
	☐ Management Service-Sup∈
	☐ Management Service-Conf
	☐ Classified
	☐ Unclassified
	☑ Executive Service
_	☐ New 🖾 Revised

\star \star PLEASE READ INSTRUCTIONS BEFORE COMPLETING THIS FORM $\,$ \star $\,$

SECTION 1. POSITION INFORMATION

a. Classification Title		b. Classificat	b. Classification No. c.		d. Position No.
Agriculture De	puty Director	Z6032	2Z	1/5/88	0141750
e. Working Title		f. Work Unit			g. Agency No.
		Admir	nistration		603
h. Agency Name		i. Employe Name		j. Work Location (City-County)
Department of	Agriculture	Bruce Andre	ews	Salem, Marie	วถ
k. Permanent Seaso			I. FLSA	☐ Non-Exempt	m. Eligible for Overtime Pay
		·			
SECTION 2. PROGRA a. Describe the program to agency mission.	•	ORMATION xists. Include program pu	rpose, who's affected	d, size, and scope. I	nclude relationship

The Department of Agriculture is responsible for leadership, service, inspection, regulation and international and domestic market development of the agricultural resources and products of the state to insure the consumer of adequate, safe, wholesome and healthful products in the marketplace and a healthy agricultural economy in the state.

b. Describe the purpose of this position, and how it functions within this program.

The Deputy Director assists the Director of Agriculture in formulating department policy and in planning and directing all activities of the department. Directs and coordinates the work of the administrative staff support services performed by the Business, Information and Personnel Offices.

% of time	(4)	DUTIES
100	Z.	In consultation with the Director, shifts program emphasis to meet the goals of the department or needs of the industry and establishes new programs or discontinues old programs to cope with changes in legislative intent.
77.	- Department of the second	Confers with the Assistant Directors to assure uniform application of department policies and coordination of effort. Keeps them advised or contemplated plans and policies that will affect their operations.
A STATE OF THE STA		Directs and coordinates the activities of the staff services to assure maximum responsiveness to department needs. Assists in the development and execution of policies on personnel, training, safety, budget preparation and execution, public information and legal services. Personally represents the department in affirmative action matters and guides collective bargaining efforts.
		Assists the Director by attending meetings and working with other state and federal officials on mutual problem areas. Consults with th Director on regulations or actions by other states, the federal government or other nations that affect Oregon agriculture development
		or marketing and advises of action being taken. Meets with industry, civic organizations and labor leaders to keep apprised of the latest developments affecting the department's role and of their needs.
	-	Works with the Assistant Directors in planning and devaloping recour-

Works with the Assistant Directors in planning and developing resources to cope with unusual industry or public demands exceeding budgetary limitations. Develops departmental policy on these matters and guides departmental presentation.

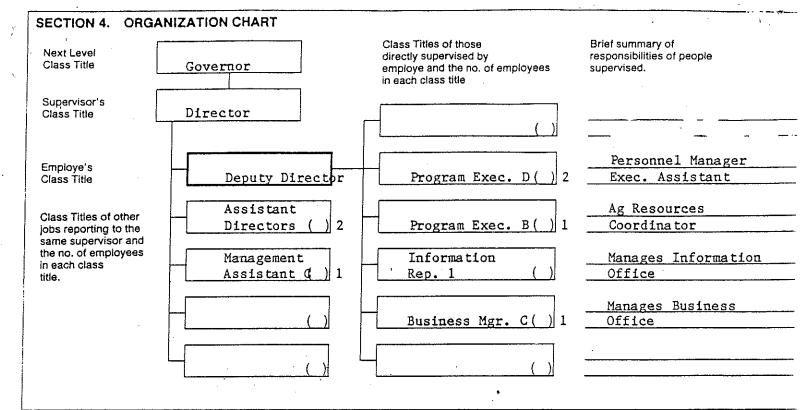
Keeps the Director advised on important happenings and of the department's participation. Advises the Director of possible impact of actions and of economic consequences to the public, industry or department.

Plans and develops meetings of State Board of Agriculture; organizes and supervises the development of Board agenda items and assists the Director in conducting the meetings.

Assists the Director in coordinating and directing the department legislative program--the preparation and presentation of departmentsponsored bills or coordination of departmental testimony on related proposed legislation in which we have concern.

Describe the kinds of dec	cisions likely to be made	by this position. Ind	licate affect of these decision	ons where possic	ole.
Policy decisions	isions affecting s affecting depar ving expenditures	tmental funct	ions		
			•		
SECTION A DEVIEW	OF WORK				
SECTION 9. REVIEW (Who reviews the work of		fication title and pos	sition number) How? How o	often? Purpose of	the review?
Director, Depart	tment of Agricult	ure As ne	eeded D	Determine ef	fectiveness
			•		
SECTION 10. SUPERV a. Which of the following		nt activities does thi	s job perform?	, , , , , , , , , , , , , , , , , , ,	
Plans Work	X Assigns Work	Approves World	k 🛚 🖊 Responds to (Grievances	Disciplines/Reward
Recommends Hiring	⊠ Hires		nends Salary Adjustments	☑ Prep	ares and Signs Merit Rating
b. What percentage of tir	ne does this position per	form these duties?	<u>50_</u> %		, ***
c. How many employes a				dinate Superviso	rs?
SECTION 11. ADDITIO				· · · · · · · · · · · · · · · · · · ·	
Any other comments that	would add to an underst	anding of this posit	ion:		e
This position has absence.	as the authority	to assume the	Director's respons	ibilities i	n his
			·		
		. •	•		
Employe Signature		Date	Supervisor Signature		Date
inploye oignature		Batto	Caportion dignature		
	★ ★ ★ THIS SEC	TION FOR APPOI	NTING AUTHORITY ONL	LY ***	
PECIAL REQUIREMENTS	S: List any special recruiti	ing requirements fo	r this position:	****	**************************************
Skilled in managand communication		rsified organi	ization. Skilled i	ln public re	lations
HIDGET AUTHORITY: 16 H	via position has outhoribe	to commit accepts	porating manay indicate is		much (hioppially)
nd type of funds:	iis position has authority		operating money, indicate in	i what area, now	moch (Diemiany)
	1 25 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	will self.		• • •	
=		l divisions wi	ithin the departmen	it. Biennia	lota de Locardos Lotardos
Appointing Authority Signature			Date		
			-	5-88	
/// Com	usela		/_ 3) - 80	

SECTION 8. JOB-RELATED DECISION-MAKING



SECTION 5. WORKING CONDITIONS

Describe special working conditions, if any, that are a regular part of this job. Include frequency of exposure to these conditions: Frequent travel (domestic & international)

Work frequently exceeds 40 hours per week

Frequent night meetings

SECTION 6. GUIDELINES

 List any established guidelines used to do this job, such as state or federal laws or regulations, policies, manuals, or desk procedures.

Oregon Revised Statutes

Dept. of Agriculture Rules & Procedures

Federal Laws & Regulations

Administrative Rules

Exec. Dept. Policies & Procedures

b. How are these guidelines used to perform the job?

Managing and performing daily duties and responsibilities

SECTION 7. WORK CONTACTS

With whom outside of co-workers in this work unit must this position regularly come in contact?

WHO CONTACTED	HOW	PURPOSE	HOW OFTEN?
Director of Agriculture	In person	Exchange information/policy	Daily
Staff Services Mgrs.	In person	Decisions/Direction	Daily
General Public	In person/phone	Respond to questions/complaints	Daily
Ag Industry Reps.	In person/phone	Exchange information	As needed
Federal Reps.	In person/phone	Exchange information	As needed
Legislators	In person/phone	Exchange information	As needed



Environmental Quality Commission

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

WORK SESSION
REQUEST FOR EQC DISCUSSION

Meeting Date: September 20, 1990
Agenda Item: 3
Division: Air Quality Division
Section: Noise Control Program

SUBJECT:

Portland Airport Noise Abatement Plan: Background Discussion

PURPOSE:

Brief the Environmental Quality Commission (EQC, Commission) on the history and status of Portland International Airport's updated noise abatement plan required by OAR 340-35-045(4)(e). This forum will allow the EQC to become more familiar with the technical and political aspects involved with the regulation and management of airport noise.

ACTION REQUESTED:

	Work Session Discussion General Program Background Potential Strategy, Policy, or Rules Agenda Item for Current Meeting Other: Informational Authorize Rulemaking Hearing	
	Authorize Rulemaking Hearing Adopt Rules Proposed Rules Rulemaking Statements Fiscal and Economic Impact Statement Public Notice	Attachment Attachment Attachment Attachment
Waterberkalling	Issue a Contested Case Order Approve a Stipulated Order Enter an Order Proposed Order	Attachment
	Approve Department Recommendation Variance Request Exception to Rule Informational Report Other: (specify)	AttachmentAttachment Attachment Attachment

Meeting Date: September 20, 1990

Agenda Item: 3

Page 2

DESCRIPTION OF REQUESTED ACTION:

Airport noise control is a complex issue. The Department of Environmental Quality (DEQ, Department), in cooperation with the Port of Portland and the Noise Abatement Advisory Committee, wish to brief the EQC on airport noise management strategies being considered for the Portland International Airport. Staff seeks guidance and input from the EQC relative to the major components of the pending airport noise abatement plan update. The final plan is due prior to October 19, 1990. The EQC will be asked to review and approve the submitted plan at its December 14, 1990 meeting. The EQC approved plan will remain in effect for five years (October 1990 - October 1995).

AUTHORITY/NEED FOR ACTION:

	Required by Statute: Enactment Date:	Attachment
	Statutory Authority: Pursuant to Rule: Pursuant to Federal Law/Rule:	Attachment Attachment Attachment
<u>X</u>	Other: Informational Time Constraints: (explain)	Attachment
DEVEL	OPMENTAL BACKGROUND:	
<u>X</u>	Advisory Committee Report/Recommendation Hearing Officer's Report/Recommendations Response to Testimony/Comments Prior EQC Agenda Items:	Attachment Attachment Attachment Attachment
	April 17, 1990 - Agenda Item D August 19, 1983 - Agenda Item H November 2, 1984 - Agenda Item J April 19, 1985 - Agenda Item G	
for recording	Other Related Reports/Rules/Statutes: Supplemental Background Information	Attachment Attachment

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

Projected growth in air traffic volumes will result in increasing noise impact levels. Changes in operations to accommodate for safety, traffic capacity requirements, and increased noise impact levels will effect the airline industry, the military, the business community, noise-impacted neighborhoods near the airport, and the public-atlarge.

Meeting Date: September 20, 1990

Agenda Item: 3

Page 3

The updated noise mitigation and management program will strive to stabilize and reduce noise impacts on residential properties east and west of the airport, Hayden Island, and Vancouver, Washington, without threatening public safety and the economic viability of the airport.

PROGRAM CONSIDERATIONS:

The finalized noise abatement plan will establish noise mitigation priorities and strategies. It will emphasize placing a higher percentage of incoming and outgoing flights over the center of the Columbia River. Military operations and replacement of older, noisier stage II aircraft, by the quieter, stage III aircraft, will also be major elements of the noise control strategy. Given the projected large increases in air traffic volumes and the potential to degrade livability in affected neighborhoods, adopting and implementing a substantive noise abatement plan is in the publics' best interest.

A primary issue for some east county residents is the "calm wind" policy which directs early morning departures east. Staff analysis of this policy using a population weighted criterion, indicates that a recision of this policy could effectively produce increased noise impacts on west Portland.

The Port of Portland will assume responsibility for implementing and complying with the approved noise abatement plan. The DEQ, through the EQC, will provide regulatory oversight.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

- 1. Official action on noise abatement plan proposal could be made by the EQC at its December 14, 1990 meeting. This option does not allow for EQC discussion and input during the drafting phases of the plan. If adjustments to the submitted plan were deemed necessary, final implementation would be delayed.
- 2. Provide the EQC a brief review and status report on the pending final proposal. This option allows for a discussion of the historic, technical, and political issues associated with airport noise control and management. A work session review and discussion would allow the EQC the opportunity to express its ideas and concerns for inclusion in the final proposal.

Meeting Date: September 20, 1990

Agenda Item:

Page 4

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

Staff recommends approval of Alternative 2. Staff seeks the Commission's guidance and input. Improved understanding of the primary issues will facilitate final approval and implementation of Portland International Airport's noise abatement program.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The Department believes the recommended action is consistent with the strategic plan, agency policy, and legislative policy.

ISSUES FOR COMMISSION TO RESOLVE:

1. No major issues. The Commission may receive public testimony in support of the basic proposal. Continuance of the easterly departures under the "calm wind policy" could produce opposition from east county residents.

INTENDED FOLLOWUP ACTIONS:

The final updated noise abatement program proposal will be completed and submitted by October 19, 1990. Department staff will critique the final proposal and place it on the Commission's December 1990 agenda for approval.

Approved:

Section :

Division:

Director:

Report Prepared By: Terry Obteshka

Phone: 229-5989

Date Prepared: September 4, 1990

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

DATE: September 4, 1990

TO:

Environmental Quality Commission

FROM:

Fred Hansen, Director

SUBJECT: Tax Credit Eligibility of Farm Tractors

At its August 10, 1990 meeting, the Commission expressed concern regarding the degree of tax credit eligibility for farm tractors as an alternative field burning method because of their other general farm applications. The Commission directed the Department to examine the issue and develop a process that will provide a consistent approach in evaluating applications that involve tractors. The purpose of this agenda item is to provide some background information and to present alternative approaches for the Commission's consideration. It is the Department's expectation that the Commission provide further direction based on the identified alternatives.

AUTHORITIES

The Oregon statute governing the Pollution Control Tax Credit Program states that field sanitation and straw utilization and disposal methods shall be eligible for tax credit benefits. The statute further directs the Department and Field Burning Advisory Committee to determine "approved methods".

Department administrative rule, Division 16, defines alternative methods through the following language:

340-16-025 (2) (f) Approved alternative field burning methods and facilities which shall be limited to:

- (A) Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning;
- (B) Propane flamers or mobile field sanitizers which are alternatives to open field burning and reduce air quality impacts; and
- (C) Drainage tile installations which will result in a reduction of grass seed acreage under production.

Memo to: Environmental Quality Commission September 4, 1990 Page 2

NON-BURNING OPTIONS FOR GRASS SEED FARMERS

Based on information from the Oregon State University Linn-Benton County Extension Service office, there are a number of non-burning options available to grass seed growers for perennial and annual crops. The following is a summary of the options for removing straw after the seed is removed.

Perennial Crops - Straw and stubble residue removal steps:

- 1. Remove cut straw by baling or using push rakes to push the straw into piles. (the straw is sold, used or given away or burned)
- 2. The post-harvest residue (stubble) can be eliminated by propane flaming, or crew cutting which removes the stubble and collects it in a wagon. (machinery includes rear's pakstak, vacuum equipment, stackwagon or flail chopper)
- 3. The stubble may also be removed with just the flail chopper. This chops and deposits the residue on the ground.
- 4. The stubble can also be re-clipped, windrowed and collected in a stackwagon. This does a better job than crew cutting.

Annual Crops - Straw and stubble residue removal steps:

- 1. The primary option if there is no burn is to chop the straw and stubble with a flail chopper and plow or disc the residue into the soil.
- 2. If there is a market for annual ryegrass, the straw may be baled.
- 3. There is some experimenting with mixing the residue into the soil using no-till drilling

CURRENT PROCEDURE FOR EVALUATION

The Department has determined under its interpretation of Section (A) of the rule that tractors may be eligible for certification based on the information and justification contained in the application. Tractors are typically needed to pull other implements such as propane flamers, flail choppers, plows, balers, etc.

Initially, the applicant states whether the tractor is going to be solely engaged in activities related to alternative methods to field burning, or used as an alternative method <u>and</u> for other farm uses that do not relate to an alternative method. If the former is stated, the Department summarizes the

Memo to: Environmental Quality Commission September 4, 1990 Page 3

applicant's description of how the tractor is used as an alternative method. If the latter applies, the percentage of the tractor that is used for alternative method purposes is the portion that is eligible for tax credit certification. This information, along with other information in the application, is then used to determine the tax credit amount.

Through the application process, the applicant provides the following information; however, the extent and quality of the information varies considerably:

- 1. A technical description and explanation of the function of the equipment.
- The conditions that existed prior to the use of the claimed equipment, and other methods that were previously used.
- 3. The conditions that exist as a result of use of the equipment.
- 4. The effectiveness of the equipment as an alternative method.
- 5. The equipment's principal or sole purpose, and any use or function of the equipment that is other than pollution control related.
- 6. A return on investment calculation, if the equipment generates any income, to determine the portion of the costs that are allocable to pollution control.
- 7. Alternative methods or equipment considered for achieving the same objective.
- 8. Any other factors that may be relevant in establishing the percent allocable to pollution control.

ISSUES WITH THE CURRENT PROCEDURES

In the Department's current process the following issues are unique to field burning facilities, which include tractors.

- 1. The applicant is not required to provide an overall plan on how a reduction in open burning will be accomplished. Since tax credit applications are submitted when individual or units of equipment or facilities are purchased, the information is specific to the application.
- 2. The rule definition of approved alternative methods is somewhat general, thereby allowing the farmers considerable latitude in determining which methods or combination of methods to apply for purposes of a tax credit. There are no expressed restrictions on equipment or facilities that also have uses which do not apply under

Memo to: Environmental Quality Commission September 4, 1990 Page 4

alternative methods. This is addressed under the "principal purpose" and "sole purpose" provisions.

3. Decisions for utilizing alternative methods and the investment decisions in equipment vary considerably among farm operations. There is a broad range of variables including equipment size, cost, used vs. new equipment.

PROPOSED ALTERNATIVE APPROACHES FOR EVALUATING APPLICATIONS

The Commission's concern regarding the establishment of the degree of eligibility for tractors, and the above identified issues may be addressed through the following:

1. Revision of Current Procedures

This approach primarily involves expansion of the staff effort to review the application, verify information on benefits and options, and include supplemental information provided in the application. (Attachment A is an application which serves as an example of provided information.) The staff report would be expanded to provide the Commission with more information substantiating eligibility. The information would include:

- Description of the applicant's overall plan to reduce open field burning, the equipment necessary for accomplishing the plan.
- Complete justification of the need for a tractor to carry out an alternative method to open field burning, including an assessment of currently owned tractors and their uses.
- Detailed explanation of the applicant's decision regarding the tractor size and model in terms of meeting the anticipated uses.
- A statement as to whether the same objective could be accomplished using a less expensive tractor or perhaps smaller tractor.
- A detailed breakdown of the estimated usage for field burning related and other unrelated farm uses.

If this option is selected, the eight tractors that were withheld at the August 10th meeting will be re-processed using the above information, and placed on the November agenda.

2. Develop of a Standard Eligibility Percentage for Tractors

The Commission may choose to establish a predetermined level of eligibility of a tractor. This would be established in relation to the identification of general farm needs and other uses of tractors that are not related to pollution control. If desired, provisions for exceptions could be developed.

Memo to: Environmental Quality Commission September 4, 1990

Page 5

This option would require rulemaking to revise the definition of alternative methods (Section (A) above). It may also be appropriate to establish an advisory committee to assist the Department in developing an agreed upon rationale for a standard percentage

This option will take approximately six months due to the need to revise the rules, and utilize input from an advisory committee. If this option is selected, a decision is needed regarding the pending tractors. The eight applicants have anticipated certification prior to the year's end so that they could apply the credit against 1990 taxes.

3. Development of Eligibility Methodology

There has been some interest in exploring whether eligibility could be determined through a methodology which would consider the number of acres subject to the alternative method, and the annual hours of tractor usage which would be converted into a percentage allocable. The Department believes this approach may be a more difficult one in terms of establishing what constitutes full utilization of a tractor. Development of this alternative may involve an advisory committee and constitutes at least a six month staff effort.

RECOMMENDATION

It is the Director's recommendation that alternative 2. be pursued on the basis that tractors have broad farm applications and do not appear to be exclusively utilized for pollution control. The Department further recommends that the new procedures be applied prospectively, and that the eight pending applications be acted upon by the Commission under the existing application process.

In pursuing this alternative, it would be the Department's intent to re-examine the application and staff report process in terms of completeness, and to assure that the application includes information on the applicant's overall plan to reduce burning.

All applicants with pending applications involving tractors have been notified of this issue. Consequently, if certification were granted to the eight applicants, no additional applications would be processed until the new procedures are in place.

eqcfb Attachment



Environmental Quality Commission

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

DATE: September 5, 1990

TO:

Environmental Quality Commission

FROM:

Fred Hansen

SUBJECT:

September 20, 1990, Work Session

Stage II Vapor Recovery at Gasoline Stations

<u>Overview</u>

Stage II vapor recovery (collection of vehicle refueling vapors) at gasoline stations is the most significant and cost-effective control measure available to the Department of Environmental Quality (Department) to insure attainment and maintenance of the ozone standard and provide for growth and development in the Portland area. In order to evaluate Stage II alternatives, the Department formed the Stage II Technical Advisory Committee (Committee) in May 1989 with representatives from various industry, government and environmental groups.

In November 1989, the Department and the Stage II Technical Advisory Committee recommended that Stage II underground piping requirements be required over a 24-month period and coordinated with Underground Storage Tank (UST) compliance work as the first step in implementing Stage II vapor recovery. Above-ground Stage II work was recommended to be delayed until the new Clean Air Act clarified the availability of Stage II reductions for use as a growth cushion. The Environmental Quality Commission (EQC, Commission) discussed Stage II at the November 1989 and January 1990 EQC work sessions and authorized a public hearing for July 1990.

Testimony at the public hearing and other recent developments (continued ozone violations, tighter new federal gasoline volatility limits, federal Clean Air Act bills passing the House and Senate) have caused the Department to reconsider the implementation approach for Stage II vapor recovery. We believe it is now appropriate to bypass the intermediate step of requiring underground piping and consider full implementation of Stage II and would like to discuss this with you at the September work session.

Recent Developments

o Ozone levels in the Portland-Vancouver area this summer violated the ozone standard and clearly keeps the area classified as nonattainment.

Memo to: Environmental Quality Commission September 5, 1990 Page 2

o The U.S. Environmental Protection Agency (EPA) adopted Phase II gasoline refinery requirements that tighten limits on summer gasoline volatility (the tendency of the gasoline to vaporize into the atmosphere) effective in 1992. The volatility limits for Oregon are tighter than originally expected.

o The House and Senate have adopted Clean Air Act versions and the bills are now in Conference Committee. It now appears clear that the Clean Air Act language would not require Stage II or affect the use of Stage II credits for growth cushion in the Portland-Vancouver area.

Future Ozone Projections

An estimate of the effects of the various gasoline vapor controls on future Portland area ozone-precursor emissions (non-methane hydrocarbons or NMHC) can be made using EPA generated national information applicable to the Portland area.

- o Figure 1 shows that refueling vapors are significantly controlled by either Stage II at gasoline stations or onboard canisters on motor vehicles; Phase I or Phase II volatility limits have only modest effects on refueling vapor control.
- o Either Stage II or onboard controls ultimately produce about the same emission reduction but in terms of implementation timing Stage II provides the reductions earlier, thus being most effective over the next five to ten years as shown in Figure 2.
- o A general projection of future total emissions and ozone air quality with Phase I and II volatility control and Stage II is shown in Figure 3. The ozone attainment line is based on an approximate 15-20% reduction needed in total NMHC emissions projected from the most recent ozone levels.
- o This preliminary projection indicates that the Portland-Vancouver area will attain ozone standards between 1990 and 1995.
- o Additional control strategies (such as tighter federal tailpipe limits on new vehicles, etc.) may be needed after 2005 to maintain compliance with the ozone standard as the population, traffic and economy continue to grow.
- o Stage II is especially important to provide airshed room for growth and development during the 1990s.

Memo to: Environmental Quality Commission

September 5, 1990

Page 3

Public Hearing Testimony

- o The groups that had been represented on the Committee gave widely differing testimony and none of these groups supported the specific proposal.
- o The petroleum marketers and gasoline dealers opined that the proposal was too much too soon; in addition, the proposal would force business decisions on installation of underground piping before a decision had been made on the overall Stage II requirements.
- o The environmental groups opined that the proposal was too little since it would only require the underground piping portion which would not, by itself, provide any emission reduction; they also recommended larger boundaries over time.
- o The testimony clarified that the November 1989 recommendation of the Committee did not represent a tight consensus but rather a middle ground within widely differing views. A summary of the public hearing testimony is attached (Attachment C).

Based on the public hearing testimony and the other recent developments, the Department believes it is appropriate to by pass the intermediate step of requiring underground piping and proceed with full implementation of Stage II vapor recovery (above- and below-ground portions).

Followup Meeting with Advisory Committee

- o Department staff met again with the Stage II Technical Advisory Committee on August 29, 1990, to discuss boundaries, gallons per month (gal/mo) exemption cutpoints, and schedules for full implementation of Stage II vapor recovery.
- o Should the Commission elect to support full Stage II, the Committee generally favored phase-in of Stage II systems over a time period of three or more years, with Stage II systems required on largest stations first, smaller stations later.
- o The Committee was divided between the two following implementation options:

Throughput	<u>Date</u>	<u>Boundaries</u>
200,000 gal/mo	12/31/91	Multnomah, Washington, Clackamas, Yamhill, Lane and Jackson Counties
100,000 gal/mo	12/31/92	tt 10 tt 10 tt 11
40,000 gal/mo	12/31/93	11 11 11 11 17
40,000 gal/mo	12/31/94	Rest of Willamette Valley
40,000 gal/mo	12/31/95	Statewide

Memo to: Environmental Quality Commission September 5, 1990

Page 4

•	٦	п	
١.	_	u	М.
-	-	4	_

250,000 gal/mo	12/31/91	Multnomah, Washington and Clackamas Counties
150,000 gal/mo	12/31/92	₩ ÇÜ. H
75,000 gal/mo	12/31/93	99 89 99
50,000 gal/mo	12/31/94	H H H H

- o The Committee's recommendations for extended schedules were apparently based on:
 - concerns that enough qualified installers were not available to do the work within a shorter time period; and
 - expectations that the gasoline throughput from the largest stations (200,000 gal/mo or larger) represented a significant portion of the total gasoline throughput.

<u>Alternatives</u>

- 1. Adopt original proposal to require installation of Stage II underground piping at November 1990 EQC meeting, and consider above-ground requirements after final Clean Air Act reauthorization.
- 2. Request hearing authorization at November 1990 EQC meeting for complete Stage II systems (above- and below-ground portions).

Discussion

Stage II has been proposed by DEQ because:

- o It is the most cost-effective control measure available to the State to further reduce ozone-causing emissions, and potentially the only measure available as growth cushion for economic development during continued nonattainment status (national volatility limits or onboard requirements would not be available for growth cushion since they would be required on a national basis);
- o It complements very well the tightening of gasoline volatility limits;
- o It would fill the timing gap until onboard canisters are required on new cars (not yet adopted, then 15-20 years to realize maximum benefit from onboard).

Full implementation of Stage II vapor recovery on gasoline stations would also:

Memo to: Environmental Quality Commission September 5, 1990

pebcemper

Page 5

- o Reduce toxic emissions and exposures of benzene, toluene and xylene;
- o Provide some gasoline conservation benefits due to capture and recycling of refueling vapors.

Full implementation of Stage II vapor recovery on gasoline stations is consistent with:

- o EQC Strategic Plan, Goal 3: Ensure that unallocated assimilative capacity exists by applying highest and best technology in conjunction with pollution prevention methods; and
- o Oregon Benchmarks (public review draft by Oregon Progress Board): Remove airshed barriers to industrial development by 1995.

The Department believes the recent developments listed earlier strengthen the need to proceed with full implementation of Stage II. Full implementation of Stage II would provide the only nearterm option of providing significant growth allocation for new economic development and would further insure attainment and maintenance of the ozone standard in the Portland area.

Issues for the Commission to Resolve

The key issues under either alternative are the boundaries, exemption cutpoints and schedules. The Stage II underground piping proposal that went to public hearing in July 1990:

- o Addressed only the three Portland-area counties (Multnomah, Washington and Clackamas);
- o Had an exemption cutpoint of 10,000 gallons per month that would affect about 89% of the gasoline stations and 99% of the gasoline throughput;
- o Required underground piping at the time of UST compliance work or within 24 months, whichever occurred sooner.

The Department proposes and seeks concurrence from the Commission on the following guiding principles for evaluating the Committee recommendations and determining the Stage II boundaries, exemption cutpoints, and schedules:

o The three Portland-area counties should be addressed first since they are within the ozone nonattainment area and subject to airshed barriers to growth and development (with other areas considered later after further evaluation); Memo to: Environmental Quality Commission September 5, 1990 Page 6

- o The exemption cutpoints and schedules should affect a substantial portion of the regional gasoline throughput during the first and second years of the Stage II program in order to provide airshed room for growth and development;
- o The exemption cutpoints and schedules should affect larger stations first and smaller stations later;
- o The exemption cutpoints and schedules should affect a relatively constant number of tanks each year to insure orderly implementation within the ability of qualified contractors; and
- o Stage II implementation in the Portland area should be essentially completed by the end of 1993 to insure ozone compliance and accommodate potentially explosive growth of population, traffic and businesses.

The Department cannot fully evaluate the Committee recommendation against these principles until it gets more specific information on gasoline throughput of stations in the Portland area. This information will be obtained and evaluated in time to make a specific recommendation to the Commission at the November meeting.

Recommendation

The Department recommends that we proceed with full implementation of Stage II vapor recovery (Alternative 2) and that potential boundaries, exemption cutpoints, and schedules be based on the guiding principles identified by the Department.

If the EQC authorized a public hearing on complete Stage II systems at the November 1990 meeting, then a public hearing could be held in January 1991, with adoption considered in March 1991. Action on the Clean Air Act reauthorization should be completed before Stage II adoption.

Approved:

Section:

for John Kowal czyle

Division:

Director:

Report Prepared By: Merlyn L. Hough

Phone: 229-6446

Date Prepared: September 5, 1990

Attachments:

A) Figures 1, 2 and 3.

B) Stage I and Stage II diagrams

C) Summary of public hearing testimony

PLAN\AH10601

FIGURE 1

MOTOR VEHICLE EMISSIONS 2010 NATIONAL COMPOSITE

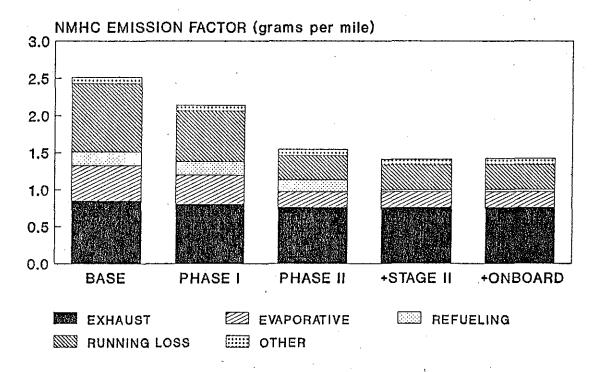
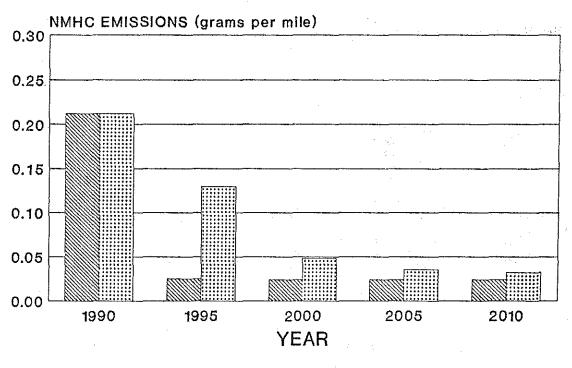


FIGURE 2

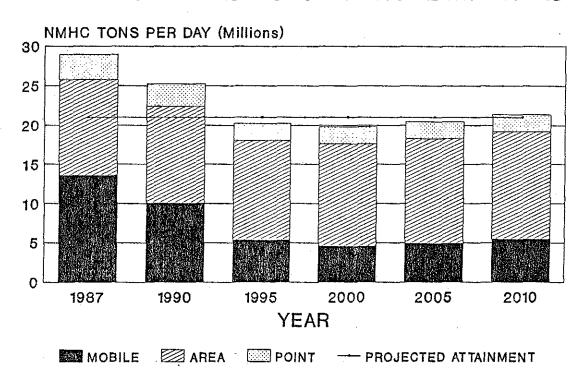
REFUELING EMISSIONS FROM MOTOR VEHICLES



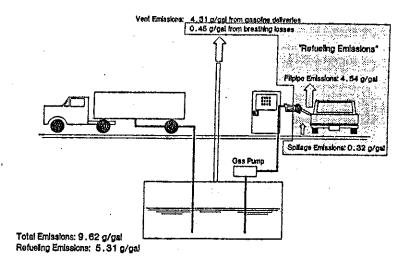
STAGE II ONBOARD

FIGURE 3

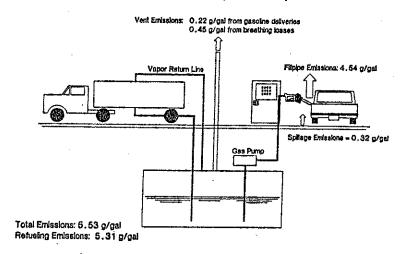
STAGE II: NATIONWIDE NMHC EMISSIONS NON-NORTHEAST OZONE PROBLEM AREAS



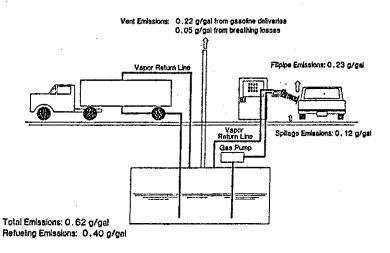
Uncontrolled Gasoline Station Emissions



Gasoline Station Emissions With Stage I Vapor Recovery



Gasoline Station Emissions With Stage I and Stage I Vapor Recovery



From <u>An Analysis of Stage II and Onboard Refueling Emissions Control</u> by Sierra Research, Inc. (November 30, 1988).

SUMMARY OF PUBLIC TESTIMONY ON CONTROL OF VAPORS FROM GASOLINE DISPENSING STATIONS

Taken at Public Hearing on July 18, 1990 and Subsequent Written Documents

A public hearing on the Control of Vapors from Gasoline Dispensing Stations was held on July 18, 1990 at 1:30 pm. The oral testimony from this hearing and subsequent written testimony is summarized below.

 Jeff Bernstein of the Oregon Environmental Council, offered verbal testimony at the hearing and subsequently presented a written summary dated the same date.

OEC generally felt that the Department's proposed actions were long overdue and inadequate. They suggested full implementation (both below and above ground components) of Stage II in the entire Willamette Valley within 3 years. In addition, full implementation of Stage II statewide should be accomplished within 5 years. Finally, Stage I should be required statewide within 2 years.

OEC believes that the Department should give little credence to the arguments for delaying Stage II: 1) Waiting until the federal Clean Air Act has been re-authorized 2) giving deference to base year considerations and 3) waiting for the state of Washington to implement Stage II. They say that the re-authorization process for the Clean Air Act has be going on since 1982 and therefore passage should not be expected any time soon. They suggested that the Department work with Representative Ron Wyden to rectify the base year considerations. Finally, the interstate air shed agreement could be used to prevent Washington from abusing the air shed cushion created by Oregon's Stage II efforts.

OEC believes that aircraft and boating fuel dispensers, which are not coverer by the proposed regulations, should be included.

OEC suggests that the Department review the emissions impact of high seasonal use of gasoline with regard to the throughput exemption limit for Stage II. OEC believes that a monthly maximum throughput limit should be used rather than an annual average.

2. Brian Boe represented both the Oregon Petroleum Marketers
Association and the Oil Heat Institute of Oregon in oral
testimony at the public hearing and submitted written witness
dated July 18, 1990.

Mr. Boe felt strongly that Oregon should hold back on Stage II regulations until reauthorization of the Clean Air Act. He said that the federal conference committee debating reauthorization is currently "dealing with language, regarding Stage II controls, that may clear the way for a solution utilizing on-board canisters on cars". He felt that this was by far the most economically viable approach to the vapor recovery issue.

He pointed out that those gasoline marketers who upgraded their stations to meet UST provisions before Stage II was an Oregon issue, will face "extremely negative economic impact" under the Department's proposed Stage II rules. They will be required to break up the ground a second time to put in Stage II underground piping. In contrast, those stations that were less diligent about doing UST work can now do the required Stage II piping for a much smaller cost at the time of UST work.

To compensate those stations who have already completed UST upgrading, Mr. Boe suggests the Department waive the Stage II requirement for these stations "until there is definitive direction from the Federal level on Stage II vapor recovery policy."

Finally, Mr. Boe suggested that the Department implement "a change in the proposed rules to place a moratorium on retrofitting for Stage II, and only mandating piping installation for new installs and tank upgrades."

 Joe Weller of the American Lung Association presented oral testimony at the hearing and also submitted written material dated July 18, 1990.

Mr Weller was very critical of the Department's proposal of requiring only underground piping for Stage II which he said would "do nothing to solve Oregon's air pollution problems" because Stage II will not work unless the above ground piping is also installed. He said that this is neither fair to the gasoline industry nor to the customers that will be paying increased gasoline prices.

He also pointed out that very little vapor recovery benefit will be gained by the proposed expanding of Stage I in the Portland tri-county area since almost all stations already have Stage I controls in place.

He recommended that the Department "modify the proposed rules to require that:

- 1. Stage I vapor control be in place statewide in 24 months
- Stage II vapor control be in place in Multnomah, Clackamas and Washington counties within 24 months
- 3. Stage II be implemented statewide within 60 months"
- 4. Peggy Manning, a contractor to the Oregon Gasoline Dealers Association, presented verbal testimony at the hearing and submitted a written outline of those comments dated July 18, 1990. Subsequent to the hearing an additional background document, dated July 18, 1990, verifying some of the oral comments was also submitted.

Ms. Manning listed alternatives to Stage II for achieving VOC reductions including: federal mandated reduction of gasoline Reid vapor pressure, tighter auto emissions standards, reduced industrial emissions and on-board vehicle canisters. She suggested that these alternatives might be more effective than Stage II.

However if Stage II must come, she suggested that Stage II be implemented as follows:

- a. For entities which own 100 or more tanks, and individual sites with yearly throughput of more that 1,000,000 gallons underground piping required by December 1993 or when UST replacement occurs, whichever is first.
- b. For entities which own 12-99 tanks, and individual sites with yearly throughput of more than 600,000 gallons underground piping required by December 1995 or when UST replacement occurs, whichever is first.
- c. For entities which own less that 12 tanks, and/or individual sites with yearly throughput of less than 600,000 gallons Stage II not required.

or

d. Follow Federal Rules when adopted.

Ms. Manning believes that the best path would be to wait for Federal Regulation through the Clean Air Act. The OGDA will stand in opposition to adoption of Oregon Stage II rules at the September 1990 EQC meeting.

5. David Paul of the Northwest Environmental Defence Center submitted written testimony to the Department dated July 20, 1990.

NEDC felt that the proposed time frame for implementation was too lengthy, given the relatively low cost for Stage II and the toxic nature of gasoline. They specifically requested that the Department not tie Oregon Stage II action into the Federal Clean Air Act reauthorization because of the uncertainty of the Act's reenactment.

NEDC believes that the Stage II requirements should cover the entire state. They also expressed concern that the proposed regulations did not restrict aviation fuel releases. Finally, they were concerned that a "reasonably achievable enforcement proposal" be included in the regulations.

6. Marcel Halberstadt with the Motor Vehicle Manufacturers
Association offered written testimony dated July 31, 1990.

MVMA supports the proposed Stage II rules. They indicated that the pending Federal Clean Air Act legislation would not require onboard vapor controls unless they are determined to be safe, and quoted the U.S. Department of Transportation General Counsel as saying that "all safety concerns about proposed onboard refueling vapor recovery systems have not been satisfactorily resolved." In addition they quoted a study by the Failure Analysis Associates that gas stations with Stage II had significantly lower gasoline fire rates.

They discussed the consumer friendly aspects of the new Stage II nozzles and the 95% effectiveness of properly maintained Stage II equipment. They indicate that California data show an 88% overall operational effectiveness with an annual inspection program, compared to an effectiveness range of 62-86% estimated by EPA in its 1987 onboard control rulemaking proposal.

MVMA estimates the vapor recovered by Stage II at about two gallons for every 1,000 gallons pumped.

They discussed the long lead time to obtain effective onboard control, estimating 3 years before onboard is installed on any vehicles and an additional 7 years to replace 66% of the vehicle fleet, then another 5-7 years to account for 90% of the fleet.

Jerry Coffer 239-8644

JWC:a PLAN\AH10602 8/9/90

State of Oregon

Department of Environmental Quality

Memorandum

Date: September 5, 1990

To:

Environmental Quality Commission

From:

Fred Hansen, Director

Subject:

September 20, 1990 Work Session Item 6

Workload and Performance Measures for the Budget and Strategic Plan

The attached pages are the workload and performance measures developed by the programs in support of the Agency's 1991-93 Budget Request. Also included are estimates of the measures for the current biennium. These measures were developed on current information to meet the needs of both the budget and the Strategic Plan.

The development of stable long term performance measures is a difficult process. In many instances, data is not currently available to support what may be a preferred indicator. The questions and discussion at this work session will guide the continuing development of more refined performance indicators for the next budget and the ongoing strategic plan.

FH:1

NARRATIVE OR SPECIAL ANALYSIS

AIR QUALITY PROGRAM WORKLOAD AND PERFORMANCE NARRATIVE

The purpose of the Air Quality program is to manage Oregon's air resources in order to ensure a healthful and aesthetically acceptable air quality and provide the optimum opportunity for continuing economic growth. Air Quality program activities to meet this goal include air quality assessment, strategic planning, and implementation.

An important performance measure for the Air Quality Program, as a whole, is the citizen exposure to unhealthful levels of air pollutants.

Air Quality Assessment

The number of monitors/samplers operated is a primary indicator of the ambient air quality assessment effort. Oregon can be divided into a number of airsheds based upon the meteorology of an area, the air pollutant in question and the emitting activities. For example, downtown Portland is considered as one airshed for the pollutant carbon monoxide while the entire Portland metropolitan area is considered a single airshed for tropospheric ozone. In order to manage Oregon's air quality as a resource, it is critical to know the air quality in these airsheds. This knowledge can be obtained directly through continuous air quality monitoring or indirectly through the inventorying of emissions in an airshed and the mathematical modelling of the impact of those emissions upon the airshed.

Strategic Planning

The percent of attainment/maintenance plans completed for areas needing such plans is an essential performance measure of air quality planning. Strategic planning for the AQ program includes: the adoption of air quality standards that are protective of public health and welfare; the development of plans that will bring unhealthful areas into attainment with air quality standards; the development of plans that will assure continued attainment (maintenance) of air quality standards; and the development of plans that will assure unimpaired visibility in pristine areas. Other elements include: the adoption of statewide rules that require highest and best control of emissions from a wide variety of sources ranging from industry to motor vehicles and woodstoves; the solicitation of programs from local governments to control area source pollution (transportation, woodstoves); the development of programs to manage airshed capacity and growth; and, the promotion of financial incentives to encourage emission reductions.

AQNARTV.91 (1)	X Agency Request	Governor's Recommended	Legislatively Adopted	Budget Page

NARRATIVE OR SPECIAL ANALYSIS

<u>Implementation</u>

Key implementation measures for the Air Quality Program include the percent completion of the permitted source inspection strategy and the percent of permitted sources in compliance. Permitting and compliance assurance are the keystones of the implementation phase. Permits for industrial and some other activities are developed to ensure that the individual source will not cause ambient air quality problems. An effective compliance assurance program is based upon establishing and maintaining an adequate regulatory presence in the areas of industry, motor vehicles, asbestos, noise, and field burning. This is accomplished through routine scheduled inspections, unannounced inspections, complaint response, sampling and monitoring, and timely and appropriate enforcement.

Critical Concerns

Achieving clean air for all Oregonians is an increasingly complex process. Both the technical demands and public participation are growing. Oregon's air monitoring network is currently insufficient to allow a statewide air quality assessment. Modelling and emission inventory resources have become a bottleneck for airshed assessments and air quality impact analyses. The federal requirements for air quality improvement and maintenance plans and state requirements for the development of rule revisions are highly resource intensive. With current resources, the Department's ability to avoid a lengthy backlog of permit applications, evaluate toxic air pollutant impacts, inspect high priority sources frequently, and respond to violations or citizen complaints in a timely manner is limited. In addition to these increased resource needs, current revenues are insufficient to support the existing staff levels. Decision packages to address these problems are contained in this budget.

			•	
QHARTV.91 (2)	X Agency Request	Governor's Recommended	Legislatively Adopted	Budget Page

	1/4/	1991	::		1991 - 1993						
	:	Estimated	timated :: :			Decision	:	Total	:		
Description	: Legislatively :	for	::	Base	:	Package	:	Agency	: Governor's	: Legislatively	
•	: Adopted :		::	Budget	:	Subtotal	:	Request	: Recommendation	: Adopted	
1	:2	3	::4		:5		;6		:7	:8	
Assessment	: :	;	::		:		:		:	:	
	:	,	::		:		;		:	:	
Number of Pristine Areas Returned to	:	;	::		:		:		:	:	
Acceptable Visibility	:	. 0	::	5	:		:	5	:	:	
Citizen Exposure to Unhealthful Air Quality	:	: 11% of pop.	::	0	:			0	•	:	
Number of Areas Redesignated to Attainment	:	: 1	::	7	:		•	7	:	:	
Number of Field Data Points	: 1,029,700 :	792,000	::	750,000	:		:	750,000	:	:	
Number of Samples Collected	: 14,950	13,000	::	13,000	:		:	13,000	:	:	
Number of Air Quality Monitors/Samplers	. .	:	::		:		:		:	:	
Operated	:	: 185	::	175	:		:	175	:	:	
Number of Field Burning Impact Sites	:		::		:		:		:	;	
Monitored	: 14	: 14	::	14	:		=	14	:	:	
Number of Laboratory Data Points	: 31,800	20,000	::	25,000	: .		:	25,000	:	:	
Number of Laboratory Analyses Performed		15,000	::	17,500	:	•	:	17,500	:	:	
Publication of Annual Air Quality Report		: 2	::	2	:		z	. 2	:	:	
Airport Noise Evaluations Completed		: 35	::	40	:		:	40	:	:	
Emission Inventory Updates	2,700	2,000	::	2,700	:		:	2,700	:	:	
Strategic Planning	:	- •	::		:	•	:		:	:	
	:	:	::		:		:		:	:	
Percent of Attainment/Maintenance Plans	:	•	::	4000	:		:		:	:	
Developed for Areas Needing Such Plans	:	: 69%	::	100%	: .		:	100%	:	:	
Rules Adopted/Modified	: 15	: 11	::	11	:		:	11	:	:	
Air Quality Attainment/Maintenance Plans	:	:	::	_	:		:	_	:	:	
Adopted/Modified	: 10	: 6	::	5	:		:	5	:	:	
Tumi amantatian		• -	::		•		•		•	:	
<u>Implementation</u>		:	::		•		:			:	
Point Source Permit Applications Received	: 645	: 420	::	420	:		•	420			
Percent of Point Source Permits Processed in		. 460	::	720	•		:	420	:	:	
a Timely Manner	•	66%	::	60%	:		:	60%		•	
Point Source Plans Reviewed	: 225	: 186	::	240	:		•	240	:	•	
Number of Point Source Dispersion Modelling		•	::	t 40	:		:	240	•	•	
Reviews	:	10	::	10	•		:	10	•	•	
Tax Credit Applications Processed	: 30	52	::	50	•		:	50	•	•	
Indirect Source Permits Issued		: 40	::	20	•		•	20	•	•	
Permitted Source Inspections		: 1.300	::	1,300	:		•	1,300	•	•	
Non-Permitted Source Inspections	: 880	: 1,500	::	1,500	•		•	1,500	•	•	
Percent Completion of Inspection Strategy	:	: 88	::	88	•		:	88	•	•	
Percent of Permitted Sources in Compliance	:	: 97	::	95	-		:	95	<u>.</u>	:	

AQBUDGET.91 (1)

X Agency Request

__ Governor's Recommended

____ Legislatively Adopted

Budget Page

	1989-					1991-1993		
	:	Estimated	::	:	Decision	: Total	:	:
Description	: Legislatively :	for	:: Bas		Package	: Agency	: Governor's	: Legislativel
	: Adopted :	Biennium	:: Budg			: Request	: Recommendation	
1	<u>:2 </u>	<u> </u>	;:4	5		:6	:7	:8
Response to Citizen Complaints	: 1,000 :	4,461	:: 4.	: 00		: 4,000	:	:
Formal Enforcement Actions Initiated	: 265 :	180		80 :		: 180	:	:
Number of Sources Performing Emissions Tests	:	146	::	146 :		: 146	:	:
Source Tests Reviewed	: :	55	::	110 :		: 110	. :	:
Number of Regularly Permitted Sources	:		::	:		:	:	:
Required to Conduct Self Monitoring	:	27	::	45 :		: 45	:	:
Number of Audits of Industry Self Monitoring		37	::	35 :		: 35	:	:
Gasoline Truck Certificates Issued	: 1,400 :	1,400	1: 1,	: 00		: 1,400	:	:
Certificates of Vehicle Emission Compliance	: :		::	:	•	•	:	:
I ssu ed	: 662,000 :	676,000	:: 710,	000 :		710,000	:	:
Number of Vehicle Emission Control Tests	:		::			:	:	;
Conducted	: 974,000 :	994,000	:: 1,044,	118 :		: 1,044,118	•	:
Vehicle Emission Compliance Rate	: 64% :	68%	::	70% :		: 70%	•	:
Noise Related Technical Assistance to	:		**	:		:	:	:
Government Agencies	: 660 :	900	::	660 :		: 660	:	:
Motor Racing Special Event Approvals	1	28	::	28 :		: 28	:	:
Field Burning Compliance Surveillance	:		::	· :		:	:	:
Performed	: :	500		500 :		: 500	:	:
Asbestos Workers Certified	: 2,220 :	2,900	:: 2,	900 :		: 2,900	:	:
Asbestos Contractors Licensed	: 140 :	140		140 :		: 140	:	:
Asbestos Building Inspectors Certified	:			200 :		: 200	:	:
Asbestos Training Courses Reviewed/Audited	: 140 :	70		135 :		: 135	:	:
Asbestos Notification Reviewed	: 4,000 :	3,000		000 :		: 3,000	:	:
Backyard Burning Permits Issued	: 1,000 :	2,000	:: 2,	000 :		: 2,000	:	:
Number of Woodstove Models Certified	: 50 :	50	::	50 :		: 50	:	. :
•	: :		::	:		:	:	:
·	: :		::	•		:	:	:
	: :		::	:		:	:	:
•	: :		::	:		:	:	:
	: :		::	:		:	:	:
	: :		::	:		:	:	:
	:		::	:		•	:	:
	: :		::	:		:	:	:
•	:		::	:		3 .	:	:
	:		::	•		:		:
			::	•		:	:	•
			::			:	•	•
	:		::			:		:
			::			•	•	•
•			::	· ·			•	•
	-			•		-		•

AQBUDGET.91 (2)

X Agency Request

___ Governor's Recommended

___ Legislatively Adopted

STATE OF OREGON EXECUTIVE DEPARTMENT

•				BUDGET SUMMARY 1991-93							
	: Legislatively	9-91	::	Base	ision Package: Total : Governor's : Legislative						
PERFORMANCE/WORKLOAD MEASURES		: Estimated for : Biennium	::	Budget	:Dec				: Legistative		
PERFORMANCE/WORKLOAD REASURES		: 5 1 em 1 um : 3	::4	Buaget	:5		6	: Recommendation :7	: Adopted :8		
	: 6	3.3	114				<u> </u>	<u> </u>	10		
ecision Packages:	:	•	::		:	5		:	. .		
	•	•	::		•		•	•	-		
10 AQ Base Enhancements	•	•	::		•	,		•	•		
Number of Laboratory Analyses	•	•	11		•	,	•	•	•		
Performed	•	•	::.		•	2,240	2,240	•	-		
Number of Surveys	-		::		:	18	18	•	•		
Rules Adopted/Modified	-	•	::		•	4		•			
Percent of Point Source Permits	•	•	::		•	7	· -	•	:		
Processed in a Timely Manner	•	:	::		:	80	80	•	:		
Number of Point Source	•		::		:			•	:		
Dispersion Modelling Reviews	•	•	::		•	8	. 8	•			
Permitted Source Inspections	•		::		:	225	225				
Percent Completion of Inspection	-	•			:	وع		:	•		
Strategy			::		•	100	100	•	•		
Percent of Permitted Sources	-				•	100	: 100	•	•		
	<u>.</u>	•	::		•	00		1	•		
in Compliance Formal Enforcement Actions Initiated	, :	:	::		•	98	: 98	Ŧ	:		
Formal Enforcement Actions Initiated	l ;	:	::		:	20	20	:	:		
113 <u>Comprehensive Air Bill</u>	•	•	::		•		•	•	•		
Percent of Emission Reductions	•	:	::		<u>-</u>		•	•	:		
Attributed to Emission Program	-	•	::		-	15	15	•	:		
Number of Projects Funded Resulting	•	•	::		:		• ,5	•	•		
in Emission Reductions	•	:	::		:	5	: 5	:	:		
Emission Inventory Improvements	•	•	::		:	300	300	•	•		
Rules Adopted/Modified	•	:	::		:	1	: 300	•	•		
Point Source Permit Applications		:	::		:	•	• '	:	•		
Received	•	•	::		:	100	100	•	•		
Percent of Point Source Permits	•	:	::		:	100	. 100	:			
Processed in a Timely Manner	•	•	::		•	80	: 80	•			
Point Source Plans Reviewed					•	20	: 20		•		
Number of Sources Performing	-	•			•	20	: 20	-	•		
	<u> </u>	•	::		•	130	. 420	<u>.</u>	:		
Emissions Tests	-		::		:	120	: 120		•		
Source Tests Reviewed	: -	i	::		:	110	: 110	•	:		
Number of Regularly Permitted	· •	•	::		:	•	;	:	:		
Required to Conduct Self-Monitoria	19:	` .	::		:	2	: 2	:	:		
Number of Audits of Industry	1		::		:		:	:	:		
Self-Monitoring	:	:	::		:	2	: 2	:	:		
	:	:	::		:		:	:	:		
	:	:	::		:		:	:	:		
	•	•	::		•		•	•	•		

BUD91.AQ3 (1)

X Agency Request

___ Governor's Recommended

____ Legislatively Adopted

STATE OF OREGON EXECUTIVE DEPARTMENT

				BUDGET SUMMARY								
	•	: 19	89-91	::		1991-93						
		: Legislatively	: Estimated for	::	Base	:Dec	ision Package:	Total	: Governor's	: Legislativel		
	PERFORMANCE/WORKLOAD MEASURES	: Adopted	: Biennium	::	Budget	o =	Subtotal :	Agency Request	: Recommendation			
		_:2	:3	::4		<u>* :5</u>		6	:7	:8.		
128	Indoor Air	:	:	::		:	1		:	:		
	Indoor Air Products Labelled	•	:	::		:	20 :	20	:	:		
	Indoor Air Consultants Accredited	:	:	::		:	20 :	20.	:	:		
		:	;	::		:	:		:	:		
129	Financial Incentives for	:	;	::		:	:		:	:		
	Residential Woodstoves	:	:	::		:			:	:		
	Woodstove Tax Credits Issued	:		::			10,000 :	10,000	:	•		
		·	•	::					- -	•		
		2	;	::		-				•		
		:	:	::					•	•		
		:	•	::		•		•	<u>.</u>	•		
		:	•						1	•		
	•	<u>:</u>	•	::		•			<u>.</u>	•		
		•	•	::		•			•	:		
		•	•	::		:			•	:		
		•	:	::		2			:	:		
		:	:	::		:	;		:	•		
		:	;	::		• .	:	}	:	:		
		:	:	::		:		:	:	•		
		:	:	::		:	:	1	:	:		
		:	:	::		:	:		:	:		
		:	•	::		1	•	1	:	:		
		•	:	::		:		•	=	-		
		*	•	::					•	•		
		. •	•	::		•		,	•	•		
			:	::					:	•		
		-	•			:	•	1	:	•		
		•	•	::		•	•		•	•		
	•		•			•	į	•	•	-		
		•	•	::		:	}	i	1	:		
		.	:	::		:	;	•	:	:		
		•	:	::	•	:	;	;	:	:		
	•	:	:	::		:	;	;	•	:		
	•	:	:	::		:	;	•	t '	:		
		2	:	::		:	· ;	:	:	:		
		1	:	::		:	!	:	:	:		
		•	2	::		:	<u>.</u>	•	•	•		
		:	:	::		•		-	•	•		
		•	•	::	•				•	•		
		•	:	::		:			•	•		
			•			:	i		•	•		
		•	•	::		•		: -	.	:		
	•	ž.	:	::		:	•	:	:	:		

BUD91.AQ3 (2)

X Agency Request

____ Governor's Recommended

____ Legislatively Adopted

NARRATIVE OR SPECIAL ANALYSIS

WATER QUALITY PROGRAM WORKLOAD AND PERFORMANCE NARRATIVE

The purpose of the Water Quality program is to protect the quality of Oregon's water so that it can provide for the beneficial uses designated for it by the State.

The functions of the Water Quality program are to assess the quality of Oregon's surface, ground, lake, ocean and estuary waters; to maintain that water which meets standards; to design and implement strategies to improve the quality of water which does not meet standards. In order to do this the Department must first assess the quality of the water then design strategies for needed improvement and finally monitor the implementation of the strategies for compliance and effectiveness.

The assessment phase consists of ambient surface and groundwater monitoring, hydrogeologic characterizations, water segment quality assessments; quality assurance and quality control of required monitoring data from those regulated; trend analysis and determination of assimilative capacity.

The strategy phase includes establishing the standards needed to protect the designated beneficial uses; determining the total pollutant assimilative capacity of waterbodies or stream stretches; requiring permits of point source discharges and pollution reduction plans and best management practices from non-point source polluters with appropriate controls; providing financing where possible for sewage infrastructure and tax credits to regulated community where allowed by statute.

After implementation, compliance monitoring of data; inspections and enforcement actions occur. Monitoring of the water continues to verify that the strategy employed works to improve or protect the water quality.

The assessment, strategy and implementation phases all include coordination and cooperation with other natural resource agencies, federal agencies, other states, DEQ programs internally and EPA.

In the following performance measures there are some areas of concern. The number of river miles, lakes, estuaries, wetlands and groundwater aquifers monitored is not as extensive as we would like. We do, however, make attempts to monitor downstream or downgradient from the bulk of sources so that we can see the effects of the discharges at their worst. We also monitor more extensively where our initial monitoring has indicated a problem. In some areas, we have no or minimal staff to do monitoring. This includes lakes, estuaries and wetlands. The other work performance measures of concern are our permit backlogs which we address with a decision package in this budget and our present lack of staff to provide guidance documents and training to our own staff or the regulated community on rules which we or the EPA have adopted. This is also an area proposed for improvement in our decision packages.

GNARITV.91 (1)	X Agency Request	Governor's Recommended	Legislatively Adopted	Budget Page

		: 1989-1991 ::						1991-1993						
	•		:	Estimated ::			:	Decision	:	Total	:			
Desc	ription	: Legislatively	:	for	::	Base	:	Package	:		: Governor's	: Legislativ		
		: Adopited	:	Biennium	::	Budget	:	Subtotal	:	Request	: Recommendation			
1		:2	:3		::4	<u> </u>	:5		:6		:7	:8		
WORKLOAD MEA	SURFS	· •	•		::		:		:			:		
NORREDAD TIEF		:	:		::		:		:		:	:		
Number of Am	mbient WQ Stations Sampled	: 480	:	750	::	600	:		:	600	:	:		
	mbient Samples Collected	10.520	:	9,000	::	8,500	:		:	8,500	:	:		
	mbient Analyses		:	86,000	::	80,000			:		:	:		
	abient Data Points	: 146,200	:	130,000	::	130,000			:		:	:		
	ource Samples	- · · · · · · · · · · · · · · · · · · ·	:	2,500	::	2,500			:		:	:		
	ource Samples Analyzed	15,000	:	15,000	::	15,000			•	15,000	•	•		
	purce Sample Data Points	50,000	:	50,000	::	50,000			•	*	:			
	roundwater Stations Sampled	485	:	750	::	500			:	500		•		
	roundwater Samples Analyzed	9,700	•	15,000	::	10,000	:		:	10,000	:	•		
	ioassessments on Sources	: 50	:	50	::	50	:		:	50	•	•		
	riority Water Body Problem	. ,	•	30	::	70	•		:	70	•	:		
		: : 7	•		::		•		٠		•			
	ts Completed	-	•				•		•		-	•		
	riority Problem Studies Completed		:		::	4	•		•		•			
	rts Completed (305b)	: 1	:	1	::	1	:		:	1	-	•		
	s Review Completed (Selected	: _	:	_	::		:		:	_	•	:		
Standards)	•	: 2	:	2	::	2	:		:	2	:	:		
	tal Maximum Daily Loads (TMDLs)	: 6	:	3	::	0,	:		:	Ō	:	:		
Final TMDLs	•	: 4	:	2	::	0	:		:	0	:	:		
	Certifications	: 20	:	50	::	50	:		:	50	:	:		
	ic Applications Processed	: 0	:	3	::	3	:		:	3	:	:		
	Fill Applications Processed	: 550	:	162	::	300	:		:	300	:	:		
Special Non-	-Point Source Grant Projects	: 0	:	24	::	0	:		:	0	:	:		
Columbia Riv	ver Study Advisory Groups	: 0	:	6	::	1	:		:	1	:	:		
Wiliamette F	River Study Advisory Groups	: 0	:	6	::	0	:		:	0	:	:		
	Lake Projects	: 0	:	3	::	3	:		:	3	:	:		
•	•	:	:	_	::		:		:		2	:		
Groundwater	Review for Discharge Permits:	:	:		::			•	:		:	:		
New Permi		: 25	:	80	::	120	-		:	120	•	•		
	newal Reviews	: 35	•	75	::	115			•	115	- -	-		
	dification Reviews	: 30	:	30	::	45	-		•	45	-	•		
	Request Reviews	: 0	:	50	::	75	:		:	75	•	:		
* G1 1 G110 C	REGUEST REFIERS	:	:	,,,	::	.,	:		:		-			
Groundwater	Monitoring Review:		:		::		:		:		•	•		
Project \$	•	•	:		::		:		:		•	•		
-	•	: 25	:	80		120	:		٠	120	•	•		
New pro		: 25	:	75		115	•		•	120 115		i		
	renewal projects	. 33	•	75		113	:		:	115	1	a		
Follow Up			ï		::	7.	:		:		:	:		
Мен b Lo		: 25	_	25		35	:		:	35	:	:		
Permit	renewal projects	: 25	=	25		35	:		:	35	:	:		
		:	:		::		:	F	:		3	:		

WQBUDGET.91 (1) (08\29\90)

X Agency Request

___ Governor's Recommended

____ Legislatively Adopted

	: 19	991	::					1991-1993			
	:	:	Estimated	::		:	Decision	:	Total	:	:
Description	: Legislativel	/ :	for	::	Base	. :	Package	:	Agency	: Governor's	: Legislativel
	: Adopted	:_	Biennium	**	Budget	:_	Subtotai	:	Request	: Recommendation	• • • • • • • • • • • • • • • • • • • •
	:2	:3		::4		:5		:6		:7	:8
Groundwater MML's (standards) set	: 0	:	10	::	3	:		:	3	:	:
	:	:		::		:		:		:	:
Hydrogeologic Characterizations	: 1.5	:	1.5	::	.5	:		:	.5	•	•
Consist Non-Daint Course Cound Dualesta	: 0	:	12	::	10	:		:	10	:	<u>.</u>
Special Non-Point Source Grand Projects			12	::	10	•		•	10		•
Domestic Waste Facility Permit Actions:	•	•		::		•		•			•
Number of Permittees	: 450	•	490	::	450	:		•	450	•	•
New Applications Processed	: 60	-	CE	::	0	:		:	750	•	•
Renewals Processed	: 120	_	·/ 75	::	7 Š	i		•	7 5	•	•
Modifications Processed	: 50	_	40	::	25	:		:	25	•	:
Inspections	: 600	_	400	::	330	:		:	330	•	•
113pec 1 0110	:	:	100	::	550	•		:		•	•
Facility Engineering Reports and Plans	-	:		::		•		•		•	•
Reviewed	105	:	400	::	100	•		•	100	•	•
(61)-10-	:	:		::		:				•	•
Operator Training Sessions Held	: 0	:	2	::	2	:		:	2	•	i
Industrial Waste Facility Permit Actions:	2	:		::				•		•	•
Total Number of Permittees	: 1,350	•	1,600		1,850	:		:	1,850	•	•
New Applications Received	: 200		250	11	250			:	250	:	:
New Permits Issued	:	:	200	::	⁶ 150	:		:	200	•	•
Permits Expired	: 120	:	100	::	100	:		:	100	•	:
Renewals Issued	;	:	60	::	40	:		:	60	:	:
Modifications Processed	: 40	:	50	::	30	:		:	50	:	:
Inspections and Surveys	: 500		400	::	400	;		:	400	•	:
	:	:		::		:		:		:	:
Plans Reviewed:		:	•	::		:		:		:	:
Industrial	: 200	:	150	::	150	:	•	:	150	*	:
	:	:		::		:		:		:	:
Tax Credits:	:	:		::		:		:		:	•
Applications Processed	: 100	:	350		300	:		:	300	:	:
On-Site Sewage Actions:	:	:		::		:		:		:	:
Sites Evaluated	: 900		2,000	::,	2,000			:	2 000	•	
Constructions Permits	: 900		1,500		1,500			•	2,000		
Repair Permits	: 504		750		750			•	1,500 750	•	•
Authorization Notices	: 504		950		1,100				1,100	•	•
Plan Reviews	•) :	40		1,100			•	40	: :	•
Existing System Reviews) :	150		150	_		•	150	= 1	•
Pumper Truck Inspections		, .) :	90		90	_		:	90		•
Variance Processing) :	130		60	-		•	60	•	•
tar talled it evectoring	•	-	130	• •	60	•		•	00	•	•

WQBUDGET.91 (2) (08\29\90)

X Agency Request

____ Governor's Recommended

___ Legislatively Adopted

	: 1989	9-1991		::					1991-1993		
	:	: Esti		::		:	Decision	:	Total	:	•
Description	: Legislatively	: fc	r :	::	Base	:	Package	:	Agency	: Governor's	: Legislatively
	: Adopted	: Bier	nium :	::	Budget	:	Subtotal	2	Request	: Recommendation	: Adopted
1	:2	:3		::4		:5		:6	· · · · · · · · · · · · · · · · · · ·	<u>:7</u>	:8
Installers/Pumpers Licensed	: 700	•	1,900 :	::	2,000				2,000		
This carter by rumper s. Directioed		:		 : :	2,000	•		:	2,000	•	
Financial Assistance for Sewage Treatment	•	:		::		:		:		•	:
Works Construction:	•	:		::		:		:		:	:
Assessment Deferral Loan Agreements	•	:		::	• 1	:		:		:	:
Executed	. 12	:		 : :	5	:		:	5	:	:
Assessment Deferral Loan Programs Reviewed		:		::	Š	:		•	5	•	:
Number of Facilities Receiving Technical	:	:		::	•	:		:	•	:	:
Assistance	50	:		::	50	:		:	50	:	:
x33.3 carice	:	:		::	,,,	:		:	50	•	•
Plans Reviewed	:			::	•	•		-		2	:
Financial Management Plans	: 50	•		::	50	•		•	50	1	•
Sewer Uşe Ordinances	: 50	:		::	50	:		:	50	2	•
User Charges Systems	: 50	:		::	50	•		:	50	:	:
	:			::		:		:		•	•
Grant and Loan Management	:	:		::		:		:			:
Grant and Loan Applications Reviewed and	:	•	•	::		•		•	•	·	•
Recommended for Contract Award	: 50	:		::	50	•		:	50	:	:
Grants and Loan Agreements Executed	: 50	:	50	::	50	:		:	50	:	
•	:	:		::		•		:		:	•
Engineering Plans Reviewed and Approved	: 300	:		::	150	:		:	150		•
	:	:		::		:		:			:
Interim Inspections Conducted	: 100	:	100	::	100	:		:	100	:	:
·	:	:		::		:		:		:	•
Change Orders Reviewed and Processed	: 300	:	300	::	300	:		:	300	:	:
•	:	:		::		:		:		:	.:
Projects Administratively Completed	: 30	:	30	::	30	:		:	30	:	:
• •	:	:		::		:		:		:	:
Laboratory:	:	:		::		:	•	:	•	:	:
Number of Ambient Water Quality Stations	•	:		::		:		:		:	:
Sampled	: 480	:	750	::	600			:	600	:	:
Number of Samples	: 10,520	:	9,000	::	8,500	:		:	8,500	:	:
Number of Analyses	93,080	:	86,000	::	80,000			:	80,000	:	:
Number of Lab Data Points	: 146,000	:	130,000	::	130,000	:		:	130,000	:	:
Number of Bioassessments	; 90	:	7	::	100			:	100	<u> </u>	:
•	:	:		::		:		:	•	•	1
PERFORMANCE MEASURES	:	:		::				:		.	:
	:	:		::		:		•		•	:
ASSESSMENT OF THE QUALITY OF THE WATER	;	:		::		:		:		2	:
	:	:		::		:		i		:	<u>.</u>
River Miles	:	:		::		•				•	<u>.</u>
Total Miles in State - 90,000	:	:		::		•		:		•	:
·								-			•

WQBUDGET.91 (3) (08\29\90)

X Agency Request

____ Governor's Recommended

____ Legislatively Adopted

Budget Page

	1989-		::					1991-1993		
•	: Legislatively : : Adopted : :2	for	::	Base Budget	: : : :5	Decision Package Subtotal	:6	Agency	: Governor's : Recommendation :7	: : Legislativel : Adopted :8
Miles Monitored	3,500	3,500	::	3,500	:		:	3,500	:	:
Estuaries			::		:		i		:	•
Total Acres of Estuaries (21 major	:		::		:		:		:	:
Estuaries) - 131,844	:		::		:		2		•	:
Total Acres Assessed	39,000	39,000	::	39,000	:		:	39,000	:	:
Lakes	•		::		:		:		• •	:
Total Acres of Lakes - 610,808	:	•	::		:		:		:	:
Total Acres Assessed (FF)	: 3,696	3,696	::	0	:		:	0	:	:
#	:		::	. 0	:		:		:	:
Groundwater Basins		. 2	::	1	:		:	1	:	:
Wetlands	•		::	,	:		:	•	:	:
Total Acres/Freshwater Wetlands - 30,000	- -		::		:		:		:	:
Total Acres Assessed	: 0 :	. 0	::	O	:		:	0	:	:
Total Acres/Tidal Wetlands - 131,844	: _ :	1	::	_	:		:	_	:	:
Total Acres Assessed	: 0	: 0	::	0	:		:	0	:	:
Pacific Ocean	:		::		:		:			:
Total Square Miles of State Waters - 1,089	•		::		:		•			•
Total Square Miles Assessed	. 0	0	::	0			:	0	•	* 2
	:	•	::		:		:		•	•
Trends:	:	:	::		:		:		:	:
River miles improving or declining	:	:	::		:		:		:	:
Percent high quality waters with no	:	•	::		:		:		:	:
degradation	•	. .	::		:		:		:	:
STRATEGIES DEVELOPED TO PROTECT AND IMPROVE	•		::		•		•		•	
WATER QUALITY	1	• •	::		:		•		•	•
	:	:	::		:		:		•	•
Percent of process which involves formal	:	•	::		:		:		:	:
public participation	: 75%	: 75	::	75%	:		:	75%	:	:
Percent of TMDLs established on waters which			. ::	** ^ ^	:		:		:	:
exceed standards Percent groundwater areas which exceed	: N/A	: 207	::	30%	:		:	30%	•	•
	:	•	::		•		:		•	
plan is being developed	10%	: . 10:	· : :	10%	:		•	10%	•	•
,	:	:	::		:		:		:	:
IMPLEMENTATION OF STRATEGIES	:	:	::		:		:		:	:
	•	:	. ::		:		:	_	:	:
Percent of new permits issued timely	: N/A	: 50	٠::	50%	:		:	50%		:

WQBUDGET.91 (4) (08\29\90)

X Agency Request

___ Governor's Recommended

____ Legislatively Adopted

		7-199	<u>/ </u>	::					1991-1993		
	:	;	Estimated	::	-	:	Decision	:	Total	‡	1
Description	: Legislatively	:		::	Base	:	Package	:	Agency	: Governor's	: Legislativel
	: Adopted	:	•	::	Budget	:	Subtotal	:	Request	: Recommendation	: Adopted
1	:2	:3		::4		:5		:6		:7	:8
Percent of renewal and modified permits	:	:		::		:		:		:	:
issued timely.	: N/A	•	50%		50%	:		:	50%	:	:
Percent of memorandum of understanding with	:	•		::		:		:		:	:
other state agencies which are needed for	:	:		::		:		:		:	:
non-point source and other program	:	:		::		:		:		:	:
regulations completed	:	•	90%		90%	:		:	90%	:	•
Percent of suspected groundwater areas of	1	•	2	::		•		•		•	-
concern and management area investigated	: 14%	•	18%		14%	:		:	14%	:	•
Percent of facilities submitting groundwater		•		::	• • • • •	-		•	, ,,,	•	•
protection plans	5%	•	9%		12%	•		•	12%	-	1
Percent of counties with groundwater	•	•		::	,			:		:	•
monitoring completed	90%	•	92%		100%	•		:	100%	:	-
Percent grants/loans for sewerage facilities		:		::		-		:		•	•
processed with no loss of federal dollars		•	100%	::	80%	•		:	80%	•	:
Percent of permit holders inspected annually		•	50%		50%	_		:	50%		•
Percent of treatment work operators trained		:		::		:		•		•	:
annually	•	•	33%		33%	:		:	33%	•	•
Percent of permit holders in compliance	•	•	60%		60%	-			60%		•
Percent of counties' on-site programs	:	:	•	::		•		:		·	•
audited biennially	:	:	10%		20%	:		•	20%	•	•
Percent of non-complying permittees which	2	•		::		•		•		•	•
have stipulated consent order or other	•	•		::		•		•		•	ţ
compliance schedule in place	•	:	30%		30%			•	30%	•	:
Percent of counties with ambient groundwater	•	•		::		•		•		•	•
monitoring conducted	20%		22%		22%			•	22%	•	;
Percent of known groundwater areas of	•	•		::		•		:		:	:
concern and management areas being	•	:		::		:		:		:	:
addressed	•	:	20%		20%	:		•	20%	:	•
Percent of municipal permittees with	•	•	2014	::	20%	•		•		•	:
certified supervisors	•	•	80%		100%	:		•	100%	•	•
Percent of permittees on TMDL streams which	•	•	50%	::	,00%	•		:	,00%	•	:
meet their waste load allocation or have	•	•		::		•		:		•	•
compliance schedules in their permits to	•	:		::		:		:		•	•
attain TMDL goals	•	•	100%		100%	: :		:	100%	•	•

WQBUDGET.91 (5) (08\29\90)

X Agency Request

____ Governor's Recommended

____Legislatively Adopted

Budget Page

STATE OF OREGON EXECUTIVE DEPARTMENT

BUDGET SUMMARY 1989-91 1991-93 : Legislatively : Estimated for :: Base :Decision Package: Total Governor's Legislatively PERFORMANCE/WORKLOAD MEASURES Adopted Biennium :: Budget Subtotal : Agency Request : Recommendation : Adopted Decision Packages: :: #101 Water Quality Permits/Regulation :: Number of Bioassessments on Sources 50 50 :: Number of Domestic Waste Facility 50 50 Permit Inspections Number of New Industrial Waste 50 50 Facility Permits Issued Number of Industrial Waste Facility 40 Permits Renewed Number of Industrial Waste Facility Permits Modifications Processed 10 Number of Industrial Waste Facility 100 100 Permit Inspections and Surveys Number of Industrial Waste Facility Plans Reviewed 50 50 Number of Tax Credit Applications Processed 50 50 Number of On-Site Sewage Sites 300 Evaluated 300 Number of On-Site Sewage Construction: 250 250 Permits Issued :: Number of On-Site Sewage Repair :: 110 110 Permits Issued Number of On-Site Sewage Plan Reviews: 10 Number of On-Site Sewage Existing System Reviews 25 Number of On-Site Sewage Pumper :: Truck Inspections 10 Number of On-Site Sewage Variances :: Processed 90 90 Percent of New Permits Issued Timely: 40% Percent of Renewal and Modified :: Permits Issued Timely 50% 50% Percent of Memorandum of Understanding with Other States Which Are Needed for Non-Point Source and Other Program Regulations :: Completed 60% 60% :: Percent of Permit Holders Inspected :

WQBDGT91.DP (1)(08/29/90)

X Agency Request

Governor's Recommended

____Legislatively Adopted

Budget Page

STATE OF OREGON EXECUTIVE DEPARTMENT

	-	1989-91	::			······································	1991-93	200021	SUMMARY
	: Legisl	atively: Estimated		Base	:Dec	ision Package:		: Governor's	: Legislative
PERFORMANCE/WORKLOAD MEASURES		opted : Biennium		Budget	:				
	2	:3	::4		:5		6	: Recommendation :	:8
						4.404			
Annually	•	:	::		:	14%	: 14%	•	:
Percent of Counties On-Site Programs	::	:	::		:			:	:
Audited Biennially	:	:	::		:	70%	: 70%	:	:
Number of Domestic Waste Facility	:	:	: :		:			:	:
Permittees	:	•	::		•	100	: 100	:	:
Number of New Domestic Waste Facility	/ :	:	::		:				:
Permit Applications Processed	:	:	::		:	60	: 60	:	:
Number of Domestic Waste Facility	:	•	::		:	1		:	:
Permit Renewals Processed	:	:	::		:	75	: 75	:	:
Number of Domestic Waste Facility	:	:	::		:		:	:	:
Permit Modifications Processed	:	‡	::		:	45	: 45	:	:
Number of Domestic Waste Facility	:	•	::		:			:	:
Permit Inspections	:	:	::		:	300	300	:	: .
Number of Domestic Waste Facility	:	:	::		:		;	:	:
Permit Engineering Reports and	:	:	::		:		:	:	:
Plans Reviewed	:	:	::		:	95	95	:	:
Number of Domestic Waste Facility	:	:	::		:		:	:	:
Operator Training Sessions Held	:	:	::		:	6	: 6	:	:
Percent of New Permits Issued Timely	:	:			:	80%	80%	·	
Percent of Renewal and Modified	:	:	::		:		:	<u>.</u>	•
Permits Issued Timely	:	:	::			100%	100%	•	•
Percent of Permit Holders Inspected			::				:	:	•
Annually	-	:	::		•	75%	75%	•	•
Percent of Treatment Work Operators	•	: /	::		:		. 124	•	•
Trained Annually	:	• •	::		:	66%	: 66%	•	•
Percent of Permit Holders in	:	•			:	00%		:	•
Compliance	:		::		•	85%	: 85%	•	•
Percent of Non-Complying Permittees	•	•	::			92.9	. 65%	•	;
Which Have Stipulated Consent Orde					•		;	•	•
or Other Compliance Schedule In		•	::		•		•	•	•
Place	•	•	::		•	750	: 704	•	:
	•	•	::	•	•	75%	: 75%	:	:
Percent of Municipal Permittees with	•	•	::		:			:	:
Certified Supervisors	. =		::		:	100%	: 100%	:	:
Percent of Permittees on TMDL Stream	S:	.	::		:		:	:	:
Which Meet Their Waste Load	:		::		:		:	:	:
Allocation or Have Compliance	:	#	::		:		:	:	:
Schedules in Their Permits to	:	: .	::		:	+	:	:	:
Attain TMDL Goals	:	:	::		ن :	90%	90%	:	:
	:	.	::		•			:	:
Water Quality Standards/Assessments		:	::		:		:	:	:
Number of Ambient Samples Collected	•		::			2,800	2,800		_

WGBDGT91.DP (2)(08/29/90)

X Agency Request

___ Governor's Recommended

___ Legislatively Adopted

STATE OF OREGON EXECUTIVE DEPARTMENT

							BUDGET	SUMMARY
		1989-91	::			1991-93		
		tively : Estimated			cision Package			: Legislativel
PERFORMANCE/WORKLOAD MEASURES	: Adop			ıdget :	Subtotal		:_Recommendation	
1	:2	<u> :3 </u>	::4	:5		:6	<u>:7 </u>	:8
Number of Ambient Analyses		•	::		27,500	: 27,500		•
Number of Ambient Data Points	•	•	::	:		: 43,000	:	•
Number of Preliminary TMDL Problem	•	•	::	•	10,000	:	•	•
Assessments Completed	-		::	:	- 12	: 12	:	•
Number of Final TMDL Studies	•		::		•	•	•	•
Completed	•	•	::		4	. 4	•	•
Number of TMDL Compliance Monitoring		-		•	•	•	*	•
Plans Reviewed	•	•	::		24	: 24	•	
Proposed Total Maximum Daily Loads	:	•	::	:	•-7		•	•
(TMDLs)	:	• :	::	•	4	: 4	•	•
Final TMDLs		:	::		4	: 4	•	
Section 401 Certifications	•	•	::	•	150	: 150	•	•
Dredge and Fill Applications	-		::	-	.,,,		•	:
Processed		:	::		250	250	:	:
Total River Miles Monitored in State	•	•	::		1,200	: 1,200	;	:
Total Acres of Estuaries Assessed	•	:	::	•	39,000	39,000	:	•
10121 //10/00 01 0000000	•	:	::		0,,000	:	•	:
#104 Cross-Media Risk Reduction	•	;	::			•	•	•
Complex New Source Permits Evaluated		-	::	•	10	: 10	:	
	•	· ·	::	;		:	:	:
#114 Groundwater Base Activities	-	•	::	:		•	•	:
Number of Groundwater Samples	•	•	::	•		•	:	:
Collected	•	•	::	•	730	730	•	•
Number of Groundwater Analyses	•	•	::	•	130	. ,50		•
Conducted	:	:	::	-	14,560	14,560	•	•
Number of Groundwater Reviews for	•	•	::	•	14,500	• 17,200	•	•
New Discharge Permits	•	•	::	•	200	200	•	:
Number of Groundwater Reviews for	:		::	:	200	. 200	-	•
Discharge Permit Renewals	:		::	:	180	: 180	-	•
Number of Groundwater Reviews for	:	•	::	•	100	• 100	-	:
Discharge Permit Modifications	•		::	:	75	· 75	•	•
Number of Groundwater Variance	•	•	::	•	,,	• •	:	:
Review Requests Processed	•		::	:	50	: 50	:	
Number of New Groundwater Monitoring		:	::	•	50	•	•	•
Review Projects	, ;	:	::	:	200	: 200	:	•
Number of Groundwater Monitoring	:	•	::	:	200	. 200	•	
Permit Renewal Projects	:	:	::	•	180	: 180	•	
FOURIE REHEMAL FIDJECTO	:	:	::		100	. 100	•	•
Number of Groundwater Monitoring	•	:		•			1	
follow Up Review Projects	•	•	::	Ī	200	: 200		-
Number of Groundwater Monitoring	•	•	::	<u>:</u>	200	. 200		:
Mannet of Atomical Monitoling	•	ī.	::	:		¥	:	:

WQBDGT91.DP (3)(08/29/90)

X Agency Request

___ Governor's Recommended

____ Legislatively Adopted

STATE OF OREGON EXECUTIVE DEPARTMENT

								BUDGET	SUMMARY
		39-91	::				1991-93		
	: Legislatively			Base		ision Package		: Governor's	: Legislativel
PERFORMANCE/WORKLOAD MEASURES	: Adopted	: Biennium	**	Budget	:			: Recommendation	
	;2	:3	::4		:5		:6	;7	:8
Permit Follow Up Renewal Projects	•		::		•	180	: 180		•
Number of Groundwater MML's	:	•	::		:	100	• 100	•	•
(standards) Set	•	•	::		:	3	: 3	•	•
Number of Hydrogeologic	•	•	::		•	3		:	
Characterizations	•	-			•	.5	5	•	i
		•	* :		•			-	
Number of Special Non-Point Source	•	:	::		:		•	:	•
Grant Projects	•	:	::		:	10	: 10	:	:
Total Square Miles of Groundwater	:	:	::		:		:	:	:
Basins Aquifers Assessed	:	:	::		:	1,000	: 1,000	:	:
Percent of Process Which Involves	:	:	::		:		: _	:	:
Formal Public Participation	:	:	::		:	75%	: 75%	:	:
Percent Groundwater Areas Which	:	:	::		:		:	:	:
Exceed Standards for Which an	:	:	::		:		:	:	:
Aquifer Management Plan is Being	:	:	::		:		2	±	· •
Developed	:	•	::			20%	: 20%	•	•
Percent of Memorandum of Understand-	•	•	::		- ;	20%	:	:	•
ing With Other State Agencies	;	:	::		:		:	:	•
Which Are Needed for Non-Point	:	•	::		:		•	:	•
Source and Other Program	•		::		•		•	•	•
Regulations Completed	•	•			•	100%	100%	•	•
	•		::		•	100%	100%	•	•
Percent of Suspected Groundwater		•	::		:		:	:	:
Areas of Concern and Management	•	•	::		:		•	•	:
Areas Investigated	:	:	::		:	23%	: 23%	:	:
Percent of Permitted Facilities	:	:	::		:		:	:	:
Submitting Groundwater Protection	:	:	::		:		:	:	:
Plans	:	:	::		:	19%	: 19%	:	:
Percent of Counties With Groundwater	:	‡	::		:		:	:	:
Monitoring Completed	:	:	::		:	100%	: 100%	:	:
Percent of Counties With Ambient	:	:	::		:		:	:	:
Groundwater Monitoring Conducted	:	:	::		:	28%	: 28%	:	:
•	* ·	2	::				•	•	•
8 Nonpoint Source Program	•	•	::		•				:
Special Non-Point Source Grant	•	:	::		٥		•	•	:
Projects	•	•	::		:	20	20	•	•
Flojects	•	•			•	2.0	. 20	•	•
•	•	•	::		•		•	•	:
	•	.	::		:		:	•	:
m	:	•	::		:		:	:	:
9 <u>Columbia/Willamette Studies</u>	;	;	::		:		•	:	:
Columbia River Study Advisory Group	:	:	::		:		:	:	:
Meetings	:	1	::		:	24	: 24	:	:
Willamette River Study Advisory	:	2	::		•		•	• '	•

WQBDGT91.DP (4)(08/29/90)

X Agency Request

_ Governor's Recommended

____ Legislatively Adopted

STATE OF OREGON EXECUTIVE DEPARTMENT

								BUDGET S	UMMARY
	: 19	89-91	::				1991-93		
	: Legislatively	: Estimated for	r ::	Base	:Dec	ision Package:		: Governor's :	Legislativel
PERFORMANCE/WORKLOAD MEASURES	: Adopted	: Biennium	::	Budget	. :	Subtotal :	Agency Request	: Recommendation :	Adopted
	:2	:3	::4		:5		6 .	<u>:7 </u>	8
Group Meetings	:		::			24 :	24		
group Heerings	•	`	::		:		,		
#120 Oceanic/Estuaries Management	•	•	::		:		•		
Total Square Hiles of State Waters		•	::		:			:	
Assessed	•	•	::		•	300	300	:	
Ocean and Estuaries Monitoring		•	::		:	300	. 500		
Program (samples)		:	::		•	400	400		
Lingiam (samples)	:	•	::		•	400	. 400	•	
#124 Lab Certification		•	::		•			:	
Rules Developed and Approved	:	•	::		•	1 set	1 set		
Applications Accepted	:	•	::		:	200	200		
On-Site Inspections Performed	•	:	::		:	75	75	•	•
Certifications Approved	•	•	::		•	70	70	•	•
Cercifications Approved	•	:	::		•	,,,	. ,,	•	•
#125 SRLF/Community Technical Assistance	:	•	::		:		•	•	•
Number of Facilities Receiving	:	•	::		:		•		
Technical Assistance	•	•	::		:	150	150	•	
Number of Financial Hanagement Plans	•	•	::		•	150	• 150	•	,
Reviewed		•	::		•	20	20	•	
Number of Sewer Use Ordinance Plans		•	::		•	20	. 20	•	
Reviewed	•	•	::			20	20		
	•	•			•	20	: 2U	· · · · · · · · · · · · · · · · · · ·	
Number of User Charges Systems_Plans	:	•	::		•	30		•	•
Reviewed		:	::	•		20	: 20	•	
Number of Grant and Loan Application	s:	:	::		=		.	=	
Reviewed and Recommended for	:	•	::		:	••	:	:	:
Contract Award	:	:	::		:	20	: 20	:	;
Number of Grants/Loan Agreements	:	:	::		:		:	:	:
Executed		:	::		:	20	: 20	: '	:
Number of Engineering Plans Reviewed	:	:	::		:		:	:	:
and Approved	:	:	::	•	:	50	: 50	:	:
Number of Interim Inspections	:	:	::		:		:	:	:
Conducted	:	:	::		:	20	: 20	:	:
Percent Grants and Loans for Sewerag		:	::		:		:	:	:
Facilities Processed With No Loss	:	:	::		:		:	:	:
of Federal Dollars	:	:	::		:	20%	: 20%	:	:
	:	:	::		:		:	:	:
#130 Groundwater New Activities	:	:	::		:		:	2	:
Number of Groundwater Protection	:	:	::		:		:	:	:
Demonstration and Education Grant	:	:	::		:		:	:	:
Projects Funded	:	:	::		:	30	: 30	:	•
Number of Groundwater Samples	-	-	::		-		-	-	-

WQBDGT91.DP (5)(08/29/90)

X Agency Request

____ Governor's Recommended

____ Legislatively Adopted

Budget Page

STATE OF OREGON EXECUTIVE DEPARTMENT

				BUDGET SUMMARY					
		9-91	::	1991-93	: Governor's : Legislative				
DEDEADMANCE GIODNI CAR HEAGURES		: Estimated for		Base		ision Package	Total	: Governor's : Legis	
PERFORMANCE/WORKLOAD MEASURES	: Adopted	: Biennium	::	Budget	:_				dopted
	:2	:3	::4		:5		:6	:7 :8	
Collected		•	::			1,940	1,940		
Number of Groundwater Analyses	•	•	::		•	1,740	1,740	:	
Conducted	•	•			•	70 030	70 930	•	
Number of Groundwater Reviews for	•		::		•	38,820	38,820	•	
	•	•	::		•	200	200	•	
New Discharge Permits	•	:	::			200	200	:	
Number of Groundwater Reviews for	:	•	::		:	400		:	
Discharge Permit Renewals	:	:	::		:	180	: 180	:	
Number of Groundwater Reviews for	:	:	::		:		.	:	
Discharge Permit Modifications	:	*	::		:	75	: 75	• . • • · · · •	
Number of Groundwater Variance	:	:	::		:		•	:	
Reviews for Discharge Permits	:	:	::		:	50	: 50	:	
Number of New Groundwater Monitoring	:	:	::		:	•	:	:	
Review Projects	:	:	::		:	200	: 200	:	
Mumber of Groundwater Monitoring	:	:	::		:		:	:	
Permit Renewal Projects	:	:	::		:	180	: 180	:	
Number of Groundwater Monitoring	:	•	::		•		<u>.</u>		
Follow Up Review New Projects	•	•	::			200	200	• •	
Number of Groundwater Monitoring	•	:	::		•	200	:	:	
Follow Up Permit Renewal Projects	:	:	11		:	180	180	:	
Number of Groundwater MML's	:	•	::		:	100	• 100		
(standards) Set	:	•	::		:	10	10	:	
Number of Hydrogeologic	•	•	::		•	10	. 10	•	
Characterizations	•	•			•	1.5	4.5	•	
	•	•	::		•	1.5	: 1.5	•	
Number of Special Non-Point Source	:	:	::		•	4.0	:	:	
Grant Projects	:	:	::		.	10	: 10	1	
Percent of Process Which Involves	:	:	::		· :		•	:	
Formal Public Participation	:	:	::		:	75%	: 75%	:	
Percent Groundwater Areas Which	:	:	::		:		:	:	
Exceed Standards for Which an	:	:	::		:		:	:	
Aquifer Management Plan is Being	:	:	::		:		:	:	
Developed	:	:	::		:	30%	: 30%	: :	
•	:	:	::		:		:	1	
	•	•	::		•				
		•	::				-	;	
		;	::		:				
Percent of Memorandum of Understand-	•	:	::	•	:		•	:	
ing With Other State Agencies	•	•			:		•	•	
Which Are Needed for Non-Point	•	•	::		•			-	
	•	•	::		:		•	:	
Source and Other Program	<u>.</u>	•	::		:			•	
Regulations Completed	:	:	• ::		:	100%	: 100%	:	
Percent of Suspected Groundwater		:	::		:		•	:	

WQBDGT91.DP (6)(08/29/90)

X Agency Request

____ Governor's Recommended

____ Legislatively Adopted

STATE OF OREGON EXECUTIVE DEPARTMENT

	: 1989-91 ::						BUDGET SUMM 1991-93					
PERFORMANCE/WORKLOAD MEASURES	: L :			stimated for Biennium		Base Budget	:Ded		Total	: Recommendation	: Legislativel : Adopted :8	
Areas of Concern and Management					::					•	•	
Areas investigated	•	,	•		::		•	32%	32%	:	• •	
Percent of Permitted Facilities	:						-			:	:	
Submitting Groundwater Protection	:		:		::		:	19%	19%	:	:	
Percent of Counties With Groundwater			:		::		:	:	•	•	:	
Monitoring Completed	:		:		::		:	100%	100%	:	:	
Percent of Counties With Ambient	:		:		::		:	:	:	•	:	
Groundwater Monitoring Conducted	:		:		::		:	33%	33%	-:	:	
	:		:		::		:		:	:	:	
	•		:		::		:		: ,	:	:	
	:		:		::		:		•	:	:	
	:		•		::		:		-	•	:	
	:		:		::		:		:	•	:	
	:		:		::		•			•	:	
	:		•		::		•		.	:	-	
•	•		•		::		•		ē -	•		
	•		•		::		•		•	•	•	
	:		•		::		:		•	•	•	
	:		:		::		:		•	•	•	
	•		:		::		:		:	-	-	
			:		::				· •	•	2	
	•		:				:		- :	•	-	
	:		:		::		:		:	:		
	:		:		::		:		:	:	:	
	:		:		::		:		:	:	:	
	:		:		::		:		:	:	:	
·	2		:		::		:		:	:	:	
	:		;		::		:		:	:	:	
	:		:		::		:		:	:	:	
•	:	•	:		::		:		:	:	:	
	:		:		::		:		:	:	:	
	:		:		::		:		:	:	:	
	:		:		::		:		:	:	:	

		And the second s	MARINE	
WQBDGT91.DP (7)(08/29/90)	X Agency Request	Governor's Recommended	Legislatively Adopted	Budget Page

NARRATIVE OR SPECIAL ANALYSIS

HAZARDOUS AND SOLID WASTE PROGRAM WORKLOAD AND PERFORMANCE NARRATIVE

The Department of Environmental Quality's Hazardous and Solid Waste Program anticipates a reduction in and improved management of hazardous and solid waste throughout the state during the 1991-93 biennium. The division's performance measures are tied to waste reduction and improved waste management. The primary objective of the division over the next two years will be to enhance its pollution prevention and technical assistance efforts throughout the state.

Base Program

The division has several program areas which are included in the base budget. The hazardous waste reduction activities in the base budget will fully implement the Toxic Use Reduction Act passed by the 1989 Legislature. The most important aspects of the hazardous waste reduction work are the completion of reduction plans by toxics users and hazardous waste generators and the quality of the plans. The primary performance measures for the 1991-93 biennium in this program will be timeliness of plan completion and the quality of the plans. The primary performance measure for the 1993-95 biennium should be the degree that these activities have decreased in the amount of toxic chemicals used and hazardous waste generated in Oregon.

The base budget supports a comprehensive hazardous waste regulatory and technical assistance effort. The Department has received federal approval to operate the federal hazardous waste program in lieu of the federal Environmental Protection Agency. This program is enhanced by providing technical assistance to the hazardous waste generators to help them comply with the regulations. The performance measures for the 1991-93 biennium will focus on effective enforcement of the hazardous waste rules and on broadening the scope of information about the generator universe and about waste management activities. Longer term performance measures must address the level of compliance of the state's generators and the operators of hazardous waste treatment, storage and disposal sites.

The division's Underground Storage Tank (UST) base budget compliance activities will continue implementing UST legislation passed during the previous three legislative sessions. The 1989 legislature enacted a grant and loan guarantee program to assist tank owners in complying with federal leak detection, tank tightness and financial assurance requirements. A long-term performance measure for the UST program is the level of compliance of the regulated community with the UST requirements. The primary performance measure for the 1991-93 biennium will focus on the Department's implementation of the grant and loan program and the number of station owners who benefit from the program.

<u>Decision Packages</u>

The Depar	ctment'	s 1991	-93 budget	reques	t contain	ıs a major	decision	package	to en	hance	the	base	solid	waste	management	program
Existing	staff	cannot	accomplish	the p	lanning,	oversight,	groundwa	ter anal	yses,	and	other	work	assoc	iated	with bring	ing the

SWNARTV.91 (1)	X Agency Request	Governor's Recommended	Legislatively Adopted	Budget Page

NARRATIVE OR SPECIAL ANALYSIS

state's existing solid waste landfills into compliance with new solid waste standards aimed at pollution prevention. The state's existing landfill operators (mostly local governments) must either significantly upgrade their landfills or close them. Two decision packages will provide personnel to adequately staff both the regional and headquarters solid waste management effort.

Long-term, this base program enhancement should result in a decrease in the percent of domestic solid waste being disposed in landfills without state-of-the-art technologies. Ultimately, this decrease should be one performance measure to judge the success of the solid waste program in preventing pollution. A performance measure for the 1991-93 biennium will be the progress made in developing cleanup, upgrade, or closure strategies at landfills with documented problems.

Reducing and recycling solid waste will be the subject of a comprehensive legislative proposal and three decision packages. The proposal will include recycling goals and standards for the state's residential, commercial and industrial sectors and reporting by the state's recycling operators. It will also focus on market development for recycled materials. One decision package will accompany the proposal and two others provide resources to the Department to improve commercial, industrial and multi-family housing recycling and household hazardous waste technical assistance.

If the proposed recycling legislation is enacted, the primary performance measure for the 1991-93 biennium will focus on implementation. Successful implementation will include creation of a system to track the level of solid waste reduction and recycling compared to prior years. A longer term performance measure for these decision packages will be the actual increase in recycling and the reduction in disposal of solid waste.

Another decision package will allow the Department to develop and begin to implement an improved hazardous waste information management system and provide technical assistance to conditionally exempt generators (usually small businesses). The Department must more accurately document and track the generation, transportation, storage, treatment and disposal of hazardous waste, while monitoring progress in hazardous waste reduction. In addition, the Department must educate thousands of small businesses in the state which are conditionally exempt from hazardous waste laws and who remain unaware of the legal requirements and/or are not utilizing the best pollution prevention management options.

The 1991-93 biennium performance measures associated with this decision package will focus on the completion of the improved information management system and the development and implementation of an effective technical assistance program for the state's conditionally exempt generators.

			•	
HSWNARTV.91 (2)	X Agency Request	Governor's Recommended	Legislatīvely Adopted	Budget Page

PERFORMANCE/WORKLOAD MEASURES

	1989-1991							1991-1993			
Description 1	: Legislatively : Adopted :	Estimated	:: :: ::4	Base Budget	: : :	Decision Package Subtotal	:6	Total Agency Request	: Governor's : Recommendation :7	: Legislatively : Adopted :8	
	4 500			4 700				4 700			
Administrative Decisions:	: 1,500 :	2,000	1:	1,700	:		:	1,700	:	:	
Permit actions, plan reviews, tax credits,			::		:		:		•	:	
budget tracking and preparation, cleanup	:		::		:		•		:	•	
actions, project reviews, issue licenses,	-		::		:					•	
register tanks, administer solid waste/	:		::		:		:	•	•	•	
recycling grants to local governments,	•		::	Ü	;		:		•	:	
UST loan guarantees, site assessment	:		1:		:		:		:	:	
grants, interest rate subsidies, register	:		::		:		:		:	•	
hazardous waste generators	•		::		:				•	:	
Empressions and Compliance Devices	4 700	3 000	::	4 500	:		:	4 500		:	
Inspections and Compliance Reviews:	1,300	2,000	::	1,500	:		•	1,500	•	•	
TSD inspections, generator inspections,		i	::		•		•		•	:	
groundwater assessments, waste reduction program monitoring, review of annual	:		::		:		:		.	•	
recycling reports, inspect tank	•	i	::		•		:		•		
installations, review compliance with	•		::		•		•			:	
regulations, on-site monitoring of			::		•		•		•		
hazardous waste land disposal operations			::		•		•		:		
mazardous waste tand disposat operations	•	•	::		•		•		•	•	
Monitoring Activities:	75,000	85,000	::	80,000	•		•	80,000	ŧ	•	
Laboratory samples, analysis, and data	. ,,,,,,,,,	. 65,000	::	00,000	:		:	000,000		•	
points bioassessments on sources, field	•		::		:				•	:	
data points	:	•	::		:		:		•	:	
	•	•	::		•		•		•	;	
Program Development Actions:	30	50	::	30	:		:	30	•	•	
Develop rules and legislation, EPA	:		::		•		•		•	•	
authorization preparation of annual report	•		::		:		•		•	•	
adopt operating and construction standards			11		•		:		•	•	
complete program goals and objectives,	•		::		•		:		•	•	
conduct CEG/HHW pilot projects, enhance	:	:	::		:		:			:	
information systems	•	:							•	:	
	:	:	::		:		:		•		
Technical Assistance, Training, Public	: 4,500	5,500	::	5,000	:		:	5,000	:	:	
Education	:		::	-	:		:	-	:	:	
Produce films, media spots, training	:	:	::		:		:		:	:	
materials, technical reports, factsheets,	:	:	::		:		:	•	:	:	
brochures. Provide technical assistance	:	:	::		:		:		:	:	
to industry, local governments and	:	:	::		:		:		:	:	
recyclers. Hold conferences, seminars to	:	:	::		:		:		:	:	
help educate. Provide training programs	:	:	::		:		:		:	:	
for Regional staff.	•	•	::								

HSWBUDGT.91 (1)

X Agency Request

____ Governor's Recommended

____ Legislatively Adopted

STATE OF OREGON EXECUTIVE DEPARTMENT

<u>: </u>		9-91	::			BUDGET SUMMARY 1991-93						
			::	Base	:Dec				: Governor's	: Legislative		
	pted	: Biennium	::	Budget	:			Request				
:2	`	:3	::4		:5		:6		:7	:8		
:		:			:		:		:	:		
:		:			:		:		:	:		
:		:			:	50	:	5.0	:	:		
:		:			:		:		:	:		
:		:			:		:		:	:		
:		:			:		:		:	:		
S:		:			:	.38	:	38	:	:		
:		:	::		:		:		3	: .		
:		:	::		:	200	:	200	:	:		
:		:	::		:		:		:	:		
:		:	: :		:		:		:	:		
:		:	::		:	38	:	38	:	:		
:		:	::		:		:		:	:		
:	-	:	::		:	20	:	20	:	:		
:		:	::		:	15	:	15	:	:		
:		:	::		:	76	:	76	:	:		
•		:			:	30	:	30	•	•		
•							:		:	•		
:		-			-		:	• •	•	•		
•	•					15	:	15	:	•		
;							•		•	•		
:		·			•		:	_	•	:		
:		•			:		•		•	:		
•		•			:	20	•	20	:	•		
•		•			:		•		•.	•		
•		•			•	450740		. E0 (40	•	•		
		•			-	450/60	•	430/60	•	:		
:		•			•	40	•	40	<u> </u>	:		
:		:			:	10	•	10	•	:		
:		:			:		:		•	:		
:		:			:	_=	•		:	:		
:		:			:		:		•	:		
:		:			:		:		:	:		
:		:		•	:		:		:	:		
:		•	::		:		:		:	:		
:		•	::		:		:		:	:		
:		:	::		:	3	:	3	•	:		
:		:	::		:		:		:	:		
:		:	::		:	1	:	1	:	:		
:		:	::		:	3	:	3	:	:		
	: Ado	: Legislatively : Adopted :2 : : : : :	: Legislatively : Estimated for : Adopted : Biennium :2 :3 : : : : : : : : : : : : : : : : :	: Legislatively : Estimated for ::	: Legislatively : Estimated for :: Base	: Legislatively : Estimated for :: Base :Dec : Adopted :: Biennium :: Budget :: 2	Legislatively : Estimated for :: Base	Legislatively	Legislatively Estimated for Base Adopted Biennium Harmonium Harm	Legislatively Estimated for Base Budget Subtotal Agency Request Recommendation Recommendatio		

HSWBUD91:DP (1.07/24/90)

X Agency Request

___ Governor's Recommended

____ Legislatively Adopted

STATE OF OREGON EXECUTIVE DEPARTMENT

	89-91 : Estimated for : Biennium :3		lase :l udget :		: Agency Request	: Recommendation	: Legislative : Adopted :8
: Adopted	: Biennium	:: Bu ::4	udget :	Subtotal	: Agency Request	: Recommendation	: Adopted
		::4					
:	:3	::		<u> </u>	:6	:7	:8
:	:		:	•			
:	:		•		•	•	•
1	•				• ′	•	•
:	•	::	•	2	. ,	•	:
•		::		7		•,	:
•	:	-	:	, , , , , , , , , , , , , , , , , , ,	: 3	•	•
	•	-		3		•	
•	•	= :	•			•	•
•	•		-	10	. 10	•	·
•	•	=	•	10	: 10	•	i
1	•		:			:	•
:	:		:		:	:	:
:	:		:	440	: 440	:	:
:	:				1	:	:
•	:		:		:	:	:
:	:	::	1	•	:	:	:
:	:	::	:			:	:
	•	::	:	76	: 76	:	:
:	:	::	:	100	: 100	:	:
:	:	. ::	:		:	:	:
:	:	::	:	800	: 800	•	:
•	:	::	:		:	:	:
:	:			50	: 50	•	•
•	•				•	•	•
•	•				•	•	:
:	:		:		•	•	:
•	•		•	20	. 30		
•	•		•			-	•
	•					•	:
•	:		:	10	: 10	:	:
:	:		•			:	:
:	:		:	_		:	:
:	:		2			:	:
:	:		-		•	:	:
:	:	::	:	2	: 2	:	:
:	:	::	:		:	:	:
:	:	::	:		:	:	:
:	:	::		20	: 20	:	:
•	:	::	:	10	: 10	:	:
:	:					•	- •
<u>.</u>				!	•	•	•
•	•			!		•	:

HSWBUD91.DP (2 07/24/90)

X Agency Request

___ Governor's Recommended

____ Legislatively Adopted

STATE OF OREGON EXECUTIVE DEPARTMENT

		1989-91						BUDGET SUMMARY					
	<u>:</u>		1991-93 Decision Package: Total : Governor's : Legislativel										
	: Legislativ	ely : Estimated fo)r ::	Base			ge=	Total	: Governor's	: Legislativel			
PERFORMANCE/WORKLOAD MEASURES	: Adopted	d : Biennium	::,	Budget	:_	Subtotal		mency kequest	:_Recommendation				
	;2	:3	::4		<u>:5</u>		-		<u>:7</u>	:8			
										_			
22 <u>Federal Hazardous Waste Program</u>	;	2	::			70		70	:	•			
Register HW generators	:	•	::		•	30	-12	30	:	:			
Enhance information systems	:	:	::	•	:	15	-3	15	:	:			
Complete program goals and objectives	s:	2	::		:	1	-	1	•	:			
Produce factsheets	•	:	::		:	4	-	4	:	:			
Hold conferences, seminars to help	:	:	::		:		~*		:	:			
educate	:	2	::		:	. 4	=	4	:	:			
	•	•	::		:				2	•			
	:	-	1:				=		•	•			
	:	•	::		-		 ;;;		•	•			
	:	:	::		•		 -==		-	•			
	:	<u>.</u> .							•	•			
	:	•	::		•		-		I .	:			
	:	:	::		:		=		:	:			
	:	:	::		:		1		:	:			
	:	:	::		: .		=		‡	:			
	:	:	::		:				1	:			
	=	•	::		:				:	•			
		•	::						•				
	•		::		:					•			
	•	:			•				•	•			
	•	•	i.i		-		-		•	ī			
	:	:	::		:				•	:			
	:	:	::		:				‡	1			
	:	:	::		:		3		:	:			
	:	: .	::		:				:	:			
	•	:	::		:				2	±			
	:	<u>.</u>	::		•				•				
	•	:	::				-		:	-			
		•			:				:	•			
	•	•	::		•		-		•	•			
	:	•	::		•				:	:			
	:	:	::		:		=		;	:			
	:	:	::	ù	:				:	:			
	:	:	::	•	:		.=	;	:	:			
	:	: '	::		:		***		:	:			
	•		::						•	•			
	•	•	::		•				•				
•		•	::		:		- Agi		•	•			
	•	•			•				•	•			
	;	:	::		:		-14		:	:			
•	:	:	::		:				:	:			
	:	:	::		:				:	:			
	:	:	::		:		-	:	:	:			

HSWBUD91.DP (3 07/24/90)

X Agency Request

____ Governor's Recommended

___ Legislatively Apted

NARRATIVE OR SPECIAL ANALYSIS

ENVIRONMENTAL CLEANUP PROGRAM WORKLOAD AND PERFORMANCE NARRATIVE

Base Budget

Workload Measures: Environmental cleanup activities normally entail a series of steps, commencing with discovery, evaluation, and assessment of contaminated sites. At selected sites, further work to characterize the nature of the contamination and options for cleanup may be required. Sites are cleaned by removal of the contaminants or by other corrective action.

Each of the major steps of the environmental cleanup process is amenable to description by quantitative workload measures. However, at complex sites even a single stage may require years of work. Hence, for purposes of measuring workload, ECD proposes to begin indicating long-term activities by percentage of task completed.

Performance Measures: Oregon's environmental cleanup law requires responsible parties to pay for investigations and corrective action, including state costs for oversight. However, at some sites, parties legally responsible for the contamination may be unknown, unwilling or unable to pay for remedial action. These facilities are known as orphan sites.

Two types of performance measures have been identified as appropriate for ECD work assignments: 1) total number of sites cleaned; and 2) the percent of Hazardous Substance Remedial Action Fund expenditures including personnel which are reimbursed or recovered from responsible parties.

Decision Packages

ECD has proposed four decision packages: 1) regional staff for site discovery, assessment, and Underground Storage Tank Cleanup; 2) voluntary cleanup initiative; 3) spill response; and 4) conversion of limited duration positions to permanent status.

The workload and performance measures are also appropriate for the decision packages. Each of the decision packages is intended to provide resources for addressing existing authorized legislative programs.

·					
ECDNARTV.91 (1) (08/29/90)	X Agency Request	Governor's Recommended	Legislatively Adopted	Budget Page	

PERFORMANCE/WORKLOAD MEASURES

	<u>:</u>	1989	- 1991		::					1991-1993		
	:		: E	stimated	::		:	Decision	:	Total	:	:
Description	: Legis	latively	:	for	::	Base	:	Package	:	Agency	: Governor's	: Legislativel
·	: A	dopted	: E	liennium	::	Budget	:	Subtotal	:	Request	: Recommendation	: Adopted
	;2		:3		::4		:5		:6	·	:7	:8
HOOK OAD MEACURES											•	:
WORKLOAD MEASURES			:		::		:		:			
NITE AGGORNEYT	-		•		::		•		-			
SITE ASSESSMENT:	•				::		•		•		:	-
No.		_	: :	250	::	150				150		
Suspected Sites Added to the Database	-		•	72		100			-			
Preliminary Assessments	:		:	12		100			:	100	:	
			:		::		:		•		:	:
SITE RESPONSE:	:		:		::		:		ē			•
Manadia 4 .	•	7	:	77	::	40	:			10	:	•
Remedial Investigations	:	,	:	33	::	10			:	10	:	:
Initiated	.		:	0	::		:		:		:	:
25% complete	:		:	6	::		:		:		•	:
50% complete	:		:	11	::		:		:		:	:
75% complete	:		:	4	::		:		:		:	:
100% complete	:	_	:	12			:		:		:	;
Feasibility Studies	:	7		17	11	, 16	:		:	16		:
Initiated	:		:	0	::		:		:		:	;
25% complete	:		:	6	::		:	•	ŧ		:	:
50% complete	:		:	2	::		:		:		:	:
75% complete	:		:	1	::		1		:	•	:	:
100% complete	:		:	8	::		:		:		:	•
Remedial Action Initiated	:	10	:	5	::	12	: :		:	12	:	:
Initiated	:		:	. 0	::		:		:		:	:
25% complete	:		:	1	::		:		:		:	:
50% complete	:		:	2	::		:		:		:	:
75% complete	:		:	2	::		:		:		:	:
100% complete	:		:	0	::		:		:		:	:
Removals	:	2	:	8	::	3	:		:	3	:	:
	:		:		::		:		:		:	:
	:		:		::		:		:		:	:
	:		:		::		: '		:		:	:
•	:		:		::		:		:		:	:
•	:		:		::							•

ECDBUDGT.91 (1) (7/23/90)

X Agency Request

___ Governor's Recommended

____ Legislatively Adopted

PERFORMANCE/WORKLOAD MEASURES

<u>: 198</u>			91								
Description	: : Legislatîvely : Adopted	:	Estimated for Biennium	::	Base Budget	•	Package Subtotal	:	Total Agency Request	: Recommendation	•
1	:2	:3		::4		:5		:6		:7	:8
UNDERGROUND STORAGE TANK CLEANUP:						_	3	_		_	_
UNDERGROUND STORAGE TARK CLEAROF:	•	:		::		:		:		•	: -
Releases Discovered		:	. •	::	550	•		•	550	•	
Investigations Initiated/Completed		:	700/600	::	500/450			:	500/450		•
•	·	-			-				=		
Cleanups Initiated/Completed	: /54	:	500/400	::	400/350	:		:	400/350	•	:
SPILL RESPONSE/ILLEGAL DRUG LAB CLEANUP	•	:		::		•					:
SPILE RESPONSE/ILLEGAL DRUG LAB LLEANUP	1	•		: ;		:		:		•	:
Number of Incidents	750/7/0	:	/00/770	::	0.770	:		:	0.770	•	:
	: 350/360		400/330	::	0/330	:		:	0/330	:	:
Volume of hazardous substances collected	:	:		::		•		:		•	•
and properly disposed (barrel cleanups/		:		::		:		:		•	:
drums)	30/0	:	100/1200	::	0/1200	:		:	0/1200	:	:
	:	:		::		:		:		:	:
LABORATORY:	:	:		::		:		:		:	:
		:		::		:		:		:	•
Number of Samples	: 1,225		500	::	1,000			:	1,000		:
Number of Analyses	•	:	2,500	::	5,000			:	5,000		:
Number of Lab Data Points	: 50,250	:	17,000	::	37,500	:		:	37,500	:	:
Number of Bioassessments	: 32	:	7	::	15	:		:	15	:	:
	:	:		::		:		:	•	:	:
PERFORMANCE MEASURES		:		::		:		:		1	:
	:	:		::		:		:		:	:
Number of Sites for Which Cleanup Has Been	:	:		::		:		:		:	:
Completed	•	:	1,138	::	683	:		:	683	•	:
Amount of Project Costs Recovered	: -	:	\$500,000	::	\$750,000	:		:	\$750,000	:	•
Number of projects for which 75%+ state	:	:	29 of 69	::	45 of 80	I		:	45 of 80	:	:
costs are recovered	: -	:		::		:		:		*	:
	:	:		::		:		:		:	:
•	:	:		::		:		:		‡	:
	:	:	•	::		:		:			:
	:	:		::		:		:		:	:
	:	:		::		:		:		•	:
	:	•		::				-		-	-

ECD8UDGT.91 (2) (7/23/90)

X Agency Request

____ Govérnor's Recommended

____ Legislatively Adopted

Budget Page

STATE OF OREGON EXECUTIVE DEPARTMENT

BUDGET SUMMARY 1989-91 1991-93 : Legislatively : Estimated for :: Base :Decision Package: Total Governor's : Legislatively PERFORMANCE/WORKLOAD MEASURES Adopted Biennium Budget Subtotal : Agency Request : Recommendation : : :: Adopted :8 Decision Packages: :: :: #111 ECD Coordination :: Releases Discovered :: 250 250 200/150 200/150 Investigations Initiated/Completed :: Cleanups Initiated/Completed 150/100 150/100 Number of Sites for Which Cleanup 100 100 Has Been Completed :: #115 ECD Regional Operations :: Suspected Sites Added to Database :: 60 :: #116 Voluntary Cleanup :: Amount of Project Costs Recovered :: \$ 3,268,000 \$ 3,268,000 Number of Projects for which :: 75%+ State Costs are Recovered :: 96 of 106 96 of 106 Suspected Sites Added to Database :: 100 100 Remedial Investigations 21 21 :: Feasibility Studies 15 15 Remedial Action :: 6 Removals 50 50 .:: Number of Sites for Which Cleanup :: Has Been Completed 50 50 :: :: #131 Spill Response/Drug Lab :: Number of Incidents 400/0 :: 400/0 Volume of Hazardous Substances :: Collected and Properly Disposed :: (Barrel Cleanups/Drums) 100/0 100/0 :: Number of Sites for Which Cleanup :: Has Been Completed 400 :: 400 :: :: :: :: :: :: ::

Governor's Recommended

____ Legislatively Adopted

Budget Page

ECDBUD91.DP (1 07/19/90)

X Agency Request

NARRATIVE OR SPECIAL ANALYSIS

AGENCY MANAGEMENT WORKLOAD AND PERFORMANCE NARRATIVE

Base Budget

The growth of the agency and the increasing complexity of the Department's work are reflected in the workload and performance measures for Agency Management. As additional staff are added to the Department, the demands on the support staff in Agency Management increase. The workload for accounting, payroll, personnel and information systems is closely related to the number of staff. Separately, the complexity and heightened awareness of environmental issues results in a continuing growth in requests for information. The requests come both from agency staff and from the public. These requests place additional demands on the information systems staff to design data bases and to develop new reports. The increasing number of public inquiries for information results in a greater workload for the public affairs staff.

The Department is actively pursuing a reduction in worker's compensation claims. This is reflected in the performance measures in terms of time loss claims. Likewise, the agency efforts to improve its recruitment and hiring practices with regard to achieving affirmative action goals are reflected in the measures.

Decision Packages

Several performance measures relate to decision package requests. The accounting function continues to become more complex as the agency moves further into cost recovery for environmental cleanup projects. Additionally, more accounting detail is required to meet the increasingly stringent conditions associated with Federal grants. While the dollar amount of Federal grants is relatively stable, the actual number of individual grants to the agency is increasing as the result of the EPA's desire to have more control over grants. This also places additional work on both the budget and accounting staff to monitor an increasing number of grants.

The data needs of the Department and the public lead to an expanded information system. This includes expanded programming and data collection efforts as well as more user access to the system. Performance measures reflect both the requests for system programming, changes and reports, as well as the maintenance effort for the technical aspects of the system (workstations, printers, etc.).

MSDNARTV.91 (1) (08/31/90)	X Agency Request	Governor's Recommended	Legislatively Adopted	Budget Page

PERFORMANCE/WORKLOAD MEASURES

	: 198	991	::	1991-1993							
	: Estimated			::		Decision : Total			:	:	
Description	: Legislatively	•	for	::	Base [®]	:	Package	:	Agency	: Governor's	: Legislativel
•	: Adopted	:	Biennium	::	Budget	:	Subtotal	:	Request	: Recommendation	
1	:2	:3		::4		:5		:6		:7	:8
BUSINESS OFFICE:	:			::						:	•
		:	E	::				:		•	:
Fiscal Control Resulting in Zero Negative	:	:		::		:		:		•	:
Audit Notes	: 0	:	0	::	0	:	0	:	0	:	:
Fiscal Coordination of Fund Sources	: 400	:	440	::	440	:	20	:	460	:	:
Supplemental Project Accounting	: 350	:	562	::	562	:	200	:	762	:	:
Number of Employees	:	:	486	::	486	:	279	:	765	:	:
Number of Assets Recorded & Inventoried	:	:	7,500	::	7,500	:	1,500	:	9,000	:	:
Annually	:	:	•	::	•	:	•	:		:	:
Number of Loans Being Serviced	:	:	65	::	65	:	22	:	87	:	:
Number of Grants	:	:	60	::	60	:	10	:	70	:	:
Number of Cost Accounting Entries Made From	:	:	1,100	::	1,100	:	630	:	1,730	:	:
Timesheets Monthly	:	:	•	::	•	1		:	•	:	:
Vouchers/Checks Prepared Monthly	:	:	1,300	::	1,300	:	745	:	2,045	:	:
Purchase Orders Issued Monthly	:	:	250	::	250		100	:	350	:	:
Receipts Deposited Monthly	:	:	3,000	::	3,000	:	2,200	:	5,200	:	:
Invoices Issued Monthly	:	:	350	::	350	:	600	:	950	:	:
Contracts & Agreement Processed Monthly	:	:	10	::	10	:	15	:	25	2	•
•	:	:	* *	::		:		:		:	:
	:	:		::		:		:		:	:
INFORMATION SYSTEMS:	:	:		::		:		:		3	:
	:	:		::		:		:		•	:
Distributed DP systems	: 20	:	28	::	28	:	35	:	35	2	:
(New/Proposed):	:	٠.		::		:		:		:	:
Central Information System Support Requests	:	:		::		:		:		:	:
Training and user support	; 73	:	74	::	88	:	58	:	146	:	:
Request for report or information display	: 69	:	89	::	137	:	90	:	227	• •	:
System development and modification	: 84	:	96	::	188	:	124	:	312	:	:
Percent of Requests Completed	: 100	:	87	::	62	:	100	:	100	:	:
Micro Network Support:	.:	:		::		:		:		:	:
Training and user support	: 610	:	907	::	1,814	:	1,197	:	3,011	:	:
Network technical support	: 100	:	125	::	250	:	165			:	:
Percent of Requests Completed	: 100	:	69	::	34	:	100	:	100	:	:
•	:	. :		::		:		:		• :	:
	:	:		::		:		:		:	:
BUDGET OFFICE:	:	:		::		:		:		:	:
	:	:		::		:		:		:	:
Fiscal Impacts Completed (#)	: 150	:	200	::	250	:		:	250	:	:
Grant Applications Coordinated (#)	: 25	:		::	29		36	•			:
	:	:		::	-,	:	30	:		:	:
	:	:		::		:		:		:	•
		-						_		=	_

MSDBUDGT.91 (1) (08/31/90)

X Agency Request

___ Governor's Recommended

___ Legislatively Adopted

Budget Page

PERFORMANCE/WORKLOAD MEASURES

: 1989-1991 ::					1991-1993						
	* -		::		Deci	sion :	Total	•	•		
Description	: Legislatively :	for	::	Base :	Pack	(age :	Agency	: Governor's	: Legislativel		
	: Adopted :		::	Budget :	: Subt	otal :		: Recommendation	: Adopted		
1	_:2:	3	::4		: 5	:6	<u> </u>	:7	:8		
HUMAN RESOURCES:				_	_			•	•		
numam resources:			::	•	; •	:		•	•		
Recruitment and Selections Processed (#)	:		::	•	•	:		•	•		
(New/proposed)			::		• •	:		•	•		
Ratio of Human Resources Staff/Positions	:		::	•	- -	:		:	:		
			::		:	:		:	•		
	: :		::	:	:	:		:	:		
HEALTH AND SAFETY:	:		::	:	•	:		:	:		
	:		::	}	:	:		:	:		
Percentage Reduction in Number of Time Loss	: ;		::	;	:	:			:		
Claims	: 25 :	33	::	33	:	:	33	:	:		
Percentage Reduction in Medical Only Claims			::	25	:	:	25	:	:		
Work Days Lost (Number)	: 700 :	500	::	500	:	:	500	:	:		
	:		::	;	:	:	*	•	:		
OTHER.	:		::		:	:		•	1 ,		
OTHER:			::		2	:		•			
Pollution Control Facility Tax Credit	•		::		:			•	:		
Applications Decessed	: 300 :	960	::	800		2 000 -	2 800				
Applications Processed	. 500	900	::	800		2,000 :	2,800	:	•		
Staff for Land Use Coordination (FTE)		.25	::	.10		1:	1.1	•			
Trail for Early OSE COOLGINGTION (112)	:	· • • • •	::	. 10	•		1.1	•	•		
Outreach Program/Number of People	: 310	310		310	<u>.</u>	25 :	335	•	•		
	:		::		:		300	:			
Number of News Releases Issued	: 7,200	7,200		7,200	:	800 :	8,000	•	:		
	:	•	::		:	:		:	:		
Public Information Requests Filled	: 18,000	18,000	::	18,000	:	2,000 :	20,000	•	:		
	:	•	::		:	:	·	:	:		
Public Information Telephone Calls	:		::		:	:		:	:		
Percent Returned Within 24 Hours	: 99	99	::	99	:	:	99	: `	:		
	:	:	::		:	:		:	:		
Pollution Control Bond Sales	: 1	: 1		2	:	:	2		:		
W * 1 *	:	:	::		:	:		:	i		
Mailings Labeled/Folded/Inserted Monthly	: 4,500	5,000		5,000	:	1,000 :	6,000	:	:		
· ·	•		::		:	:	<i>*</i>	:	:		
	•		::		:	:		•	:		
	. ,	•	::		:	:		:	•		
	•		::			:		•			
	•	- •	::		:				•		
	•	•	::		:	•		•	•		
	•	•	::		:	:		•	:		
	-	•	••		•	•		•	•		

MSDBUDGT.91 (2) (08/31/90)

X Agency Request

____ Governor's Recommended

____ Legislatively Adopted

Budget Page



Environmental Quality Commission

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

REQUEST FOR EQC ACTION

	Meeting Date:Sep	tember 21, 1990
	Agenda Item: B	
	Division: MSD	
	Section: Adm	inistration
<u>subj</u>	ECT:	
	Approval of Tax Credit Applications	:
ACTI	ON 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 Rulemaking Statements Fiscal and Economic Impact Statement Public Notice	AttachmentAttachment Attachment Attachment
	Issue a Contested Case Order Approve a Stipulated Order Enter an Order Proposed Order	Attachment
<u>X</u>	Approve Department Recommendation Variance Request Exception to Rule Informational ReportX Other: (specify)	Attachment
	Tax Credit Application Review Report	S
	(See list on next mage)	

Agenda Item: B

Page 2

Tax Credit Applications:

TC-2257

Norpac Foods, Inc. Addition to Wastewater Treatment System

TC-2320

Rogge Forest Products, Log Yard Debris Separation System

Inc.

TC-2451

Blue Sky Farm Straw Storage Shed 120' x 26'

TC-2477

Blue Sky Farm Straw Storage Shed, 80' x 106'

TC-2723

Hawk Oil Company

Installation of fiberglass lining in 4 bare steel underground storage tanks, addition of cathodic protection anodes to the tanks, the replacement of bare steel piping with fiberglass, spill containment basins, tank monitor, line leak detectors, an overfill alarm, and monitoring wells.

TC-2724

Hawk Oil Company

Installation of fiberglass lining in 4 bare steel underground storage tanks, addition of cathodic protection anodes to the tanks, the replacement of bare steel piping with fiberglass, spill containment basins, tank monitor, line leak detectors, an overfill alarm and monitoring wells.

TC-2725

Hawk Oil Company

Installation of fiberglass lining in 3 bare steel underground storage tanks, the addition of cathodic protection anodes to the tanks, the replacement of bare steel piping with fiberglass, spill containment basins, tank monitor, overfill alarm and monitoring wells.

TC-2726

Hawk Oil Company

Installation of fiberglass lining in 3 bare steel underground storage tanks, the addition of cathodic protection to the tanks, the replacement of bare steel piping with fiberglass, spill containment basins, tank monitor, overfill alarm and line leak detectors.

Agenda Item: B

Page 3

TC-2727 Hawk Oil Company

Installation of fiberglass lining in 4 bare steel underground storage tanks, addition of cathodic protection anodes to the tanks, the replacement of bare steel piping with fiberglass, spill containment basins, tank monitor, line leak detectors and an overfill alarm.

TC-2739 Doug Nulf

Fisher 370 Twine Baler

TC-2762

Richmond's Service

Replacement of 3 bare steel tanks and piping with 2 STI-P3 tanks and fiberglass piping, and the installation of Emco-Wheaton spill containment basins and a Pollulert tank monitor.

TC-2836 Hawk Oil Company

Replacement of 3 bare steel underground storage tanks and piping with fiberglass tanks and piping, spill containment basins, tank monitor, line leak detectors, breakaway shutoff devices and monitoring wells.

TC-2842 Springfield Fuel Center

Installation of epoxy lining to the interior of one existing steel 12,000 gallon underground storage tank; the purchase of a 14,000 gallon two-compartment double-bulkhead steel aboveground tank with secondary half-shell containment vessel and two Red Jacket line leak detectors on the aboveground tank.

TC-2858 Blue Sky

Straw Storage Shed, 80' x 106'

TC-2911 Boise Cascade Corporation

Replacement of 2 bare steel tanks and piping with one total containment double wall polyethylene jacketed steel underground storage tank and double wall fiberglass piping, and the installation of an EBW spill containment basin,

monitoring wells, Petrosonic III tank

Agenda Item: B

Page 4

monitor, Red Jacket line leak detectors and EBW breakaway shutoff devices. A third waste oil tank was decommissioned at the time of the project.

TC-2929

Hyster Company

Installation of a Petrosonic III tank monitor, Red Jacket line leak detectors, Emco spill containment basins, overfill alarm and Stage I vapor recovery fill tubes on four underground storage tank systems.

TC-2950

Fletcher Oil Company

Installation of sacrificial anode cathodic protection on 3 steel underground storage tanks and piping, Petrosonic III tank monitor, Red Jacket line leak detectors, spill containment basins, vapor monitoring well and overfill alarm.

TC-3005

May-Slade Oil Company,

Inc.

Installation of epoxy lining in three underground storage tanks, impressed current cathodic protection to tanks, and piping and spill containment basins.

TC-3006

May-Slade Oil Company,

Inc.

Installation of epoxy lining in three underground storage tanks, impressed current cathodic protection to tanks, and piping and spill containment basins.

TC-3007

May-Slade Oil Company,

Inc.

Installation of epoxy lining in two underground storage tanks, impressed current cathodic protection to tanks, and piping and spill containment basins.

TC-3071

Metrofueling, Inc.

Installation of UST leak detection devices on three (3) gasoline USTs and one (1) diesel UST in the form of automatic liquid tank gauges with a built-in alarm.

Agenda Item: B

Page 5

TC-3075

Metrofueling, Inc.

Installation of UST leak detection devices on two (2) gasoline USTs and one (1) diesel UST in the form of automatic liquid tank gauges with a built-in alarm.

TC-3082

Metrofueling, Inc.

Installation of UST leak detection devices on two (2) gasoline USTs and one (1) diesel UST in the form of automatic liquid tank gauges with a built-in alarm.

TC-3095

Gary's Cannon Beach

Service

Installation of epoxy lining in four bare steel underground storage tanks and the replacement of bare steel piping with fiberglass piping, the installation of a tank monitor, spill containment basins, suction pumps and breakaway shutoff devices.

TC-3149

Kirk Century Farms,

Inc.

John Deere 300 Stackwagon; John Deere 260 Loader; John Deere 2810 7-Bottom Plow; Used 15 Dandl Flail Chopper; and John Deere 530 Round Baler.

TC-3156

Berger Brothers

Rear's 14' Flail Chopper; New Holland 858 Round Baler.

TC-3169

Oak Creek Farms, Inc.

Wil Rich Plow; Pul-Flail Straw Chopper.

TC-3171

Cersovski Farm

Ford Plow; 15' Dandl Flail Chopper.

TC-3189

Roger F. Neuschwander

John Deere 2800 Plow

TC-3195

Langmack Seed Co., Inc. 16' Pul Flail Chopper

TC-3196

Marion L. Knox

White 548 Plow; Agriweld 2200 Harrow;

Dandl Chopper.

Agenda Item:

Page 6

TC-3206

Metrofueling, Inc. Installation of UST leak detection devices

on four (4) gasoline USTs and one (1)

diesel UST in the form of automatic liquid

tank gauges with a built-in alarm.

TC-3212

Metrofueling, Inc.

Installation of UST leak detection devices on four (4) gasoline USTs and three (3) diesel USTs in the form of automatic liquid tank gauges with a built-in alarm.

TC-3213

Metrofueling, Inc.

Installation of UST leak detection devices on five (5) gasoline USTs and one (1) diesel UST in the form of automatic liquid tank gauges with a built-in alarm.

TC-3215

G & R Seeds

Gehl 5' Round Baler; Hesston 60B Stakhand; Roan's 30' Propane Flamer.

TC-3217

Roger Rucked

Straw Storage Shed 124' x 144'

TC-3218

Truax Oil, Inc.

Installation of UST leak detection devices on five (5) gasoline USTs and three (3) diesel UST in the form of automatic liquid tank gauges with a built-in alarm.

TC-3220

Clovercrest Market

Replacement of 2 bare steel tanks and piping with 2 STI-P3 tanks and fiberglass piping, and the installation of spill containment basins and a monitoring well.

TC-3221

Jared L. Rogers Chevron

Installation of spill containment basins and a tank monitor system on three steel underground storage tanks.

TC-3222

George's Texaco

Replacement of 3 bare steel tanks and piping with 3 STI-P3 tanks and fiberglass piping, and the installation of spill containment basins, monitoring wells, breakaway shutoff devices and preparation of the site for a tank monitor system.

Agenda Item: B

Page 7

TC-3225

Lyle Neuschwander

John Deere Flail Chopper; John Deere Mold-

Board Plow.

TC-3226

Western Stations Co.

Replacement of 4 bare steel tanks and piping with 4 STI-P3 tanks and fiberglass piping, and the installation of EBW spill containment basins, breakaway shutoff devices, oil/water separator, overfill vent valves, tank monitor, line leak detectors, overfill alarm, monitoring wells and single point Stage I vapor

recovery.

TC-3227 Deryl J. Ferguson

Replacement of 3 bare steel tanks and piping with 2 STI-P3 tanks and fiberglass piping, and the installation of spill containment basins, a tank monitor, overfill alarm, line leak detectors and

monitoring wells.

TC-3228

Grant's Petroleum, Inc.

Replacement of one bare steel tank and piping with 2 STI-P3 tanks and fiberglass piping, and the installation of spill containment basins, monitoring wells, overfill valves, automatic shutoff safety valves, piping for vapor recovery and preparation for the installation of a tank monitor.

TC-3232

Carmichael-Columbia Oil

Installation of a Petronsonic III tank monitor, EBW spill containment basins, OPW overfill valves, float vent valves, piping for Stage II vapor recovery and the underground wiring for an impressed current cathodic protection system to be installed at a later date to augment protection to the tanks now being provided by existing sacrificial anodes.

TC-3235

May-Slade Oil Company,

Inc.

Replacement of bare steel piping with fiberglass piping in three underground storage tank systems.

Agenda Item: B

Page 8

DESCRIPTION OF REQUESTED ACTION:

Issue Tax Credit Certificates for Pollution Control Facilities.

<u>AUTH</u>	ORITY/NEED FOR ACTION:	•
<u> </u>	Required by Statute: ORS 468.150-468.190	Attachment
	Enactment Date: Statutory Authority: Pursuant to Rule: OAR 340 Division 16 Pursuant to Federal Law/Rule:	Attachment Attachment Attachment
	Other:	Attachment
	Time Constraints: (explain)	
<u>DEVE</u>	LOPMENTAL BACKGROUND:	
<u> </u>	Advisory Committee Report/Recommendation Hearing Officer's Report/Recommendations Response to Testimony/Comments Prior EQC Agenda Items: (list)	Attachment Attachment Attachment
	Other Related Reports/Rules/Statutes:	Attachment
<u>_x</u>	Supplemental Background Information	Attachment Attachment

Eight of the applications - TC-3149, 3156, 3169, 3171, 3181, 3189, 3195, and 3196 were submitted to the Commission at its August 10th meeting. Due to Commission concern over the Department's evaluation in determining the percentage allocable to pollution control, these applications were not acted upon. Seven of the eight applications that involved tractors also included other facilities or equipment to be certified. The Department has removed the tractors from these applications, with the applicants' concurrence, so that the Commission may review and act on the remaining facilities and equipment. Commission review and action on the tractors will occur at a later time.

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

There is no indication of questions or concerns that would be put forth at this meeting.

Agenda Item:

Page 9

PROGRAM CONSIDERATIONS:

None.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

None.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends the Environmental Quality Commission approve certification for tax credit applications 2257, 2320, 2451, 2477, 2723, 2724, 2725, 2726, 2727, 2739, 2762, 2836, 2842, 2858, 2911, 2929, 2950, 3005, 3006, 3007, 3071, 3075, 3082, 3095, 3149, 3156, 3169, 3171, 3189, 3195, 3196, 3206, 3212, 3213, 3215, 3217, 3218, 3220, 3221, 3222, 3225, 3226, 3227, 3228, 3232, 3235.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

Yes.

Note - Pollution Tax Credit Totals:

Proposed September 21, 1990 Totals

Air Quality	\$	686,625
Hazardous/Solid Waste		76,493
Noise		0
Plastics		0
Underground Storage Tanks		881,198
Water Quality		<u>56,890</u>
	\$ 1	,701,206

1990 Calendar Year Totals through August 1990.

Air Quality	\$ 2,894,770
Hazardous/Solid Waste	193,934
Noise	0
Plastics	166,101
Underground Storage Tanks	1,237,766
Water Quality	1,796,320
	\$ 6,288,891

Agenda Item: B

Page 10

INTENDED FOLLOWUP ACTIONS:

Notify applicants of Environmental Quality Commission actions.

Approved:

Section:

Division:

Director:

Report Prepared By: Roberta Young

Phone: 229-6408

Date Prepared: September 5, 1990

RY:y MY100850 September 5, 1990

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Norpac Foods, Inc. 930 W. Washington Street Stayton, OR 97383

The applicant owns and operates a vegetable canning plant near Brooks, Oregon.

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

2. <u>Description of Facility</u>

The facility consists of a concrete basin, three 10 horsepower Ashbrook aerators, one 75 horsepower Aqua aerator, and associated piping and electrical system.

Claimed Facility Cost: \$56,890.00 (Accountant's Certification was provided).

3. <u>Procedural Requirements</u>

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

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed March 16, 1987, more than 30 days before construction commenced on May 1, 1987.
- b. The request for preliminary certification was approved before application for final certification was made.
- c. Construction of the facility was substantially completed on July 1, 1988 and the application for final certification was found to be complete on April 14, 1989, within 2 years of substantial completion of the facility.

4. <u>Evaluation of Application</u>

a. The facility is eligible because the sole purpose of the facility is to reduce a substantial quantity of water pollution.

This reduction is accomplished by the use of treatment works for industrial waste as defined in ORS 468.700.

On April 20, 1987, the Department issued NPDES Permit No. 100315 to Norpac Foods, Inc. to operate a wastewater treatment system for its process wastewater and to land irrigate the treated effluent. The permit requires that the treated wastewater shall be irrigated in a manner so as to prevent prolonged ponding on the ground surface, surface runoff, creation of odors or other nuisance conditions, and the overloading of land with nutrients or organics.

The existing wastewater treatment system consisting of 4 holding lagoons and 2 floating aerators was in compliance with its permit limits. However, there was no flexibility in its operations that sometimes chemical addition to control odors was necessary. At times, the existing aerators could barely sustain biological processes in the treatment system.

With the addition of more aerators and modification of the basin in lagoon no. 1, treatment of process wastewater in the lagoons is maximized. Wastewater in the holding lagoons is stabilized and it can be held for extended periods without odor problems developing. Nutrient loading at the disposal site is greatly reduced.

b. Eligible Cost Findings

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

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

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

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

There is no revenue generated from this facility and therefore no return on investment.

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

Anaerobic treatment system and waste concentration were the alternatives considered. The anaerobic system was expensive and technically impractical due to the seasonal nature of plant effluent. There is no market for concentrated waste except for animal feed which requires low moisture content. Dehydration of the waste is not economically practicable.

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

There are no savings from the facility. The cost of maintaining and operating the facility is \$13,000 annually.

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

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

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the sole purpose of the facility is to reduce a substantial quantity of water pollution and accomplishes this purpose by the use of treatment works for industrial waste as defined in ORS 468.700.
- c. The facility complies with permit conditions.
- d. The portion of the facility cost that is properly allocable to pollution control is 100 percent.

Application No. T-2257 Page 4

6. <u>Director's Recommendation</u>

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$56,890.00 with 100 percent allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2257.

RCDulay:crw\hs IW\WC5755 (503) 229-5876 November 7, 1989

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Rogge Forest Products, Inc. P.O. Box 609 Bandon, OR 97411

The applicant owns and operates a sawmill at Bandon, Oregon.

Application was made for tax credit for a solid waste recycling facility.

2. Description of Facility

The claimed equipment is a mobile log yard debris separation system used to recycle wood waste. Materials recovered are rock (15%), hog fuel (25%) and fill material (60%). Both the rock and fill material are usable/salable products.

Claimed Facility Cost: \$76,493 (Accountant's Certification was provided).

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed August 3, 1987 more than 30 days before installation commenced in October, 1987.
- b. The request for preliminary certification was approved before application for final certification was made.
- c. Installation of the facility was substantially completed on August 30, 1989 and the application for final certification was found to be complete on July 19, 1990 within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the sole purpose of the facility is to reduce a substantial quantity of solid waste through recycling.

This reduction is accomplished by the use of a material recovery process.

b. Eligible Cost Findings

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

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

This factor is applicable because the entire purpose of the facility is to separate wood waste into rock (15%), hog fuel (25%) and fill material (60%). The rock and the fill material are salable/usable products. Prior to the purchase of this facility, the dirt, rock and bark accumulated on the log yard and was periodically pushed into piles. The applicant states that he has an existing contract for the sale of the fill material.

The percent allocable determined by using this factor would be 100%.

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

Average annual cash flow is \$665. This results from the value of the recycled material less operating costs. Dividing the annual average cash flow into the cost of the facility gives a return on investment factor of 115.03. Using Table 1 of OAR 340-16-030, for a life of 10 years, the percent return on investment is zero. As a result, the percent allocable would be 100%.

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

In-house construction of a fixed piece of equipment began in October 1987, using company millwrights as time was available. The mobile plant cost less than completing the original project and also allowed the company to begin operations at an earlier date.

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

There are no savings from the facility. The cost of maintaining and operating the facility is approximately \$29,500 annually. The income from this facility is approximately \$30,600 annually and has been included in the ROI calculation.

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

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

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the sole purpose of the facility is to reduce a substantial quantity of solid waste through recycling.

This reduction is accomplished by the use of a material recovery process.

- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. <u>Director's Recommendation</u>

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$76,493 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2320.

LWienholt:b G:\YB9764 (503) 229-6823 July 24, 1990

State of Oregon Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Blue Sky Farm, Inc. PO Box 217 Woodburn, Oregon 97071

The applicant owns and operates a grass seed farm operation in Woodburn, Oregon.

Application was made for tax credit for an air pollution control facility.

2. Description of Claimed Facility

The facility described in this application is a straw storage building 80' long by 106' wide, located at 14703 Manning Road NE, Woodburn, Oregon. The land and buildings are owned by the applicant.

Claimed facility cost: \$25,040 (Accountant's Certification was provided.)

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190, and by OAR Chapter 340, Division 16. The facility has met all statutory deadlines in that:

Construction of the facility was substantially completed on December 5, 1989, and the application for final certification was found to be complete on July 6, 1990, within two years of substantial completion of the facility. The request for preliminary certification was approved on March 18, 1988.

4. Evaluation of Application

a. The facility 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."

The applicant's farming operation includes approximately 1250 acres of grass seed crops, and in recent years has registered 590 acres in the Department's open field burning program for the Willamette Valley. The equipment will enable the applicant to reduce acreage to be open burned by approximately 500 acres. Other related equipment that has been certified for this applicant includes a cover crop disk and a propane flamer.

b. Eligible Cost Findings

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

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

The facility promotes the conversion of a waste product (straw) into a salable commodity by providing protection from the weather.

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

There is no annual percent return on the investment as applicant claims no gross annual income because of the unreliable market for straw.

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 installation of the facility.

There is an increase in operating costs of \$806 to annually maintain and operate the facility. 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 facility 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 facility properly allocable to prevention, control or reduction of air pollution.

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to reduce a substantial quantity of air pollution and accomplishes this purpose by the reduction of air contaminants, as defined in ORS 468.275.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility that is properly allocable to pollution control is 100%.

6. Reviewer's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$25,040, with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application Number TC-2451.

Jim Britton, Manager Smoke Management Program Natural Resources Division Oregon Department of Agriculture (503) 378-6792

JB; bmTC2451 July 6, 1990

State of Oregon Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Blue Sky Farm, Inc. PO Box 217 Woodburn, Oregon 97071

The applicant owns and operates a grass seed farm operation in Woodburn, Oregon.

Application was made for tax credit for an air pollution control facility.

2. Description of Claimed Facility

The facility described in this application is a straw storage building approximately 120' by 26', located at 21333 French Prairie Road NE, St.Paul, Oregon. The land and buildings are owned by the applicant.

Claimed facility cost: \$13,275 (Accountant's Certification was provided.)

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190, and by OAR Chapter 340, Division 16. The facility has met all statutory deadlines in that:

Construction of the facility was substantially completed on December 5, 1989, and the application for final certification was found to be complete on July 6, 1990, within two years of substantial completion of the facility. The request for preliminary certification was approved on April 27, 1988.

4. Evaluation of Application

a. The facility 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."

The applicant's farming operation includes approximately 1250 acres of grass seed crops, and in recent years has registered 590 acres in the Department's open field burning program for the Willamette Valley. The equipment will enable the applicant to reduce acreage to be open burned by approximately 500 acres. Other related equipment that has been certified for this applicant includes a cover crop disk and a propane flamer.

b. Eligible Cost Findings

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

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

The facility promotes the conversion of a waste product (straw) into a salable commodity by providing protection from the weather.

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

There is no annual percent return on the investment as applicant claims no gross annual income because of the unreliable market for the straw.

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 installation of the facility.

There is an increase in operating costs of \$432 to annually maintain and operate the facility.

5. Any other factors which are relevant in establishing the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air pollution.

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

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to reduce a substantial quantity of air pollution and accomplishes this purpose by the reduction of air contaminants, as defined in ORS 468.275.
- c. The facility complies with DEO statutes and rules.
- d. The portion of the facility that is properly allocable to pollution control is 100%.

6. Reviewer's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$13,275, with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application Number TC-2477.

Jim Britton, Manager Smoke Management Program Natural Resources Division Oregon Department of Agriculture (503) 378-6792

JB;bmtc2477 July 6, 1990

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Hawk Oil Company
P. O. Box 1388
Medford, OR 97501
UST Facility Number 2417

The applicant owns and operates a service station at 75 C Street, Ashland, OR.

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

2. <u>Description of Facility</u>

The claimed pollution control facilities described in this application are the installation of fiberglass lining in 4 bare steel underground storage tanks, addition of cathodic protection anodes to the tanks, the replacement of bare steel piping with fiberglass, spill containment basins, tank monitor, line leak detectors, an overfill alarm and monitoring wells.

A fifth waste oil tank at the site will be replaced by an above ground tank at a later date.

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

Claimed facility cost \$39,624 Percent allocable to pollution control 100%

3. Procedural Requirements

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

The facility met all statutory deadlines in that installation of the facility was substantially completed on June 14, 1989 and the application for certification was found to be complete within two years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose

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

Prior to the installation of pollution control, the facility consisted of 5 bare steel underground storage tanks and piping with no corrosion protection and no leak detection or spill and overfill prevention equipment.

Effective December 22, 1988, EPA established a ten year phase-in program for tank owners to upgrade existing underground storage tanks to new tank standards. This includes installing pollution control equipment to provide protection against releases due to corrosion, to prevent spills and release from overfill, and to monitor for leaks.

To respond to corrosion protection, the applicant installed fiberglass tank lining, cathodic protection anodes and fiberglass piping. This equipment meets EPA requirements for corrosion protection.

To respond to spill and overfill prevention, the applicant installed spill containment basins and an overfill alarm. This equipment meets EPA requirements for spill and overfill prevention.

To respond to leak detection requirements, the applicant installed a tank monitor, line leak detectors and monitoring wells. This equipment meets EPA requirements for leak detection.

With respect to the applicant's claimed facility cost of \$39,624, the Department determined that all of the costs included in this figure are eligible pursuant to the definition of a pollution control facility in ORS 648.155. A breakdown of the applicant's claimed costs is shown below.

Application No. TC-2723 Page 3

Facility	Applicant Claimed Costs	Department Adjusted <u>Costs</u>
Corrosion Protection: Fiberglass tank lining Fiberglass pipe & fittings Cathodic protection anodes	\$16,000 3,596 1,385	\$ 16,000 3,596 1,385
Spill & Overfill Prevention: Spill containment basins Overfill alarms	708 176	708 176
Leak Detection: Tank monitor Line leak detectors Monitoring wells	4,984 664 297	4,984 664 297
Labor and materials	11,814	11,814
Total	\$ 39,624	\$ 39,624
Adjusted Eligible Fa	cility Cost	\$ 39,624

The applicant reported that tank tightness testing was performed as part of the project with no leakage discovered, and the soil was inspected during construction and no evidence of contamination was found.

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant considered replacing the tanks, but determined that lining them was more economical. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

The Department determined the percent allocable using standardized methodology pursuant to the latest interpretation of the Oregon Administrative Rules Chapter 340 Division 16. The result is displayed in the table at the end of this section. Where the percent allocable is less than 100%, the rationale is presented in the following paragraphs.

The applicant's claimed cost for a tank monitor is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the device can serve other purposes, e.g., inventory control.

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

	Eligible Facility Cost	Percent Allocable	
Corrosion Protection: Fiberglass tank lining Fiberglass pipe & fittings Cathodic protection anodes	\$16,000 3,596 1,385	100	\$ 16,000 3,596 1,385
Spill & Overfill Prevention Spill containment basins Overfill alarms	708 176	100 100	708 176
Leak Detection: Tank monitor Line leak detectors Monitoring wells	4,984 664 297	90 100 100	4,486 664 297
Labor and materials	11,814	100	11,814
Total	\$ 39,624	99%	\$ 39,126

5. <u>Summation</u>

- a. The facility was constructed in accordance with all regulatory requirements.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility:, defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 99%.

6. <u>Director's Recommendation</u>

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$39,624 with 99% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-2723.

Barbara J. Anderson August 17, 1990 (503) 229-5870

100%

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. <u>Applicant</u>

Hawk Oil Company P. O. Box 1388 Medford, OR 97501 UST Facility Number 2417

The applicant owns and operates a service station at 840 NE "F" Street, Grants Pass, OR.

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

2. Description of Facility

The claimed pollution control facilities described in this application are the installation of fiberglass lining in 4 bare steel underground storage tanks, addition of cathodic protection anodes to the tanks, the replacement of bare steel piping with fiberglass, spill containment basins, tank monitor, line leak detectors, an overfill alarm and monitoring wells.

A fifth waste oil tank at the site will be replaced by an above ground tank at a later date.

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

Claimed facility cost \$46,567 Percent allocable to pollution control

3. Procedural Requirements

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

The facility met all statutory deadlines in that installation of the facility was substantially completed on July 3, 1989 and the application for certification was found to be complete within two years of substantial completion of the facility.

Evaluation of Application 4.

The facility is eligible because the principal purpose a.

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

Prior to the installation of pollution control, the facility consisted of 4 bare steel underground storage tanks and piping with no corrosion protection and no leak detection or spill and overfill prevention equipment and a fifth corrosion protected (epoxy lined) waste oil underground storage tank.

Effective December 22, 1988, EPA established a ten year phase-in program for tank owners to upgrade existing underground storage tanks to new tank standards. This includes installing pollution control equipment to provide protection against releases due to corrosion, to prevent spills and release from overfill, and to monitor for leaks.

To respond to corrosion protection, the applicant installed fiberglass tank lining, cathodic protection anodes and fiberglass piping. This equipment meets EPA requirements for corrosion protection.

To respond to spill and overfill prevention, the applicant installed spill containment basins and an overfill alarm. This equipment meets EPA requirements for spill and overfill prevention.

To respond to leak detection requirements, the applicant installed a tank monitor, line leak detectors and monitoring wells. This equipment meets EPA requirements for leak detection.

With respect to the applicant's claimed facility cost of \$46,567, the Department determined that all of the costs included in this figure are eligible pursuant to the definition of a pollution control facility in ORS 648.155. A breakdown of the applicant's claimed costs is shown below.

Application No. TC-2724 Page 3

Facility	Applicant Claimed Costs	Department Adjusted <u>Costs</u>
Corrosion Protection: Fiberglass tank lining Fiberglass pipe & fittings Cathodic protection anodes	\$16,000 7,549 580	\$ 16,000 7,549 580
Spill & Overfill Prevention: Spill containment basins Overfill alarms	708 176	708 176
Leak Detection: Tank monitor Line leak detectors Monitoring wells	5,468 725 210	5,468 725 210
Labor and materials	15,151	<u>15,151</u>
Total	\$ 46,567	\$ 46,567
Adjusted Eligible Fac	ility Cost	\$ 46,567

The applicant reported that tank tightness testing was performed as part of the project with no leakage discovered, and the soil was inspected during construction and no evidence of contamination was found.

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

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

The applicant considered replacing the tanks, but determined that lining them was more economical. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

The Department determined the percent allocable using standardized methodology pursuant to the latest interpretation of the Oregon Administrative Rules Chapter 340 Division 16. The result is displayed in the table at the end of this section. Where the percent allocable is less than 100%, the rationale is presented in the following paragraphs.

The applicant's claimed cost for a tank monitor is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the device can serve other purposes, e.g., inventory control.

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

	Eligible Facility Cost	Percent Allocable	
Corrosion Protection: Fiberglass tank lining Fiberglass pipe & fittings Cathodic protection anodes	\$16,000 7,549 580		\$ 16,000 7,549 580
Spill & Overfill Prevention Spill containment basins Overfill alarms	708 176	100 100	708 176
Leak Detection: Tank monitor Line leak detectors Monitoring wells	5,468 725 210	90 100 100	4,921 725 210
Labor and materials	15,151	100	<u>15,151</u>
Total	\$ 46,567	99%	\$ 46,020

5. Summation

- a. The facility was constructed in accordance with all regulatory requirements.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility:, defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 99%.

6. <u>Director's Recommendation</u>

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$46,567 with 99% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-2724.

Barbara J. Anderson August 17, 1990 (503) 229-5870

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Hawk Oil Company
P. O. Box 1388
Medford, OR 97501
UST Facility Number 2433

The applicant owns and operates a service station at 1 Pine Street, Rogue River, OR.

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

Description of Facility

The claimed pollution control facilities described in this application are the installation of fiberglass lining in 3 bare steel underground storage tanks, the addition of cathodic protection anodes to the tanks, the replacement of bare steel piping with fiberglass, spill containment basins, tank monitor, overfill alarm and monitoring wells.

A fourth waste oil tank at the site will be replaced by an above ground tank at a later date.

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

Claimed facility cost \$51,545
Percent allocable to pollution control 100%

3. Procedural Requirements

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

The facility met all statutory deadlines in that installation of the facility was substantially completed on March 1, 1990 and the application for certification was found to be complete within two years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose

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

Prior to the installation of pollution control, the facility consisted of 4 bare steel underground storage tanks and piping with no corrosion protection and no leak detection or spill and overfill prevention equipment.

Effective December 22, 1988, EPA established a ten year phase-in program for tank owners to upgrade existing underground storage tanks to new tank standards. This includes installing pollution control equipment to provide protection against releases due to corrosion, to prevent spills and release from overfill, and to monitor for leaks.

To respond to corrosion protection, the applicant installed fiberglass tank lining, cathodic protection anodes and fiberglass piping. This equipment meets EPA requirements for corrosion protection.

To respond to spill and overfill prevention, the applicant installed spill containment basins and an overfill alarm. This equipment meets EPA requirements for spill and overfill prevention.

To respond to leak detection requirements, the applicant installed a tank monitor and monitoring wells. This equipment meets EPA requirements for leak detection.

With respect to the applicant's claimed facility cost of \$51,545, the Department determined that all of the costs included in this figure are eligible pursuant to the definition of a pollution control facility in ORS 648.155. A breakdown of the applicant's claimed costs is shown below.

Application No. TC-2725 Page 3

Facility	Applicant Claimed Costs	Department Adjusted <u>Costs</u>
Corrosion Protection: Fiberglass tank lining Fiberglass pipe & fittings Cathodic protection anodes	\$13,500 10,575 1,155	\$ 13,500 10,575 1,155
Spill & Overfill Prevention: Spill containment basins Overfill alarms	531 158	531 158
Leak Detection: Tank monitor Monitoring wells	4,212 172	4,212 172
Labor and materials	21,242	21,242
Total	\$ 51,545	\$ 51,545
Adjusted Eligible Fac	cility Cost	\$ 51,545

The applicant reported that tank tightness testing was performed as part of the project with no leakage discovered, and the soil was inspected during construction and no evidence of contamination was found.

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

Application No. TC-2725 Page 4

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

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

The applicant considered replacing the tanks, but determined that lining them was more economical. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

The Department determined the percent allocable using standardized methodology pursuant to the latest interpretation of the Oregon Administrative Rules Chapter 340 Division 16. The result is displayed in the table at the end of this section. Where the percent allocable is less than 100%, the rationale is presented in the following paragraphs.

The applicant's claimed cost for a tank monitor is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the device can serve other purposes, e.g., inventory control.

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

	Eligible Facility Cost	Percent Allocable	Amount Allocable
Corrosion Protection: Fiberglass tank lining Fiberglass pipe & fittings Cathodic protection anodes	\$13,500 10,575 1,155		\$ 13,500 10,575 1,155
Spill & Overfill Prevention Spill containment basins Overfill alarms	n: 531 158	100 100	531 158
Leak Detection: Tank monitor Monitoring wells	4,212 172	90 100	3,791 172
Labor and materials	21,242	100	21,242
Total	\$ 51,545	99%	\$ 51,124

5. Summation

- a. The facility was constructed in accordance with all regulatory requirements.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility:, defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 99%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$51,545 with 99% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-2725.

Barbara J. Anderson August 17, 1990 (503) 229-5870

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Hawk Oil Company
P. O. Box 1388
Medford, OR 97501
UST Facility Number 2415

The applicant owns and operates a service station at 2300 Crater Lake Avenue, Medford, OR.

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

2. Description of Facility

The claimed pollution control facilities described in this application are the installation of fiberglass lining in 3 bare steel underground storage tanks, the addition of cathodic protection to the tanks, the replacement of bare steel piping with fiberglass, spill containment basins, tank monitor, overfill alarm and line leak detectors.

A fourth waste oil tank at the site will be replaced by an above ground tank at a later date.

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

Claimed facility cost \$36,094 Percent allocable to pollution control 100%

Procedural Requirements

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

The facility met all statutory deadlines in that installation of the facility was substantially completed on May 15, 1989 and the application for certification was found to be complete within two years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose

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

Prior to the installation of pollution control, the facility consisted of 4 bare steel underground storage tanks and piping with no corrosion protection and no leak detection or spill and overfill prevention equipment.

Effective December 22, 1988, EPA established a ten year phase-in program for tank owners to upgrade existing underground storage tanks to new tank standards. This includes installing pollution control equipment to provide protection against releases due to corrosion, to prevent spills and release from overfill, and to monitor for leaks.

To respond to corrosion protection, the applicant installed fiberglass tank lining, cathodic protection anodes and fiberglass piping. This equipment meets EPA requirements for corrosion protection.

To respond to spill and overfill prevention, the applicant installed spill containment basins and an overfill alarm. This equipment meets EPA requirements for spill and overfill prevention.

To respond to leak detection requirements, the applicant installed a tank monitor and line leak detectors. This equipment meets EPA requirements for leak detection.

With respect to the applicant's claimed facility cost of \$36,094, the Department determined that all of the costs included in this figure are eligible pursuant to the definition of a pollution control facility in ORS 648.155. A breakdown of the applicant's claimed costs is shown below.

Application No. TC-2726 Page 3

Facility	Applicant Claimed Costs	Department Adjusted <u>Costs</u>
Corrosion Protection: Fiberglass tank lining Fiberglass pipe & fittings Cathodic protection anodes	\$13,500 3,811 670	\$ 13,500 3,811 670
Spill & Overfill Prevention: Spill containment basins Overfill alarm	552 176	552 176
Leak Detection: Tank monitor Line leak detectors	4,851 546	4,851 546
Labor and materials	11,988	11,988
Total	\$ 36,094	\$ 36,094
Adjusted Eligible Fac	ility Cost	\$ 36,094

The applicant reported that tank tightness testing was performed as part of the project with no leakage discovered, and the soil was inspected during construction and no evidence of contamination was found.

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant considered replacing the tanks, but determined that lining them was more economical. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

The Department determined the percent allocable using standardized methodology pursuant to the latest interpretation of the Oregon Administrative Rules Chapter 340 Division 16. The result is displayed in the table at the end of this section. Where the percent allocable is less than 100%, the rationale is presented in the following paragraphs.

The applicant's claimed cost for a tank monitor is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the device can serve other purposes, e.g., inventory control.

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

		Percent Allocable	
Corrosion Protection:			
Fiberglass tank lining	\$13,500	100%	\$ 13,500
Fiberglass pipe & fittings			3,811
Cathodic protection anodes			670
Spill & Overfill Prevention	on:		
Spill containment basins	552	100	552
Overfill alarm	176	100	176
Leak Detection:			
Tank monitor	4,851	90	4,366
Line leak detectors	546		546
Labor and materials	11,988	100_	11,988
Total	\$ 36,094	99%	\$ 35,609

5. Summation

- a. The facility was constructed in accordance with all regulatory requirements.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility:, defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 99%.

6. <u>Director's Recommendation</u>

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$36,094 with 99% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-2726.

Barbara J. Anderson August 17, 1990 (503) 229-5870

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Hawk Oil Company
P. O. Box 1388
Medford, OR 97501
UST Facility Number 2421

The applicant owns and operates a service station/convenience store at 951 E. Barnett, Medford, OR.

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

2. Description of Facility

The claimed pollution control facilities described in this application are the installation of fiberglass lining in 4 bare steel underground storage tanks, addition of cathodic protection anodes to the tanks, the replacement of bare steel piping with fiberglass, spill containment basins, tank monitor, line leak detectors, and an overfill alarm.

A fifth waste oil tank at the site will be replaced by an above ground tank at a later date.

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

Claimed facility cost \$38,186 Percent allocable to pollution control 100%

Of the amount shown above, the Department determined that \$228 was ineligible pursuant to the definition of a pollution control facility as stated in ORS 468.155, resulting in an adjusted facility cost of \$37,958. The rationale for making this adjustment is explained in Section 4.a., the evaluation of the application.

Adjusted claimed facility cost

\$37,958

3. Procedural Requirements

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

The facility met all statutory deadlines in that installation of the facility was substantially completed on June 26, 1989 and the application for certification was found to be complete within two years of substantial completion of the facility.

4. Evaluation of Application

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

Prior to the installation of pollution control, the facility consisted of 5 bare steel underground storage tanks and piping with no corrosion protection and no leak detection or spill and overfill prevention equipment.

Effective December 22, 1988, EPA established a ten year phase-in program for tank owners to upgrade existing underground storage tanks to new tank standards. This includes installing pollution control equipment to provide protection against releases due to corrosion, to prevent spills and release from overfill, and to monitor for leaks.

To respond to corrosion protection, the applicant installed fiberglass tank lining, cathodic protection anodes and fiberglass piping. This equipment meets EPA requirements for corrosion protection.

To respond to spill and overfill prevention, the applicant installed spill containment basins and an overfill alarm. This equipment meets EPA requirements for spill and overfill prevention.

To respond to leak detection requirements, the applicant installed a tank monitor, and line leak detectors. This equipment meets EPA requirements for leak detection.

With respect to the applicant's claimed facility cost of \$38,186, the Department determined the cost of the submersible pump claimed by the applicant to be ineligible because it does not serve the purpose of

pollution control. The breakdown of the applicant's claimed costs is shown below.

Facility	Applicant Claimed Costs	Department Adjusted <u>Costs</u>
Corrosion Protection: Fiberglass tank lining Fiberglass pipe & fittings Cathodic protection anodes	\$16,000 5,295 1,246	\$ 16,000 5,295 1,246
Spill & Overfill Prevention: Spill containment basins Overfill alarms	708 176	708 176
Leak Detection: Tank monitor Line leak detectors	4,984 487	4,984 487
Submersible pump Labor and materials	228 9,062	0 <u>9,062</u>
Total	\$ 38,186	\$37,958
Adjusted Eligible Fac	cility Cost	\$ 37,958

The applicant reported that tank tightness testing was performed as part of the project with no leakage discovered, and the soil was inspected during construction and no evidence of contamination was found.

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eliqible Cost Findings

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

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

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

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

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

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

The applicant considered replacing the tanks, but determined that lining them was more economical. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

The Department determined the percent allocable using standardized methodology pursuant to the latest interpretation of the Oregon Administrative Rules Chapter 340 Division 16. The result is displayed in the table at the end of this section. Where the percent allocable is less than 100%, the rationale is presented in the following paragraphs.

The applicant's claimed cost for a tank monitor is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the device can serve other purposes, e.g., inventory control.

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

	Eligible Facility Cost	Percent Allocable	Amount <u>Allocable</u>
Corrosion Protection: Fiberglass tank lining Fiberglass pipe & fittings Cathodic protection anodes			\$ 16,000 5,295 1,246
Spill & Overfill Prevention Spill containment basins Overfill alarms	on: 708 176	100 100	708 176
Leak Detection: Tank monitor Line leak detectors	4,984 487	90 100	4,486 487
Labor and materials	9,062	100	9,062
Total	\$ 37,958	99%	\$ 37,460

5. Summation

- a. The facility was constructed in accordance with all regulatory requirements.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility:, defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 99%.

6. <u>Director's Recommendation</u>

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$37,958 with 99% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-2727.

Barbara J. Anderson August 17, 1990 (503) 229-5870

State of Oregon Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Doug Nulf 25946 Ferguson 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 a Fisher 370 twine baler, located at 25946 Ferguson Road, Junction City, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: \$33,362 (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, 1929, and the application for final certification was found to be complete on August 1, 1990, within two years of substantial purchase of the equipment. The request for preliminary certification was approved on January 11, 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."

The applicant's farming operation includes approximately 225 acres of grass seed crops, and in recent years has registered 200 acres in the Department's open field burning program for the Willamette Valley. The equipment will enable the applicant to reduce his acreage to be open burned by approximately 25 acres and his neighbors acreage to be open burned by approximately 300 acres.

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 providing the capability to bale the straw for use as a supplemental livestock feed.

2. The estimated annual percent return on the investment in the equipment.

There is no annual percent return on the investment as applicant claims no cash flow as income from the straw is offset by operating expenses.

The applicant established salvage value by stating that the expense of cutting and hauling would be more than the value of the scrap metal.

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 \$3,000 to annually maintain and operate the equipment.

5. Any other factors which are relevant in establishing the portion of the actual cost of the equipment properly allocable to the prevention, control or reduction of air pollution.

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

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

5. Summation

- a. The equipment was purchased in accordance with all regulatory deadlines.
- b. The equipment is eligible for final tax credit certification in that the principal 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. <u>Director's Recommendation</u>

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$33,362, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-2739.

Jim Britton, Manager Smoke Management Program Natural Resources Division Oregon Department of Agriculture (503) 378-6792

JB:bmTC2739 August 6, 1990

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Richmond's Service 511 Deschutes Avenue Maupin, OR 97037 UST Facility Number 3457

The applicant owns and operates a service station and repair shop at the above address.

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

2. <u>Description of Facility</u>

The claimed pollution control facilities described in this application are the replacement of 3 bare steel tanks and piping with 2 STI-P3 tanks and fiberglass piping, and the installation of Emco-Wheaton spill containment basins and a Pollulert tank monitor.

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

Claimed facility cost \$19,406 Percent allocable to pollution control 90%

3. <u>Procedural Requirements</u>

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

The facility met all statutory deadlines in that installation of the facility was substantially completed on April 20, 1989 and the application for certification was found to be complete within two years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and

Application No. TC-2762 Page 2

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

Prior to the installation of pollution control, the facility consisted of 3 bare steel underground storage tanks and piping with no corrosion protection and no leak detection or spill and overfill prevention equipment.

Effective December 22, 1988, EPA established a ten year phase-in program for tank owners to upgrade existing underground storage tanks to new tank standards. This includes installing pollution control equipment to provide protection against releases due to corrosion, to prevent spills and release from overfill, and to monitor for leaks.

To respond to corrosion protection, the applicant installed STI-P3 tanks and fiberglass piping. This equipment meets EPA requirements for corrosion protection.

To respond to spill and overfill prevention, the applicant installed spill containment basins. This equipment meets EPA requirements for spill and overfill prevention.

To respond to leak detection requirements, the applicant installed a tank monitor system. This equipment meets EPA requirements for leak detection.

With respect to the applicant's claimed facility cost of \$19,406, the Department determined that all of the costs included in this figure are eligible pursuant to the definition of a pollution control facility in ORS 648.155. A breakdown of the applicant's claimed costs is shown below.

Application No. TC-2762 Page 3

Facility	Applicant Claimed Costs	Department Adjusted <u>Costs</u>
Corrosion Protection: STI-P3 tanks	\$ 4,724	\$ 4,724
Spill & Overfill Prevention: Spill containment basins	391	391
Leak Detection: Tank monitor	3,911	3,911
Labor and materials including fiberglass piping	10,380	10,380
Total	\$ 19,406	\$ 19,406
Adjusted Eligible Fac	ility Cost	\$ 19,406

The applicant reported that soil testing was performed during decommissioning and no evidence of contamination was found.

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

There is no annual percent return on investment as the applicant claims no gross annual income from the facility. 3) The alternative methods, equipment and costs for achieving the same pollution control objective.

The applicant indicated that the methods and equipment selected were the most cost effective. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

The applicant estimated that 90% of the claimed facility cost of \$19,406 was allocable to pollution control. The applicant arrived at this percentage by subtracting the cost of bare steel tanks from his total facility cost.

The Department determined the percent allocable using standardized methodology pursuant to the latest interpretation of the Oregon Administrative Rules Chapter 340 Division 16. The result is displayed in the table at the end of this section. Where the percent allocable is less than 100%, the rationale is presented in the following paragraphs.

With respect to corrosion protection, the Department has determined the percent allocable on the cost of a corrosion protected tank system by using a formula based on the difference in cost between the protected tank system and a bare steel tank system as a percent of the protected system. Applying this formula to the costs presented by the applicant, where the STI-P3 tank system cost is \$4,724 and the bare steel system is \$1,984, the resulting portion of the eligible tank cost allocable to pollution control is 58%.

The applicant's claimed cost for a tank monitor is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the device can serve other purposes, e.g., inventory control.

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

	Eligible Facility <u>Cost</u>		acility Percent		ount ocable
Corrosion Protection: STI-P3 tanks	\$	4,724	58%	\$	2,740
Spill & Overfill Prevention Spill containment basins	1:	391	100		391
Leak Detection: Tank monitor		3,911	90		3,520
Labor and materials including piping		10,380	100		10,380
Total	\$	19,406	88%	\$	17,031

5. Summation

- a. The facility was constructed in accordance with all regulatory requirements.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility:, defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 88%.

6. <u>Director's Recommendation</u>

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$19,406 with 88% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-2762.

Barbara J. Anderson August 17, 1990 (503) 229-5870

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Hawk Oil Company P. O. Box 1388 Medford, OR 97501 UST Facility Number 2430

The applicant owns and operates a service station and convenience store at 800 N. Main, Phoenix, OR.

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

2. Description of Facility

The claimed pollution control facilities described in this application are the replacement of 3 bare steel underground storage tanks and piping with fiberglass tanks and piping, spill containment basins, tank monitor, line leak detectors, breakaway shutoff devices and monitoring wells.

A fourth waste oil tank at the site will be replaced by an above ground tank at a later date.

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

Claimed facility cost \$74,922 Percent allocable to pollution control 100%

3. <u>Procedural Requirements</u>

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

The facility met all statutory deadlines in that installation of the facility was substantially completed on November 28, 1989 and the application for certification was found to be complete within two years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose

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

Prior to the installation of pollution control, the facility consisted of 4 bare steel underground storage tanks and piping with no corrosion protection and no leak detection or spill and overfill prevention equipment.

Effective December 22, 1988, EPA established a ten year phase-in program for tank owners to upgrade existing underground storage tanks to new tank standards. This includes installing pollution control equipment to provide protection against releases due to corrosion, to prevent spills and release from overfill, and to monitor for leaks.

To respond to corrosion protection, the applicant installed fiberglass tanks and piping. This equipment meets EPA requirements for corrosion protection.

To respond to spill and overfill prevention, the applicant installed spill containment basins and breakaway shutoff devices. This equipment meets EPA requirements for spill and overfill prevention.

To respond to leak detection requirements, the applicant installed a tank monitor, line leak detectors and monitoring wells. This equipment meets EPA requirements for leak detection.

With respect to the applicant's claimed facility cost of \$74,922, the Department determined that all of the costs included in this figure are eligible pursuant to the definition of a pollution control facility in ORS 648.155. A breakdown of the applicant's claimed costs is shown below.

Application No. TC-2836 Page 3

Facility	Applicant Claimed Costs	Department Adjusted Costs
Corrosion Protection: Fiberglass tanks Fiberglass pipe & fittings	\$20,185 5,205	\$ 20,185 5,205
Spill & Overfill Prevention: Spill containment basins Breakaway shutoff devices	531 648	531 648
Leak Detection: Tank monitor Line leak detectors Monitoring wells	4,417 477 414	4,417 477 414
Labor and materials	43,045	43,045
Total	\$ 74,922	\$ 74,922
Adjusted Eligible Fac	cility Cost	\$ 74,922

The applicant reported that soil and groundwater contamination was discovered during decommissioning and was reported to DEQ, Southwest Region office. The contaminated soil was removed and disposed of. The groundwater contamination is being monitored on an ongoing basis under the supervision of DEQ.

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant indicated that no alternatives were considered. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

The Department determined the percent allocable using standardized methodology pursuant to the latest interpretation of the Oregon Administrative Rules Chapter 340 Division 16. The result is displayed in the table at the end of this section. Where the percent allocable is less than 100%, the rationale is presented in the following paragraphs.

With respect to corrosion protection, the Department has determined the percent allocable on the cost of a corrosion protected tank system by using a formula based on the difference in cost between the protected tank system and a bare steel tank system as a percent of the protected system. Applying this formula to the costs presented by the applicant, where the corrosion protected tank system cost is \$20,185 and the bare steel system is \$13,274, the resulting portion of the eligible tank cost allocable to pollution control is 34%.

The applicant's claimed cost for a tank monitor is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the device can serve other purposes, e.g., inventory control.

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

	Eligible Facility Cost	Percent Allocable	
Corrosion Protection: Fiberglass tanks Fiberglass pipe & fitings	\$20,185 5,205		\$ 6,863 5,205
Spill & Overfill Prevention Spill containment basins Breakaway shutoff devices	n: 531 648		531 648
Leak Detection: Tank monitor Line leak detectors Monitoring wells	4,417 477 414	90 100 100	3,975 477 414
Labor and materials	43,045	100	43,045
Total	\$ 74,922	82%	\$ 61,158

5. Summation

- a. The facility was constructed in accordance with all regulatory requirements.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility:, defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 82%.

6. <u>Director's Recommendation</u>

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$74,922 with 82% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-2836.

Barbara J. Anderson August 17, 1990 (503) 229-5870

State of Oregon. Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Springfield Fuel Center 701 South 28th Street Springfield, OR 97477 UST Facility Number 3729

The applicant owns and operates a cardlock truck fueling station at the above address.

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

2. <u>Description of Facility</u>

The claimed pollution control facilities described in this application are the installation of Bridgeport Chemical GA 27P epoxy lining to the interior of one existing steel 12,000 gallon underground storage tank; the purchase of a 14,000 gallon two-compartment double-bulkhead steel aboveground tank with a secondary half-shell containment vessel and two Red Jacket line leak detectors on the aboveground tank.

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

Claimed Facility cost \$ 19,089 Percent allocable to pollution control 100%

3. <u>Procedural Requirements</u>

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

The facility met all statutory deadlines in that installation of the facility was substantially completed in October 31, 1989 and the application for certification was found to be complete within two years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with underground storage

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

Prior to completing the work claimed, the facility had one 12,000 bare steel underground storage tank and piping approximately 12 years of age holding motor fuel. The facility had a groundwater monitoring well, and a spill containment basin on the underground tank.

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

To respond to corrosion protection, the applicant lined the interior of the underground storage tank with epoxy resin. Epoxy resin lining meets EPA requirements for corrosion protection.

The applicant also purchased a two-compartment aboveground tank that includes a half-shell spill containment vessel.

With respect to the applicant's claimed facility cost of \$19,089, the Department determined that all of the costs included in this figure are eligible pursuant to the definition of a pollution control facility in ORS 648.155. A breakdown of the applicant's claimed costs is shown below.

Application No. TC-2842 Page 3

Facility		Applicant Claimed Costs	Department Approved Costs
Corrosion Protect Epoxy tank lining		\$ 11,019	\$11,019
Above-ground Tank Line leak detecto Secondary contain	rs	378 7,692	378 7,692
	Total	\$ 19,089	\$ 19,089
	Eligible Faci	lity Cost	\$ 19,089

With regard to the line leak detectors and secondary containment shell on the aboveground tank, the Department considers them eligible, because their cost was incurred soley for the purpose of pollution control. The cost listed above does not include the cost of the basic storage tank which the manufacturer sells for \$6150.

The applicant reported that soil was inspected during construction of the project and no evidence of contamination was found. Tank tightness testing on the underground tank had been performed shortly prior to the project.

Based upon information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

The claimed facility is intended to prevent leaks from corrosion or spillage and does not recover or convert waste products into salable or usable commodity.

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

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

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

The applicant felt that the best available methods were chosen. The methods, equipment and costs chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

The Department determined the percent allocable using standardized methodology pursuant to the latest interpretation of the Oregon Administrative Rules Chapter 340 Division 16. The result is displayed in the table at the end of this section.

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

Corrosion Protection:	Eligible Claimed Costs	Percent Allocable	Amount <u>Allocable</u>
Epoxy tank lining	\$11,019	100%	\$11,019
Aboveground Tank: Line leak detectors	378	100	. 270
Secondary containment	7,692_	100	378 7,6 <u>9</u> 2
occomadiff containment	1,052	_ 100	7,032
Total	\$19,089	100%	\$19,089

5. Summation

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

Application No. TC-2842 Page 5

- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility:, defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$19,089 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-2842.

Barbara J. Anderson (503) 229-5870 August 17, 1990

State of Oregon Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Blue Sky Farm, Inc. PO Box 217 Woodburn, Oregon 97071

The applicant owns and operates a grass seed farm operation in Woodburn, Oregon.

Application was made for tax credit for an air pollution control facility.

2. Description of Claimed Facility

The facility described in this application is a straw storage building 80' long by 106' wide, located at 14703 Manning Road NE, Woodburn, Oregon. The land and buildings are owned by the applicant.

Claimed facility cost: \$30,363 (Accountant's Certification was provided.)

3. <u>Procedural Requirements</u>

The facility is governed by ORS 468.150 through 468.190, and by OAR Chapter 340, Division 16. The facility has met all statutory deadlines in that:

Construction of the facility was substantially completed on December 5, 1989, and the application for final certification was found to be complete on July 6, 1990, within two years of substantial completion of the facility. The request for preliminary certification was approved on April 12, 1989.

4. Evaluation of Application

a. The facility 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."

The applicant's farming operation includes approximately 1250 acres of grass seed crops, and in recent years has registered 590 acres in the Department's open field burning program for the Willamette Valley. The equipment will enable the applicant to reduce acreage to be open burned by approximately 500 acres. Other related equipment that has been certified for this applicant includes a cover crop disk and a propane flamer.

b. Eligible Cost Findings

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

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

The facility promotes the conversion of a waste product (straw) into a salable commodity by providing protection from the Weather.

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

There is no annual percent return on the investment as applicant claims no gross annual income because of the unreliable market for straw.

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 installation of the facility.

There is an increase in operating costs of \$806 to annually maintain and operate the facility.

5. Any other factors which are relevant in establishing the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air pollution.

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

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to reduce a substantial quantity of air pollution and accomplishes this purpose by the reduction of air contaminants, as defined in ORS 468.275.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility that is properly allocable to pollution control is 100%.

6. Reviewer's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$30,363, with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application Number TC-2858.

Jim Britton, Manager Smoke Management Program Natural Resources Division Oregon Department of Agriculture (503) 378-6792

JB;bmtc2858 Julv 6, 1990

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Boise Cascade Corporation P. O. Box 74 Boise, ID 83703 UST Facility Number 5368

The applicant owns and operates a trucking terminal at 2017 N.W. Vaughn Street, Portland, OR.

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

2. <u>Description of Facility</u>

The claimed pollution control facilities described in this application are the replacement of 2 bare steel tanks and piping with one total containment double wall polyethylene jacketed steel underground storage tank and double wall fiberglass piping, and the installation of an EBW spill containment basin, monitoring wells, Petrosonic III tank monitor, Red Jacket line leak detectors and EBW breakaway shutoff devices. A third waste oil tank was decommissioned at the time of the project.

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

Claimed facility cost \$53,483 Percent allocable to pollution control 100%

3. <u>Procedural Requirements</u>

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

The facility met all statutory deadlines in that installation of the facility was substantially completed on September 8, 1989 and the application for certification was found to be complete within two years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose

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

Prior to the installation of pollution control, the facility consisted of three bare steel underground storage tanks and piping with no corrosion protection and no leak detection or spill and overfill prevention equipment.

Effective December 22, 1988, EPA established a ten year phase-in program for tank owners to upgrade existing underground storage tanks to new tank standards. This includes installing pollution control equipment to provide protection against releases due to corrosion, to prevent spills and release from overfill, and to monitor for leaks.

To respond to corrosion protection, the applicant installed a total containment double wall polyethylene jacketed steel tank and double wall fiberglass piping. This equipment meets EPA requirements for corrosion protection.

To respond to spill and overfill prevention, the applicant installed spill containment basins and breakaway shutoff devices. This equipment meets EPA requirements for spill and overfill prevention.

To respond to leak detection requirements, the applicant installed a tank monitor system, line leak detectors and monitoring wells. This equipment meets EPA requirements for leak detection.

With respect to the applicant's claimed facility cost of \$53,483, the Department determined that all of the costs included in this figure are eligible pursuant to the definition of a pollution control facility in ORS 648.155. A breakdown of the applicant's claimed costs is shown below.

Application No. TC-2911 Page 3

Facility	Applicant Claimed Costs	Department Adjusted <u>Costs</u>
Corrosion Protection: Double wall tanks Fiberglass pipe & fittings	\$ 18,688 1,420	\$ 18,688 1,420
Spill & Overfill Prevention: Spill containment basins Breakaway shutoff devices	230 210	230 210
Leak Detection: Tank monitor Line leak detectors Monitoring wells	3,773 170 151	3,773 170 151
Labor and materials	28,841	28,841
Total	\$ 53,483	\$ 53,483
Adjusted Eligible Fac	cility Cost	\$ 53,483

The applicant reported that contaminated soil was found during tank removal and was reported to DEQ. The soil was removed and disposed of. DEQ, Southwest Region reports that the cleanup has been satisfactorily completed.

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant indicated that the only alternative would have been removal of existing fuel system and the purchase of fuel from an outside vendor. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

The Department determined the percent allocable using standardized methodology pursuant to the latest interpretation of the Oregon Administrative Rules Chapter 340 Division 16. The result is displayed in the table at the end of this section. Where the percent allocable is less than 100%, the rationale is presented in the following paragraphs.

With respect to corrosion protection, the Department has determined the percent allocable on the cost of a corrosion protected tank system by using a formula based on the difference in cost between the protected tank system and a bare steel tank system as a percent of the protected system. Applying this formula to the costs presented by the applicant, where the corrosion protected tank system cost is \$18,688 and the bare steel system is \$8,500, the resulting portion of the eligible tank cost allocable to pollution control is 55%.

The applicant's claimed cost for a tank monitor is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the device can serve other purposes, e.g., inventory control.

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

	Eligible Facility Cost	Percent Allocable	Amount <u>Allocable</u>
Corrosion Protection: Double wall tanks Fiberglass pipe & fittings	\$ 18,688 1,420		\$ 10,278 1,420
Spill & Overfill Prevention Spill containment basins Breakaway shutoff devices	n: 230 210		230 210
Leak Detection: Tank monitor Line leak detectors Monitoring wells	3,773 170 151		3,396 170 151
Labor and materials	28,841	100	28,841
Total	\$ 53,483	84%	\$ 44.696

5. Summation

- a. The facility was constructed in accordance with all regulatory requirements.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility:, defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 84%.

6. <u>Director's Recommendation</u>

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$53,483 with 84% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-2911.

Barbara J. Anderson August 17, 1990 (503) 229-5870

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Hyster Company 2701 NW Vaughn, Suite 900 Portland, OR 97210 UST Facility Number 5736

The applicant owns and operates a lab and testing facility to support lift truck design engineering activities at 4000 Blue Lake Road, Fairview, OR.

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

2. Description of Facility

The claimed pollution control facilities described in this application is the installation of a Petrosonic III tank monitor, Red Jacket line leak detectors, Emco spill containment basins, overfill alarm and Stage I vapor recovery fill tubes on four underground storage tank systems.

The applicant claims the following cost and percentage for the claimed pollution control facility. The applicant provided an accountant's certification of cost.

Claimed Facility cost \$22,989
Percent allocable to pollution control 100%

3. <u>Procedural Requirements</u>

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

The facility met all statutory deadlines in that installation of the facility was substantially completed in October 1989 and the application for certification was found to be complete within two years of substantial completion of the facility.

4. Evaluation of Application

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

Prior to completing the work claimed, the facility had four bare steel underground storage tanks and piping with no corrosion protection and no system for detecting leaks or preventing spills and overfills.

Effective December 22, 1988, EPA established a ten year phase-in program for tank owners to upgrade existing underground storage tanks to new tank standards. This includes installing pollution control equipment to provide protection against releases due to corrosion, to prevent spills and release from overfill, and to monitor for leaks.

To respond to spill and overfill prevention requirements, the applicant installed Emco spill containment basins and an overfill alarm. This equipment meets EPA requirements for spill and overfill prevention.

To respond to leak detection requirements, the applicant installed a Petrosonic III automatic tank monitoring system and line leak detectors. This equipment meets EPA requirements for leak detection.

The applicant also installed fill tubes for Stage I vapor recovery.

The applicant acknowledged recognition of the need to meet corrosion protection requirements by December 1998.

With respect to the applicant's claimed facility cost of \$22,989, the Department determined that all of the costs included in this figure are eligible pursuant to the definition of a pollution control facility in ORS 648.155. A breakdown of the applicant's claimed costs is shown below.

Application No. TC-2929 Page 3

Facility		Applicant Claimed Costs	Department Approved Costs
Spill and Overfil Spill containment recovery and a	t basins, vapor	1,174	1,174
Leak Detection: Tank monitor syst Line leak detects		6,442 378	6,442 378
Miscellaneous mat Installation	terials -	727 14,268	727 14,268
	Total	\$22,989	\$22,989
	Eligible Facil:	ity Cost	\$22,989

The applicant reported that the soil was inspected during the project and no contamination was found.

Based on the records available to us at the time of this review, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

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

3) The applicant indicated that the methods selected were considered to be the best alternatives. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

The Department determined the percent allocable using standardized methodology pursuant to the latest interpretation of the Oregon Administrative Rules Chapter 340 Division 16. The result is displayed in the table at the end of this section. Where the percent allocable is less than 100%, the rationale is presented in the following paragraphs.

The applicant's claimed cost for a leak detection system, the Petrosonic III automatic tank monitor, is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the equipment can be used for other purposes, e.g., inventory control.

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

Facility		Percent	Amount <u>Allocable</u>
Spill and Overfill Prevent Spill containment basins,			
vapor recovery and alar	ms 1,174	100%	1,174
Leak Detection:			
Tank monitor system	6,442	90	5,798
Line leak detectors	378	100	378
			•
Miscellaneous materials	727	100	727
Installation	14,268	100	14,268
Total	\$22,989	97%	\$22 345

5. Summation

- a. The facility was constructed in accordance with all regulatory requirements.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility" defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 97%.

6. <u>Director's Recommendation</u>

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$22,989 with 97% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-2929.

Barbara J. Anderson (503) 229-5870 August 17, 1990

\$17,932

100%

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Fletcher Oil Company 471 North Curtis Road Boise, ID 83706 UST Facility Number 4091

The applicant owns and operates a retail gas station and grocery store at 2212 10th Street, Baker City, OR.

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

2. <u>Description of Facility</u>

The claimed pollution control facilities described in this application are the installation of sacrificial anode cathodic protection on 3 steel underground storage tanks and piping, Petrosonic III tank monitor, Red Jacket line leak detectors, spill containment basins, vapor monitoring well and overfill alarm.

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

Claimed facility cost
Percent allocable to pollution control

3. Procedural Requirements

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

The facility met all statutory deadlines in that installation of the facility was substantially completed on April 27, 1990 and the application for certification was found to be complete within two years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and

Application No. TC-2950 Page 2

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

Prior to the installation of pollution control, the facility consisted of 3 bare steel underground storage tanks and piping with no corrosion protection and no leak detection or spill and overfill prevention equipment.

Effective December 22, 1988, EPA established a ten year phase-in program for tank owners to upgrade existing underground storage tanks to new tank standards. This includes installing pollution control equipment to provide protection against releases due to corrosion, to prevent spills and release from overfill, and to monitor for leaks.

To respond to corrosion protection, the applicant installed sacrificial anodes on the existing steel tanks and piping. This equipment meets EPA requirements for corrosion protection.

To respond to spill and overfill prevention, the applicant installed spill containment basins and an overfill alarm. This equipment meets EPA requirements for spill and overfill prevention.

To respond to leak detection requirements, the applicant installed a tank monitor, line leak detectors and a vapor monitoring well. This equipment meets EPA requirements for leak detection.

With respect to the applicant's claimed facility cost of \$17,932, the Department determined that all of the costs included in this figure are eligible pursuant to the definition of a pollution control facility in ORS 648.155. A breakdown of the applicant's claimed costs is shown below.

Application No. TC-2950 Page 3

Facility	Applicant Claimed Costs	Department Adjusted <u>Costs</u>	
Corrosion Protection: Cathodic protection anodes	\$ 1,200	\$ 1,200	
Spill & Overfill Prevention: Spill containment basins Overfill alarm	1,200 649	1,200 649	
Leak Detection: Tank monitor Line leak detectors Vapor monitoring well	3,500 570 690	3,500 570 690	
Labor and materials	10,123	10,123	
Total	\$ 17,932	\$ 17,932	
Adjusted Eligible Fac	cility Cost	\$ 17,932	

The applicant reported that the soil was inspected during construction and no evidence of contamination was found. Tank tightness testing had been performed prior to the project.

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant indicated that no reasonable alternatives existed. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

The Department determined the percent allocable using standardized methodology pursuant to the latest interpretation of the Oregon Administrative Rules Chapter 340 Division 16. The result is displayed in the table at the end of this section. Where the percent allocable is less than 100%, the rationale is presented in the following paragraphs.

The applicant's claimed cost for a tank monitor is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the device can serve other purposes, e.g., inventory control.

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

	Eligible Facility Cost		Percent Allocable		
Corrosion Protection: Cathodic protection anodes	\$	1,200	100%	\$	1,200
Spill & Overfill Prevention Spill containment basins Overfill alarm	ı:	1,200 649			1,200 649
Leak Detection: Tank monitor Line leak detectors Vapor monitoring well		3,500 570 690	90 100 100		3,150 570 690
Labor and materials		10,123	100		10,123
Total	\$	17,932	98%	\$:	17,582

5. Summation

- a. The facility was constructed in accordance with all regulatory requirements.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility:, defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 98%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$17,932 with 98% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-2950.

Barbara J. Anderson August 17, 1990 (503) 229-5870

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

May-Slade Oil Company, Inc. 953 S. Spring Street Klamath Falls, OR 97601 UST Facility Number 0622

The applicant owns and operates a service station at 3732 S. 6th Street, Klamath Falls, OR.

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

2. Description of Facility

The claimed pollution control facilities described in this application are the installation of epoxy lining in three underground storage tanks, impressed current cathodic protection to tanks and piping and spill containment basins.

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

Claimed facility cost \$27,940 Percent allocable to pollution control 100%

3. Procedural Requirements

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

The facility met all statutory deadlines in that installation of the facility was substantially completed on July, 1989 and the application for certification was found to be complete within two years of substantial completion of the facility.

4. Evaluation of Application

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

Application No. TC-3005 Page 2

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

Prior to the installation of pollution control, the facility consisted of three bare steel underground storage tanks and piping with no corrosion protection and no leak detection or spill and overfill prevention equipment.

Effective December 22, 1988, EPA established a ten year phase-in program for tank owners to upgrade existing underground storage tanks to new tank standards. This includes installing pollution control equipment to provide protection against releases due to corrosion, to prevent spills and release from overfill, and to monitor for leaks.

To respond to corrosion protection, the applicant installed epoxy tank lining and impressed current cathodic protection in three tank and piping systems. This equipment meets EPA requirements for corrosion protection.

To respond to spill and overfill prevention, the applicant installed spill containment basins on the tanks. This equipment meets EPA requirements for spill and overfill prevention.

The applicant did not install leak detection equipment at this time, but reported plans to install tank monitors on the three tanks within the year, which meets EPA requirements for leak detection.

With respect to the applicant's claimed facility cost of \$27,940, the Department determined that all of the costs included in this figure are eligible pursuant to the definition of a pollution control facility in ORS 648.155. A breakdown of the applicant's claimed costs is shown below.

Application No. TC-3005 Page 3

Facility	Applicant Claimed Costs	Department Adjusted <u>Costs</u>
Corrosion Protection: Epoxy tank lining Cathodic protection	\$19,866 6,800	\$ 19,866 6,800
Spill & Overfill Prevention: Spill containment basins	1,274	1,274
Total	\$ 27,940	\$ 27,940
Adjusted Eligible Fac	cility Cost	\$ 27,940

The applicant reported that tank tightness testing was performed as part of the project with no leakage discovered, and the soil was inspected and no evidence of contamination was found.

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant considered replacing the tanks, but determined that lining them was more economical.

The methods chosen are acceptable for meeting the federal regulations.

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

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

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

The Department determined the percent allocable using standardized methodology pursuant to the latest interpretation of the Oregon Administrative Rules Chapter 340 Division 16. The result is displayed in the table at the end of this section. Where the percent allocable is less than 100%, the rationale is presented in the following paragraphs.

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

	Eligible Facility <u>Cost</u>	Percent <u>Allocable</u>	Amount Allocable
Corrosion Protection: Epoxy tank lining Cathodic protection	\$19,866 6,800	100% 100	\$ 19,866 6,800
Spill & Overfill Prev Spill containment bas		100_	1,274
Total	\$ 27,940	100%	\$ 27,940

5. Summation

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

Application No. TC-3005 Page 5

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

- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. <u>Director's Recommendation</u>

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$27,940 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3005.

Barbara J. Anderson August 17, 1990 (503) 229-5870

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

May-Slade Oil Company, Inc. 953 S. Spring Street Klamath Falls, OR 97601 UST Facility Number 1519

The applicant owns and operates a convenience store and service station at 5419 S. 6th Street, Klamath Falls, OR.

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

2. <u>Description of Facility</u>

The claimed pollution control facilities described in this application are the installation of epoxy lining in three underground storage tanks, impressed current cathodic protection to tanks and piping and spill containment basins.

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

Claimed facility cost \$23,503 Percent allocable to pollution control 100%

3. Procedural Requirements

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

The facility met all statutory deadlines in that installation of the facility was substantially completed on July, 1989 and the application for certification was found to be complete within two years of substantial completion of the facility.

4. Evaluation of Application

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

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

Prior to the installation of pollution control, the facility consisted of three bare steel underground storage tanks and piping with no corrosion protection and no leak detection or spill and overfill prevention equipment. Two other tanks exist at the site that were not included in the project because they already have cathodic protection and are only two years old. However, they do not have spill and overfill protection or leak detection.

Effective December 22, 1988, EPA established a ten year phase-in program for tank owners to upgrade existing underground storage tanks to new tank standards. This includes installing pollution control equipment to provide protection against releases due to corrosion, to prevent spills and release from overfill, and to monitor for leaks.

To respond to corrosion protection, the applicant installed epoxy tank lining and impressed current cathodic protection in three tank and piping systems. The fourth and fifth tanks will be epoxy lined within five years. This equipment meets EPA requirements for corrosion protection.

To respond to spill and overfill prevention, the applicant installed spill containment basins on three tanks. The applicant plans to install basins on the fourth and fifth tanks within the year. This equipment meets EPA requirements for spill and overfill prevention.

The applicant did not install leak detection equipment at this time, but reported plans to install tank monitors on the five tanks within the year, which meets EPA requirements for leak detection.

With respect to the applicant's claimed facility cost of \$23,503, the Department determined that all of the costs included in this figure are eligible pursuant to the definition of a pollution control facility in ORS 648.155. A breakdown of the applicant's claimed costs is shown below.

Application No. TC-3006 Page 3

Facility	Applicant Claimed Costs	Department Adjusted Costs
Corrosion Protection: Epoxy tank lining Cathodic protection	\$15,279 6,500	\$ 15,279 6,500
Spill & Overfill Prevention: Spill containment basins	<u> </u>	1,724
Total	\$ 23,503	\$ 23,503
Adjusted Eligible	Facility Cost	\$ 23,503

The applicant reported that tank tightness testing was performed as part of the project with no leakage discovered, and the soil was inspected and no evidence of contamination was found.

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant considered replacing the tanks, but determined that lining them was more economical.

Application No. TC-3006 Page 4

The methods chosen are acceptable for meeting the federal regulations.

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

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

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

The Department determined the percent allocable using standardized methodology pursuant to the latest interpretation of the Oregon Administrative Rules Chapter 340 Division 16. The result is displayed in the table at the end of this section. Where the percent allocable is less than 100%, the rationale is presented in the following paragraphs.

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

	Eligible Facility Cost	Percent Allocable	Amount Allocable
Corrosion Protection:			,
Epoxy tank lining	\$15,279	100%	\$ 15,279
Cathodic protection	6,500	100	6,500
Spill & Overfill Prevention	n:		
Spill containment basins	1,724	<u> 100</u>	1,724
Total	\$ 23,503	100%	\$ 23,503

5. Summation

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

Application No. TC-3006 Page 5

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

- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$23,503 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3006.

Barbara J. Anderson August 17, 1990 (503) 229-5870

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

May-Slade Oil Company, Inc. 953 S. Spring Street Klamath Falls, OR 97601 UST Facility Number 1521

The applicant owns and operates a convenience store and service station at 135 Main Street, Klamath Falls, OR.

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

2. <u>Description of Facility</u>

The claimed pollution control facilities described in this application are the installation of epoxy lining in two underground storage tanks, impressed current cathodic protection to tanks and piping and spill containment basins.

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

Claimed facility cost \$19,432 Percent allocable to pollution control 100%

3. Procedural Requirements

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

The facility met all statutory deadlines in that installation of the facility was substantially completed on July, 1989 and the application for certification was found to be complete within two years of substantial completion of the facility.

4. Evaluation of Application

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

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

Prior to the installation of pollution control, the facility consisted of two bare steel underground storage tanks and piping with no corrosion protection and no leak detection or spill and overfill prevention equipment. A third tank exists at the site that was not included in the project because it already has cathodic protection and is only two years old. However, it does not have spill and overfill protection or leak detection.

Effective December 22, 1988, EPA established a ten year phase-in program for tank owners to upgrade existing underground storage tanks to new tank standards. This includes installing pollution control equipment to provide protection against releases due to corrosion, to prevent spills and release from overfill, and to monitor for leaks.

To respond to corrosion protection, the applicant installed epoxy tank lining and impressed current cathodic protection in two tank and piping systems. The third tank will be epoxy lined within five years. This equipment meets EPA requirements for corrosion protection.

To respond to spill and overfill prevention, the applicant installed spill containment basins on two tanks. The applicant plans to install a basin on the third tank within the year. This equipment meets EPA requirements for spill and overfill prevention.

The applicant did not install leak detection equipment at this time, but reported plans to install tank monitors on the three tanks within the year, which meets EPA requirements for leak detection.

With respect to the applicant's claimed facility cost of \$19,432, the Department determined that all of the costs included in this figure are eligible pursuant to the definition of a pollution control facility in ORS 648.155. A breakdown of the applicant's claimed costs is shown below.

Application No. TC-3007 Page 3

Facility	Applicant Claimed <u>Costs</u>	Department Adjusted Costs
Corrosion Protection: Epoxy tank lining Cathodic protection	\$11,337 6,910	\$ 11,337 6,910
Spill & Overfill Prevention: Spill containment basins	1,185	1,185
Total	\$ 19,432	\$ 19,432
Adjusted Eligible F	acility Cost	\$ 19,432

The applicant reported that tank tightness testing was performed as part of the project with no leakage discovered, and the soil was inspected and no evidence of contamination was found.

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant considered replacing the tanks, but determined that lining them was more economical.

Application No. TC-3007 Page 4

The methods chosen are acceptable for meeting the federal regulations.

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

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

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

The Department determined the percent allocable using standardized methodology pursuant to the latest interpretation of the Oregon Administrative Rules Chapter 340 Division 16. The result is displayed in the table at the end of this section. Where the percent allocable is less than 100%, the rationale is presented in the following paragraphs.

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

	Eligible Facility Cost	Percent Allocable	Amount Allocable
Corrosion Protection: Epoxy tank lining Cathodic protection	\$11,337 6,910	100% 100	\$ 11,337 6,910
Spill & Overfill Prevention Spill containment basins	1,185	100	1,185
Total	\$ 19,432	100%	\$ 19,432

5. Summation

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

Application No. TC-3007 Page 5

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

- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. <u>Director's Recommendation</u>

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$19,432 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3007.

Barbara J. Anderson August 17, 1990 (503) 229-5870

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Peter F. Meyer, Vice President Metrofueling, Inc. P.O. Box 2099 Salem, Oregon 97308

UST Facility Number 6571

The applicant owns and operates a commercial cardlock fueling facility at 5000 N. Basin, Portland, Oregon.

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

2. <u>Description of Facility</u>

The claimed pollution control facility described in this application is the installation of UST leak detection devices on three (3) gasoline USTs and one (1) diesel USTs in the form of automatic liquid tank gauges with a built-in alarm.

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

Claimed facility cost \$7,031 Percent allocable to pollution control 100%

Of the amount shown above, the Department determined that \$75 was ineligible. The applicant applied for the list price of four manholes rather than the actual amount paid to the vendor.

Adjusted claimed facility cost

\$6,956

3. Procedural Requirements

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

The facility met all statutory deadlines in that installation of the facility was substantially completed on November 1, 1989. The application for certification was found to be

complete within two years of substantial completion of the facility.

4. Evaluation of Application

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

Prior to the installation of pollution control, the facility consisted of four underground storage tanks with overfill prevention equipment.

Effective December 22, 1988, EPA established a ten year phase-in program for tank owners to upgrade existing underground storage tanks to new tank standards. This includes installing pollution control equipment to provide protection against releases due to corrosion, to prevent spills and release from overfill, and to monitor for leaks.

To respond to leak detection requirements, the applicant installed Petrosonic III automatic tank gauging equipment on four USTs. This equipment meets EPA requirements for leak detection.

With respect to the applicant's adjusted claimed facility cost of \$7,031, and the Department's downward adjustment to \$6,956, the Department determined that the applicant neglected to credit the costs for the discount of \$75 on four manholes. The remaining costs are eligible pursuant to the definition of a pollution control facility in ORS 648.155. A breakdown of the applicant's claimed costs is shown below.

Application No. TC-3071 August 21, 1990 Page 3

Facility	Applicant Claimed Costs	Department Adjusted Costs
LEAK DETECTION: Equipment Installation	\$ 6,094 \$ 937	\$6,019 \$ 937
Total	\$ 7,031	\$6,956

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

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant indicated that no alternative methods were considered. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

The applicant estimated that 100% of the claimed facility cost of \$7,031 was allocable to pollution control. The applicant arrived at this percentage by totaling the cost of the equipment and installation of the equipment. The applicant did not consider an equipment discount in their total costs, thus the Department reduced the eligible facility cost by \$75 to \$6,956.

The Department determined the percent allocable using standardized methodology pursuant to the latest interpretation of the Oregon Administrative Rules Chapter 340 Division 16. The result is displayed in the table at the end of this section.

The applicant's claimed cost for a tank monitor is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the device can serve other purposes, e.g., inventory control.

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

		Eligible Facility <u>Cost</u>	Percent Allocable	Amount <u>Allocable</u>
LEAK	DETECTION: Equipment Installation	\$6,019 \$ 937	90% 100%	\$5,417 \$ 937
	Total	\$6,956	91%	\$6,354

5. Summation

- a. The facility was constructed in accordance with all regulatory requirements.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility:, defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 91%.

6. <u>Director's Recommendation</u>

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$6,956 with 91% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3071.

Larry D. Frost (503) 229-5769 T3071F

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Peter F. Meyer, Vice President Metrofueling, Inc. P.O. Box 2099 Salem, Oregon 97308

UST Facility Number 3615

The applicant owns and operates a commercial cardlock fueling facility at 2600 Prairie Rd, Eugene, Oregon.

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

2. <u>Description of Facility</u>

The claimed pollution control facility described in this application is the installation of UST leak detection devices on two (2) gasoline USTs and one (1) diesel USTs in the form of automatic liquid tank gauges with a built-in alarm.

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

Claimed facility cost \$11,211
Percent allocable to pollution control 100%

Of the amount shown above, the Department determined that \$27 was ineligible. The applicant applied for the list price of an alarm horn rather than the actual amount paid to the vendor.

Adjusted claimed facility cost

\$11,185

3. <u>Procedural Requirements</u>

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

The facility met all statutory deadlines in that installation of the facility was substantially completed on August 30, 1989. The application for certification was found to be

Application No. TC-3075 August 22, 1990 Page 2

complete within two years of substantial completion of the facility.

4. Evaluation of Application

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

Prior to the installation of pollution control, the facility consisted of three underground storage tanks with spill containment equipment.

Effective December 22, 1988, EPA established a ten year phase-in program for tank owners to upgrade existing underground storage tanks to new tank standards. This includes installing pollution control equipment to provide protection against releases due to corrosion, to prevent spills and release from overfill, and to monitor for leaks.

To respond to leak detection requirements, the applicant installed Petrosonic III automatic tank gauging equipment on three USTs. This equipment meets EPA requirements for leak detection.

With respect to the applicant's adjusted claimed facility cost of \$11,211, and the Department's downward adjustment to \$11,185, the Department determined that the applicant neglected to credit the costs for the discount of \$27 on an audible alarm. The remaining costs are eligible pursuant to the definition of a pollution control facility in ORS 648.155. A breakdown of the applicant's claimed costs is shown below.

Application No. TC-3075 August 22, 1990 Page 3

<u>Faci</u>	lity	Applicant Claimed <u>Costs</u>	Department Adjusted Costs
LEAK	DETECTION: Equipment Installation	\$ 4,339 \$ 6,872	\$ 4,313 \$ 6,872
	Total	\$11,211	\$11,185

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

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant indicated that no alternative methods were considered. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

The applicant estimated that 100% of the claimed facility cost of \$11,211 was allocable to pollution control. The applicant arrived at this percentage by totaling the cost of the equipment and installation of the equipment. The applicant did not consider an equipment discount in their total costs, thus the Department reduced the eligible facility cost by \$27 to \$11,185.

The Department determined the percent allocable using standardized methodology pursuant to the latest interpretation of the Oregon Administrative Rules Chapter 340 Division 16. The result is displayed in the table at the end of this section.

The applicant's claimed cost for a tank monitor is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the device can serve other purposes, e.g., inventory control.

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

•		Eligible Facility <u>Cost</u>	Percent <u>Allocable</u>	Amount Allocable
LEAK	DETECTION: Equipment Installation	\$ 4,313 \$ 6,872	90% 100%	\$ 3,881 \$ 6,872
	Total	\$11,185	96%	\$10,753

5. <u>Summation</u>

- a. The facility was constructed in accordance with all regulatory requirements.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility:, defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 96%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$11,185 with 96% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3075.

Larry D. Frost (503) 229-5769 T3075F

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Peter F. Meyer, Vice President Metrofueling, Inc. P.O. Box 2099 Salem, Oregon 97308

UST Facility Number 171

The applicant owns and operates a commercial cardlock fueling facility at 635 S.E. 7th, Portland, Oregon.

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

2. <u>Description of Facility</u>

The claimed pollution control facility described in this application is the installation of UST leak detection devices on two (2) gasoline USTs and one (1) diesel USTs in the form of automatic liquid tank gauges with a built-in alarm.

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

Claimed facility cost \$10,177
Percent allocable to pollution control 100%

Of the amount shown above, the Department determined that \$57 was ineligible. The applicant applied for the list price of three manholes rather than the actual amount paid to the vendor.

Adjusted claimed facility cost

\$10,120

3. <u>Procedural Requirements</u>

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

The facility met all statutory deadlines in that installation of the facility was substantially completed on March 15, 1990. The application for certification was found to be

complete within two years of substantial completion of the facility.

4. Evaluation of Application

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

Prior to the installation of pollution control, the facility consisted of three underground storage tanks with spill containment equipment.

Effective December 22, 1988, EPA established a ten year phase-in program for tank owners to upgrade existing underground storage tanks to new tank standards. This includes installing pollution control equipment to provide protection against releases due to corrosion, to prevent spills and release from overfill, and to monitor for leaks.

To respond to leak detection requirements, the applicant installed Petrosonic III automatic tank gauging equipment on three USTs. This equipment meets EPA requirements for leak detection.

With respect to the applicant's claimed facility cost of \$10,177, and the Department's downward adjustment to \$10,120, the Department determined that the applicant neglected to credit the costs for the discount of \$57 on three manholes. The remaining costs are eligible pursuant to the definition of a pollution control facility in ORS 648.155. A breakdown of the applicant's claimed costs is shown below.

Application No. TC-3082 August 22, 1990 Page 3

<u>Faci</u>	lity	Applicant Claimed <u>Costs</u>	Department Adjusted Costs
LEAK	DETECTION: Equipment Installation	\$ 5,006 \$ 5,171	\$ 4,949 \$ 5,171
	Total	\$10,177	\$10,120

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

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant indicated that no alternative methods were considered. The methods chosen are acceptable for meeting the requirements of federal regulations.

Application No. TC-3082 August 22, 1990 Page 4

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

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

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

The applicant estimated that 100% of the claimed facility cost of \$10,177 was allocable to pollution control. The applicant arrived at this percentage by totaling the cost of the equipment and installation of the equipment. The applicant did not consider an equipment discount in their total costs, thus the Department reduced the eligible facility cost by \$57 to \$10,120.

The Department determined the percent allocable using standardized methodology pursuant to the latest interpretation of the Oregon Administrative Rules Chapter 340 Division 16. The result is displayed in the table at the end of this section.

The applicant's claimed cost for a tank monitor is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the device can serve other purposes, e.g., inventory control.

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

		Eligible Facility <u>Cost</u>	Percent <u>Allocable</u>	Amount Allocable
LEAK	DETECTION: Equipment Installation	\$ 4,949 \$ 5,171	90% 100%	\$ 4,454 \$ 5,171
	Total	\$10,120	95%	\$ 9,625

5. Summation

- a. The facility was constructed in accordance with all regulatory requirements.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility:, defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 95%.

6. <u>Director's Recommendation</u>

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$10,120 with 95% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3082.

Larry D. Frost (503) 229-5769 T3082F

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Gary's Cannon Beach Service Center, Inc. 280 N. Hemlock Cannon Beach, OR 97110 UST Facility Number 0319

The applicant owns and operates a service station at the above address.

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

2. <u>Description of Facility</u>

The claimed pollution control facilities described in this application are the installation of epoxy lining in four bare steel underground storage tanks and the replacement of bare steel piping with fiberglass piping, the installation of a tank monitor, spill containment basins, suction pumps and breakaway shutoff devices.

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

Claimed facility cost \$45,428 Percent allocable to pollution control 100%

During review of the application, the Department determined that an additional \$11,690 was eligible pursuant to the definition of a pollution control facility as stated in ORS 468.155, resulting in an adjusted facility cost of \$57,118. The rationale for making this adjustment is explained in Section 4.a., the evaluation of the application.

Adjusted claimed facility cost

\$ 57,118

3. <u>Procedural Requirements</u>

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

The facility met all statutory deadlines in that installation of the facility was substantially completed on October 15, 1989 and the application for certification was found to be

complete within two years of substantial completion of the facility.

4. Evaluation of Application

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

Prior to the installation of pollution control, the facility consisted of five underground storage tanks, one with corrosion protection (waste oil tank has interior lining) and four without, and all of which had no corrosion protected piping or leak detection or spill and overfill prevention equipment.

Effective December 22, 1988, EPA established a ten year phase-in program for tank owners to upgrade existing underground storage tanks to new tank standards. This includes installing pollution control equipment to provide protection against releases due to corrosion, to prevent spills and release from overfill, and to monitor for leaks.

To respond to corrosion protection, the applicant installed epoxy tank lining in the four non-corrosion protected tanks and fiberglass piping for all tank systems. This equipment meets EPA requirements for corrosion protection.

To respond to spill and overfill prevention, the applicant installed spill containment basins and breakaway shutoff devices. This equipment meets EPA requirements for spill and overfill prevention.

To respond to leak detection requirements, the applicant installed a tank monitor system. This equipment meets EPA requirements for leak detection.

The applicant also replaced submersible pressure pumps with suction pumps to minimize contamination in the event of a leak developing in the tank or piping.

With respect to the applicant's claimed facility cost of \$45,428 and the Department's upward adjustment to \$57,118, the Department determined that one of the costs of the project not claimed was eligible pursuant to the definition of a pollution control facility in ORS 648.155. An explanation of the adjustment follows the breakdown of the applicant's claimed costs shown below.

Facility	Applicant Claimed Costs	Department Adjusted Costs
Corrosion Protection:		
Epoxy tank lining	\$22, 563	\$ 22,563
Fiberglass pipe & fittings	10,464	10,464
Spill & Overfill Prevention:		
Spill containment basins	700	700
Breakaway shutoff devices	270	270
Tuelle Debendelen.		
Leak Detection:	C 045	6 045
Tank monitor	6,845	6,845
Install tank monitor	1,663	1,663
Suction pumps	0	11,690
Site evaluation		•
	1,250	1,250
Labor and materials	1,673	<u> 1,673</u>
Total	\$ 45,428	\$ 57,118
Adjusted Eligible Fac	cility Cost	\$ 57,118

The applicant's cost for suction pumps is considered eligible by the Department because they were installed, according to the applicant, expressly for the purpose of pollution control. The applicant estimates that the pressure pumps, which the suction pumps replaced, had more than 60% of their useful life remaining. However, the applicant believed there was more risk associated with a pressure system because the pump would tend to increase the volume of a leak, if one were to occur, by forcing product out of the piping. The suction pump was chosen because it would tend to minimize a leak inasmuch as it would draw air and groundwater inward.

The applicant reported that tank tightness testing was performed as part of the project with no leakage discovered, and the soil was inspected during construction and no evidence of contamination was found.

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant considered replacing the tanks, but determined that lining them was more economical. The methods chosen are acceptable for meeting the federal regulations.

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

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

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

The Department determined the percent allocable using standardized methodology pursuant to the latest interpretation of the Oregon Administrative Rules Chapter 340 Division 16. The result is displayed in the table at the end of this section. Where the percent allocable is less than 100%, the rationale is presented in the following paragraphs.

Application No. TC-3095
Page 5

The applicant's claimed cost for a tank monitor is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the device can serve other purposes, e.g., inventory control.

The cost of the suction pumps is reduced to 60% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since, according to the applicant, this is the percentage of useful life that remained in the pumps that were replaced.

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

	Eligible Facility Cost	Percent <u>Allocable</u>	Amount <u>Allocable</u>
Corrosion Protection: Epoxy tank lining Fiberglass pipe & fittings	\$22,563 10,464	100% 100	\$ 22,563 10,464
Spill & Overfill Prevention Spill containment basins Breakaway shutoff devices	700 270	100 100	700 270
Leak Detection: Tank monitor Install tank monitor	6,845 1,663	90 100	6,161 1,663
Suction pumps Site evaluation Labor and materials	11,690 1,250 <u>1,673</u>	60 100 	7,014 1,250 <u>1,673</u>
Total	\$ 57,118	91%	\$ 51,758

5. Summation

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

Application No. TC-3095 Page 6

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

- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 91%.

6. <u>Director's Recommendation</u>

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$57,118 with 91% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3095.

Barbara J. Anderson August 17, 1990 (503) 229-5870

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Michael W. Kirk, Secretary Kirk Century Farms, Inc. 33214 Seefeld Drive 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 located at 33214 Seefeld Drive, Halsey, Oregon. The equipment is owned by the applicant.

John Deere 300 stackwagon	\$11,000
John Deere 2810 7-bottom plow	14,580
15' Dandl flail chopper (used)	3,000
John Deere 530 round baler	<u>17,500</u>

Claimed equipment cost: \$46,080 (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 in September, 1989, and the application for final certification was found to be complete on January 30, 1990, within two years of substantial purchase of the equipment.

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." Applicant estimates that he will not open field burn any of his 1150 acres of grass seed fields by 1990.

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 salable commodity by providing collection and packaging of straw for marketing and processing and plowing down the remaining residue into the soil.

2. The estimated annual percent return on the investment in the equipment.

There is no annual percent return on the investment as applicant claims a negative average annual cash flow because annual operating costs exceed 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 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 principal 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 \$46,080, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3149.

Jim Britton, Manager Smoke Management Program Natural Resources Division Oregon Department of Agriculture (503) 378-6792

JB:bmTC3149/sm August 31, 1990

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Michael Berger, Partner Berger Bros. 34125 Riverside Drive Albany, Oregon 97321

The applicant owns and operates a grass seed farm operation in Albany, 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 29722 Highway 34, Albany, Oregon. The equipment is owned by the applicant.

Rear's 14' flail chopper: \$ 9,117
New Holland 858 round baler: 7,500

Claimed equipment cost: \$16,617 (Accountant's Certification was provided.)

3. <u>Procedural Requirements</u>

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 September 20, 1989, and the application for final certification was found to be complete on February 15, 1990, within two years of substantial purchase of the equipment.

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."

Applicant claims that he has reduced open field burning by 560 acres by applying alternatives using this equipment.

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 stack burning.

2. The estimated annual percent return on the investment in the equipment.

There is no annual percent return on the investment as 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 to annually maintain and operate the equipment. These costs were considered in the return on investment calculations.

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 principal 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 \$16,617, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3156.

Jim Britton, Manager Smoke Management Program Natural Resources Division Oregon Department of Agriculture (503) 378-6792

JB:bmTC3156 August 31, 1990

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Ronald Schmucker, V.P. Oak Creek Farms, Inc. 34105 Highway 34, SE Albany, Oregon 97321

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 located at 31014 Seven Mile Lane, Tangent, Oregon. The equipment is owned by the applicant.

Wil Rich plow: \$ 21,000
Pul-flail chopper: 9,401
Claimed equipment cost: \$ 30,401

(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 24, 1989, and the application for final certification was found to be complete on February 15, 1990, within two years of substantial purchase of the equipment.

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." Applicant claims that approximately 500 acres are removed from the open field burning inventory.

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 is chopped and plowed under by the equipment.

2. The estimated annual percent return on the investment in the equipment.

There is no annual percent return on the investment as 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 to annually maintain and operate the equipment. These costs were considered in the return on investment calculations.

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 principal 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. <u>Director's Recommendation</u>

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$30,401, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3169.

Jim Britton Smoke Management Program Natural Resources Division Oregon Department of Agriculture (503) 378-6792

JB:bmTC3169/sm August 31, 1990

State of Oregon Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Joseph M. Cersovski; Donald E. Cersovski Cersovski Farms 31277 Diamond Hill Drive Harrisburg, Oregon 97446

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 located at 31277 Diamond Hill Drive, Harrisburg, Oregon. The equipment is owned by the applicant.

Ford plow \$ 3,700 15' Dandl Flail chopper 3,800

Claimed equipment cost: \$7,500 (Accountant's Certification was provided.)

3. Procedural Requirements

The equipment is governed by ORS 468.150 through 462.190, and by OAR Chapter 340, Division 16. The equipment has met all statutory deadlines in that:

Purchase of the equipment was substantially completed on May 31, 1989, and the application for final certification was found to be complete on April 27, 1990, within two years of substantial purchase of the equipment.

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."

The applicant claims that approximately 500 acres will be removed from the open field burning inventory.

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. After the baled straw is removed the remaining stubble is flail chopped and plowed under in all fields of annual grass.

2. The estimated annual percent return on the investment in the equipment.

There is no annual percent return on the investment due to the negative average annual cash flow because annual operating expenses exceed 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 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 principal 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 \$7,500, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3171.

Jim Britton, Manager Smoke Management Program Natural Resources Division Oregon Department of Agriculture (503) 378-6792

JB:bmTC3171 August 31, 1990

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 principal 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 95%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$6,000, with 95% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3189.

Jim Britton, Manager Smoke Management Program Natural Resources Division Oregon Department of Agriculture (503) 378-6792

JB:bmTC3189 August 31, 1990

State of Oregon Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Roger F. Neuschwander 31983 Harris Drive Harrisburg OR 97446

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 located at 31983 Harris Drive, Harrisburg, Oregon. The equipment is owned by the applicant.

John Deere 2800 plow

\$6,000

Claimed equipment cost: \$6,000

(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 March 13, 1990, and the application for final certification was found to be complete on May 25, 1990, within two years of substantial purchase of the equipment.

4. Evaluation of Application

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."

The applicant claims that approximately 175 acres will be removed from the open field burning inventory.

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 left after harvest of annual ryegrass is now plowed under and incorporated into the soil.

2. The estimated annual percent return on the investment in the equipment.

There is no annual percent return on the investment as 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 to annually maintain and operate the equipment. These costs were considered in the return on investment calculations.

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.

Applicant claims that the plow will be used for pollution control 95% of operation hours, reducing actual equipment costs allocable to pollution control to \$5,700.

The actual cost of the equipment properly allocable to pollution control as determined by using these factors is 95%.

State of Oregon Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Langmack Seed Co., Inc. Charles Langmack 35944 Gore Drive Lebanon, Oregon 97355

The applicant owns and operates a grass seed farm operation in Lebanon, 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 35944 Gore Drive, Lebanon, Oregon. The equipment is owned by the applicant.

16' pul-flail chopper with crop \$10,065

Claimed equipment cost: \$10 065 (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 27, 1989, and the application for final certification was found to be complete on June 25, 1990, within two years of substantial purchase of the equipment.

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."

The applicant claims that approximately 878 acres will be removed from the open field burning inventory.

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 returning the residue to the soil increasing the humus and adding back phosphate and potash.

2. The estimated annual percent return on the investment in the equipment.

There is no annual percent return on the investment as 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 to annually maintain and operate the equipment. These costs were considered in the return on investment calculations.

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 principal 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. <u>Director's Recommendation</u>

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$10,065, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3195.

Jim Britton, Manager Smoke Management Program Natural Resources Division Oregon Department of Agriculture (503) 378-6792

JB:bmTC3195 August 31, 1990

State of Oregon Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Marion L. Knox 35136 Hwy. 34 Lebanon, Oregon 97355

The applicant owns and operates a grass seed farm operation in Lebanon, 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 35136 Highway 34, Lebanon, Oregon. The equipment is owned by the applicant.

Agriweld 2200 Harrow Dandl Chopper

\$5,000

Claimed equipment cost: \$12,250 (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 August 1, 1989, and the application for final certification was found to be complete on June 22, 1990, within two years of substantial purchase of the equipment.

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."

The applicant claims that approximately 500 acres will be removed from the open field burning inventory.

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 decomposition after the equipment chops the straw and plows it back into the fields.

2. The estimated annual percent return on the investment in the equipment.

There is no annual percent return on the investment as 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 to annually maintain and operate the equipment. These costs were considered in the return on investment calculations.

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 principal 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. <u>Director's Recommendation</u>

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$12,250, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3196.

Jim Britton, Manager Smoke Management Program Natural Resources Division Department of Agriculture (503) 378-6792

JB:bmTC3196 August 31, 1990

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Peter F. Meyer, Vice President Metrofueling, Inc. P.O. Box 2099 Salem, Oregon 97308

UST Facility Number 6574

The applicant owns and operates a commercial cardlock fueling facility at 13295 S.W. Pacific Hwy., Tigard, Oregon.

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

Description of Facility

The claimed pollution control facility described in this application is the installation of UST leak detection devices on four (4) gasoline USTs and one (1) diesel USTs in the form of automatic liquid tank gauges with a built-in alarm.

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

Claimed facility cost \$12,097
Percent allocable to pollution control 100%

Of the amount shown above, the Department determined that \$122 was ineligible. The applicant applied for the list price of five manholes and one audible alarm rather than the actual amount paid to the vendor.

Adjusted claimed facility cost

\$11,975

3. <u>Procedural Requirements</u>

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

The facility met all statutory deadlines in that installation of the facility was substantially completed in October 1989.

The application for certification was found to be complete within two years of substantial completion of the facility.

4. Evaluation of Application

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

Prior to the installation of pollution control, the facility consisted of five underground storage tanks with spill containment equipment.

Effective December 22, 1988, EPA established a ten year phase-in program for tank owners to upgrade existing underground storage tanks to new tank standards. This includes installing pollution control equipment to provide protection against releases due to corrosion, to prevent spills and release from overfill, and to monitor for leaks.

To respond to leak detection requirements, the applicant installed Petrosonic III automatic tank gauging equipment on five USTs. This equipment meets EPA requirements for leak detection.

With respect to the applicant's claimed facility cost of \$12,097, and the Department's downward adjustment to \$11,975, the Department determined that the applicant neglected to credit the costs for the discount of \$95 on five manholes and \$27 on an audible horn. The remaining costs are eligible pursuant to the definition of a pollution control facility in ORS 648.155. A breakdown of the applicant's claimed costs is shown below.

Application No. TC-3206 August 22, 1990 Page 3

Facility		Applicant Claimed Costs	Department Adjusted Costs
LEAK	DETECTION: Equipment Installation	\$ 6,087 \$ 6,010	\$ 5,965 \$ 6,010
	Total	\$12,097	\$11,975

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

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant indicated that no alternative methods were considered. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

The applicant estimated that 100% of the claimed facility cost of \$12,097 was allocable to pollution control. The applicant arrived at this percentage by totaling the cost of the equipment and installation of the equipment. The applicant did not consider an equipment discount in their total costs, thus the Department reduced the eligible facility cost by \$122 to \$11,975.

The Department determined the percent allocable using standardized methodology pursuant to the latest interpretation of the Oregon Administrative Rules Chapter 340 Division 16. The result is displayed in the table at the end of this section.

The applicant's claimed cost for a tank monitor is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the device can serve other purposes, e.g., inventory control.

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

		Eligible Facility <u>Cost</u>	Percent <u>Allocable</u>	Amount Allocable
LEAK	DETECTION: Equipment	\$ 5,965	90%	\$ 5,369
	Installation	\$ 6,010	100%	\$ 6,010
	Total	\$11,975	95%	\$11,379

5. Summation

- a. The facility was constructed in accordance with all regulatory requirements.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility:, defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 95%.

6. <u>Director's Recommendation</u>

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$11,975 with 95% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3206.

Larry D. Frost (503) 229-5769 T3206F

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Peter F. Meyer, Vice President Metrofueling, Inc. P.O. Box 2099 Salem, Oregon 97308

UST Facility Number 6591

The applicant owns and operates a commercial cardlock fueling facility at 2705 S.W. Pacific Hwy., Forest Grove, Oregon.

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

2. <u>Description of Facility</u>

The claimed pollution control facility described in this application is the installation of UST leak detection devices on three (3) gasoline USTs and one (1) diesel USTs in the form of automatic liquid tank gauges with a built-in alarm.

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

Claimed facility cost \$10,530
Percent allocable to pollution control 100%

Of the amount shown above, the Department determined that \$27 was ineligible. The applicant applied for the list price of one audible alarm rather than the actual amount paid to the yendor.

Adjusted claimed facility cost

\$10,503

3. Procedural Requirements

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

The facility met all statutory deadlines in that installation of the facility was substantially completed in November 1989.

The application for certification was found to be complete within two years of substantial completion of the facility.

4. Evaluation of Application

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

Prior to the installation of pollution control, the facility consisted of four underground storage tanks with spill containment equipment.

Effective December 22, 1988, EPA established a ten year phase-in program for tank owners to upgrade existing underground storage tanks to new tank standards. This includes installing pollution control equipment to provide protection against releases due to corrosion, to prevent spills and release from overfill, and to monitor for leaks.

To respond to leak detection requirements, the applicant installed Petrosonic III automatic tank gauging equipment on four USTs. This equipment meets EPA requirements for leak detection.

With respect to the applicant's claimed facility cost of \$10,530, and the Department's downward adjustment to \$10,503, the Department determined that the applicant neglected to credit the costs for the discount of \$27 on an audible horn. The remaining costs are eligible pursuant to the definition of a pollution control facility in ORS 648.155. A breakdown of the applicant's claimed costs is shown below.

Application No. TC-3212 August 22, 1990 Page 3

Facility		Applicant Claimed Costs	Department Adjusted Costs	
LEAK	DETECTION: Equipment Installation	\$ 5,939 \$ 5,591	\$ 5,912 \$ 5,591	
	Total	\$10,530	\$10,503	

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

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant indicated that no alternative methods were considered. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

The applicant estimated that 100% of the claimed facility cost of \$10,530 was allocable to pollution control. The applicant arrived at this percentage by totaling the cost of the equipment and installation of the equipment. The applicant did not consider an equipment discount in their total costs, thus the Department reduced the eligible facility cost by \$57 to \$10,503.

The Department determined the percent allocable using standardized methodology pursuant to the latest interpretation of the Oregon Administrative Rules Chapter 340 Division 16. The result is displayed in the table at the end of this section.

The applicant's claimed cost for a tank monitor is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the device can serve other purposes, e.g., inventory control.

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

		Eligible Facility <u>Cost</u>	Percent Allocable	Amount <u>Allocable</u>
LEAK	DETECTION: Equipment Installation	\$ 4,912 \$ 5,591	90% 100%	\$ 4,421 \$ 5,591
	Total	\$10,503	95%	\$10,012

5. <u>Summation</u>

- a. The facility was constructed in accordance with all regulatory requirements.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility:, defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 95%.

6. <u>Director's Recommendation</u>

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$10,503 with 95% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3212.

Larry D. Frost (503) 229-5769 T3212F

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Peter F. Meyer, Vice President Metrofueling, Inc. P.O. Box 2099 Salem, Oregon 97308

UST Facility Number 8424

The applicant owns and operates a commercial cardlock fueling facility at 10000 S.W. Barbur Blvd, Portland, Oregon

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

2. <u>Description of Facility</u>

The claimed pollution control facility described in this application is the installation of UST leak detection devices on five (5) gasoline USTs and one (1) diesel USTs in the form of automatic liquid tank gauges with a built-in alarm.

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

Claimed facility cost \$14,031
Percent allocable to pollution control 100%

Of the amount shown above, the Department determined that \$250 is ineligible. The applicant applied for the list price of six manholes, six probe caps and one audible alarm rather than the actual amount paid to the vendor.

Adjusted claimed facility cost

\$13,781

3. Procedural Requirements

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

The facility met all statutory deadlines in that installation of the facility was substantially completed on April 30, 1990. The application for certification was found to be

complete within two years of substantial completion of the facility.

4. Evaluation of Application

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

Prior to the installation of pollution control, the facility consisted of six underground storage tanks with overfill prevention equipment.

Effective December 22, 1988, EPA established a ten year phase-in program for tank owners to upgrade existing underground storage tanks to new tank standards. This includes installing pollution control equipment to provide protection against releases due to corrosion, to prevent spills and release from overfill, and to monitor for leaks.

To respond to leak detection requirements, the applicant installed Petrosonic III automatic tank gauging equipment on six USTs. This equipment meets EPA requirements for leak detection.

With respect to the applicant's claimed facility cost of \$14,031 and the Department's downward adjustment to \$13,781, the Department determined that the applicant neglected to credit the costs for the discount of \$250 on six manholes, six probe caps, and one alarm. The remaining costs are eligible pursuant to the definition of a pollution control facility in ORS 648.155. A breakdown of the applicant's claimed costs is shown below.

Application No. TC-3213 August 21, 1990 Page 3

Facility	Applicant Claimed <u>Costs</u>	Department Adjusted Costs	
LEAK DETECTION: Equipment Installation	\$ 7,041 \$ 6,990	\$ 6,791 \$ 6,990	
Total	\$14,031	\$13,781	

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

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant indicated that no alternative methods were considered. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

The applicant estimated that 100% of the claimed facility cost of \$14,031 was allocable to pollution control. The applicant arrived at this percentage by totaling the cost of the equipment and installation of the equipment. The applicant did not consider an equipment discount in their total costs, thus the Department reduced the eligible facility cost by \$250 to \$13,781.

The Department determined the percent allocable using standardized methodology pursuant to the latest interpretation of the Oregon Administrative Rules Chapter 340 Division 16. The result is displayed in the table at the end of this section.

The applicant's claimed cost for a tank monitor is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the device can serve other purposes, e.g., inventory control.

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

		Eligible Facility <u>Cost</u>	Percent Allocable	Amount Allocable
LEAK	DETECTION: Equipment Installation	\$ 6,791 \$ 6,990	90% 100%	\$ 6,112 \$ 6,990
	Total	\$13,781	95%	\$13,102

5. Summation

- a. The facility was constructed in accordance with all regulatory requirements.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility:, defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 95%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$13,781 with 95% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3213.

Larry D. Frost (503) 229-5769 T3213F

State of Oregon Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

G & R Seeds Roger A. and Larry E. Ruckert 33776 Ridge Drive 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 located at 33776 Ridge Drive, Tangent, Oregon. The equipment is owned by the applicant.

Gehl 5' round baler \$13,500 Hesston 60 B stackhand 12,250 Rears 30' propaner 7,620

Claimed equipment cost: \$33,370 (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 August 1, 1989, and the application for final certification was found to be complete on July 5, 1990, within two years of substantial purchase of the equipment.

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): "Propane flamers or mobile field sanitizers which are alternatives to open field burning and reduce air quality impacts."

The applicant's farming operation includes approximately 1500 acres of grass seed crops, and in recent years has registered 1200 acres in the Department's open field burning program for the Willamette Valley. The equipment will enable the applicant to reduce acreage to be open burned by approximately 540 acres.

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 stack burning. The stubble remaining in the field 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 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 \$9,000 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.

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 principal 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. <u>Director's Recommendation</u>

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$33,370, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3215.

Jim Britton, Manager Smoke Management Program Natural Resources Division Oregon Department of Agriculture (503) 378-6792

JB:bmTC3215 July 6, 1990

State of Oregon Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Roger A. Ruckert 33776 Ridge Drive Tangent, Oregon 97389

The applicant owns and operates a grass seed farm operation in Tangent, Oregon.

Application was made for tax credit for an air pollution control facility.

2. Description of Claimed Facility

The facility described in this application is a pole construction straw storage shed, 124' wide, 144' long, 22' eaves, and 31' center clearance, located at 33776 Ridge Drive, Tangent, Oregon. The land and buildings are owned by the applicant.

Claimed facility cost: \$55,239 (Accountant's Certification was provided.)

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190, and by OAR Chapter 340, Division 16. The facility has met all statutory deadlines in that:

Construction of the facility was substantially completed on July 1, 1989, and the application for final certification was found to be complete on July 7, 1990, within two years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to 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."

The applicant's farming operation includes approximately 1500 acres of grass seed crops, and in recent years has registered 1200 acres in the Department's open field burning program for the Willamette Valley. The equipment will enable the applicant to reduce acreage to be open burned by approximately 500 acres.

b. Eligible Cost Findings

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

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

The facility promotes the conversion of a waste product (straw) into a salable commodity by providing protection from the weather.

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

There is no annual percent return on the investment as applicant claims no gross annual income because the costs associated with straw removal and delivery to the facility are greater than the market value.

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 installation of the facility.

There is an increase in operating costs of \$1000 to annually maintain and operate the facility.

5. Any other factors which are relevant in establishing the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air pollution.

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

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

5. Summation

- The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to reduce a substantial quantity of air pollution and accomplishes this purpose by the reduction of air contaminants, as defined in ORS 468.275.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility that is properly allocable to pollution control is 100%.

6. Reviewer's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$55,239, with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application Number TC-3217.

Jim Britton, Manager Smoke Management Program Natural Resources Division Oregon Department of Agriculture (503) 378-6792

JB; bmtc3217 July 6, 1990

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Peter F. Meyer, Vice President Truax Oil, Inc. P.O. Box 2099 Salem, Oregon 97308

UST Facility Number 6445

The applicant owns and operates a commercial card lock and retail service station at 4124 Main Street, Springfield, Oregon 97477.

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

2. <u>Description of Facility</u>

The claimed pollution control facility described in this application is the installation of UST leak detection devices on five (5) gasoline USTs and three (3) diesel USTs in the form of automatic liquid tank gauges with built-in overfill alarm.

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

Claimed facility cost \$16,359
Percent allocable to pollution control 100%

Of the amount shown above, the Department determined that \$151 was ineligible. The applicant applied for the list price of eight manholes rather than the actual amount paid to the yendor.

Adjusted claimed facility cost

\$16,208

3. Procedural Requirements

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

Application No. TC-3218 August 21, 1990 Page 2

The facility met all statutory deadlines in that installation of the facility was substantially completed on March 8, 1990 The application for certification was found to be complete within two years of substantial completion of the facility.

4. Evaluation of Application

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

Prior to the installation of pollution control, the facility consisted of eight underground storage tanks with overfill prevention equipment.

Effective December 22, 1988, EPA established a ten year phase-in program for tank owners to upgrade existing underground storage tanks to new tank standards. This includes installing pollution control equipment to provide protection against releases due to corrosion, to prevent spills and release from overfill, and to monitor for leaks.

To respond to leak detection requirements, the applicant installed Petrosonic III automatic tank gauging equipment on eight USTs. This equipment meets EPA requirements for leak detection.

With respect to the applicant's claimed facility cost of \$16,359.31, and the Department's downward adjustment to \$16,208, the Department determined that the applicant neglected to credit the costs for the discount of \$151 on eight manholes. The remaining costs are eligible pursuant to the definition of a pollution control facility in ORS 648.155. A breakdown of the applicant's claimed costs is shown below.

Application No. TC-3218 August 21, 1990 Page 3

Faci.	Lity	Applicant Claimed Costs	Department Adjusted Costs
LEAK	DETECTION: Equipment Installation	\$10,108 \$ 6,251	\$ 9,957 \$ 6,251
	Total	\$16,359	\$16,208

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

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant indicated that no alternative methods were considered. The methods chosen are acceptable

for meeting the requirements of federal regulations.

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

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

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

The applicant estimated that 100% of the claimed facility cost of \$16,359 was allocable to pollution control. The applicant arrived at this percentage by totaling the cost of the equipment and installation of the equipment. The applicant did not consider an equipment discount in their total costs, thus the Department reduced the eligible facility costs by \$151 to \$16,201.

The Department determined the percent allocable using standardized methodology pursuant to the latest interpretation of the Oregon Administrative Rules Chapter 340 Division 16. The result is displayed in the table at the end of this section.

The applicant's claimed cost for a tank monitor is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the device can serve other purposes, e.g., inventory control.

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

		Eligible Facility Cost	Percent <u>Allocable</u>	Amount <u>Allocable</u>
LEAK	DETECTION: Equipment Installation	\$ 9,957 \$ 6,251	90% 100%	\$ 8,961 \$ 6,251
	Total	\$16,208	94%	\$15,242

5. <u>Summation</u>

- a. The facility was constructed in accordance with all regulatory requirements.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility:, defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 94%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$16,208 with 94% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3218.

Larry D. Frost (503) 229-5769 T3218F

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Clovercrest Market 2600 Cloverlawn Drive Grants Pass, OR 97527 UST Facility Number 2292

The applicant owns and operates a rural market and gas pumps at the above address.

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

2. Description of Facility

The claimed pollution control facilities described in this application are the replacement of 2 bare steel tanks and piping with 2 STI-P3 tanks and fiberglass piping, and the installation of spill containment basins and monitoring well.

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

Claimed facility cost \$10,745
Percent allocable to pollution control 100%

3. Procedural Requirements

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

The facility met all statutory deadlines in that installation of the facility was substantially completed on December 28, 1989 and the application for certification was found to be complete within two years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and

Application No. TC-3220 Page 2

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

Prior to the installation of pollution control, the facility consisted of 2 bare steel underground storage tanks and piping with no corrosion protection and no leak detection or spill and overfill prevention equipment.

Effective December 22, 1988, EPA established a ten year phase-in program for tank owners to upgrade existing underground storage tanks to new tank standards. This includes installing pollution control equipment to provide protection against releases due to corrosion, to prevent spills and release from overfill, and to monitor for leaks.

To respond to corrosion protection, the applicant installed 2 STI-P3 tanks and fiberglass piping. This equipment meets EPA requirements for corrosion protection.

To respond to spill and overfill prevention, the applicant installed spill containment basins. This equipment meets EPA requirements for spill and overfill prevention.

To respond to leak detection requirements, the applicant installed a monitoring well. This equipment meets EPA requirements for leak detection.

With respect to the applicant's claimed facility cost of \$10,745, the Department determined that all of the costs included in this figure are eligible pursuant to the definition of a pollution control facility in ORS 648.155. A breakdown of the applicant's claimed costs is shown below.

Application No. TC-3220 Page 3

Facility	Applicant Claimed <u>Costs</u>	Department Adjusted <u>Costs</u>
Corrosion Protection: STI-P3 tanks Fiberglass pipe & fittings	\$ 2,887 2,040	\$ 2,887 2,040
Spill & Overfill Prevention: Spill containment basins	900	900
Leak Detection: Monitoring well	100	100
Labor and materials	4,818	4,818
Total	\$ 10,745	\$ 10,745
Adjusted Eligible Fa	acility Cost	\$ 10,745

The applicant reported that soil testing was performed during decommissioning and no evidence of contamination was found.

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

There is no annual percent return on investment as the applicant claims no gross annual income from the facility. 3) The alternative methods, equipment and costs for achieving the same pollution control objective.

The applicant indicated that no alternative methods were considered feasible. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

The Department determined the percent allocable using standardized methodology pursuant to the latest interpretation of the Oregon Administrative Rules Chapter 340 Division 16. The result is displayed in the table at the end of this section. Where the percent allocable is less than 100%, the rationale is presented in the following paragraphs.

With respect to corrosion protection, the Department has determined the percent allocable on the cost of a corrosion protected tank system by using a formula based on the difference in cost between the protected tank system and a bare steel tank system as a percent of the protected system. Applying this formula to the costs presented by the applicant, where the STI-P3 tank system cost is \$2,887 and the bare steel system is \$1,046, the resulting portion of the eligible tank cost allocable to pollution control is 64%.

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

	Fac	gible cility Cost	Percent Allocable	mount locable
Corrosion Protection: STI-P3 tanks Fiberglass pipe & fittings	\$	2,887 2,040	64% 100	\$ 1,848 2,040
Spill & Overfill Prevention Spill containment basins	ı:	900	100	900
Leak Detection: Monitoring well Labor and materials		100 4,818	100 100	 100 4,818
Total	Ś	10.745	90%	\$ 9.706

5. Summation

- a. The facility was constructed in accordance with all regulatory requirements.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility:, defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 90%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$10,745 with 90% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3220.

Barbara J. Anderson August 17, 1990 (503) 229-5870

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Jared L. Rogers Chevron 8th and Albany Elgin, OR 97827 UST Facility Number 0081

The applicant owns and operates a service station at the above address.

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

2. <u>Description of Facility</u>

The claimed pollution control facilities described in this application are the installation of spill containment basins and a tank monitor system on three steel underground storage tanks.

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

Claimed facility cost \$14,513
Percent allocable to pollution control 100%

3. Procedural Requirements

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

The facility met all statutory deadlines in that installation of the facility was substantially completed in October 21, 1989 and the application for certification was found to be complete within two years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental water. This is accomplished by preventing releases into soil or water. The facility qualifies as a Protection Agency to prevent pollution of soil and

Application No. TC-3221 Page 2

"pollution control facility", defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."

Prior to the installation of pollution control, the facility consisted of 3 bare steel underground storage tanks and piping with no corrosion protection and no leak detection or spill and overfill prevention equipment. One heating oil tank is also at the site.

Effective December 22, 1988, EPA established a ten year phase-in program for tank owners to upgrade existing underground storage tanks to new tank standards. This includes installing pollution control equipment to provide protection against releases due to corrosion, to prevent spills and release from overfill, and to monitor for leaks.

To respond to spill and overfill prevention, the applicant installed spill containment basins. This equipment meets EPA requirements for spill and overfill prevention.

To respond to leak detection requirements, the applicant installed tank monitor system. This equipment meets EPA requirements for leak detection.

The applicant plans to install corrosion protection on his tanks and piping by December 1998 pursuant to EPA requirements.

With respect to the applicant's claimed facility cost of \$14,513, the Department determined that all of the costs included in this figure are eligible pursuant to the definition of a pollution control facility in ORS 648.155. A breakdown of the applicant's claimed costs is shown below.

Application No. TC-3221 Page 3

Facility				Applicant Claimed Costs		Departmen Adjusted <u>Costs</u>		ted
Spill & Ov Spill cont			:	\$	755	\$		755
Leak Detec					5,587		5	,587
Labor and	materials	5	-		8,171		8	,171
	Total		\$	1	4,513	\$ 1	4	,513
	Adjusted	Eligible	Facili	.ty	Cost	\$ 1	4	,513

The applicant reported that the soil was inspected during construction and no evidence of contamination was found.

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant indicated that no reasonable alternatives were found. The methods chosen are

acceptable for meeting the requirements of federal regulations.

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

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

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

The Department determined the percent allocable using standardized methodology pursuant to the latest interpretation of the Oregon Administrative Rules Chapter 340 Division 16. The result is displayed in the table at the end of this section. Where the percent allocable is less than 100%, the rationale is presented in the following paragraphs.

The applicant's claimed cost for a tank monitor is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the device can serve other purposes, e.g., inventory control.

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

	Eligible Facility Cost	Percent <u>Allocable</u>	Amount Allocable
Spill & Overfill Prevention Spill containment basins	1: \$ 755	100	\$ 755
Leak Detection: Tank monitor	5,587	90	5,028
Labor and materials	8,171	100	8,171
Total	\$ 14,513	96%	\$ 13,954

5. <u>Summation</u>

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

- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility:, defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 96%.

6. <u>Director's Recommendation</u>

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$14,513 with 96% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3221.

Barbara J. Anderson August 17, 1990 (503) 229-5870

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

George's Texaco 802 Adams Avenue LaGrande, OR 97852 UST Facility Number 6797

The applicant owns and operates a service and repair station at the above address.

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

2. Description of Facility

The claimed pollution control facilities described in this application are the replacement of 3 bare steel tanks and piping with 3 STI-P3 tanks and fiberglass piping, and the installation of spill containment basins, monitoring wells, breakaway shutoff devices and preparation of the site for a tank monitor system.

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

Claimed facility cost \$25,802
Percent allocable to pollution control 100%

3. Procedural Requirements

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

The facility met all statutory deadlines in that installation of the facility was substantially completed in February 1990 and the application for certification was found to be complete within two years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and

Application No. TC-3222 Page 2

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

Prior to the installation of pollution control, the facility consisted of 3 bare steel underground storage tanks and piping with no corrosion protection and no leak detection or spill and overfill prevention equipment.

Effective December 22, 1988, EPA established a ten year phase-in program for tank owners to upgrade existing underground storage tanks to new tank standards. This includes installing pollution control equipment to provide protection against releases due to corrosion, to prevent spills and release from overfill, and to monitor for leaks.

To respond to corrosion protection, the applicant installed STI-P3 tanks and fiberglass piping. This equipment meets EPA requirements for corrosion protection.

To respond to spill and overfill prevention, the applicant installed spill containment basins and breakaway shutoff devices. This equipment meets EPA requirements for spill and overfill prevention.

To respond to leak detection requirements, the applicant installed monitoring wells and prepared the site for a tank monitor system to be installed at a later date. This equipment meets EPA requirements for leak detection.

With respect to the applicant's claimed facility cost of \$25,802, the Department determined that all of the costs included in this figure are eligible pursuant to the definition of a pollution control facility in ORS 648.155. A breakdown of the applicant's claimed costs is shown below.

Application No. TC-3222 Page 3

Facility	Applicant Claimed Costs	Department Adjusted <u>Costs</u>
Corrosion Protection: STI-P3 tanks Fiberglass piping	\$ 7,962 5,586	\$ 7,962 5,586
Spill & Overfill Prevention: Spill containment basins Breakaway shutoff devices	636 95	636 95
Leak Detection: Monitoring wells	248	248
Labor & materials including prep site for tank monitor	11,275	11,275
Total	\$ 25,802	\$ 25,802
Adjusted Eligible Fac	ility Cost	\$ 25,802

The applicant reported that soil testing was performed during decommissioning and no evidence of contamination found.

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

There is no annual percent return on investment as the applicant claims no gross annual income from the facility. 3) The alternative methods, equipment and costs for achieving the same pollution control objective.

The applicant indicated that no reasonable alternatives were found. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

The Department determined the percent allocable using standardized methodology pursuant to the latest interpretation of the Oregon Administrative Rules Chapter 340 Division 16. The result is displayed in the table at the end of this section. Where the percent allocable is less than 100%, the rationale is presented in the following paragraphs.

With respect to corrosion protection, the Department has determined the percent allocable on the cost of a corrosion protected tank system by using a formula based on the difference in cost between the protected tank system and a bare steel tank system as a percent of the protected system. Applying this formula to the costs presented by the applicant, where the STI-P3 tank system cost is \$7,962 and the bare steel system is \$5,500, the resulting portion of the eligible tank cost allocable to pollution control is 31%.

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

·	Fac	gible ility ost	Percent Allocable		
Corrosion Protection: STI-P3 tanks Fiberglass piping	\$	7,962 5,586		\$	2,468 5,586
Spill & Overfill Prevention Spill containment basins Breakaway shutoff devices	n: ·	636 95			636 95
Leak Detection: Monitoring wells		248	100		248
Labor & materials including prep site for tank monit		11,275	100	1	.1,275
Total	\$	25,802	.79%	\$ 2	0,308

5. Summation

- a. The facility was constructed in accordance with all regulatory requirements.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility:, defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 79%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$25,802 with 79% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3222.

Barbara J. Anderson August 17, 1990 (503) 229-5870

State of Oregon Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Lyle Neuschwander 26262 Powerline Road 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 located at 26262 Powerline Road, Halsey, Oregon. The equipment is owned by the applicant.

John Deere flail chopper \$ 8,200 John Deere moldboard plow 8,000

Claimed equipment cost: \$16,200 (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 April 21, 1990, and the application for final certification was found to be complete on August 2, 1990, within two years of substantial purchase of the equipment.

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."

The applicant's farming operation includes approximately 600 acres of grass seed crops, and in recent years has registered 250 acres in the Department's open field burning program for the Willamette Valley. The equipment will enable the applicant to eliminate all open field burning.

The baler collects straw into bales to be stack burned; the stackhand vacuums loose straw the baler missed; the flail chopper chops the straw; the propane flamer sanitizes the field by controlled burning; and the moldboard plow turns the chopped straw back into the soil.

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 is disposed of by chopping the grass straw residue and plowing it into the soil.

2. The estimated annual percent return on the investment in the equipment.

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

The applicant established salvage value by relying on his experience buying and selling farm machinery.

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 \$2,526 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 principal 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 DEO statutes and rules.
- d. The portion of the equipment that is properly allocable to pollution control is 100%.

6. <u>Director's Recommendation</u>

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$16,200, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3225.

Jim Britton, Manager Smoke Management Program Natural Resources Division Oregon Department of Agriculture (503) 378-6792

JB:bmTC3225 August 3, 1990

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Western Stations Co. 1466 N. W. Front Portland, OR 97228-5969 UST Facility Number 6237

The applicant owns and operates a retail gasoline outlet at 12479 S.E. 82nd Ave., Portland, OR.

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

2. Description of Facility

The claimed pollution control facilities described in this application are the replacement of 4 bare steel tanks and piping with 4 STI-P3 tanks and fiberglass piping, and the installation of EBW spill containment basins, breakaway shutoff devices, oil/water separator, overfill vent valves, tank monitor, line leak detectors, overfill alarm, monitoring wells and single point Stage I vapor recovery.

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

Claimed facility cost \$95,226 Percent allocable to pollution control 77%

3. Procedural Requirements

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

The facility met all statutory deadlines in that installation of the facility was substantially completed on September 1, 1988 and the application for certification was found to be complete within two years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and

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

Prior to the installation of pollution control, the facility consisted of 4 bare steel underground storage tanks and piping with no corrosion protection and no leak detection or spill and overfill prevention equipment. A 5th tank at the site holding motor fuel was installed three years ago with STI-P3 corrosion protection.

Effective December 22, 1988, EPA established a ten year phase-in program for tank owners to upgrade existing underground storage tanks to new tank standards. This includes installing pollution control equipment to provide protection against releases due to corrosion, to prevent spills and release from overfill, and to monitor for leaks.

To respond to corrosion protection, the applicant installed STI-P3 tanks and fiberglass piping. This equipment meets EPA requirements for corrosion protection.

To respond to spill and overfill prevention, the applicant installed spill containment basins, overfill alarm, overfill vent valves and breakaway shutoff devices. This equipment meets EPA requirements for spill and overfill prevention.

To respond to leak detection requirements, the applicant installed a tank monitor, line leak detectors and monitoring wells. This equipment meets EPA requirements for leak detection.

The applicant also installed an oil/water separator to treat surface water runoff from the station and single point Stage I vapor recovery.

With respect to the applicant's claimed facility cost of \$95,226, the Department determined that all of the costs included in this figure are eligible pursuant to the definition of a pollution control facility in ORS 648.155. A breakdown of the applicant's claimed costs is shown below.

Application No. TC-3226 Page 3

Facility	Applicant Claimed Costs	
Corrosion Protection: STI-P3 tanks Fiberglass piping	\$ 22,869 9,500	\$ 22,869 9,500
Spill & Overfill Prevention: Spill cont. basins (installed) Breakaway shutoff devices Overfill vent valves Overfill alarm	6,500 886 600 180	6,500 886 600 180
Leak Detection: Tank monitor Line leak detectors Monitoring wells	7,590 735 200	7,590 735 200
Stage I vapor recovery Oil/water separator Labor and materials	408 1,838 43,920	408 1,838 43,920
Total	\$ 95,226	\$ 95,226
Adjusted Eligible Fac	ility Cost	\$ 95,226

The applicant reported that some contaminated soil was found during decommissioning and was removed and disposed of. Soil test results did not indicate further contamination.

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant indicated that there were no significant alternatives. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

The applicant estimated that 77% of the claimed facility cost of \$95,226 was allocable to pollution control. The applicant arrived at this percentage by claiming 1) the difference between bare steel and STI-P3 tanks, 2) the difference between bare steel piping and fiberglass piping, 3) 90% of the cost of the tank monitor and 4) 90% of some of the labor costs associated with the tank monitor.

The Department determined the percent allocable using standardized methodology pursuant to the latest interpretation of the Oregon Administrative Rules Chapter 340 Division 16. The result is displayed in the table at the end of this section. Where the percent allocable is less than 100%, the rationale is presented in the following paragraphs.

With respect to corrosion protection, the Department has determined the percent allocable on the cost of a corrosion protected tank system by using a formula based on the difference in cost between the protected tank system and a bare steel tank system as a percent of the protected system. Applying this formula to the costs presented by the applicant, where the STI-P3 tank system cost is \$22,869 and the bare steel system is \$16,742, the

Application No. TC-3226 Page 5

resulting portion of the eligible tank cost allocable to pollution control is 27%.

Relative to piping, however, the Department considers 100% of fiberglass piping eligible because direct replacement of steel piping with fiberglass is considered the most practical method of achieving corrosion protection on piping.

The applicant's claimed cost for a tank monitor is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the device can serve other purposes, e.g., inventory control.

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

	Eligible Facility Cost	Percent Allocable	
Corrosion Protection: STI-P3 tanks Fiberglass piping	\$ 22,869 9,500	27% 100	\$ 6,175 9,500
Spill & Overfill Prevention Sp.cont.basins (installed) Breakaway shutoff devices Overfill vent valves Overfill alarm	6,500 886 600 180	100 100 100 100	6,500 886 600 180
Leak Detection: Tank monitor Line leak detectors Monitoring wells	7,590 735 200	90 100 100	6,831 735 200
Stage I vapor recovery Oil/water separator Labor and materials Total	408 1,838 43,920 \$ 95,226	100 100 100 82%	408 1,838 43,920 \$ 77,773

5. <u>Summation</u>

- a. The facility was constructed in accordance with all regulatory requirements.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of

Application No. TC-3226 Page 6

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

- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 82%.

6. <u>Director's Recommendation</u>

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$95,226 with 82% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3226.

Barbara J. Anderson August 17, 1990 (503) 229-5870

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Deryl J. Ferguson P. O. Box 156 Terrebonne, OR, 97760 UST Facility Number 1239

The applicant owns and operates a service station at 8150 N. Hwy 97, Terrebonne, OR.

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

2. Description of Facility

The claimed pollution control facilities described in this application are the replacement of 3 bare steel tanks and piping with 2 STI-P3 tanks and fiberglass piping, and the installation of spill containment basins, a tank monitor, overfill alarm, line leak detectors and monitoring wells.

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

Claimed facility cost \$40,423 Percent allocable to pollution control 100%

3. Procedural Requirements

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

The facility met all statutory deadlines in that installation of the facility was substantially completed on September 28, 1989 and the application for certification was found to be complete within two years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and

Application No. TC-3227 Page 2

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

Prior to the installation of pollution control, the facility consisted of 3 bare steel underground storage tanks and piping with no corrosion protection and no leak detection or spill and overfill prevention equipment.

Effective December 22, 1988, EPA established a ten year phase-in program for tank owners to upgrade existing underground storage tanks to new tank standards. This includes installing pollution control equipment to provide protection against releases due to corrosion, to prevent spills and release from overfill, and to monitor for leaks.

To respond to corrosion protection, the applicant installed two STI-P3 tanks and fiberglass piping. This equipment meets EPA requirements for corrosion protection.

To respond to spill and overfill prevention, the applicant installed spill containment basins and an overfill alarm. This equipment meets EPA requirements for spill and overfill prevention.

To respond to leak detection requirements, the applicant installed a tank monitor, line leak detectors and monitoring wells. This equipment meets EPA requirements for leak detection.

With respect to the applicant's claimed facility cost of \$40,423, the Department determined that all of the costs included in this figure are eligible pursuant to the definition of a pollution control facility in ORS 648.155. A breakdown of the applicant's claimed costs is shown below.

Application No. TC-3227 Page 3

Facility	Applicant Claimed Costs	Department Adjusted Costs
Corrosion Protection: STI-P3 tanks Fiberglass pipe & fittings	\$ 13,467 2,483	\$ 13,467 2,483
Spill & Overfill Prevention: Spill containment basins Overfill alarm	942 210	942 210
Leak Detection: Tank monitor Line leak detectors Monitoring wells	5,850 644 362	5,850 644 362
Labor and materials	16,465	16,465
Total	\$ 40,423	\$ 40,423
Adjusted Eligible F	acility Cost	\$ 40,423

The applicant reported that soil testing was performed during decommissioning and no evidence of contamination was found.

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

There is no annual percent return on investment as the applicant claims no gross annual income from the facility. 3) The alternative methods, equipment and costs for achieving the same pollution control objective.

The applicant indicated that no alternative to replacing the tanks was feasible due to their age. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

The Department determined the percent allocable using standardized methodology pursuant to the latest interpretation of the Oregon Administrative Rules Chapter 340 Division 16. The result is displayed in the table at the end of this section. Where the percent allocable is less than 100%, the rationale is presented in the following paragraphs.

With respect to corrosion protection, the Department has determined the percent allocable on the cost of a corrosion protected tank system by using a formula based on the difference in cost between the protected tank system and a bare steel tank system as a percent of the protected system. Applying this formula to the costs presented by the applicant, where the STI-P3 tank system cost is \$13,467 and the bare steel system is \$7,200, the resulting portion of the eligible tank cost allocable to pollution control is 47%.

The applicant's claimed cost for a tank monitor is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the device can serve other purposes, e.g., inventory control.

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

	Eligible Facility Cost	Percent Allocable	Amount Allocable
Corrosion Protection: STI-P3 tanks Fiberglass pipe & fittings	\$ 13,467 2,483		\$ 6,329 2,483
Spill & Overfill Prevention Spill containment basins Overfill alarm	942 210		942 210
Leak Detection: Tank monitor Line leak detectors Monitoring wells	5,850 644 362	100	5,265 644 362
Labor and materials	16,465	_100	16,465
Total	\$ 40,423	81%	\$ 32,700

5. Summation

- a. The facility was constructed in accordance with all regulatory requirements.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility:, defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 81%.

Application No. TC-3227 Page 6

6. <u>Director's Recommendation</u>

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$40,423 with 81% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3227.

Barbara J. Anderson August 17, 1990 (503) 229-5870

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Grant's Petroleum, Inc. P. O. Box 966 Fruitland, ID 83619 UST Facility Number 4464

The applicant owns and operates a cardlock station at 520 S. E. 1st, Ontario, OR.

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

2. <u>Description of Facility</u>

The claimed pollution control facilities described in this application are the replacement of one bare steel tank and piping with 2 STI-P3 tanks and fiberglass piping, and the installation of spill containment basins, monitoring wells, overfill valves, automatic shutoff safety valves, piping for vapor recovery and preparation for the installation of a tank monitor.

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

Claimed facility cost \$33,976 Percent allocable to pollution control 100%

Of the amount shown above, the Department determined that \$2,431 was ineligible pursuant to the definition of a pollution control facility as stated in ORS 468.155, resulting in an adjusted facility cost of \$31,545. The rationale for making this adjustment is explained in Section 4.a., the evaluation of the application.

Adjusted claimed facility cost

\$31,545

3. <u>Procedural Requirements</u>

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

The facility met all statutory deadlines in that installation of the facility was substantially completed in January 24, 1990 and the application for certification was found to be

complete within two years of substantial completion of the facility.

4. Evaluation of Application

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

Prior to the installation of pollution control, the facility consisted of one bare steel underground storage tank and piping with no corrosion protection and no leak detection or spill and overfill prevention equipment.

Effective December 22, 1988, EPA established a ten year phase-in program for tank owners to upgrade existing underground storage tanks to new tank standards. This includes installing pollution control equipment to provide protection against releases due to corrosion, to prevent spills and release from overfill, and to monitor for leaks.

To respond to corrosion protection, the applicant installed STI-P3 tanks and fiberglass piping. This equipment meets EPA requirements for corrosion protection.

To respond to spill and overfill prevention, the applicant installed spill containment basins, overfill prevention valves, and automatic shutoff safety valves. This equipment meets EPA requirements for spill and overfill prevention.

To respond to leak detection requirements, the applicant installed monitoring wells and prepared the site for a tank monitor system to be installed at a later date. This equipment meets EPA requirements for leak detection.

The applicant also installed piping for vapor recovery in anticipation of that requirement.

With respect to the applicant's claimed facility cost of \$33,976, and the Department's downward adjustment to \$31,545, the Department determined that one of the costs included in this figure was not eligible pursuant to the definition of a pollution control facility in ORS 648.155. An explanation of the adjustment follows the breakdown of the applicant's claimed costs shown below.

Facility	Applicant Claimed <u>Costs</u>	Department Adjusted <u>Costs</u>
Corrosion Protection: STI-P3 tanks Fiberglass piping	\$ 13,775 4,000	\$ 13,775 4,000
Spill & Overfill Prevention: Spill containment basins Overfill prevention valves Shutoff safety valves	679 791 102	679 791 102
Leak Detection: Monitoring wells	786	786
Suction pump Piping for vapor recovery Labor & materials including prep for tank monitor	2,431 1,646 9,766	0 1,646
Total	\$ 33,976	9,766 \$ 31,545
Adjusted Eligible	Facility Cost	\$ 31,545

The Department considers the cost of the suction pump claimed by the applicant to be ineligible because the equipment was not purchased for the principal or sole purpose of pollution control, but because it was required for another dispenser that was added to the station.

The applicant reported that soil testing was performed during decommissioning and no evidence of contamination was found.

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant indicated that the methods chosen were the most economical. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

The Department determined the percent allocable using standardized methodology pursuant to the latest interpretation of the Oregon Administrative Rules Chapter 340 Division 16. The result is displayed in the table at the end of this section. Where the percent allocable is less than 100%, the rationale is presented in the following paragraphs.

With respect to corrosion protection, the Department has determined the percent allocable on the cost of a corrosion protected tank system by

Application No. TC-3228 Page 5

using a formula based on the difference in cost between the protected tank system and a bare steel tank system as a percent of the protected system. Applying this formula to the costs presented by the applicant, where the corrosion protected tank system cost is \$13,775 and the bare steel system is \$5,500, the resulting portion of the eligible tank cost allocable to pollution control is 60%.

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

	Eligible Facility Cost	Percent Allocable	Amount Allocable
Corrosion Protection: STI-P3 tanks Fiberglass piping	\$ 13,775 4,000		\$ 8,265 4,000
Spill & Overfill Prevention Spill containment basins Overfill prevention valves Shutoff safety valves	n: 679 791 102	100 100 100	679 791 102
Leak Detection: Monitoring wells	786	100	786
Piping for vapor recovery Labor & materials including	1,646	100	1,646
prep for tank monitor	9,766	100	9,766
Total	\$ 31,545	83%	\$ 26,035

5. Summation

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

Application No. TC-3228 Page 6

- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 83%.

6. <u>Director's Recommendation</u>

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$31,545 with 83% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3228.

Barbara J. Anderson August 17, 1990 (503) 229-5870

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Carmichael-Columbia Oil, Inc. P. O. Box 1068 Astoria, OR 97103 UST Facility Number 7094

The applicant owns and operates a cardlock facility at 510 Marine Drive, Astoria, OR.

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

2. <u>Description of Facility</u>

The claimed pollution control facilities described in this application are the installation of a Petronsonic III tank monitor, EBW spill containment basins, OPW overfill valves, float vent valves, piping for Stage II vapor recovery and the underground wiring for an impressed current cathodic protection system to be installed at a later date to augment protection to the tanks now being provided by existing sacrificial anodes.

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

Claimed facility cost \$27,572 Percent allocable to pollution control 100%

3. Procedural Requirements

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

The facility met all statutory deadlines in that installation of the facility was substantially completed in December 1989 and the application for certification was found to be complete within two years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with underground storage

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

Prior to the installation of pollution control, the facility consisted of 4 coated steel tanks with sacrificial anodes, fiberglass piping and automatic shutoff valves, but no leak detection equipment.

Effective December 22, 1988, EPA established a ten year phase-in program for tank owners to upgrade existing underground storage tanks to new tank standards. This includes installing pollution control equipment to provide protection against releases due to corrosion, to prevent spills and release from overfill, and to monitor for leaks.

To respond to corrosion protection, the applicant installed underground wiring for an impressed current cathodic protection system to further protect the tanks. This involved the necessity of rerunning (and replacing) some of the fiberglass lines at the site. This equipment meets EPA requirements for corrosion protection.

To respond to spill and overfill prevention, the applicant installed spill containment basins, overfill valves and float vent valves. This equipment meets EPA requirements for spill and overfill prevention.

To respond to leak detection requirements, the applicant installed a tank monitor system. This equipment meets EPA requirements for leak detection.

The applicant also installed piping for Stage II vapor recovery in anticipation of that requirement.

With respect to the applicant's claimed facility cost of \$27,572, the Department determined that all of the costs included in this figure are eligible pursuant to the definition of a pollution control facility in ORS 648.155. A breakdown of the applicant's claimed costs is shown below.

Application No. TC-3232 Page 3

Facility		Applicant Claimed Costs		Department Adjusted <u>Costs</u>	
Wiring for cathod Fiberglass	Protection: r impressed current ic protection system s piping to rerun and age II vapor recovery	\$	3,844	\$	3,844
			1,172 1,156 597		1,172 1,156 597
Leak Dete			5,054		5,054
Labor and	materials		11,832		11,832
	Total	\$	27,572	\$	27,572
	Adjusted Eligible Fac	ilit	y Cost	\$	27,572

The applicant reported that tank tightness testing was performed during the project and the soil was inspected. No leakages or evidence of soil contamination were discovered.

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

Application No. TC-3232 Page 4

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

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

The applicant indicated that no alternative methods were considered. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

The Department determined the percent allocable using standardized methodology pursuant to the latest interpretation of the Oregon Administrative Rules Chapter 340 Division 16. The result is displayed in the table at the end of this section. Where the percent allocable is less than 100%, the rationale is presented in the following paragraphs.

The applicant's claimed cost for a tank monitor is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the device can serve other purposes, e.g., inventory control.

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

	Eligible Facility <u>Cost</u>	Percent Allocable	Amount Allocable
Corrosion Protection:			
Wiring for impressed curre		* 0.00	A A A A A
cathodic protection	\$ 3,844	100%	\$ 3,844
Fiberglass piping including Stage II vapor recovery		100	3,917
Stage II vapor recovery	7 3,911	100	3,911
Spill & Overfill Prevention	on:		
Spill containment basins	1,172	100	1,172
Overfill valves	1,156	100	1,156
Float vent valves	597	100	597
To all the state of the state of			
Leak Detection:	E 0E4	0.0	4 = 40
Tank monitor	5,054	90	4,549
Labor and materials	11,832	100	11,832
Total	\$ 27,572	98%	\$ 27,067

5. Summation

- a. The facility was constructed in accordance with all regulatory requirements.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility:, defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 98%.

6. <u>Director's Recommendation</u>

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$27,572 with 98% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3232.

Barbara J. Anderson August 17, 1990 (503) 229-5870

State of Oregon Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

May-Slade Oil Company, Inc. 953 S. Spring Street Klamath Falls, OR 97601 UST Facility Number 1524

The applicant owns and operates a convenience store and service station at Hwy 97 South, Klamath Falls, OR.

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

2. <u>Description of Facility</u>

The claimed pollution control facilities described in this application are the replacement of bare steel piping with fiberglass piping in three underground storage tank systems.

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

Claimed facility cost \$ 7,042 Percent allocable to pollution control \$ 100%

3. Procedural Requirements

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

The facility met all statutory deadlines in that installation of the facility was substantially completed on August 18, 1989 and the application for certification was found to be complete within two years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases into soil or water. The facility qualifies as a

Application No. TC-3235 Page 2

"pollution control facility", defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."

Prior to the installation of pollution control, the facility consisted of three bare steel underground storage tanks and piping with no corrosion protection and no leak detection or spill and overfill prevention equipment.

Effective December 22, 1988, EPA established a ten year phase-in program for tank owners to upgrade existing underground storage tanks to new tank standards. This includes installing pollution control equipment to provide protection against releases due to corrosion, to prevent spills and release from overfill, and to monitor for leaks.

To respond to corrosion protection, the applicant installed fiberglass piping. The applicant indicated he may convert to aboveground tanks in the near future, in which case, EPA requirements for corrosion protection on the tanks would not apply.

The applicant did not install spill and overfill prevention or leak detection equipment at this time because he may convert to aboveground tanks, in which case EPA requirements would not apply.

With respect to the applicant's claimed facility cost of \$7,042, the Department determined that all of the costs included in this figure are eligible pursuant to the definition of a pollution control facility in ORS 648.155. A breakdown of the applicant's claimed costs is shown below.

Facility	Applicant Claimed <u>Costs</u>	Department Adjusted <u>Costs</u>
Corrosion Protection: Fiberglass pipe & fittings	\$ 7,042	\$ 7,042
Total	\$ 7,042	\$ 7,042
Adjusted Eligible Fac	ility Cost	\$ 7,042

The applicant reported that the soil was inspected during the project and no evidence of contamination was found.

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant indicated that no alternative methods were considered. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

The Department determined the percent allocable using standardized methodology pursuant to the

Application No. TC-3235 Page 4

latest interpretation of the Oregon Administrative Rules Chapter 340 Division 16. The result is displayed in the table at the end of this section. Where the percent allocable is less than 100%, the rationale is presented in the following paragraphs.

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

	Fac	gible ility ost	Percent Allocable	 mount locable
Corrosion Protection: Fiberglass pipe & fittings	\$	7,042	100%	\$ 7,042
Total	\$	7,042	100%	\$ 7,042

5. <u>Summation</u>

- a. The facility was constructed in accordance with all regulatory requirements.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility:, defined in OAR 340-16-025(2)(g): Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. <u>Director's Recommendation</u>

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$7,042 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3235.

Barbara J. Anderson August 17, 1990 (503) 229-5870

State of Oregon Environmental Quality Commission

Memorandum

Date: September 6, 19900

To:

Environmental Quality Commission

From:

Commissioners Lorenzen and Castle

Subject:

Agenda Item C, September 21, 1990 EQC Meeting

Accountabilities and Expectations of the Director,

Department of Environmental Quality

Attached is a proposed draft on the above subject for consideration by the full Commission.

Attachment

AGENDA ITEM: ACCOUNTABILITIES AND EXPECTATIONS OF THE DIRECTOR, DEPARTMENT OF ENVIRONMENTAL QUALITY.

The Director of the Department of Environmental Quality has dual responsibilities. The Director is the principal executive officer of a major state agency and, in addition, facilitates the work of the Environmental Quality Commission which has major policy responsibilities for environmental quality in Oregon. The Commission shall consider both areas of responsibility in evaluating the performance of the Director.

The following accountabilities have been established for the Director as the principal executive officer of the Department of Environmental Quality:

- 1. Assure the carrying out of state policy, subject to statutory authority and to policy direction by the Environmental Quality Commission, by providing administrative leadership to the Department.
- 2. Enforce environmental laws of the state, and of the federal government where delegation has occurred, including seeking voluntary cooperation; and administer the directives of the Commission in regulating the discharge and disposal of wastes.
- 3. Insure a high degree of technical performance by the Department by employing, assigning, coordinating, and motivating a qualified staff.
- 4. Insure that distribution of state, federal or other funds through the Department related to environmental quality protection is done systematically, maintaining a complete accountability and audit program.
- 5. Increase awareness of the public to environmental problems through citizen education, information and involvement.
- 6. Seek adequate Department resources by presenting program information and needs to the legislature.
- 7. Cooperate with and support environmental quality efforts by other local state and federal jurisdiction.

In discharging its assigned responsibilities, the Environmental Quality Commission has the following expectations from the Director:

- 1. Provide the Commission with staff support for issues before the Commission.
- 2. Facilitate communication between the Department and the Commission by:
 - a. formulating topics for staff investigation in the context of Commission deliberations.
 - b. interpreting staff findings in the context of policy issues identified by the Commission.
- 3. Provide for the involvement of agency personnel in the development and implementation of strategic plans authorized and approved by the Commission.
- 4. Assist the Commission Chair in establishing agenda for Commission meetings, workshops and retreats by publishing early drafts and soliciting ideas for agenda items from members, staff, and interested parties.
- 5. Assist the Commission as it considers new policy directives by:
 - a. consulting with the Commission through regularly scheduled briefings, reports, and memoranda on identification and analysis of potential policy issues.
 - b. noting appropriate documentation either by rule-making or written resolution
 - c. making explicit what the impacts on existing programs and priorities will be.
 - d. reviewing, in a timely fashion, alternative implementation strategies.



Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date:	September 21, 1990
Agenda Item:	D
Division:	Air Quality Division
Section:	Planning & Development

SUBJECT:

Portland Central Business District (CBD) Parking Offset Rule

PURPOSE:

To allow the City of Portland to meet growth and associated new parking needs in the CBD without degrading carbon monoxide air quality.

ACTION REQUESTED:

Work Session Discussion General Program Background Potential Strategy, Policy, or Rules Agenda Item for Current Meeting Other: (specify)	
X Authorize Rulemaking Hearing Adopt Rules Proposed Rules Rulemaking Statements Fiscal and Economic Impact Statement Public Notice	Attachment A&B Attachment C Attachment D Attachment E
Issue a Contested Case Order Approve a Stipulated Order Enter an Order Proposed Order	Attachment
Approve Department Recommendation	Attachment Attachment Attachment Attachment

Agenda Item:

Page 2

DESCRIPTION OF REQUESTED ACTION:

A public hearing is proposed to consider the addition of an Air Quality Parking Offset Rule to the Portland Carbon Monoxide (CO) State Implementation Plan (SIP).

The new Rule would allow the City of Portland to exceed the CO SIP parking lid to meet new parking growth needs projected for the next ten years in the CBD without any increase in CO emissions.

The proposed Air Quality Parking Offset Rule is based on a 1987 study by Cambridge Systematics for the City of Portland which quantifies CO emissions from new parking spaces and CO emissions decreases from implementation of a variety of transportation control measures.

The Rule insures that offsets will actually provide a net air quality benefit by requiring emission offsets ranging from 1.2 to 2.0 of the potential emissions increase from new parking; and the Rule includes a Monitoring and Contingency Plan to check periodically on the implementation of specific measures, track changes in traffic flow conditions and provide specific fallback measures to guarantee that the full emission offsets will be achieved if any particular offset measure fails to achieve or maintain its expected effectiveness.

The CBD parking lid contained in the 1982 CO SIP as a control strategy element to attain and maintain healthful CO air quality in the CBD would be revised from 40,855 to 43,914 parking spaces to reflect the actual number of existing and approved spaces in 1982 based on a more accurate parking space count in 1986. Under the proposed Offset Rule, the revised parking ceiling of 43,914 spaces could be supplemented by up to an additional 1,370 spaces.

AUTHORITY/NEED FOR ACTION:

·	Required by Statute:	Attachment
<u>X</u>	Statutory Authority: ORS 468.020, 468.280 and 468.305	Attachment F
<u> </u>	Pursuant to Rule: Pursuant to Federal Law/Rule:	AttachmentAttachment
	Other:	Attachment
x	Time Constraints:	

Agenda Item:

Page 3

If a hearing is authorized, a final proposal for adoption would be brought to the Environmental Quality Commission's (EQC, Commission) December 14, 1990 meeting. Before actual offsets can be usable, the Portland City Council will need to adopt a contingency measure which would guarantee restricted use of parking under city control to make up any shortfall that may occur from failure of an offset to materialize. Also, the Environmental Protection Agency (EPA) will need to approve the SIP revision. Both these actions are expected by the end of this year in order to meet the city's expected initial parking growth needs.

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
Background Information on Issue	Attachment <u>G</u>
Air Quality Offsets for Parking, Executive Summary	Attachment <u>H</u>
Portland Downtown Parking Plan & Circulation Update, Executive Summary	Attachment <u>I</u>
Downtown Parking Management Plan, Executive Summary	Attachment <u>J</u>

The Portland downtown area was recognized by EPA as the official nonattainment area for CO in the Portland-Vancouver region when EPA approved the control strategy plan for meeting and maintaining federal CO standards. The control plan included the city's updated 1980 parking policy (with an upper limit on CBD parking) and Parking Management program as significant parts of the overall strategy, and targeted the end of 1985 as the date that the city would attain the federal 8-hour CO standard. No violations of the 8-hour standard have been recorded at the Department of Environmental Quality's (DEQ, Department) monitoring sites in the downtown area since the end of 1984, indicating apparent attainment. Because of the requirement to maintain standards upon achieving attainment, any significant changes to the original control strategy call for a formal revision of the SIP which must be approved by the EPA.

Agenda Item:

Page 4

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The City of Portland released a draft of the <u>Downtown Parking Management Plan</u> (Attachment I--Executive Summary, only) in May 1990 and held several meetings with the affected downtown business community and interested environmental organizations. The development and implementation of offset measures for additional parking space needs in the downtown area was a major focal point of discussions on the draft plan. A general consensus was reached on the implementation of specific offset measures, and the Portland City Council adopted the Downtown Parking Management Plan on July 18, 1990.

A key concern for business groups was that a perception of adequate access to downtown, including available parking, be maintained. Also, the parking ceiling was seen, generally, as a constraint on downtown development with respect to competing on a regional basis for new projects. These concerns were satisfied to some extent by the city's agreement to develop some of the offsets and conduct a detailed future study of long-term alternatives for the management of parking in a broader area than the CBD. A major focus of the future study would be maintaining healthful air quality.

Environmental groups supported both Category I offsets (those measures that reduce emissions on a per vehicle basis) and Category II offsets (those measures that reduce vehicle trips). They wanted assurance that Category II measures would achieve the expected emission reductions. The Department believes that tight offset review criteria and a contingency plan would guard against failure of Category II offsets.

Based on the city's successful efforts in forging a consensus, the overall reaction to this proposal is expected to be positive. EPA has indicated conceptual support of the parking offset proposal.

PROGRAM CONSIDERATIONS:

Existing staff resources are anticipated to be sufficient to implement the proposed Rule within normal work loads.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. The city would continue its policy of removing existing parking spaces in order to add new spaces in the event that the additional spaces would otherwise put the total number of downtown spaces over the established parking ceiling.

Agenda Item:

Page 5

This policy has worked and would theoretically continue to work to ensure that the parking ceiling would be maintained as new developments opened. However, from a practical standpoint, the bulk of the parking controlled by the city is short-term-oriented (4 hours or less) and those spaces have been determined to be in short supply by past studies. To close such spaces in exchange for new long-term spaces would be contrary to the city's parking policy goals and the city's efforts over the last several years to build short-term-oriented parking structures. The city held a public meeting in the fall of 1989 to consider eliminating on-street parking spaces in selected locations in the downtown retail core. The proposal met with widespread opposition from affected retailers and customers and one environmental group.

2. Proceed to develop a CO maintenance plan for the area that provides a growth cushion for expected growth and development in the downtown area.

This alternative would be highly desirable, except for the time constraints. The city has an immediate need to accommodate new development projects, but a maintenance plan would probably take one to three years to complete. Furthermore, EPA requirements for a maintenance plan would likely be changed, perhaps substantially, if the Clean Air Act is reauthorized by Congress.

3. Authorize the Department to hold a public hearing to add an Air Quality Parking Offset Rule to the Portland Carbon Monoxide State Implementation Plan.

This alternative could provide additional new parking in a relatively short period of time (6 months), while assuring that no increase in CO emissions would occur.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission authorize a public hearing on adding a new Offset Rule (Alternative 3) to the Portland CO SIP. This would provide for a timely and relatively modest addition of up to 1,370 spaces (approximately three percent) to the parking inventory, with the assurance through the contingency and monitoring provisions of the proposed Offset Rule, that carbon monoxide emissions would not increase. Potentially, more than 2 million square feet of new office space would be facilitated, which would provide direct economic benefits to the downtown area. The City of Portland fully supports this approach at least as an interim measure until a complete CO maintenance plan can be developed.

Agenda Item:

Page 6

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The Alternative 3 recommendation is expected to be consistent with the strategic plan, agency policy and legislative policy.

ISSUES FOR COMMISSION TO RESOLVE:

The offset concept has heretofore applied only to new industrial sources in nonattainment areas. Does the Commission support extending the offset concept to new indirect sources (vehicle parking facilities)?

INTENDED FOLLOWUP ACTIONS:

- 1. Hold a public hearing in Portland on October 31, 1990.
- 2. Summarize hearing testimony, respond to issues raised, revise proposal as necessary, and recommend adoption at the Commission's December 1990 meeting.

Approved:

Section:

Division:

Director:

Report Prepared By: Howard Harris

Phone: 229-6086

Date Prepared: August 20, 1990

HWH:a PLAN\AH10590 August 20, 1990 Proposed Amendment To OAR 340-20-047

Section 4.2

CONTROL STRATEGY
FOR
PORTLAND-VANCOUVER INTERSTATE
AIR QUALITY MAINTENANCE AREA (AQMA)
(OREGON PORTION)
STATE IMPLEMENTATION PLAN
FOR
CARBON MONOXIDE

July 16, 1982 regon Department of Environ

Oregon Department of Environmental Quality
Metropolitan Service District
City of Portland

incorporated as a major part of the selected control strategy. The specific provisions of that plan are as follows:

1. <u>Maintain and Manage Downtown Parking Inventory</u>

- (a) At the end of any quarter of any year, the total inventory of parking spaces available for use in downtown will not exceed [40,855.]

 43.914 plus any additional spaces allowed under the Rules for Parking Offsets in Portland (OAR 340-20-400 through 440).

 (Parking spaces for residential and hotel uses approved after May 29, 1973, are exempt from this total inventory.) Periodic review of the total inventory available for use in downtown will be made by the City's Parking Manager for the review and consideration of the City Planning Commission and the City Council.
- (b) Approval of new parking will be made based on maximum floor-space ratios established in Section 9 of the Parking and Circulation Policy. The Parking Manager will recommend the number of spaces to be made available for long-term and short-term use, general public use, carpools and bicycle storage. In addition, the Parking Manager will recommend conditions affecting the future use of approved parking.
- (c) Changes in the number and use of existing parking will be monitored and steps taken to coordinate any enforcement of the policy. The Oregon Revised Statutes (ORS) 468.275 through .620 authorize the Oregon Environmental Quality Commission to adopt programs necessary to meet and maintain State and federal standards. The mechanism for implementing these programs is the Oregon Administrative Rules (OAR). The rules that are pertinent to the carbon monoxide control strategy for the Oregon portion of the Portland-Vancouver AQMA are:
 - * OAR 340-20-220 through -275, the new source review rules;
 - * OAR 340-20-300 through -320, the plant site emission limit rules;
 - * OAR 340-24-300 through -350, the motor vehicle emission control inspection test criteria and standards;

- * OAR 340-31-025, the State standard for carbon monoxide is set equal to the primary and secondary federal standard.
- * OAR 340-20-400 through 440, the Rules for Parking Offsets in the Portland Central Business District;

New Source Review Rules

The new source review rules require major new or modified stationary sources locating in a non-attainment area to:

- 1. Meet lowest achievable emission rates;
- Demonstrate that the source will comply with the growth increment available or provide emission offsets;
- Provide an analysis of alternative sites, sizes, production processes and control techniques.

Plant Site Emission Limit Rules

Plant site emission limit rules establish a baseline allowable emission rate for existing sources of carbon monoxide that are subject to regular permit requirements. These rules do not allow significant growth of stationary source emissions unless a growth margin is available or an offset can be obtained.

Rules for Parking Offsets in the Portland Central Business District

The parking offset Rules identify procedures for adding parking spaces in downtown Portland through the implementation of prescribed air quality improvement measures. These Rules include calculation, monitoring and contingency requirements to insure 1) the air quality improvement measures will more than offset the carbon monoxide emissions increases from motor vehicles using the additional parking spaces; and 2) compliance will be maintained with ambient carbon monoxide air quality standards.

Inspection/Maintenance

All major urban areas needing an extension beyond 1982 for attainment of the ozone standard are required to implement a vehicle inspection/maintenance program by December 31,

1982. The Oregon inspection/maintenance program has been in mandatory operation since July 1975. The inspection is required for all vehicles registered within the Metro boundary. Testing in the Portland region is performed for carbon monoxide, as well as for hydrocarbons.

Appendix 4.3-8 contains the required information about Oregon's inspection/maintenance program.

HWH:a PLAN\AH10699

PARKING OFFSETS IN THE PORTLAND CENTRAL BUSINESS DISTRICT

PURPOSE

340-20-400 These rules allow the City of Portland, through application of transportation emission offsets, to meet new parking growth needs in the Central Business District without increasing carbon monoxide emissions.

Stat. Auth.: ORS Ch. 468

SCOPE

340-20-405 Subject to the provisions of these rules, the City of Portland may utilize motor vehicle emission offsets for the purpose of increasing off-street parking spaces by up to 1,370 spaces above the 43,914 parking space limit contained in the Portland carbon monoxide control strategy (Section 4.2 of the State Implementation Plan, OAR 340-20-047). If further increases are needed, the City of Portland shall make a request to the Department of Environmental Quality for an appropriate rule change and State Implementation Plan revision at least six months prior to the needed increase.

DEFINITIONS

340-20-410 (1) "Category I" means a parking offset measure that would reduce vehicle emissions on a per vehicle trip basis.

(2) "Category II" means a parking offset measure that would

reduce the number of vehicle trips.

- (3) "Core Area" means Parking Sectors C, E, F, and G in the central business district of downtown Portland as identified in the 1985 Updated Downtown Parking and Circulation Policy adopted by the Portland City Council on February 26, 1986.
- (4) "Department" means the Oregon Department of Environmental Quality.
- (5) "Downtown Parking Inventory" means the total number of parking spaces authorized for use in the central business district of downtown Portland in the Portland carbon monoxide control strategy (Section 4.2 of the State Implementation Plan). The Downtown Parking Inventory is made up of existing spaces, spaces allocated to new development but not yet built, and reserve spaces available to be allocated.
- (6) *Downtown Parking Management Plan* means the plan prepared by the Portland Office of Transportation in July 1990 and subsequently adopted by the Portland City Council on July 18, 1990. The Downtown Parking Management Plan provides direction for the management of parking resources in downtown Portland.
- (7) "Long-Term Parking Space" means any parking space where the parking duration is allowed to exceed 4 hours.

- (8) "Motor Vehicle" means self-propelled vehicles powered by internal combustion engines including, but not limited to, automobiles, trucks and motorcycles.
- (9) "Non-core Area" means Parking Sectors A, B, D, H, J, K, and L in the central business district of downtown Portland as identified in the 1985 Updated Downtown Parking and Circulation Policy adopted by the Portland City Council on February 26, 1986.
- (10) "Offsets Study" means the Air Quality Offsets for Parking study prepared for the City of Portland by Cambridge Systematics, Inc. dated January 25, 1988.
- (11) "Parking Emission Offset" means any emission reduction measure applied to motor vehicles which provides an equivalent or greater emission reduction prior to allowing an emission increase from motor vehicles using new off-street parking. Such emission reduction measures shall include but not be limited to the following measures from the Offsets Study:
 - (a) Fringe Parking (Category II)
 - (b) Alternative Work Schedules (Category I)
 - (c) Subsidy of Ridesharing (Category II)
 - (d) Increase Long-Term Parking Space Rates (Category II)
 - (e) Increase All Parking Rates (Category II)
 - (f) Restrict Off-Street Parking Before 10 a.m. (Category I)
 - (q) Reserve Parking for Carpools (Category II)
 - (h) Park and Ride Remote Lots (Category II)
 - (i) Alternative Fuels (Category I)
 - (j) Enhanced Vehicle Inspection and Maintenance (Category I)
 - (k) Increased Transit Capacity (Category II)
 - (1) Traffic Flow Improvement (Category I)
 - (m) Bicycle Access (Category II)
- (12) "Short-Term Parking Space" means any parking space having a parking duration of up to 4 hours.

REQUIREMENTS FOR PARKING OFFSETS

- 340-20-420 (1) The baseline year for determining parking offset emission credits is 1987 with the following carbon monoxide emission and parking space equivalencies identified in the Offsets Study:
- (a) 122.5 grams per day for a core area off-street parking space; and
- (b) 107.8 grams per day for a non-core area off-street parking space.
- (2) In order to insure a net air quality benefit, the following ratios shall be used to calculate the number of additional parking spaces allowed:
 - (a) Category I parking offsets at a 1.2 ratio; and
- (b) Category II parking offsets at a 1.2 or greater (up to 2.0) ratio based on the type of parking offset and the relative locations (core versus non-core sectors) of the parking offsets and the new parking spaces.

- (3) The City of Portland shall submit applications for parking emission offsets to the Department of Environmental Quality for approval. The application shall include at least the following elements:
- (a) Proposed number and sector type (core or non-core) of additional parking spaces;
- (b) Proposed offsets quantified according to calculation procedures in the Offsets Study and sections (1) and (2) above;
- (c) Documentation of permanence and enforceability of proposed offsets; and
- (d) Monitoring plan to provide at least an annual assessment of whether the offset is maintaining its projected effectiveness.

OVERALL MONITORING AND CONTINGENCY PLAN

- 340-20-430 (1) The City of Portland shall monitor the overall effectiveness of the Downtown Parking Management Plan.
 The City of Portland monitoring program shall include at least the following elements:
 - (a) A semi-annual report on the Downtown Parking Inventory;
- (b) An every-third-year update of significant changes in parking utilization rates and parking lot types;
- (c) Continuous monitoring of traffic volumes (and speed approximations) at 19 or more key locations in downtown beginning in January 1991;
- (d) Annual to quarterly floating car speed runs on critical streets as requested by the Department;
- (e) Annual evaluation of effectiveness of specific offset measures approved under these rules.
- (2) Before any offsets are approved by the Department, the City of Portland shall guarantee the permanence of offset measures by providing the Department with a contingency plan adopted by resolution. In the event the offset monitoring required by OAR 340-20-420(3)(d) indicates an offset measure is not providing the projected effectiveness and the City of Portland is unable to correct the deficiency within six months of notification by the Department, then the City of Portland shall commit through resolution to:
- (a) Reduce the number of spaces in the reserve portion of the Downtown Parking Inventory by an equivalent number of spaces; or
- (b) Reduce the hours of operation of City-provided offstreet parking by delaying opening until 10 a.m. of an equivalent number of spaces as determined by calculation procedures in the Offsets Study; or
 - (c) Remove equivalent existing parking spaces.

HWH:a PLAN\AH10592 (8/21/90)

RULEMAKING STATEMENTS FOR PROPOSED PORTLAND CBD PARKING OFFSET AND REVISION TO THE STATE OF OREGON CLEAN AIR ACT IMPLEMENTATION PLAN

STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS 183.335(7), this statement provides information on the intended action to amend a rule.

(1) Legal Authority

This proposal amends Oregon Administrative Rules (OAR) 340-20-047 and adds 340-20-400 through 340-20-430. It is proposed under authority of Oregon Revised Statutes (ORS) Chapter 468.

(2) Need for these Rules

The City of Portland projects a need to add up to 1,370 new parking spaces in the CBD to meet growth anticipated in the next ten years. The Portland CO SIP control strategy contains a parking ceiling for the CBD which would prevent this increase. New parking could be added without jeopardizing the integrity of the CO SIP if CO emission offsets are provided to more than compensate for any increase in CO emissions created by new parking. The CO SIP and parking ceiling needs to be revised in order to accommodate a new offset Rule.

(3) Principal Documents Relied Upon

- 1. Control Strategy for Portland-Vancouver Interstate Air Quality Maintenance Area (AOMA) (Oregon Portion), State Implementation Plan Revision, 1982, City of Portland, Metropolitan Service District, Oregon Department of Environmental Quality, Portland, Oregon.
- 2. <u>Air Quality Offsets for Parking, Final Report</u>, Cambridge Systematics, Inc., Berkeley, California, January 25, 1988.
- 3. <u>Portland Downtown Parking Plan & Circulation Update,</u>
 <u>Final Report & Recommendations</u>, Barney & Worth, Inc.,
 Portland, Oregon, November 1989.
- 4. <u>Downtown Parking Management Plan</u>, City of Portland, Portland, Oregon, July 1990.

All documents referenced may be inspected at the Department of Environmental Quality, Air Quality Division, 811 S.W. 6th Avenue, Portland, Oregon, during normal business hours.

LAND USE CONSISTENCY STATEMENT

The proposed rule changes appear to affect land use as defined in the Department's coordination program with DLCD, but appear to be consistent with the Statewide Planning Goals.

With regard to Goal 6, (air, water, and land resources quality), the proposed changes are designed to enhance and preserve air quality in the State and are considered consistent with the goal. The proposed rule changes do not appear to conflict with the other Goals.

Public comment on any land use issue involved is welcome and may be submitted in the same fashion as indicated for other testimony on these rules.

It is requested that local, state, and federal agencies review the proposed action and comment on possible conflicts with their programs affecting land use and with Statewide Planning Goals within their expertise and jurisdiction.

The Department of Environmental Quality intends to ask the Department of Land Conservation and Development to mediate any appropriate conflicts brought to our attention by local, state, or federal authorities.

HWH:a PLAN\AH10593 (8/21/90)

FISCAL AND ECONOMIC IMPACT STATEMENT FOR PROPOSED PORTLAND CBD PARKING OFFSET RULE AND REVISION TO THE PORTLAND CARBON MONOXIDE STATE IMPLEMENTATION PLAN

PROPOSAL SUMMARY

The Department is proposing to add an Air Quality Parking Offset Rule that is specific to the Portland Central Business District (CBD) carbon monoxide (CO) nonattainment area. Also, the Portland CO State Implementation Plan (SIP) would be amended to incorporate the new Rule. The key features of the proposal are listed below.

- O Up to 1,370 new parking spaces above the CO SIP parking ceiling would be allowed in accordance with a proposed Air Quality Parking Offset Rule;
- o Emission offsets would be required to provide a net air quality benefit ranging from 1.2 to 2.0 above the emission increases associated with new parking; In general, Category I measures, i.e., those that reduce emissions on a per vehicle trip basis, would be set in the low end of the net benefit range and Category II measures, i.e., those that reduce the number of vehicle trips, would be set in the upper end of the range;
- o An offset Monitoring and Contingency Plan would be required to check on the implementation of specific measures, track changes in traffic flow conditions and provide specific fallback measures to guarantee the emission offsets will be achieved if any particular offset measure fails to achieve or maintain its effectiveness;
- o The ceiling on Portland CBD parking in the CO SIP would be revised from 40,855 to 43,914 to reflect the actual number of existing and approved spaces in 1982 based on a more accurate parking space count conducted in 1986.

Cambridge Systematics, Inc. analyzed and quantified 14 potential transportation control measures that could be implemented to offset the carbon monoxide emissions associated with new downtown Portland parking spaces. The following section summarizes the costs of selected measures. Although there is uncertainty as to the ultimate mix of measures and the extent that any one measure would be utilized in contributing offsets, the first four measures listed below would likely be given priority consideration by the city.

COSTS OF POTENTIAL PARKING OFFSETS

Alternative Work Schedules

Costs associated with this measure are not easily quantified, as no direct expenses would be incurred, except possibly in the initial effort at arranging and shifting employe schedules. The City of Portland and Tri-Met are committing staff resources to develop alternative work hours for city employes.

Subsidy of Ridesharing

Cambridge Systematics assumed a \$0.50 per day subsidy for employes who carpool or ride transit. For carpoolers the subsidy would be applied to a reduction in the cost of parking. For transit riders the subsidy would be toward reducing the price of a monthly transit pass. Since the federal tax code allows for 100% deductibility of parking costs borne by a private sector employer, the net cost for subsidizing carpoolers would be zero. Assuming an equal mix of two-zone and all-zone transit riders, the net cost (transit subsidies are only 20% deductible on federal taxes) to a non-government employer for a \$0.50 per day reduction in the cost of monthly passes would be \$8.40 per employe. Governmental agencies would bear the full \$10.50 per month cost of providing ridesharing subsidies.

The City of Portland estimates that a transit pass subsidy of \$15 per month for all 2000 downtown city employes would cost \$380,000 per year, including the cost of administration.

Reserve Parking for Carpools

The City of Portland estimates that dedicating an additional 150 spaces for carpools in city-owned garages would cost \$5,250 per month in lost revenue, because carpool spaces are currently preferentially priced. To reduce the revenue impact, the price of a carpool space may increase relative to a monthly commuter space. There is currently more demand for carpool spaces than available supply.

Park and Ride Lots

Tri-Met estimates that a 150-space park and ride lot in a typical suburban location has a current capital cost range of \$450,000 to \$550,000. Shopping center facilities with adjacent transit service might make some portion of parking spaces available at little or no cost to individual parkers.

Alternative Fuels

The City of Portland and the State of Oregon are involved in a joint demonstration project to convert 15-25 fleet vehicles to

compressed natural gas (CNG). The conversion cost for automobiles to CNG dual fuel is \$2,000 per vehicle. A compressor station to handle 30-50 vehicles is estimated to cost a minimum of \$30,000. Northwest Natural Gas is currently making its fueling facility in the downtown available for the demonstration project. Maintenance costs are being absorbed by existing motor pool staff. In 1988 the City of Portland estimated that a 30 to 50 vehicle program would initially cost \$100,000 with an annual operational cost of \$60,000. The demonstration project will be used to determine net costs of conversion after consideration of the lower unit cost of CNG fuel in comparison to gasoline.

Traffic Flow Improvement

The City of Portland estimates that a systematic traffic flow improvement program, as outlined by Cambridge Systematics, would involve a \$5,000 consultant contract for initial development and an additional 0.25 to 0.5 Full Time Equivalent (FTE) on an ongoing basis.

Fringe Parking

The private sector would be expected to bear the cost of providing fringe parking. An operator of a fringe lot on land owned by the Oregon Department of Transportation charged parkers \$35 per month in 1990. Parking costs in the downtown generally, are two to three times as expensive as the above rate.

Increase Long-Term Rates

An increase of \$1 per day applied to 30,000 long-term parkers would amount to an out of pocket cost totaling \$630,000 on a monthly basis, assuming 21 working days in the average month. Since some employers currently subsidize parking costs for selected employes, not all the cost would be expected to be borne by individual employes.

Reserve Off-Street Parking Before 10 A.M.

The City of Portland estimates that closure of 1,500 city- owned spaces until 10 A.M. would entail a revenue loss of approximately \$2,600 on a daily basis. While this would probably shift long-term oriented parkers into other modes, downtown retailers would probably indirectly benefit by being assured of a plentiful supply of spaces available for short-term use by customers.

COSTS TO STATE AND LOCAL GOVERNMENT AGENCIES

Existing Department staff resources are expected to be sufficient to implement the proposed Rule without causing any shifting of work priorities. The exception to this would be if annual vehicle inspection and maintenance (I/M) were to be pursued as an offset

measure. However, given the numerous difficulties and time to implement an annual program and the limited scope of the proposed Parking Offset Rule (up to 1,370 spaces), annual I/M probably would not be pursued on a short-term basis.

Other than previously documented FTE's for individual measures, the City of Portland, Parking Management program has committed 1.0 FTE to manage an offset program.

HWH:a PLAN\AH10723 Oregon Department of Environmental Quality

A CHANCE TO COMMENT

PORTLAND CBD PARKING OFFSET RULE NOTICE OF PUBLIC HEARING

> October 23, Hearing Date: Comments Due: October 25, 1990

WHO IS AFFECTED: Downtown Portland residents, City of Portland government, downtown businesses and downtown real estate owners, operators and developers.

WHAT IS PROPOSED: The Department of Environmental Quality is proposing to amend OAR 340-20-047, the Portland Carbon Monoxide portion of the State of Oregon Clean Air Act Implementation Plan and add an Air Quality Parking Offset Rule.

WHAT ARE THE HIGHLIGHTS:

- 1) A new parking space offset program would be established in the Portland Central Business District to allow the city to exceed the parking lid by 1,370 spaces to deal with projected growth.
- 2) Parking offsets would be required from 1.2 to 2.0 times the potential increased carbon monoxide emissions from new spaces to insure a net air quality benefit from the action.
- 3) A contingency plan would be provided to insure that emission offsets are actually achieved should any transportation control measure fail to achieve or maintain its expected effectiveness.

HOW TO COMMENT: Copies of the complete proposed rule package may be obtained from: Air Quality Division, Department of Environmental Quality, 811 SW Sixth Avenue, Portland, OR 97204. For further information contact Howard Harris at (503) 229-6086.

A public hearing will be held before a hearings officer at:

6:00 p.m. October 23, 1990 Portland Building, Rm. A 1120 SW Fifth Avenue Portland, Oregon



Oral and written comments will be accepted at the public hearing. Written comments may be sent to the DEQ, but must be received by no later than October 25, 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 adopted rules will be submitted to the U.S. Environmental Protection Agency as part of the State Clean Air Act Implementation Plan. The Commission's deliberation should come in December 1990 as part of the agenda of a regularly scheduled Commission meeting.

A Statement of Need, Fiscal and Economic Impact Statement, and Land Use Consistency Statement are attached to this notice.*

* Note: refer to Attachments C and D of the staff report.

HWH:a PLAN\AH10595 (8/21/90)

GENERAL ADMINISTRATION

- 468.005 Definitions. As used in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter, unless the context requires otherwise:
- (1) "Commission" means the Environmental Quality Commission.
- (2) "Department" means the Department of Environmental Quality.
- (3) "Director" means the Director of the Department of Environmental Quality.
- (4) "Order" has the same meaning as given in ORS 183.310.
- (5) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the Federal Government and any agencies thereof.
- (6) "Rule" has the same meaning as given in ORS 183.310.
- (7) "Standard" or "standards" means such measure of quality or purity for air or for any waters in relation to their reasonable or necessary use as may be established by the commission pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter. [Formerly 449.00]
- 468.010 Environmental Quality Commission; appointment; confirmation; term; compensation and expenses. (1) There is created an Environmental Quality Commission. The commission shall consist of five members, appointed by the Governor, subject to confirmation by the Senate as provided in ORS 171.562 and 171.565.
- (2) The term of office of a member shall be four years, but the members of the commission may be removed by the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor to assume the duties of the Governor on July 1 next following. A member shall be eligible for reappointment, but no member shall serve more than two consecutive terms. In case of a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.
- (3) A member of the commission is entitled to compensation and expenses as provided in ORS 292.495. [Formerly 449.016]

- 468.015 Functions of commission. It is the function of the commission to establish the policies for the operation of the department in a manner consistent with the policies and purposes of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter. In addition, the commission shall perform any other duty vested in it by law. [1973 c.835 §4]
- 468.020 Rules and standards. (1) In accordance with the applicable provisions of ORS 183.310 to 183.550, the commission shall adopt such rules and standards as it considers necessary and proper in performing the functions vested by law in the commission.
- (2) Except as provided in ORS 183,335 (5), the commission shall cause a public hearing to be held on any proposed rule or standard prior to its adoption. The hearing may be before the commission, any designated member thereof or any person designated by and acting for the commission. [Formerly 449,173; 1977 c.38 §1]
- 468.030 Department of Environmental Quality. There is hereby established in the executive-administrative branch of the government of the state under the Environmental Quality Commission a department to be known as the Department of Environmental Quality. The department shall consist of the director of the department and all personnel employed in the department. [Formerly 449.032]
- 468.035 Functions of department. (1) Subject to policy direction by the commission, the department:
- (a) Shall encourage voluntary cooperation by the people, municipalities, counties, industries, agriculture, and other pursuits, in restoring and preserving the quality and purity of the air and the waters of the state in accordance with rules and standards established by the commission.
- (b) May conduct and prepare, independently or in cooperation with others, studies, investigations, research and programs pertaining to the quality and purity of the air or the waters of the state and to the treatment and disposal of wastes.
- (c) Shall advise, consult, and cooperate with other agencies of the state. political subdivisions, other states or the Federal Government, in respect to any proceedings and all matters pertaining to control of air or water pollution or for the formation and submission to the legislature of interstate pollution control compacts or agreements.
- (d) May employ personnel, including specialists, consultants and hearing officers, pur-

- (2) Nothing in ORS 468.263 to 468.272 is intended as a restriction or limitation upon any other powers which a county might otherwise have under the laws of this state, but shall be construed as cumulative.
- (3) If any provision of ORS 468.263 to 468.272 or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions of ORS 468.263 to 468.272 which can be given effect without the invalid provision or application, and to this end the provisions of ORS 468.263 to 468.272 are declared to be severable. [1974 s.s. c.34 §9]

Note: See note under 468.263.

468.272 Application of other laws relating to bonds. Any restrictions, limitations, conditions or procedures provided by other statutes relating to the issuance and sale of bonds or other obligations including, but not limited to, any restrictions, limitations, conditions or procedures set forth in ORS 288.320, do not apply to the issuance and sale of bonds authorized by ORS 468.263 to 468.272. [1974 s.s. c.34 §10]

Note: See note under 468.263.

AIR POLLUTION CONTROL

- 468.275 Definitions for air pollution control laws. As used in this chapter, unless the context requires otherwise:
- (1) "Air-cleaning device" means any method, process or equipment which removes, reduces or renders less noxious air contaminants prior to their discharge in the atmosphere.
- (2) "Air contaminant" means a dust, fume, gas, mist. odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter or any combination thereof.
- (3) "Air contamination" means the presence in the outdoor atmosphere of one or more air contaminants which contribute to a condition of air pollution.
- (4) "Air contamination source" means any source at, from, or by reason of which there is emitted into the atmosphere any air contaminant, regardless of who the person may be who owns or operates the building, premises or other property in, at or on which such source is located, or the facility, equipment or other property by which the emission is caused or from which the emission comes.
- (5) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof, in sufficient

- quantities and of such characteristics and of a duration as are or are likely to be injurious to public welfare, to the health of human, plant or animal life or to property or to interfere unreasonably with enjoyment of life and property throughout such area of the state as shall be affected thereby.
- (6) "Area of the state" means any city or county or portion thereof or other geographical area of the state as may be designated by the commission.
- (7) "Woodstove" means a wood fired appliance with a closed fire chamber which maintains an air-to-fuel ratio of less than 30 during the burning of 90 percent or more of the fuel mass consumed in the low firing cycle. The low firing cycle means less than or equal to 25 percent of the maximum burn rate achieved with doors closed or the minimum burn achievable. [Formerly 449.760; 1983 c.333 §1]
- 468.280 Policy. (1) In the interest of the public health and welfare of the people, it is declared to be the public policy of the State of Oregon:
- (a) To restore and maintain the quality of the air resources of the state in a condition as free from air pollution as is practicable, consistent with the overall public welfare of the state.
- (b) To provide for a coordinated state-wide program of air quality control and to allocate between the state and the units of local government responsibility for such control.
- (c) To facilitate cooperation among units of local government in establishing and supporting air quality control programs.
- (2) The program for the control of air pollution in this state shall be undertaken in a progressive manner, and each of its successive objectives shall be sought to be accomplished by cooperation and conciliation among all the parties concerned. [Formerly 449.765]
- 468.285 Purpose. It is the purpose of the air pollution laws contained 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 to safeguard the air resources of the state by controlling, abating and preventing air pollution under a program which shall be consistent with the declaration of policy in this section and with ORS 468.280. [Formerly 449.770]
- 468.290 Application of air pollution laws. Except as provided in this section and in ORS 468.450, 476.380 and 478.960, the air pollution laws contained in this chapter do not apply to:

nants and different air contamination sources or classes thereof. [Formerly 449.785]

468.300 When liability for violation not applicable. The several liabilities which may be imposed pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter upon persons violating the provisions of any rule, standard or order of the commission pertaining to air pollution shall not be so construed as to include any violation which was caused by an act of God, war, strife, riot or other condition as to which any negligence or wilful misconduct on the part of such person was not the proximate cause. [Formerly 449.825]

468.305 General comprehensive plan. Subject to policy direction by the commission, the department shall prepare and develop a general comprehensive plan for the control or abatement of existing air pollution and for the control or prevention of new air pollution in any area of the state in which air pollution is found already existing or in danger of existing. The plan shall recognize varying requirements for different areas of the state. [Formerly 449.782]

468.310 Permits. By rule the commission may require permits for air contamination sources classified by type of air contaminants, by type of air contaminants of the state. The permits shall be issued as provided in ORS 468.065. [Formerly 449.727]

468.315 Activities prohibited without permit; limit on activities with permit. (1) Without first obtaining a permit pursuant to ORS 468.065, no person shall:

- (a) Discharge, emit or allow to be discharged or emitted any air contaminant for which a permit is required under ORS 468.310 into the outdoor atmosphere from any air contamination source.
- (b) Construct, install, establish, develop, modify, enlarge or operate any air contamination source for which a permit is required under ORS 468.310.
- (2) No person shall increase in volume or strength discharges or emissions from any air contamination source for which a permit is required under ORS 468.310 in excess of the permissive discharges or emission specified under an existing permit. [Formerly 449.731]

468.320 Classification of air contamination sources; registration and reporting of sources. (1) By rule the commission may classify air contamination sources according to

levels and types of emissions and other characteristics which cause or tend to cause or contribute to air pollution and may require registration or reporting or both for any such class or classes.

(2) Any person in control of an air contamination source of any class for which registration and reporting is required under subsection (1) of this section shall register with the department and make reports containing such information as the commission by rule may require concerning location, size and height of air contaminant outlets, processes employed, fuels used and the amounts, nature and duration of air contaminant emissions and such other information as is relevant to air pollution. [Formerly 449.707]

468.325 Notice prior to construction of new sources; order authorizing or prohibiting construction; effect of no order; appeal. (1) The commission may require notice prior to the construction of new air contamination sources specified by class or classes in its rules or standards relating to air pollution.

- (2) Within 30 days of receipt of such notice, the commission may require, as a condition precedent to approval of the construction, the submission of plans and specifications. After examination thereof, the commission may request corrections and revisions to the plans and specifications. The commission may also require any other information concerning air contaminant emissions as is necessary to determine whether the proposed construction is in accordance with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter and applicable rules or standards adopted pursuant thereto.
- (3) If the commission determines that the proposed construction is in accordance with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter and applicable rules or standards adopted pursuant thereto, it shall enter an order approving such construction. If the commission determines that the construction does not comply with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter and applicable rules or standards adopted pursuant thereto, it shall notify the applicant and enter an order prohibiting the construction.
- (4) If within 60 days of the receipt of plans, specifications or any subsequently requested revisions or corrections to the plans and specifications or any other information required pursuant to this section, the commission fails to

SUPPLEMENTAL BACKGROUND INFORMATION ON ISSUE

The Portland downtown area (roughly, the portion bounded by the Willamette River and the freeway loop) is under the jurisdiction of the city's Downtown Parking and Circulation Policy, originally adopted in 1975, and is the officially designated nonattainment area for carbon monoxide within the Portland-Vancouver Interstate Air Quality Maintenance Area (AQMA). In mid-1982 the state submitted a control plan for meeting the federal carbon monoxide standards within the AQMA by the end of 1985 as a revision to the Federal Clean Air Act State Implementation Plan. A key element of the control plan was a subsequent, 1980 update of the city's parking policy, which established a maximum parking inventory figure of 40,855 spaces, composed of 1) existing spaces; 2) spaces allocated to future development projects; 3) unallocated spaces categorized as the Parking Reserve. The control plan was approved by the U.S. Environmental Protection Agency in the fall of 1982. The downtown area has not violated the federal 8-hour carbon monoxide standard since the end of 1984.

After 1982 the city's parking policy went through another update (1984-1985). The deliberations on revising the policy were prolonged, with retention of the parking ceiling a major point of contention. However, there was nearly unanimous opinion among both the Citizens Advisory Committee and the Technical Advisory Committee that the city needed to collect comprehensive data on downtown parking, including at the Department's request a new count of existing parking spaces.

Following adoption of the updated 1985 parking policy by the Portland City Council in early 1986, the city conducted a new count of downtown parking spaces. The count data went through a thorough verification process, including some spot checks by the Department in the core area (Sector E) of the downtown. After verification the on-street and off-street parking data were computerized. The new count indicated the existence of approximately 3,000 more spaces than the previous count (1984) had Most of the difference between the two counts was in the off-street parking category. Previous counts conducted by the city were hampered by lack of access to privately owned off-street parking facilities, requiring city staff to estimate the number of parking spaces in such facilities with a space factoring technique. Unlike previous counting efforts, the 1986 count managed to obtain access to most of the privately owned off-street facilities. The Department concluded that the lack of access resulted in underestimating the actual number of spaces. arrive at a revised maximum inventory number, changes in the Reserve and Approved categories of the inventory were tracked from This resulted in a revised maximum inventory (ceiling) of 43,914 spaces.

Two consultant studies followed the parking count effort, with the first (Air Quality Offsets for Parking) looking at transportation control measures as a way to provide emission offsets for increased parking in the downtown above the ceiling and the second (Portland Downtown Parking Plan & Circulation Update) constituting a comprehensive examination of parking utilization, traffic circulation problems and future (year 2000) parking needs. In projecting the amount of parking that would be needed in 2000, this latter study utilized the current parking ratios (from the 1985 parking policy update) in conjunction with an assumed expansion of transit ridership (existing 26% all day mode split to 35% mode split in 2000). The projections indicated that an additional 1,370 spaces above the parking ceiling would be needed to accommodate expected growth.

At the beginning of 1990, approximately 1,700 spaces of the total inventory were in the Approved category, representing parking space allocations to future development projects. The Reserve category had 30 spaces. In anticipation that the Reserve category might not have a sufficient number of spaces to allocate to new parking spaces, the 1985 parking policy update allowed the city to borrow spaces from the Approved category provided that at the same time the city identified an equal number of existing spaces which would be closed if the Reserve were not replenished. Recently, new development projects in the downtown have been approved under this provision of the parking policy.

The city and the Department have been working together to develop the proposed Parking Offset Rule to ensure that the Reserve category of the parking inventory could be augmented and allocated to new development projects without exacerbating carbon monoxide air quality in the downtown when those projects are completed and become operational.

Once EPA requirements for long range maintenance plans become clear as an anticipated followup to the prospective Clean Air Act reauthorization, then the city would be in position to do new traffic and air quality projections along with revision of the parking policy. Such an effort would probably require two to three years of planning work. The proposed Parking Offset Rule is a way to provide for maintenance of air quality standards in the interim without stifling new downtown development projects.

AIR QUALITY OFFSETS FOR PARKING

Since 1975, the total supply of parking in downtown Portland has been constrained to a maximum of roughly 40,000 spaces as part of an overall transportation strategy to improve downtown air quality. Over the twelve year period since the parking lid was established, employment downtown has increased from roughly 65,000 to over 80,000. While much of the additional travel generated by this development has been accommodated through expansion of transit service, the growth has also begun to place pressure on the available parking supply. The desire to redevelop older parts of the downtown and to continue the overall economic growth downtown has prompted the City to explore implementing other measures that might meet the same air quality objectives that the parking lid was designed to meet. The objective of this project has been to explore a range of measures that could potentially "offset" the emissions from any accommodation of additional parking.

Eleven potential offset measures were examined, each having been generated through a process of discussion and consensus building by city, regional, and state agency staff and through public input. Each of the potential offset measures was evaluated in the specific context of downtown Portland, and for each an estimate of the potential reduction in carbon monoxide (CO) emissions was made. The eleven measures and the estimated potential impact of each are presented in Table 1.

Table 9
SUMMARY OF POTENTIAL EMISSIONS IMPACTS OF OFFSETS

		Total Estimated Impact (1)			
===	Measure		tential Emissic Reducti	ons	
1.	Fringe Parking	600 Downtown Parkers Diverted	60	kg	
2.	Alternative Work Schedules	1 MPH Increase in P.M. Speeds - 4,000 Employees	147	kg	
3.	Subsidy of Ridesharing	\$.50/day Subsidy - 35,000 Employees	255	kg	
4.	Parking Management				
	Increase Long-term Rates	\$1 increase in All-Day Rate - 30,000 Parkers	129	kg	
	Increase All Parking Rates	20% Increase for All Parkers - 56,000 Parkers	187	kg	
	Reserve Off-Street Parking Before 10 A.M.	15% of Core Off-street Spaces Restricted - 2,000 Spaces	302	kg	
	Reserve Parking for Carpools	1,000 Additional Spaces Used	17	kg	
5.	Park-and-Ride Remote	335 Spaces Used	13	kg	
6.	Alternative Fuels	1,000 Light Vehicles Converted	51	kg	
7.	Reserved Parking For	No Apparent Reduction			
8.	Enhanced Inspection and and Maintenance	Annual Inspection for All Vehicles	462	kg	
9.	Increased Transit Capacity	6,000 Trips Diverted to Transit	364	kg	
10.	Traffic Flow Improvement	.5 MPH Increase in P.M. Peak Speeds	73	kg	
11.	Bicycle Access	50 to 100 Commuters Shifting	5-10	kg	

⁽¹⁾ The change in parking and in emissions represents only the reduction in parking produced by the measure. As spaces become available, some additional parkers may be attracted to the downtown and the magnitude of the change is therefore likely to be less. Because of the limitations in the data available to the project, the response to the change in space availability could not be predicted.

The evaluation of each of the measures included a review of experience with the measure in other cities as well as any experience with the measure in downtown Portland. A computer-oriented model system was also constructed to aid in the quantitative assessment of the potential impacts of each of the measures. The model system provided predictions of the changes in parking by sector, by type of parking (garage, lot, on-street), by time of arrival, and by duration of stay. The estimates were based on observed sensitivities to changes in parking costs, the cost of other modes, the travel times by alternative modes, and the baseline level of parking demand and travel by mode as could best be constructed from available data. The sensitivities were based on a combination of model parameters from the regional models maintained by METRO and sensitivities observed in other cities when similar measures were implemented.

The review of the eleven measures indicated that the measures could be grouped into two categories:

- those measures that could be considered true offsets because they would reduce the emissions per trip for vehicles coming to the downtown, and
- those measures that could be useful in an overall program of parking management because they would lead to a reduction of parking demand in the downtown.

Two of the measures could potentially have mixed effects, producing both a reduction in demand and a reduction in emissions per trip. They are:

- Parking management strategies A number of strategies were considered including preferential rates and/or locations for carpoolers, changes in parking rates, and changes in hours of operation. Most of these parking management strategies are designed to discourage long-term parking and encourage short-term parking. As such, they are primarily of the second type of measure as described above--primarily oriented to reducing parking demand. There may be some emission reductions as well, however, depending upon how the parking characteristics change as a result of the measure. Some substitution of short-term parking for long-term parking may result in a reduction in emissions, but in some cases the effect may actually be an increase in emissions.
- Reserved parking for fleets All spaces used for reserved fleets in the downtown are presently counted in the parking lid, but there is some possibility that the emissions impact of these spaces is less

than for spaces used for private vehicles. Unless the availability of fleet vehicles significantly discourages commuting by private car, or employers with fleet pools encourage employee use of transit to work, thereby reducing demand for downtown parking by commuters, this measure would probably have little direct impact.

Five of the measures are clearly of the second type and are designed to reduce the demand for commuter parking downtown either by providing incentives to drivers to switch to alternative modes or by providing alternative locations for commuter parkers at the fringe of downtown but outside of the area affected by the parking lid. These five measures are:

- Fringe parking Location of parking spaces at the fringe of downtown with shuttle service into the downtown would relocate some commuter parkers from downtown to the fringe lot(s).
- Subsidy of carpool and transit In this measure, employers would provide a direct financial incentive for commuters to use alternative modes
- Park-and-ride remote lots The development of additional parking lots along major express transit routes serving downtown would provide further incentive for downtown employees to use transit as their mode to work.
- Increases in transit capacity or coverage By increasing the level of service or capacity of the transit system, transit would become more attractive and increase its capacity for accommodating commuter trips.
- **Bicycle access to park-and-ride** By improving the bicycle access to transit service use of the transit system for trips to the downtown would be made more convenient for some trip-makers.

Four of the measures evaluated were clearly potential measures that would reduce the emissions per trip:

- Alternative work schedules By reducing peaking, higher speeds might be attained during typically congested periods and emissions per mile would be lower at the higher downtown speeds.
- Alternative fuels The use of compressed natural gas in vehicle eliminates most CO emissions.
- Enhanced inspection and maintenance Annual inspection and maintenance has been shown to significantly reduce emission rates over biennial programs in states where the change from one to the other has occurred.
- Traffic flow improvements A combination of traffic engineering

improvements, signal adjustments, and on-street parking restrictions could lead to some increase in peak-hour speeds and lower emission rates at the higher speeds.

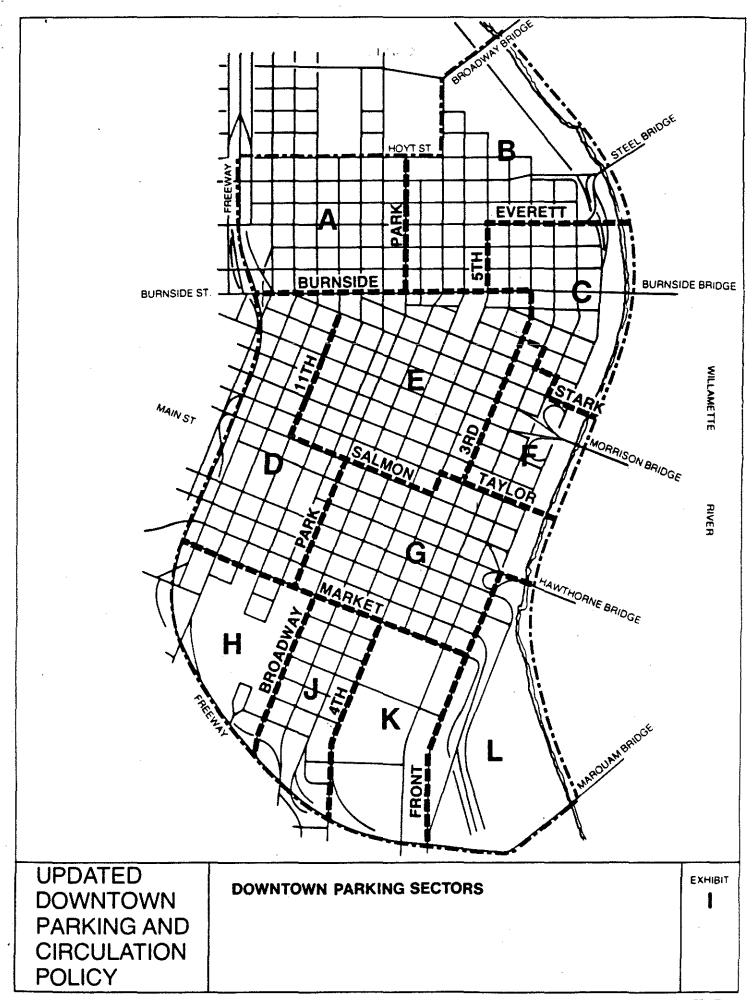
For the final four measures, those that are most clearly offset measures, the potential emissions reduction from each has been assessed in terms of the number of parking-space equivalents: that is, the number of spaces for which the emissions would be roughly equal to the emissions reduction from the measure. These parking equivalents are presented in Table 2. Although all four measures have significant offsets potential, the greatest potential appears to be in the "Enhanced Inspection and Maintenance" a change from biennial to annual inspection. This measure could offset the emissions of between 2000 and 5000 new parking spaces depending on their location and type. The other three measures offer parking offsets in the range of 200 to 1500 spaces.

Each of the eleven offset measures reviewed in this study offer some potential improvements in air quality or a reduction in total demand for downtown parking. Some measures are clearly more appropriate as offset measures if more parking is to be added to the downtown supply but others will be essential if the additional development is to be accommodated and the air quality standards are to be maintained. Further analysis with more complete data on parking utilization and parking need will allow the City to refine the results presented in this study and develop future parking policies for the downtown.

Table 2
PARKING SPACE EQUIVALENTS FOR FOUR OFFSET MEASURES

			Parking Space Equivalents			
		tial CO	Co	re	Non-	Core
Measure		sions ction ======	Off-street	On-street	Off-street	On-street
Alternative Work Schedules	147	kg	1200	650	1360	1510
Alternative Fuels	51	kg	420	222	470	520
Enhanced Inspection and Maintenance	462	kg	3770	2030	4290	4740
Traffic Flow Improvement	73	kg	600	320	680	750

The estimated emissions per space in gr/day are: core off-street: 122.5; core on-street: 227.9; non-core off-street: 107.8; and non-core on-street: 97.5. Core is Sectors C, E, F, and G.



EXECUTIVE SUMMARY

For over 15 years, the City of Portland has been an active manager of its downtown parking resources. Portland's active parking management approach, linked to expanded transit service, has been essential in achieving the City's widely acclaimed downtown renaissance.

The results of a recent study, the Downtown Parking Plan and Circulation Update, suggest that the City's parking management program has been effective. Downtown employment, retailing and entertainment have flourished. Yet the unwanted consequences of downtown growth -- constrained access, traffic congestion and delays, air pollution -- have been largely alleviated. And the study shows that there's still enough parking downtown to meet the day-to-day needs of employees, shoppers and visitors.

Portland <u>can</u> meet its future downtown parking needs by following this same recipe which has been effective for the last fifteen years: blending the City's program of closely managed downtown parking with the regional program of expanded transit service to the downtown.

Today, downtown parking is still relatively plentiful. Few sectors of the downtown approach full capacity, even at the peak hours. Portland has about the same number of downtown parking spaces as Seattle -- but only about half as much employment. Local parking prices are 30-50% below prevailing rates in downtown Seattle. And transit service to Downtown Portland is programmed to expand again in the future.

Over the next ten years, though, as the downtown continues to grow, Portland will also need to begin adding a few new ingredients to keep the City's parking management recipe working.

Partnership with Downtown Business

The Downtown Parking Plan and Circulation Update recommends the City of Portland consider several new approaches which would develop a partnership with major employers, businesses and Tri-Met to jointly manage downtown parking:

- o Introducing Transportation System Management (TSM) programs to promote transit, reduce peak hour traffic, and increase vehicle occupancy at peak hours.
- Organizing a Transportation Management Association (TMA): a non-profit service organization providing a unified voice for downtown businesses, and assisting employees who commute.
- o Negotiating agreements with major employers to provide transit incentives for their downtown workers, while curtailing employer-paid parking subsidies.

Better Access to Underutilized Parking

Also needed in the future will be techniques to improve access for parkers to areas of the downtown which have low utilization. Methods recommended in the plan include:

- O Conducting a public education/marketing campaign that informs and directs parkers (commuters and shoppers) to available parking resources.
- o Establishing loop transit shuttles that connect employees and shoppers with downtown locations where there's surplus parking (particularly in Sectors A, C and K).

Sector Strategies

There's a further opportunity to address specific parking needs on a sector-specific basis, or at certain times of day or year, through intensive parking management:

- o Handling a shortage of on-street (short-term) parking in Sectors E and F by dedicating a portion of new development's off-street parking for short-term use.
- o Building (or allowing) additional off-street parking in Sector L to replace surface parking lost to new development.
- o Managing fringe parking resources which are already serving to supplement parking resources located in downtown sectors.
- o Exploiting the potential for shared use of commuter parking, by working with parking owners and operators to make available additional off-street spaces where needed to meet excess demand on evenings and weekends.
- o Adjusting the balance of 15-30-90 minute meters in several sectors.
- o Initiating special holiday season carpool incentives in core area office/retail sectors, to free up more spaces for shoppers.

Other Recommendations

The plan also provides several recommendations not reflected in the parking management strategies, advising the City of Portland to:

- o Pursue air quality offsets that compensate for the air quality impacts of added parking.
- O Undertake parking-related circulation improvements to lessen traffic congestion, primarily at the Morrison Bridgehead.
- o Expand Portland's parking data collection efforts to cover a wider area, and to provide data at more regular intervals. Also, make minor adjustments in the City's sector boundaries.

Other Recommendations (cont'd)

It is important to recognize that these measures won't give Portland the luxury of maintaining the status quo. While the downtown's parking needs can be met overall, parking conditions in the downtown will change over the next ten years. Parking spaces will be harder to find. Many commuters will be walking longer distances from parking to work, and will pay more for their monthly parking spaces. Some parkers will be guaranteed spaces by their employers, while others must hunt for spaces. More commuters, and a higher percentage, will be riding transit or carpooling.

To be sure, some additional parking will be needed in the downtown over the next ten years. However, most of the future need is expected to be fulfilled through the new parking allotted by the City to new development. Except in Sector L, it does not appear there's a need for the City of Portland to play an active role to develop more parking, or to change the current ratios to allow more parking to be developed privately.

The following report summarizes the results of the Portland Downtown Parking Plan and Circulation Update, and details the study's conclusions. A separate Technical Appendix provides a compilation of key data sources and technical documentation for the study.

EXECUTIVE SUMMARY

PURPOSE

The purpose of the Downtown Parking Management Plan is to provide direction for the management of parking resources in downtown Portland for the next ten years. The overall objectives of the Downtown Parking Management Plan support existing air quality, economic development, traffic management and transit goals. Adoption of the Plan by City Council authorizes staff to:

- 1. Pursue an amendment to the State Air Quality Implementation Plan for Carbon Monoxide to allow offsets to add parking in downtown. This entails approval by DEQ and EPA.
- 2. Implement transportation/offset programs for City of Portland employees. Depending on the fiscal impact, programs will come to City Council in implementing ordinances at a later date.
- 3. Develop and implement strategies to address parking needs of older office buildings.
- 4. Manage the parking resource at the Sector level.
- 5. Provide and promote the availability of additional carpool spaces.
- 6. Establish the work scope for an analysis of new downtown transportation and air quality policies, as well as for areas adjacent to downtown.
- 7. Periodically review economic and transit growth assumptions on which the Plan is based.

Although we cannot know for certain what the growth pattern will be in ten years, the projection for parking needs derived from the earlier Downtown Parking and Circulation Study (Barney & Worth, et al., 1989) allows planning to focus on a midrange target. The target for additions of parking and air quality offsets will be adjusted if downtown's growth is greater or less than Central City Plan projections. Future parking needs are based upon the downtown transit ridership projections of the regionally adopted Regional Transportation Plan, 35%.

The Downtown Parking Management Plan comprises both direct actions which the City can take as a major downtown employer and as a land use and parking regulator and actions that facilitate response by the private sector and other public agencies to issues of congestion and air quality in the Portland area. The Plan provides direction for public/private joint action on alternatives to drive-alone commuting. Incentives to assure the use of these alternatives are encouraged. It is anticipated that recommendations contained in this plan will be incorporated into the next parking policy update.

BACKGROUND

The 1985 update of the Downtown Parking and Circulation Policy did not include major changes. Information on parking utilization and needs was felt to be inadequate and there was concern that measures were needed which would allow more downtown parking without degrading air quality.

In 1987 the Parking Management Division contracted for the first of two consultant studies to address these gaps in information. The Air Quality Offsets Study, completed in January 1988, examined what programs could be implemented in downtown Portland to offset the adverse impacts of air pollution associated with additional downtown parking.

The 1989 Parking and Circulation Study analyzed current and projected parking and targeted circulation conditions downtown for a ten year horizon. The Parking Study identified a need for 1,370 additional spaces above the current maximum of 43,914 spaces, to accommodate mid-range downtown growth (as anticipated in the Central City Plan), to the year 2000. With these additional spaces Portland can meet future downtown parking needs for new development if the City continues to closely manage existing parking and assures that the regional transit improvement program remains on target with Regional Transportation Plan projections.

Downtown parking was shown in the study to still be relatively plentiful. Three parking sectors, H and J at Portland State University and G, the Government Center, utilize their capacities at peak. Overall, the downtown has about 10% unused offstreet spaces at the peak, or about 3,500 off-street spaces.

The conclusions of the Air Quality Offsets Study and the Parking Study provide the basis for the Downtown Parking Management Plan. The Plan identifies actions for air quality and congestion improvement which when approved by EPA will allow the City to add new parking above the current maximum parking inventory. Of particular interest are those actions which also provide regional equity, congestion relief and support for transit.

These multi-purpose measures were the subject of considerable discussion during the public reviews and workshops required for the development of the recommendations contained in this management plan. A fifty-person Citizen Resource Board was appointed by the Commissioner of Public Works to monitor the parking plan and provide suggestions during the course of the Parking Study. All members of that group received copies of the discussion drafts of this report and were given the opportunity to comment.

Additional work sessions were held involving members of the downtown business development community and advocates for air quality and transit, to gain comment on the applicability of various air quality offset and transportation system management measures. Briefings were held with Metro, the Portland Development Commission, the Department of Environmental Quality, Tri-Met and the Portland Planning Commission. A public hearing for all interested parties was held. A summary of public comment, and a summary of work session prioritization of offset measures is appended to this plan.

0

RECOMMENDATIONS: The following is a summary of recommendations. Detail on each of these recommendations is found in Section I of the Downtown Parking Management Plan.

I. INCREASE DOWNTOWN ACCESS

A transportation management plan for downtown Portland to the year 2000 which allows for the managed growth envisioned in the Central City Plan; which enhances environmental quality; and which supports the Regional Transportation Plan is recommended. The Parking Plan is based on an increase in transit ridership from 26% to 35% over a ten-year period. In order to assure the Plan's success it is essential that Tri-Met achieve yearly increase in ridership. Service and capacity increases should keep pace with growth.

Air Quality Offsets should be implemented to allow the addition of new parking spaces to be allocated to new development.

Through the Parking Study and the public process, it has been determined that an addition of 1,370 spaces to the current parking space maximum will be needed if development in downtown grows according to projections consistent with the Central City Plan. These spaces will be needed in addition to the planned transit improvements which are essential for future growth and access.

This new parking can only be added if steps are taken to assure that air quality downtown remains at least as good as it is today.

Measures to improve air quality must be assured before parking can be added, and they must be measurable and enforceable. The State Department of Environmental Quality has obtained approval by the federal Environmental Protection Agency of the offset concept and will continue to work with them to reach agreement on specific formulas.

Transportation system management (TSM) measures should be implemented to allow maximum opportunity for access to downtown while maintaining a managed parking supply.

Transportation system management addresses the future need for personal access to downtown; it emphasizes and provides for access by means other than the drive-alone auto.

TSM measures can benefit employees. Reserved carpool parking spaces, transit pass and carpool subsidies are examples of transportation management measures employers can offer as benefits to their employees.

TSM measures are most effectively and equitably provided when planned and administered by a Transportation Management Organization (TMO). The TMO is typically a non-profit association of downtown business groups acting together to serve employees who commute. Transportation Management Organizations are active in many cities nationwide and often bring about ridesharing alternatives in congested areas.

Some demand management measures may also qualify as offsets when combined with other measures. For example, a transit pass subsidy program combined

with a parking rate increase could become an offset if it can be shown that the result is an emissions improvement of a permanent nature.

- Major Update of the Downtown Parking and Circulation Policy should be delayed for two years to allow for the development of a new transportation policy for the Central City.
- ^o Reliance of older office buildings on surface parking lots should be assessed and resolved.

The process leading to the development of this Plan identified a potential problem associated with the loss of existing parking serving older office buildings without dedicated parking. Many of the buildings depend, to an unknown degree, on existing surface parking lots. These surface parking lots represent a major source of land for future development. As new development occurs these buildings will lose this parking resource. Current City policy does not address this issue.

To ensure the viability of all downtown commercial buildings, particularly older buildings, it is essential that there be a certain amount of available parking. Although home-based auto commuting should not be promoted as the predominant mode for access downtown, it will remain a significant component. Therefore, parking should be allocated and placed in a manner that allows air quality standards to be achieved and which minimizes the impact on traffic flow.

II. IMPROVE SECTOR MANAGEMENT

The Plan recognizes the unique characteristics of each downtown parking sector.

Sector strategies should be implemented to better utilize the existing and future supply of parking spaces.

Strategies are suggested which address the Parking Study findings on utilization of existing parking in each of the sectors. Examples: Explore the use of underutilized spaces such as those in Sector A at the Northwest edge of downtown as designated carpool spaces; develop a parking program for evening and weekend patrons of cultural events in Sectors D and G, near the Performing Arts Center.

Develop and implement a strategy to meet the parking needs of older buildings without dedicated parking.

CONSIDERATIONS FOR FUTURE ACTION: INCORPORATE TRANSPORTATION SYSTEM MANAGEMENT IN CENTRAL CITY AND REGIONAL PLANNING

The plan gives recognition to the increasing need to integrate downtown parking and circulation management with transportation management measures applicable to adjacent Central City districts as well as the region.

Central City and regional transportation measures should be implemented to mitigate congestion and air quality problems expected to develop in the next ten years, and to assure transit improvements and ridership. All jurisdictions throughout the region share the responsibility to manage the region's traffic growth.

The question of equity between downtown Portland, peripheral Central City districts, and the region in terms of the amount, pricing, and accessibility of parking is being raised as the Central City and other regional centers add major office and retail development.

Transportation System Management programs can incorporate parking management strategies for each Central City Plan district as called for in the Central City Plan.

Certain transportation management approaches are more effective if put into place regionally; carpool and vanpool matching is an example.

Central City Portland today accounts for approximately one-half of all rated office space in the region. This aggregate of office space allows for higher degrees of transit utilization than is achieved in most other major American cities. A continuation of downtown as the major commercial employment center in the region will serve to further an intensively used transit system, thereby keeping individual auto travel and regional air pollution to a minimum.

National trends show two-thirds of all new office development is occurring in the suburbs. Suburban development is difficult to serve by transit and thus generates more vehicle miles of travel. Unless auto travel to the Central City and within the region is managed, the gains made from cleaner cars will be erased by the increased number of cars and miles of travel. The lower capital costs for providing transit service rather than additional road lanes is another factor arguing for preventing deterioration in Downtown's strong position in regional employment and transit service.

SUMMARY

Specifically, the Downtown Parking Management Plan recommends that the City Council authorize direct actions which the City can take to both improve access for its own employees and contribute to the offsets "bank" of new spaces.

In addition, the Downtown Parking Management Plan recommends that the City not mandate action for the private sector but rather facilitate action to implement offsets and demand management measures. The City alone cannot implement enough measures to allow an addition of approximately 1,370 spaces for new development. The private sector is being given the opportunity to determine a course which will meet its needs as well as the public goals.

Finally, while not directly in the purview of the Downtown Parking Management Plan goals, it is clear that transportation management efforts for downtown are inextricably connected to the Central City and the region both for transportation and economic development impacts. Therefore, it is recommended that the City of Portland advocate transportation systems management which promulgates clean air, transit, and development in the Central City and the region.



Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: Sept. 21, 1990

Agenda Item: E

Division: Environmental Cleanup
Section: UST Cleanup

SUBJECT:

Proposed Amendments to Soil Matrix Rules for Underground Storage Tank Cleanups.

PURPOSE:

Revisions to Soil Matrix Rules (Numeric Soil Cleanup Levels for Motor Fuel and Heating Oil: OAR 340-122-305 through 340-122-360) - Request for Hearing Authorization.

When the Numeric Soil Cleanup Levels for Motor Fuel and Heating Oil (Soil Matrix Rules) were adopted in July, 1989, it was stipulated that the Department of Environmental Quality (Department, DEQ) would review the performance of these rules and report back to the Environmental Quality Commission (Commission, EQC) within 15 months.

The Department has met with a technical workgroup as well as the Environmental Cleanup Advisory Committee (ECAC) in developing these amendments. The proposed amendments make necessary changes in the analytical methods, sampling methodology and reporting requirements, but do not change the actual numeric cleanup standards.

ACTION REQUESTED:

Work Session Discussion	
General Program Background	
Potential Strategy, Policy, or Rules	
Agenda Item for Current Meeting	
Other: (specify)	
· · · · · · · · · · · · · · · · · · ·	
X Authorize Rulemaking Hearing	
Adopt Rules	
Proposed Rules	Attachment <u>A</u>
Summary of Amendments	Attachment B
Rulemaking Statements	Attachment C
Fiscal and Economic Impact Statement	Attachment D
Public Notice	Attachment E

Meeting Date: Sept. 21, 1990

Agenda Item:

Page 5

ISSUES FOR COMMISSION TO RESOLVE:

Should the rules be moved forward as per the Department's recommendation, or should we delay until there is a final methodology developed by EPA?

INTENDED FOLLOWUP ACTIONS:

If the Commission approves the Department's recommendation, the Department will:

- 1. Conduct public hearings on the proposed amendments.
- 2. Submit final rule amendments to the Commission at the December EQC meeting.

Approved:

Section:

Division: //

Director:

Report Prepared By: Alan D. Kiphut

Phone: 229-6834

FOR LOW REVACE

Date Prepared: September 4, 1990

ADK:adk matrix.rev 9/4/90



Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: <u>Sept. 21, 1990</u>
Agenda Item: <u>E</u>

Division: Environmental Cleanup
Section: UST Cleanup

SUBJECT:

Proposed Amendments to Soil Matrix Rules for Underground Storage Tank Cleanups.

PURPOSE:

Revisions to Soil Matrix Rules (Numeric Soil Cleanup Levels for Motor Fuel and Heating Oil: OAR 340-122-305 through 340-122-360) - Request for Hearing Authorization.

When the Numeric Soil Cleanup Levels for Motor Fuel and Heating Oil (Soil Matrix Rules) were adopted in July, 1989, it was stipulated that the Department of Environmental Quality (Department, DEQ) would review the performance of these rules and report back to the Environmental Quality Commission (Commission, EQC) within 15 months.

The Department has met with a technical workgroup as well as the Environmental Cleanup Advisory Committee (ECAC) in developing these amendments. The proposed amendments make necessary changes in the analytical methods, sampling methodology and reporting requirements, but do not change the actual numeric cleanup standards.

ACTION REQUESTED:

<pre>Work Session Discussion</pre>	
X_Authorize Rulemaking Hearing Adopt Rules	
Proposed Rules	Attachment A
Summary of Amendments	Attachment B
Rulemaking Statements	Attachment C
Fiscal and Economic Impact Statement	Attachment D
Public Notice	Attachment E

	·	
		·
	Issue a Contested Case Order Approve a Stipulated Order Enter an Order	Attachmont
	Proposed Order	Attachment
	Approve Department Recommendation Variance Request Exception to Rule Informational Report Other: (specify)	Attachment Attachment Attachment Attachment
DESC	RIPTION OF REQUESTED ACTION:	
DEC	RITION OF REGOEDIED ACTION.	
	The proposed rule amendments are designed to in reliability of the analytical methods and samp methodology, as well as clarify reporting required regulated community must meet.	ling
	The Department requests authority to conduct pon these proposed amendments.	ublic hearings
<u>AUTH</u>	ORITY/NEED FOR ACTION:	
v	Required by Statute: Enactment Date: Statutory Authority: ORS 465.200 to 465.420;	Attachment
	ORS 466.705 to 466.835 Pursuant to Rule:	Attachment
	Pursuant to Federal Law/Rule:	Attachment
	Other:	Attachment
X	Time Constraints: (explain)	
	Previous staff report (7/21/89) stipulated that return to the EQC within 15 months. It is also start the rulemaking process now, so that final be ready for implementation before the building spring.	necessary to changes will
DEVE:	LOPMENTAL BACKGROUND:	
	Advisory Committee Report/Recommendation Hearing Officer's Report/Recommendations Response to Testimony/Comments Prior EQC Agenda Items: (list) Agenda Item H, 7/21/89 EQC Meeting	Attachment Attachment Attachment

Meeting Date: Sept. 21, 1990 Agenda Item: E Page 2 Agenda Item: E
Page 3

Attachment ___

Other Related Reports/Rules/Statutes:

Supplemental Background Information

Attachment ___

Attachment ___

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

Meeting Date: Sept. 21, 1990

The Soil Matrix Rules were developed and adopted to allow the regulated community to move forward quickly and efficiently with the cleanup of minor petroleum releases to the soil. For the most part, the program has worked extremely well. One area of concern which was identified when the rules were adopted was the analytical method used to evaluate soil samples and determine if a site needed further remediation.

The current analytical method (EPA 418.1) does not discriminate between naturally occurring hydrocarbons and petroleum hydrocarbons. This "background interference", and its impact on measured contamination, has been a concern of the regulated community and the Department.

The Department has been involved in a national effort with the Environmental Protection Agency (EPA) and other states to develop a consistent methodology which can be used nationwide. While this method has not yet been finalized, the proposed approaches (TPH-G and TPH-D) are based on the most recent developments in this area and will require little, if any, modification when EPA adopts a final approach. They will also provide more accurate measurement of petroleum contamination on a site. Detailed descriptions of the proposed methods will be available for public review and comment during the public hearing process.

Representatives from consulting firms and analytical laboratories, who participated in a technical workgroup with the Department, as well as the ECAC, support the proposed changes to the analytical methods and the other amendments to the rules.

PROGRAM CONSIDERATIONS:

The intent of these rules is to allow for efficient cleanup of minor petroleum releases to soil. These sites typically receive little DEQ oversight due to the minor hazard they present. It is, therefore, extremely important that the rules clearly delineate the process to be followed and that the analytical methods and sampling methodology provide reliable data which allows the Department to make a decision with reasonable confidence.

Meeting Date: Sept. 21, 1990

Agenda Item:

Page 4

The proposed amendments will improve the quality of the information which the Department receives on simple soil cleanups, and increase the confidence of the Department in closing out these sites.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

Several alternatives were considered relative to these rules:

- 1. Make no changes in any portion of the rules until EPA develops a final version of the analytical methodology.
- 2. Amend other sections of the rules where changes are needed for clarity and consistency, but make no changes in the analytical methods at this time.
- 3. Amend the rules to reflect current, state-of-the-art developments in the area of analytical methods, and also amend other sections of the rules, where necessary for clarity and consistency.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends Alternative 3.

Given the concerns with the current analytical method for gasoline contamination, the Department feels it is imperative to provide a better approach as soon as possible. The proposed method will provide more reliable data and, from the input to date, is acceptable to the regulated community. It also makes sense to amend the other sections of the rules at this time.

For the reasons stated above, the Department recommends that the Commission authorize public hearings to be held on the proposed rule amendments.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The development of these rules is consistent with the Strategic Plan, Agency Policy and Legislative Policy.

Meeting Date: Sept. 21, 1990

Agenda Item:

Page 5

ISSUES FOR COMMISSION TO RESOLVE:

Should the rules be moved forward as per the Department's recommendation, or should we delay until there is a final methodology developed by EPA?

INTENDED FOLLOWUP ACTIONS:

If the Commission approves the Department's recommendation, the Department will:

- Conduct public hearings on the proposed amendments. 1.
- 2. Submit final rule amendments to the Commission at the December EQC meeting.

Approved:

Division:

Director:

Report Prepared By: Alan D. Kiphut

Phone: 229-6834

Date Prepared: September 4, 1990

ADK:adk matrix.rev 9/4/90

Attachment A Agenda Item E 9-21-90 EQC Meeting

Proposed Revisions to

NUMERIC SOIL CLEANUP LEVELS FOR MOTOR FUEL AND HEATING OIL

OAR 340-122-305 to 340-122-360

OUTLINE OF RULES

340-122-305	Purpose
340-122-310	Definitions
340-122-315	Scope and Applicability
340-122-320	Soil Cleanup Options
340-122-325	Evaluation of Matrix Cleanup Levels
340-122-330	Evaluation Parameters
340-122-335	Numeric Soil Cleanup Standards
340-122-340	Sample Number and Location
340-122-345	Sample Collection Methods
340-122-350	Required Analytical Methods
340-122-355	Evaluation of Analytical Results
340-122-360	Reporting Requirements

340-122-305 Purpose

These rules establish numeric soil cleanup standards pursuant to ORS 466.745 and OAR 340-122-245 (1988) for the remediation of motor fuel and heating oil releases from underground storage tanks. The soil cleanup levels have been developed to facilitate the cleanup of these releases while maintaining a high degree of protection of public health, safety, welfare and the environment.

340-122-310 Definitions

Terms not defined in this section have the meanings set forth in ORS <u>465.200</u>[466.540], ORS 466.705, and OAR 340-122-210. Additional terms are defined as follows unless the context requires otherwise:

- (1) "Gasoline" means any petroleum distillate used primarily for motor fuel of which more than 50% of its components have hydrocarbon numbers of C10 or less.
- (2) "Groundwater" means any water, except capillary moisture, beneath the land surface or beneath the bed of any stream, lake, reservoir or other body of surface water within the boundaries of the state, whatever may be the geological formation or structure in which such water stands, flows, percolates or otherwise moves.
- (3) "Native soil" means the soil outside of the immediate boundaries of the pit that was originally excavated for the purpose of installing an underground storage tank.
- (4) "Non-gasoline fraction" means diesel and any other petroleum distillate used for motor fuel or heating oil of which more than 50% of its components have hydrocarbon numbers of C11 or greater.
- (5) "Soil" means any unconsolidated geologic materials including, but not limited to, clay, loam, loess, silt, sand, gravel, tills or any combination of these materials.

340-122-315 Scope and Applicability

- (1) These rules shall apply to the cleanup of releases from UST systems containing motor fuel and heating oil, and shall take effect March 1, 1991.
- (2) Matrix cleanup levels established by these rules are not applicable to the cleanup of petroleum releases which, due to their magnitude or complexity, are ordered by the Director to be conducted under OAR 340-122-010 through OAR 340-122-110.

340-122-320 Soil Cleanup Options

When using the numeric soil cleanup standards specified in these rules, the owner, permittee, or responsible person has the option of:

- (1) Cleaning up the site as specified in these rules to the numeric soil cleanup standard defined as Level 1 in 340-122-335(2); or
- (2) Evaluating the site as specified in 340-122-325 to determine the required Matrix cleanup level, and then cleaning up the site as specified in these rules to the numeric soil cleanup standard defined by that Matrix cleanup level.

340-122-325 Evaluation of Matrix Cleanup Level

- (1) In order to determine a specific Matrix cleanup level, the site must first be evaluated by:
 - (a) Assigning a numerical score to each of the five site-specific parameters in 340-122-330(1)-(5); and
 - (b) Totaling the parameter scores to arrive at the Matrix Score.
- (2) The Matrix Score shall then be used to select the appropriate numeric soil cleanup standard as specified in 340-122-335.

340-122-330 Evaluation Parameters

The site-specific parameters are to be scored as specified in this section. If any of the parameters in 340-122-330(1)-(5) is unknown, that parameter shall be given a score of 10.

(1) Depth to Groundwater: This is the vertical distance (rounded to the nearest foot) from the surface of the ground to the highest seasonal elevation of the saturated zone.

The score for this parameter is:

	>:	L00	feet	1
51	-1	L00	feet	4
25		50	feet	7
	<	25	feet	10

(2) Mean Annual Precipitation: This measurement may be obtained from the nearest appropriate weather station.

The score for this parameter is:

	<	20 inch	nes	1
20	_	<u>45[40]</u>	inches	5
	>	45[40]	inches	10

(3) Native Soil or Rock Type:

The score for this parameter is:

Low permeability materials such as clays, <u>silty clays</u>, compact 1 tills, shales, and unfractured metamorphic and igneous rocks.

Moderate permeability materials such as sandy loams, loamy sands, [silty clays,] and clay loams; moderately permeable limestones, dolomites and sandstones; and moderately fractured igneous and metamorphic rocks.

High permeability materials such as fine and silty sands, 10 sands and gravels, highly fractured igneous and metamorphic rocks, permeable basalts and lavas, and karst limestones and dolomites.

(4) Sensitivity of the Uppermost Aquifer: Due to the uncertainties involved in the Matrix evaluation process, this factor is included to add an extra margin of safety in situations where critical aquifers have the potential to be affected.

The score for this parameter is:

Unusable aquifer, either due to water quality conditions

such as salinity, etc.; or due to hydrologic conditions
such as extremely low yield.

Potable aquifer not currently used for drinking water, but the quality is such that it could be used for drinking water.

Potable aquifer currently used for drinking water; alternate unthreatened sources of water readily available.

Sole source aquifer currently used for drinking water; 10 there are no alternate unthreatened sources of water readily available.

- (5) Potential Receptors: The score for potential receptors is based on both the distance to the nearest well and also the number of people at risk. Each of these two components is to be evaluated using the descriptors defined in this section.
 - (a) The distance to the nearest well is measured from the area of contamination to the nearest well that draws water from the aquifer of concern. If a closer well exists which is known to draw water from a deeper aquifer, but there is no evidence that the deeper aquifer is completely isolated from the contaminated aquifer, then the distance must be measured to the closer, deeper well.

5

The distance descriptors are:

Near < 1/2 mile Medium 1/2 - 2[3] miles Far > 2[3] miles

(b) The number of people at risk is to include all people <u>served by drinking water wells which are</u> located within 2[3] miles of the contaminated area. For public wells, count the number of users listed with the Oregon Health Division, Drinking Water Systems Section. For private wells, assume 3 residents per well. In lieu of a door-to-door <u>survey of private wells</u>, it may be assumed that there is one well per residence. [This number is to include not only residents of the area, but also others who regularly enter the area such as employees in restaurants, motels, or campgrounds.]

The number descriptors are:

Many > 3000 Medium 100 - 3000 Few < 100

(c) The score for this parameter is taken from the combination of the two descriptors using the following grid:

	Many	Medium	Few
Near	10	10	5
Medium	10	5	1
Far	5	. 1	1

(6) The Matrix Score for a site is the sum of the five parameter scores in 340-122-330(1)-(5).

340-122-335 Numeric Soil Cleanup Standards

- (1) If the Matrix Score evaluated in 340-122-330 is:
 - (a) Greater than 40, the site must be cleaned up to at least the Level 1 standards listed in 340-122-335(2).
 - (b) From 25 to 40, inclusive, the site must be cleaned up to at least the Level 2 standards listed in 340-122-335(2).
 - (c) Less than 25, the site must be cleaned up to at least the Level 3 standards listed in 340-122-335(2).

(2) The following table contains the required numeric soil cleanup standards based on the level of Total Petroleum Hydrocarbons (TPH) as measured by the analytical methods specified in 340-122-350.

	Level 1	Level 2	Level 3
TPH (Gasoline) TPH (Diesel)	40 ppm	80 ppm	130 ppm
	100 ppm	mgg 003	1000 ppm

(3) The Gasoline TPH value shall be the target cleanup level for all sites unless a hydrocarbon identification (HCID) test clearly shows that the contaminant is Diesel or another non-gasoline fraction hydrocarbon as defined in 340-122-310(4). Under these conditions, the Diesel TPH value may be used as the target cleanup level. In locations where the soil is contaminated by both gasoline and diesel or other non-gasoline hydrocarbons, the gasoline contaminated soils shall meet the gasoline cleanup standard and the diesel or other non-gasoline contaminated soils shall meet the diesel cleanup standard.

340-122-340 Sample Number and Location

The collection and analysis of soil samples is required to verify that a site meets the requirements of these rules. These samples must represent the soils remaining at the site and shall be collected after contaminated soils have been removed or remediated. Each sample must represent a single location; composite samples are not allowed. The number of soil samples required for a given site and the location at which the samples are to be collected are as follows:

- (1) A minimum of two soil samples must be collected from the site:
 - (a) These samples must be taken from those areas where obviously stained or contaminated soils have been identified and removed or remediated.
 - (b) If there are two or more distinct areas of soil contamination, then a minimum of one sample must be collected from each of these areas.
 - (c) The samples must be taken from within the first foot of native soil directly beneath the areas where the contaminated soil has been removed, or from within the area where in-situ remediation has taken place.

- (d) A field instrument sensitive to volatile organic compounds may be used to aid in identifying areas that should be sampled, but the field data may not be substituted for laboratory analyses of the soil samples.
- (e) If there are no areas of obvious contamination, then samples must be collected from the locations specified in subsections (2) to (5) of this section which are most appropriate for the situation.
- (f) If it is being proposed that a pocket of contamination be left in place pursuant to 340-122-355(4), then sufficient samples shall be collected from the site in order to estimate the extent, volume and level of contamination in this pocket.
- (2) If water is not present in the tank pit:
 - (a) Soil samples must be collected from the native soils located no more than two feet beneath the tank pit in areas where contamination is most likely to be found.
 - (b) For the removal of an individual tank, samples must be collected from beneath both ends of the tank. For the removal of multiple tanks from the same pit, a minimum of one sample must be collected for each 150 [250] square feet of area in the pit.
- (3) In situations where leaks have been found in the piping, or in which released product has preferentially followed the fill around the piping, samples are to be collected from the native soils directly beneath the areas where obvious contamination has been removed. Samples should be collected at 20 lateral foot intervals.
- (4) If water is present in the tank pit, <u>regardless of whether obvious</u> contamination is present or not, the Department must be notified of this fact. The owner, permittee, or responsible person shall then either continue the investigation under OAR 340-122-240, or do the following:
 - (a) Purge the water from the tank pit and dispose of it in accordance with all currently applicable requirements.
 - (b) If the pit remains dry for 24 hours, testing and cleanup may proceed according to the applicable sections of these soil cleanup rules. If water returns to the pit in less than 24 hours, a determination must be made as to whether contamination is likely to have affected the groundwater outside of the confines of the pit as indicated below:
 - (A) For the removal of an individual tank, soil samples are to be collected from the walls of the excavation next to the ends of the tank at the original soil/water interface. For the removal of multiple tanks from the same pit, a soil sample is to be collected from each of the four walls of the excavation at the original soil/water interface.

- (B) At least one sample must be taken of the water in the pit regardless of whether obvious contamination is present or not. This sample shall be collected as required by 340-122-345(4).
- (C) The soil samples must be analyzed for TPH and benzene, toluene, ethylbenzene and xylenes (BTEX), and the water sample must be analyzed for BTEX. These analyses must be made using the methods specified in 340-122-350. The results of these analyses must be submitted to the Department.
- (D) The Department shall then determine how the cleanup shall proceed as specified in 340-122-355(3).
- (5) In situations where tanks and lines are to remain in place in areas of suspected contamination, the owner, permittee or responsible person shall submit a specific soil sampling plan to the Department for its approval.
- (6) In situations where TPH analysis indicates that contamination is present due to a release from a waste oil tank, at least one sample of the waste oil contaminated soils must be collected and analyzed for PCBs, volatile chlorinated solvents, volatile aromatic solvents, and leachable metals using the analytical methods specified in 340-122-350.

340-122-345 Sample Collection Methods

- (1) The following information must be kept during the sampling events:
 - (a) A sketch of the site must be made which clearly shows all of the sample locations and identifies each location with a unique sample identification code.
 - (b) Each soil and water sample must be clearly labeled with its sample identification code. A written record must be maintained which includes, but is not limited to: the date, time and location of the sample collection; the name of the person collecting the sample; how the sample was collected; and any unusual or unexpected problems encountered during the sample collection which may have affected the sample integrity.
 - (c) Formal chain-of-custody records must be maintained for each sample.
- (2) If soil samples cannot be safely collected from the excavation, a backhoe may be used to remove a bucket of native soil from each of the sample areas. The soil is to be brought rapidly to the surface where samples are to be immediately taken from the soil in the bucket.
- (3) The following procedures must be used for the collection of soil samples from open pits or trenches:

- (a) Just prior to collecting each soil sample, approximately three inches of soil must be rapidly scraped away from the surface of the sample location.
- (b) To minimize the loss of volatile materials, it is recommended that samples be taken using a driven-tube type sampler. A clean brass or stainless steel tube of at least one inch in diameter and three inches in length may be used for this purpose. The tube should be driven into the soil with a suitable instrument such as a wooden mallet or hammer.
- (c) The ends of the sample-filled tube must be immediately covered with clean aluminum foil. The foil must be held in place by plastic end caps which are then sealed onto the tube with a suitable tape.
- (d) Alternatively, samples may be taken with a minimum amount of disturbance and packed <u>immediately</u> in a clean wide-mouth glass jar leaving as little headspace as possible. The jar must then be immediately sealed with a teflon-lined screw cap.
- (e) After the samples are properly sealed, they are to be immediately placed on ice and maintained at a temperature of no greater than 4 $^{\rm OC}$ (39 $^{\rm OF}$) until being prepared for analysis by the laboratory. All samples must be analyzed within 14 days of collection.
- (4) The following procedures must be used for the collection of water samples from the tank pit:
 - (a) After the water has been purged from the pit in accordance with 340-122-340(4)(a), samples shall be collected as soon as sufficient water has returned to the pit to allow representative sampling [it is not necessary to wait for the pit to refill to its original depth, only for sufficient water to return to properly use the sampling device].
 - (b) Samples are to be taken with a device designed to reduce the loss of volatile components. A bailer with a sampling port is suitable for this purpose.
 - (c) The water is to be transferred into [a] <u>two identical</u> glass vials with as little agitation as possible and immediately sealed with [a] teflon-lined caps. The vials must be filled completely so that no air bubbles remain trapped inside.
 - (d) After the samples are properly sealed, they are to be immediately placed on ice and maintained at a temperature of no greater than 4 $^{\rm OC}$ (39 $^{\rm OF}$) until being prepared for analysis in the laboratory. All samples must be analyzed within 14 days of collection.
- (5) The Department may approve alternative sampling methods which have been clearly shown to be at least as effective with respect to minimizing the loss of volatile materials during sampling and storage as the methods listed in 340-122-345(1)-(4).

340-122-350 Required Analytical Methods

The following methods are to be used for the analysis of the soil and water samples, as applicable:

- (1) Total Petroleum Hydrocarbons (TPH) <u>for Casoline</u> shall be analyzed by means of <u>DEO Laboratory Method TPH-G</u> [EPA Method 418.1 using the sample extraction and preparation technique specified by the Department].
- (2) Total Petroleum Hydrocarbons (TPH) for Diesel and other non-gasoline fraction hydrocarbons shall be analyzed by means of either EPA Method 418.1 using the sample extraction and preparation technique specified by the Department or by means of the DEO Laboratory Method TPH-D.
- (3)[(2)] Hydrocarbon Identification (HCID) shall be made[, using the extract from EPA Method 418.1,] by a gas chromatographic method capable of identifying, in terms of the number of carbon atoms, the range of hydrocarbons present in the sample.
- (4)[(3)] Benzene, Toluene, Ethylbenzene and Xylenes (BTEX) shall be analyzed by means of EPA Methods documented in SW-846 (Test Methods for Evaluating Solid Waste)[5030 in conjunction with either EPA Method 8020 or EPA Method 8240].
- (5) Waste oil contaminated soils shall be analyzed for volatile chlorinated solvents, volatile aromatic solvents, and PCBs by EPA Methods documented in SW-846 (Test Methods for Evaluating Solid Waste); for leachable metals by EPA Toxicity Characteristic Leaching Procedure (TCLP); and for TPH by one of the methods specified in 340-122-350(2). [The Department shall review the effectiveness of the analytical methods delineated in 340-122-350(1)-(3) and report to the Commission within 15 months on the appropriateness of their use and, if necessary, recommend changes to the analytical methods and/or the cleanup standards delineated in subsection 340-122-335 of these rules.]
- (6)[(4)] The Department may approve alternative analytical methods which have been clearly shown to be applicable for the compounds of interest and which have detection limits at least as low the methods listed in 340-122-350(1)-(5)[(3)].

340-122-355 Evaluation of Analytical Results

- (1) The results of the soil analyses shall be interpreted as follows:
 - (a) If a sample has a concentration less than or equal to the required matrix level, the area represented by that sample shall have met the requirements of these rules.
 - (b) If a sample has a concentration exceeding the required matrix level by more than 10%, the area represented by that sample has not met the requirements of these rules. Further remediation, sampling and testing is necessary until the required level is attained.

- (c) If a sample has a concentration exceeding the required matrix level by less than 10%, the responsible person has the option of collecting and analyzing two more samples from the same area and using the average of all three to determine if the standard has been met; or further remediating the area and then collecting and analyzing one new sample and using the concentration of the new sample to determine if the standard has been met; or the Department has the option of approving the cleanup with no further action, requiring that more samples be taken, or requiring further cleanup and subsequent sampling. Such a decision shall be made based upon the analytical results of other samples from the site, best professional judgement made from a visit to the site, the apparent extent of contamination, and other site specific factors deemed appropriate.
- (2) A site shall be considered sufficiently clean when all of the sampled areas have concentrations less than or equal to the required matrix cleanup level, and when the possibility of any human contact with the residual soil contamination remaining on the site has been precluded.
- (3) If water is present in the tank pit, the Department shall decide if cleanup may proceed under these rules or if further action must be taken such as the installation of monitoring wells, or the development of a Corrective Action Plan under OAR 340-122-250. This decision shall be based on, but is not limited to:
 - (a) The apparent extent of the contamination;
 - (b) The likelihood that groundwater contamination exists beyond the boundaries of the tank pit;
 - (c) The likelihood that the BTEX concentrations in the water and the BTEX and TPH concentrations in the soil indicate a situation which poses a threat to public health, safety, welfare and the environment; and
 - (d) Any other site-specific factors deemed appropriate by the Department.
- (4) If a pocket of contamination exceeding the required Matrix cleanup level is located under a building or other structure where further removal would endanger the structure or be prohibitively expensive, the Department must be notified of this situation. The Director shall then decide whether such contamination can remain without threatening human health, safety, and welfare and the environment. If not, the Department shall require further remediation.
- (5) For waste oil contaminated sites, all detectable levels of volatile chlorinated solvents, volatile aromatic hydrocarbons, PCBs, or leachable metals shall be reported to the Department as soon as these results are known. The Department shall then decide whether the cleanup shall continue under these rules or whether further investigation is warranted under 340-122-205 through 260 or 340-122-010 through 110.

- (1) Within 60 days of completing work at the site, or within another reasonable period of time determined by the Department, an [An] owner, permittee, or responsible person shall submit a final report to the Department for a site that has been cleaned up according to these rules, which report shall contain, but is not limited to:
 - (a) A narrative section describing how the release was discovered, what initial measures were taken to control the spread of contamination, what was observed when the tank was removed from the pit (odor, sheen, stained soils, holes in tank or lines, etc.), how the cleanup was done, how much contaminated soil was removed, what was done with the contaminated soil and the decommissioned tank and piping, who collected the samples, how the samples were collected, stored and shipped to the lab, and any problems encountered during the cleanup or sample collection process [A list of the individual parameter and factor scores used to arrive at the Matrix score for the site];
 - (b) Properly filled out copies of the Department's Matrix Checklist and Matrix Score Sheet;
 - (c)[(b)] All of the sampling documentation required in 340-122-345[(4)];
 - (d)[(c)] Copies of the laboratory reports and chain of custody forms for all soil and water [of the] samples collected at the site[, including samples that were too high and which required further action under 340-122-355(1)];
 - (e) Copies of all receipts or permits related to the disposal of free product, contaminated soil, contaminated water, and decommissioned tanks and piping;
 - <u>(f)</u>[(d)] A brief explanation of what was done in the case of any samples that initially exceeded the required cleanup levels;
 - (g)[(e)] A summary of the concentrations measured in the final round of samples from each sampling location;
 - [(f) An explanation of what was done with any contaminated soil that was removed from the site;]
 - (h)[(g)] In cases where groundwater was present in the pit, a summary of the data collected and the decision made by the Department under 340-122-355(3)[.];
 - (i)[(h)] In cases where pockets of excess contamination remain on site in accordance with 340-122-355(4), a description of this contamination including location, approximate volume and concentration[.]; and

- (j) In cases where waste oil contamination required extra sampling and analyses as specified in 340-122-340(6), a summary of the data collected and, if appropriate, the decision made by the Department under 340-122-355(5).
- (2) The owner, permittee, or responsible person shall retain a copy of the report submitted to the Department under this section until the time of first transfer of the property, plus 10 years.
- (3) Within 120 days after receipt of the final report under this section, the Department shall:
 - (a) Provide the person submitting the report a written statement that, based upon information contained in the report, the site has been cleaned up in accordance with OAR 340-122-305[301] through 340-122-360; or
 - (b) Request the owner, permittee, or responsible person to submit additional information or perform further investigation; or
 - (c) Request the owner, permittee, or responsible person to develop and submit a corrective action plan in accordance with OAR 340-122-250.

Summary of Proposed Matrix Rule Revisions

General Comments

When the Environmental Quality Commission (EQC) adopted the Numeric Soil Cleanup Levels for Motor Fuel and Heating Oil (OAR 340-122-305 through 360, commonly referred to as "The Matrix") on July 21, 1989, it was stipulated that the Department review the performance of these rules and report back to the Commission within 15 months. If deemed necessary, the Department was to propose changes to the rules at that time. During the past year, the Department has received a number of comments on the rules from DEQ Regional UST Cleanup and Compliance Staff as well as from consultants and members of the regulated community. In March of this year, the Department sent letters to 71 regional environmental cleanup firms requesting comments on the technical aspects of the rules. The Department then held three meetings with a technical work group to review the comments and propose possible changes that would improve the rules. The changes proposed by the work group were presented to the Environmental Cleanup Advisory Committee (ECAC) on July 9. The ECAC proposed two minor changes to the draft rules and recommended that the Department take these rules to the EQC and request permission to hold public hearings on the proposed changes.

Although there are quite a few proposed changes, many of them are minor and most of them fall into one of three general categories:

Improvements in the analytical methods;

When the Department originally proposed the matrix rules in 1989, one topic that received many comments from industry and consultants was the requirement of the use of EPA Method 418.1 for the analysis of Total Petroleum Hydrocarbons (TPH) at gasoline-contaminated sites. The Department promised the EQC that it would investigate this issue. During the past year, DEQ's lab has been working with EPA on the development of better analytical methods for TPH analysis. Changes are proposed to implement these new methods.

2. Improvements in sampling methodology;

Much time has been spent over the past year explaining to consultants and responsible parties the types of samples that the Department wants to see from their sites. This is especially true for cases where water is in the pit, contamination is found under a waste oil tank, or when parties are requesting permission to leave contamination in excess of cleanup standards. Changes are proposed to make the Department's position clear in the rules.

3. Improvements in reporting requirements.

The Department has found that a large number of matrix reports are submitted with much information about the site missing. This creates delays in Departmental review since staff must then call or write and request more information before they know how best to respond to the report. Changes are proposed to clarify the reporting requirements and hopefully speed up the Department's review process.

Summary of Proposed Revisions

Rule	Proposed Change and Explanation		
310	This citation must be amended since the state superfund statute has been recodified from ORS Chapter 466 to ORS Chapter 465.		
330(2)	The precipitation cutoff for 5/10 points would be changed from 40 to 45 inches to provide a more realistic cutoff for typical Willamette Valley and Northwest Region sites.		
330(3)	The minor terminology changes are being proposed to more accurately define the terms in the rules.		
330(5) (a)	The proposal for changing the medium/far distance cutoff from 3 to 2 miles is to provide consistency with risk distances for groundwater contamination being used by ECD's Site Assessment Section (SAS).		
330(5) (b)	The change in the way of estimating the number of people at risk is being proposed to more accurately reflect the real risk that groundwater contamination may pose to adjacent populations. This is also more consistent with ECD's SAS risk assessment.		
335(3)	The added language is being proposed in order to provide guidance for dealing with sites contaminated by both gasoline and diesel or other non-gasoline petroleum products.		
340	The added language is being proposed to clarify the Department's position on the use of composite samples at matrix sites.		
340(1)(f)	The proposed wording would clarify the Department's position on the amount of information required before a decision can be made to leave small pockets of contamination in excess of cleanup standards. This change does not add a new requirement since it is consistent with the information previously required in 360(h) (which is 360(i) in these revised rules).		

340(2)(b)

The proposal to reduce the area per sample from 250 to 150 square feet is being made to provide better data from sites where large excavations are made to remove nests of USTs.

340(4)

The proposed wording is meant to clarify the Department's position on water samples from tank pits.

340(4)(b)(B)

Same as 340(4).

340(6)

This subsection is being proposed so that responsible parties will know the Department's position on dealing with waste oil contamination. Since waste oil commonly contains non-petroleum contamination such as PCBs, metals and chlorinated solvents, the Department feels that tests for these compounds should be required before we can assume the waste is just petroleum.

345(3)(d)

This change is proposed to emphasize the need for proper handling of volatile samples.

345(4)(a)

Same as 345(3)(d).

345(4)(c)

Most laboratories require that duplicate water samples be submitted for analysis. Only one is typically analyzed. However, in cases where high contaminant levels interfere with the analysis, it may be necessary for them to try again. This proposed wording will make sure that both samples are collected at the same time.

350(1) - (3)

The Department now has two new alternative TPH methods which are proposed in these rules: TPH-G for gasoline and TPH-D for diesel and other non-petroleum hydrocarbons. From the results of the Department's tests, it is proposed that TPH-G be the required method for gasoline contamination, but that either TPH-D or 418.1 be allowed for diesel or other non-gasoline petroleum hydrocarbons. The reason for the latter recommendation is that the two methods give comparable results. The proposed wording changes in these three sections reflect DEQ Laboratory recommendations.

350(4)

DEQ Laboratory proposed this wording change to allow some flexibility in analytical methods, while still limiting the choice to a specific group of EPA approved methods.

350(5)

The new wording is proposed for the same reasons as those given for 340(6). The old wording is being deleted since with the issuance of this staff report the Department has met its obligation to the Commission.

350(6)	These are just bookkeeping changes to keep the rule numbering consistent with proposed changes.
355(1)(c)	The proposed wording would allow the Department more flexibility in situations where sample results were close to, but still in excess of, adopted cleanup levels.
355(5)	Same as 340(6).
360(1)	The reporting time requirement is being proposed to reduce the amount of time spent by the Department in calling/writing responsible parties to ask them to submit the required site reports.
360(1)(a)-(j)	All of the changes in these sections are being proposed to make the reporting requirements clearer and more complete so as to reduce the need for requesting more data and speed-up the review process.
360(3)(a)	The change from 301 to 305 is proposed to simply correct an erroneous reference.

Attachment C Agenda Item E 9/21/90 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 and amend rules.

(1) <u>Legal Authority</u>

ORS 465.400 (1) authorizes the Environmental Quality Commission to adopt rules, in accordance with the applicable provision of ORS 183.310 to 183.550, necessary to carry out the provisions of ORS 465.200 to 465.900. ORS 466.720(1) directs the Commission to adopt a state-wide underground storage tank program. ORS 466.745(1) authorizes the Commission to adopt rules necessary to carry out the provisions of 466.705 to 466.835 and 466.895. In addition, ORS 468.020 authorizes the Commission to adopt such rules and standards as it considers necessary and proper in performing the functions vested by law in the Commission.

(2) Need for the Rule

ORS 465.400(2)(a) requires the Commission to adopt rules establishing the levels, factors, criteria or other provisions for the degree of cleanup including the control of further releases of a hazardous substance, and the selection of the remedial actions necessary to assure protection of the public health, safety, welfare and the environment.

ORS 466.745(1)(e)(j)(k) and (L) authorize the Commission to adopt rules establishing requirements for reporting a release from an underground storage tank, reporting corrective action taken in response to a release, and any other requirements necessary to carry out the provisions of ORS 466.705 to 466.835 and 466.895. The Environmental Quality Commission, at its meeting on July 21, 1989, adopted the Soil Matrix Rules and concurred with the Department's recommendation to report back to the Commission on the implementation of the matrix rules.

Attachment D Agenda Item E 9/21/90 EQC Meeting

FISCAL AND ECONOMIC IMPACT STATEMENT

The use of the Soil Matrix Rules has resulted in significant, but indeterminable, savings. The owner, permittee, or responsible person can use this more expeditious approach instead of performing more extensive and costly procedures under other subsections of the UST Cleanup Rules or the Remedial Action Rules. Those more extensive approaches are not necessary for relatively simple soil contamination cleanups.

The proposed amendments could increase the cost for a matrix cleanup of a gasoline release by approximately \$150 to \$300 per site. This is a one-time cost and is due primarily to the increased requirements of the proposed analytical method. This applies primarily to gasoline contamination because the previous method (EPA 418.1) is still an acceptable approach for evaluating diesel releases.

Given the average cost of a matrix cleanup (\$5,000 to \$15,000), this is a minor increase in cost for the benefits received. The primary benefits are that the site owner will obtain more accurate information on the level of contamination/cleanliness of a site and the Department can close out sites with more confidence in the cleanup numbers. It is impossible to quantify these and other benefits due to the broad spectrum of cleanup approaches being used.

Discussions with private labs have indicated that there are no significant "start-up" costs associated with using the proposed analytical method.

A small portion (2-4%) of cleanups are paid for through the Federal Leaking Underground Storage Tank Trust Fund for releases with no viable responsible person. The balance (96-98%) are paid by the liable person(s). Close to a majority of these costs may be borne by small businesses which own gas stations. Local and state agencies, which operate gasoline stations for fleets or otherwise own underground storage tanks, will bear some cleanup costs. Local jurisdictions may also become owners of underground storage tanks through right-of-way excavations, property transactions and tax foreclosures.

Attachment E Agenda Item E 9/21/90 EQC Meeting

PUBLIC NOTICE

If the Commission approves this request for public hearings, the Department will hold a series of five hearings around the state. The tentative schedule for the hearings is as follows.

- 1. Portland
 Tuesday, October 16
 7:00 9:00 PM
 Meeting room to be announced
- Pendleton
 Thursday, October 18
 7:00 9:00 PM
 Meeting room to be announced
- 3. Bend
 Tuesday, October 23
 7:00 9:00 PM
 Meeting room to be announced
- 4. Eugene Wednesday, October 24 7:00 - 9:00 PM Meeting room to be announced
- MedfordThursday, October 257:00 9:00 PMMeeting room to be announced

Adequate notice will be provided in order to maximize public comment on the proposed amendments. There will also be an opportunity for written comments to be submitted to the Department.



Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: September 21, 1990

Agenda Item: F

Division: Water Quality

Section: Standards & Assessmnt

SUBJECT:

Authorization for Rulemaking Hearing: Proposed Amendments to Water Quality Standards as Part of the Triennial Review Required by the Clean Water Act.

PURPOSE:

Every three years the Department reviews water quality standards, in fulfillment of the requirements of the Clean Water Act, to determine if revisions are needed to current rules to more fully protect water quality and beneficial uses. After reviewing the most recent scientific information and Environmental Protection Agency (EPA) criteria and policies related to water quality, the Department of Environmental Quality (Department) is proposing amendments to the Antidegradation Policy, definition of waters of the state, dissolved oxygen, bacteria, toxics, mixing zones, particulate matter, and biological criteria. The Department is also proposing changes in the definition section to support the proposed rule changes.

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	<u>A</u>
Rulemaking Statements	Attachment	
Fiscal and Economic Impact Statement	Attachment	С
Public Notice		D
Issue Papers	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:

Meeting Date: September 21, 1990

Agenda Item: F

Page 2

The current water quality standards described in Oregon Administrative Rules Chapter 340, Division 41, were reviewed by the Department and the public during December 1989 through March 1990. Based on comments from the public, staff, and EPA as to which water quality standards may need revision, the Department identified fourteen issues, related to either existing or new rules, and prepared water quality standards issue papers to discuss possible rule revision concepts. The fourteen issue papers, include 1) Definition for Waters of the State; 2) Antidegradation Policy; 3) Dissolved Oxygen; 4) Temperature; 5) Bacteria; 6) Total Dissolved Solids; 7) Toxic Pollutants; 8) Toxic Equivalency Factors; 9) 2,3,7,8-TCDD; 10) Mixing Zones; 11) Sediment Quality Criteria; 12) Interim Sediment Quality Guidelines; 13) Biological Criteria; and 14) Turbidity and Particulate Matter.

The water quality issue papers were sent to the Commission and made available for public review and comment from May 11 through June 29, 1990. In addition, four workshops were held in Portland, Salem, Eugene and Bend, and several special presentations to organizations were made, to discuss the issue papers and solicit public comment and ideas for possible revisions to the existing rule language.

The Department considered the public comments and is proposing rule amendments for the following: Definition of Waters of the State, Antidegradation Policy, Dissolved Oxygen, Bacteria, Toxic Substances, Mixing Zones, Particulate Matter and Turbidity, and Biological Criteria. The Department will not propose any changes to the 2,3,7,8-TCDD standard adopted in 1987. The Department is postponing development of rules for Toxicity Equivalency Factors, Sediment Quality Standards, Interim Sediment Quality Guidelines, Temperature, and Total Dissolved Solids until

Agenda Item: F

Page 3

further work can be done to define the needed changes. Many of the public comments emphasized the prematurity of developing rule language for these, and requested more opportunity to work with the Department in development of proposed language for these rules. The Department will appoint a technical water quality standards advisory committee with representatives from several scientific disciplines to begin compiling background information and evaluating potential changes.

The proposed rule language presented in Attachment A clarifies definitions and policies, and incorporates consideration of natural variations of water quality as well as the most recent EPA criteria for toxic substances. A summary of the need for rule amendments and the issues involved in the proposed revisions follows:

- definition includes lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, estuaries, marshes, inlets, etc. The term "marshes" intended to represent all forms of wetlands. Technically, however, marshes refers to a specific type of wetland. The Department is proposing to add "wetlands" to be more inclusive about protection for all types of marsh and wetlands. In addition, the Department is proposing to adopt the definitions of "wetlands" in the definition section as defined by Senate Bill 3, Wetlands Protection Act of 1989 to assure consistency with state wetland management programs.
- Antidegradation Policy: The Antidegradation Policy 2. describes the conditions under which water quality may be lowered and when it must be maintained or enhanced. Antidegradation Policy is designed to ensure that the chemical, physical and ecological value of water is fully evaluated, any economic growth and development that will lower water quality is necessary and important, all alternatives to degradation have been exhausted, and the public has been given an opportunity to comment on actions that will degrade high quality waters. The current rule is not consistent with the federal antidegradation policy and must be revised to incorporate protection for all waters of the state, not just high quality waters as the current rule describes, and to add an Outstanding Resource Waters category to protect waters with exceptional water quality values. Department is proposing to revise the policy to incorporate the EPA requested changes and to establish an outstanding resource waters category. The Department must also identify an implementation plan for the antidegradation policy to meet the federal policy requirements.

Agenda Item: F

Page 4

- 3. <u>Dissolved Oxygen:</u> Dissolved oxygen must be high enough to support fisheries and aquatic life, both warmwater and coldwater species. The current rules for each basin describe a dissolved oxygen concentration to protect warmwater, coldwater and spawning areas. However, the rules do not adequately consider natural diurnal variation of dissolved oxygen levels, the effects of minimum and maximum values, and do not fully protect all sensitive life stages of salmonids. The Department is proposing amendments to the rules that provide a statistical approach to measuring dissolved oxygen concentrations using daily minimum values, 7-day and 30-day averages, depending on the type of fisheries and aquatic life present.
- Bacteria: Bacteriological indicator organisms are used for 4. monitoring water quality and pollution levels, and for evaluating the human health risks associated with contact recreation or shellfish consumption. Fecal coliform has been used as an indicator organisms to determine human health risks from exposure to pathogens. The current rule states that the log mean of 200 fecal coliform per 100 milliliters cannot be exceeded to protect for content recreation, and 14 organisms per 100 milliliters to protect for consumption of shellfish. Many tests have been conducted by the Department as well as other states to determine if fecal coliform is the best indicator organism. Studies have shown that Enterococcus provides more rigorous tests and a better indication of risk for water content recreation. Department is proposing to substitute Enterococcus as the indicator organism for water contact recreation. Department will retain fecal coliform for consumption of shellfish since adequate studies to determine whether Enterococcus or fecal coliform are better organisms have not yet been completed. The Food and Drug Administration and the Interstate Shellfish Sanitation Conference have the authority to change the fecal coliform standard for commercial shellfish growing areas after the indicator studies are completed.
- 5. Toxic Pollutants: Control of toxic pollutants is critical for the protection of all beneficial uses. The current standards include both numeric and narrative limits for the control of priority pollutants and complex mixtures of toxic substances. The numeric values are listed in Table 20 of the water quality standards regulations. EPA has adopted new criteria for aluminum, chloride and ammonia. The Department is proposing to amend the table to include limits for ammonia, chloride and ammonia, and to revise the narrative

Agenda Item: F

Page 5

toxics rule to include protection from toxics that may accumulate in sediments or bioaccumulate in aquatic life, and to include reference to wildlife protection. The Department is also proposing to include the use level of contaminants in fish tissue as an indication of water quality standards violations. Table 21 describes the levels not to exceed in fish tissues.

- Mixing Zones: Mixing zones are designated areas that are 8. used for wastewater and receiving waters to mix. Water quality standards may be suspended in this area, but must be met at the edge of the mixing zone. Acute toxicity may not occur within the mixing zone, and chronic toxicity is prohibited outside the mixing zone. The current rule describes the conditions that must be met within and outside the mixing zone. It specifies the duration of acute toxicity tests, that are not necessary applicable given the new test methodologies that have been developed in the last several years since the current rule was adopted. Under some conditions, the requirement for no acute toxicity within the mixing zone cannot be met at the end of the pipe, (such as chlorine) but can be met after initial rapid mixing with receiving waters a short distance from the discharge point within a mixing zone. The Department is proposing to designate a zone of immediate dilution, to delete reference to a specific testing period needed in order to have flexibility with the types of applicable tests to be used, and to add use of 100% effluent for acute toxicity testing requirements.
- 7. <u>Biological Criteria:</u> Water quality standards are set to protect beneficial uses such as fish and aquatic life, and wildlife. However, the rules do not specifically address protection of indigenous aquatic life communities and ecological integrity. The Department is proposing to add a narrative standard that specifically protects indigenous aquatic life species and health of the resident biological community. The Department will also be defining biological terms.
- 8. Particulate Matter and Turbidity: Particulate matter may affect aquatic life if present in high concentrations. Parameters used to measure particulates are turbidity, total suspended solids, settleable solids, and percent accumulated fines. The current rule measures turbidity in Jackson Turbidity Units. These units are not being used any longer and have been replaced with Nephelometric Turbidity Units.

Agenda Item: F

Page 6

The Department is not proposing to change the standard but rather is proposing to use a more sensitive measurement to change from Jackson Turbidity Units to Nephelometric/Turbidity Units. The remainder of the existing rule remains as written.

AUTHORITY/NEED FOR ACTION:	
<pre>Required by Statute:</pre>	Attachment Attachment Attachment
Other:	Attachment
<u>x</u> Time Constraints: The Department must complete water quality standards review in 1990 to meet made in the State/EPA Agreement.	
DEVELOPMENTAL BACKGROUND:	
Advisory Committee Report/Recommendation Hearing Officer's Report/Recommendations Response to Testimony/Comments Prior EQC Agenda Items:	Attachment Attachment
-	Attachment
Other Related Reports/Rules/Statutes:	
Committee De alemante de Trafferent de la committe	Attachment
Supplemental Background Information	Attachment

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

Any entity that discharges wastewater to waters of the state, or conducts activities that may add pollutants, particulates, or change the character of the water may be affected by the proposed rules, particularly if they are located upstream of a designated "outstanding resource water", as described in the Antidegradation Policy. The most significant impact may be on wastewater treatment plants that will need to add an Enterococcus testing procedure.

Agenda Item: F

Page 7

PROGRAM CONSIDERATIONS:

Some of the current rules are not consistent with recent EPA policies and criteria, do not fully protect all of the most sensitive beneficial uses, or do not account for natural diurnal or seasonal variations in water quality parameters. The current standards are established to protect beneficial uses and used as the basis for establishing permit limits. Without statistical tests that take into consideration the natural variability of water quality, one sample taken that would violate water quality standards or a permit limit, may subject wastewater discharge facilities to warnings or possible penalties. One violations may not affect a beneficial use. Using statistically-based standards, and sampling methodology in certain cases, should provide a better indicator of beneficial use impairment.

The Antidegradation Policy is intended to protect existing water quality in all waters of the state, and to establish guidelines for how decisions to lower water quality, or establish additional protection for waters are to be made. Any activities or decisions made that affect water quality are subject to the provisions of the Antidegradation Policy. This policy should identify the criteria for the Commission to consider in making determinations that may significantly affect water quality.

The proposed rules would provide better definitions and a technical basis for some of the water quality standards.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

- Maintain the existing rules.
- 2. Propose rule amendments to the following, based on public comments on the water quality issue papers at the public workshops: Waters of the State, Antidegradation, Dissolved Oxygen, Bacteria, Mixing Zones, Toxic Pollutants, Biological Criteria, and Particulate Matter. The proposed rule amendments would clarify the definition of waters of the state, establish a category of protection for outstanding resource waters, begin using a statistical approach to evaluating water quality variations for dissolved oxygen and temperature, and incorporate the newest criteria for toxic substances into the water quality standards.

Agenda Item: F

Page 8

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission authorize the Department to conduct public rulemaking hearings on the eight proposed rule amendments for OAR 340-41. The proposed rules would assist the Department with more fully protecting beneficial uses and maintaining the essential, unique character of many of Oregon's waterbodies.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The proposed rules are consistent with the strategic plan, agency policy and legislative policy since they were developed to more fully protect beneficial uses.

ISSUES FOR COMMISSION TO RESOLVE:

- 1. Antidegradation: Should all Wild and Scenic Rivers, State Scenic Waterways, Wildlife Refuges, State Parks, and National Parks be automatically designated as Outstanding Resource Waters for special water quality protection? Or should applicants file for outstanding resource waters status for waterbodies with exceptional water quality values?
- 2. <u>Bacteria:</u> Should the Department have two separate indicator organisms, Enterococcus for public recreation protection, and fecal coliform for shellfish consumption in estuarine areas, or require that both organisms be used and tested routinely in areas where both shellfish and recreational uses occur?
- 3. <u>Toxic Pollutants:</u> Should contaminant levels in fish tissue serve as indicators of water quality standards violations or should exceeding contaminant levels in fish tissue be a <u>violation</u> of the water quality standards?
- 4. <u>Dissolved Oxygen:</u> Currently, a dissolved oxygen standard is violation can be based on a single sample. The proposed standard is based on a statistical test where more samples are needed to confirm a violation. Using the statistical approach the operable DO standard will go from 95% to 90% in salmon spawning areas. Is the Antidegradation Policy strong enough to maintain existing quality in waters of the state, if the standard for DO is changed? Will there be a problem in implementing a statistically based standard?

Agenda Item: F

Page 9

INTENDED FOLLOWUP ACTIONS:

Hold public hearings, evaluate public testimony, and propose final action on the proposed rules.

Approved:

Section:

Division:

Director:

Report Prepared By: Krystyna Wolniakowski

Phone: 229-6018

Date Prepared: September 4, 1990

(KUW:crw) (SW\WC7069) (September 4, 1990)

Attachment A

PROPOSED RULE AMENDMENTS

Wetlands

The following changes are recommended for the definition of Waters of the State. These recommended changes are based on recent changes to the state statutes regarding wetlands protection. Proposed new language is underlined and proposed deletions are bracketed.

340-41-006 (14)

"Waters of the State" include lakes, bays ,ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, wetlands, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface and underground waters, natural or artifical, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters, and constructed wetlands and other constructed waterbodies used as wastewater treatment facilities), which are wholly or partially within or bordering the state within its jurisdiction.

340-41-006 (32)

"Wetlands" means those areas that are inundated or saturated by surface or underground waters at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

PROPOSED RULE AMENDMENTS

Antidegradation Policy

The following changes are recommended for the antidegradation policy. These recommendations are based on recent EPA changes to the federal antidegradation policy, and public comments received during water quality standards hearings held in 1986, and recent public comment on the issue papers. Proposed deletions are bracketed and new language is underlined.

340-41-026(1)(a) Antidegradation Policy for Surface Waters
The purpose of the Antidegradation Policy is to quide decisions
that affect water quality such that unnecessary degradation is
prevented, and to protect, maintain, and enhance existing surface
water quality to protect all designated beneficial uses. The
standards and policies set forth in OAR 340-41-120 through 962
are intended to implement the Antidegradation Policy.

- A. Where [E]existing high quality waters [which] meet or exceed those levels necessary to support the propogation of fish, shellfish and wildlife, recreation in and on the water, and other designated beneficial uses that level of water quality shall be maintained and protected. [unless t]The Environmental Quality Commission [chooses], after full satisfaction of the intergovernmental coordination and public participation provisions of the continued planning process, however, may lower water quality in high quality waters if they find:
 - i no other reasonable alternatives exist except to lower water quality; and
 - <u>ii</u> the action is necessary and justifiable for economic or social development; and
 - iii all water quality standards will be met and beneficial uses protected.
- B. The Director or [his] a designee may allow lower water quality on a short term basis in order to respond to emergencies or to otherwise protect human health and welfare.
- C. [In no event, however, may degradation of water quality interfere or be injurious to the beneficial use of water within surface waters of the following areas:] Where existing high quality waters constitute an outstanding state or national resource such as those waters designated as extraordinary resource waters, or as critical habitat areas, the existing water quality and water quality values shall be

maintained and protected, and classified as "Outstanding Resource Waters of Oregon". The Commission may specially designate high quality waterbodies to be classified as Outstanding Resource Waters in order to protect ecological integrity of critical habitat or special water quality values that are vital to the unique character of those waterbodies.

The Commission, either on their own initiative or through nominations from the Department or other applicants, shall consider designating these waters based upon receiving the following information:

- i. An application must provide notification to affected parties and provide sufficient information to the Department as described in the petition for rulemaking (OAR 137-01-070);
- ii. An application must describe the existing water quality, beneficial uses and ecological resource values of the water body they are nominating as Outstanding Resource Waters;
- iii. An application must define the outstandingly remarkable values related to water quality of the waterbody and describe why they need additional protection;
- iv. An applicant must describe the level of water quality needed to protect those values and beneficial uses.

In the designation process, the Commssion shall establish the water quality levels and values to be protected, and in a management plan, shall provide for what activities are allowed that would not affect the outstanding resource values during the designation process. After the designation, the Commission shall not allow activities that may lower water quality below the level established in the management plan except on a short term basis to respond to emergencies or to otherwise protect human health and welfare.

PROPOSED RULE AMENDMENTS

Dissolved Oxygen

The following changes are recommended for the dissolved oxygen standards. These recommendations are based upon recent EPA guidance. Proposed deletions are bracketed and new language is underlined. Specific basin standards, or rules, which are affected by each recommendation are identified following the proposed new language.

340-41-___(2)(a) Dissolved Oxygen (DO):

(A) (i) Salmonid producing waters:

[Fresh waters: DO concentrations shall not be less than 90% of saturation at the seasonal low, or less than 95% of saturation in spawning areas during spawning, incubation, hatching, and fry stages of salmonid fishes].

Freshwaters shall have 30 day mean dissolved oxygen concentrations of 8.0 mg/l or greater with one day minimum concentrations of not less than 5.0 mg/l and the mean of seven consecutive daily minima equal to, or greater than 6.0 mg/l. Dissolved oxygen concentrations in areas of salmonid spawning shall have seven day mean water column concentrations of 11.0 mg/l or greater and one day minimum concentrations of 9.0 mg/l or greater during spawning, egg incubation, hatching and early life stages up to 30 days post hatch.

RULE REFERENCES BY BASIN

(A) (i) Salmonid producing waters:

Basin	Old Rule	New Rule
North Coast Mid Coast Umpqua South Coast Roque Willamette Sandy Hood Deschutes Klamath 340-41(2)(a	340-41-205(2)(a)(A) 340-41-245(2)(a)(A) 340-41-285(2)(a)(A) 340-41-325(2)(a)(A) 340-41-365(2)(a)(A) 340-41-445(2)(a)(E)(i) 340-41-485(2)(a)(B) 340-41-525(2)(a)(B)(i) 340-41-565(2)(a)(B)(i) 340-41-965(2)(a)(C)(i)	340-41-205-(2) (a) (A) (i) 340-41-245-(2) (a) (A) (i) 340-41-285-(2) (a) (A) (i) 340-41-325-(2) (a) (A) (i) 340-41-365-(2) (a) (A) (i) 340-41-445-(2) (a) (A) (i) 340-41-485-(2) (a) (A) (i) 340-41-525-(2) (a) (A) (i) 340-41-565-(2) (a) (A) (i) 340-41-965-(2) (a) (A) (i)

[DO concentrations shall not be less than 75% of saturation at the seasonal low, or less than 95% of saturation in spawning areas during spawning, incubation, hatching, and fry stages of salmonid fishes].

Freshwaters shall have 30 day mean dissolved oxygen concentrations of 8.0 mg/l or greater with one day minimum

concentrations of 8.0 mg/l or greater with one day minimum concentrations of not less than 5.0 mg/l and the mean of seven consecutive daily minima equal to, or greater than 6.0 mg/l. Dissolved oxygen concentrations in areas of salmonid spawning shall have seven day mean water column concentrations of 11.0 mg/l or greater and one day minimum concentrations of 9.0 mg/l or greater during spawning, egg incubation, hatching and early life stages up to 30 days post hatch.

RULE REFERENCES BY BASIN

<u>Basin</u> <u>Old Rule</u> <u>New Rule</u>	_
John Day 340-41-605(2)(a)(B) 340-41-605(2) Umatilla 340-41-645(2)(a)(B) 340-41-645(2) Walla Walla 340-41-685(2)(a) 340-41-685(2) Grande Ronde 340-41-725(2)(a) 340-41-725(2) Powder 340-41-765(2)(a) 340-41-765(2) Malheur 340-41-805(2)(a) 340-41-805(2) Owyhee 340-41-845(2)(a) 340-41-845(2) Malheur Lake 340-41-885(2)(a) 340-41-885(2) Goose and 340-41-925(2)(a)(A) 340-41-925(2) Summer Lakes) (a) (A) (i)) (a) (A) (i)

340-41-__(2)(a)

(A)(ii) Non-salmonid fish producing waters:

[The DO concentration shall not be less than 6 mg/l].

The 30 day mean dissolved oxygen concentrations shall be 6.0 mg/l or greater with one day minimum concentrations of not less than 4.0 mg/l and the mean of seven consecutive daily minima equal to, or greater than 5.0 mg/l. Dissolved oxygen concentrations in spawning areas shall have seven day mean water column concentrations of 6.5 mg/l or greater and one day minimum concentrations of 5.0 mg/l or greater during spawning, egg incubation, hatching and early life stages up to 30 days post hatch.

RULE REFERENCES BY BASIN

<u>Basin</u>	Old Rule	New Rule
Hood	340-41-445(2)(a)(E)(ii) 340-41-525(2)(a)(B)(ii) 340-41-965(2)(a)(C)(ii)	340-41-445(2)(a)(A)(ii) 340-41-525(2)(a)(A)(ii) 340-41-965(2)(a)(A)(ii) 340-41-205(2)(a)(A)(ii) 340-41-225(2)(a)(A)(ii) 340-41-285(2)(a)(A)(ii) 340-41-325(2)(a)(A)(ii) 340-41-365(2)(a)(A)(ii) 340-41-365(2)(a)(A)(ii) 340-41-565(2)(a)(A)(ii) 340-41-605(2)(a)(A)(ii) 340-41-645(2)(a)(A)(ii) 340-41-685(2)(a)(A)(ii) 340-41-725(2)(a)(A)(ii) 340-41-765(2)(a)(A)(ii) 340-41-765(2)(a)(A)(ii) 340-41-805(2)(a)(A)(ii) 340-41-885(2)(a)(A)(ii) 340-41-885(2)(a)(A)(ii) 340-41-885(2)(a)(A)(ii) 340-41-885(2)(a)(A)(ii)

340-41-___(2)(a)

(B) Marine and estuarine waters (outside of zones of upwelled marine waters naturally deficient in DO): DO concentrations shall not be less than 6 mg/l for estuarine waters, or less than saturation concentrations for marine waters.

RULE REFERENCES BY BASIN

<u>Basin</u>	Old Rule	New Rule
North Coast Mid Coast Umpqua South Coast Roque	340-41-205(2)(a)(B) 340-41-225(2)(a)(B) 340-41-285(2)(a)(B) 340-41-325(2)(a)(B) 340-41-365(2)(a)(B)	340-41-205-(2) (a) (B) 340-41-225-(2) (a) (B) 340-41-285-(2) (a) (B) 340-41-325-(2) (a) (B) 340-41-365-(2) (a) (B)
340-41(2)(a)		

(C) When natural environmental conditions limit dissolved oxygen concentrations to less than 110 percent of the applicable numerical standard, 90 percent of the natural dissolved oxygen concentration shall be the standard.

RULE REFERENCES BY BASIN

Basin	Old Rule	New Rule
North Coast	•	340-41-205(2)(a)(C)
Mid Coast		340-41-225(2)(a)(C)
Umpqua		340-41-285(2)(a)(C)
South Coast		340-41-325(2)(a)(C)
Roque		340-41-365(2)(a)(C)
Willamette		340-41-445(2)(a)(B)
Sandy		340-41-485(2)(a)(B)
Hood		340-41-525(2)(a)(B)
Deschutes		340-41-565(2)(a)(B)
John Day		340-41-605(2)(a)(B)
Umatilla		340-41-645(2)(a)(B)
Walla Walla		340-41-685(2)(a)(B)
Grande Ronde		340-41-725(2)(a)(B)
Powder		340-41-765(2)(a)(B)
Malheur		340-41-805(2)(a)(B)
Owyhee		340-41-845(2)(a)(B)
Malheur Lake		340-41-885(2)(a)(B)
Goose and		340-41-925(2)(a)(B)
Summer Lakes		
Klamath		340-41-965(2)(a)(B)

Additional Proposed Deletions:

340-41-___(2)(a)

[(C) Columbia River: DO concentrations shall not be less than 90 percent of saturation].

RULE REFERENCES BY BASIN

Old Rule
340-41-205(2)(a)(C)
340-41-445(2)(a)(F)
340-41-485(2)(a)(A)
340-41-525(2)(a)(A)
340-41-565(2)(a)(A)
340-41-605(2)(a)(A)
340-41-645(2)(a)(A)

340-41-445(2)(a)

[(A) Multnomah Channel and Main stem Willamette River from mouth to the Willamette Falls at Oregon City, river mile 26.6: The DO concentration shall not be less than 5 mg/l.

- (B) Main stem Willamette River from the Willamette Falls to Newberg, river mile 50: The DO concentration shall not be less than 6 mg/l.
- (C) Main stem Willamette River from Newberg to Salem, river mile 85: The DO concentration shall not be less than 7 mg/l.
- (D) Main stem Willamette River from Salem to the confluence of the Coast and Middle Forks, river mile 187: The DO concentration shall not be less than 90% of saturation.]

340-41-925(2)(a)

[(B) Goose Lake:DO concentrations shall not be less than 7
 milligrams per liter.]

340-41-965(2)(a)

- [(A) Main stem Klamath River from Klamath Lake to Keno Dam, (river miles 255 to 232.5): DO concentrations shall not be less than 5 mg/l.
- (B) Main stem Klamath River from Keno dam to Oregon-California Border (river miles 232.5 to 208.5): DO concentrations shall not be less than 7 mg/l.]

New standards proposed above are also applicable to these water bodies.

PROPOSED RULE AMENDMENTS

<u>Bacteria</u>

The following changes are recommended for the bacteria water quality standard. These recommendations are based upon recent EPA guidance which indicates that selection of a new indicator organism is necessary for the protection of human health from swimming-associated illnesses. Rules for each basin are affected by these recommendations and are identified following the proposed new language. Proposed new language is underlined and language to be deleted is bracketed.

340-41-__(2)(e) [Organisms] <u>Bacteria</u> of the coliform group associated with fecal sources <u>and bacteria</u> of the enterococi group (MPN or equivalent [MF] <u>membrane filtration</u> using a representative number of samples) <u>shall not exceed the criteria</u> values described in A-C. However, the Department may designate <u>site-specific bacteria criteria</u> on a case by case basis to protect beneficial uses. Site specific values shall be described in and included as part of a water quality management plan.

(A) [A log mean of 200 fecal coliform] <u>Freshwaters: A geometric mean of 33 enterococci</u> per 100 milliliters based on a minimum of 5 samples in a 30-day period with no more than 10 percent of the samples in the 30-day period exceeding [400 per 100 ml] the following one-sided confidence levels:

Nov.	1 through	Apr. 3	0 95	<u> </u>
May 1	through 0	ct.31	75	& C.T.

calculated with a site-specific log standard deviation.

RULE REFERENCES BY BASIN

<u>Basin</u>	Old Rule	New Rule
North Coast	340-41-205(2)(e)(A)	340-41-205(2)(e)(A)
Mid Coast	240 41 005 (0) (7) (0)	340-41-245(2)(e)(A)
Umpqua	340-41-285(2)(e)(C),(D)	340-41-285(2)(e)(A)
South Coast		340-41-325(2)(e)(A)
Roque	340-41-365(2)(e)(C),(D)	340-41-365(2)(e)(A)
Willamette	340-41-445(2)(e)(A),	340-41-445(2)(e)(A)
	(B),(C)(i),(C)(ii)	,
Sandy	340-41-485(2)(e)	340-41-485(2)(e)(A)
Hood	340-41-525(2)(e)	340-41-525(2)(e)(A)
Deschutes	340-41-565(2)(e)(A),(B)	340-41-565(2)(e)(A)
John Day	340-41-605(2)(e)	340-41-605(2)(e)(A)
Umatilla	340-41-645(2)(e)	340-41-645(2)(e)(A)
Walla Walla	340-41-685(2)(d)	340-41-685(2)(d)(A)
Grande Ronde	340-41-725(2)(e)	340-41-725(2)(e)(A)

Powder	340-41-765(2)(e)	340-41-765(2)(e)(A)
Malheur	340-41-805(2)(e)	340-41-805(2)(e)(A)
Owyhee	340-41-845(2)(e)	340-41-845(2)(e)(A)
Malheur Lake		340-41-885(2)(e)(A)
Goose and Summer Lakes	340-41-925(2)(e)	340-41-925(2)(e)(A)
Klamath	340-41-965(2)(e)	340-41-965(2)(e)(A)

340-41-___(2)(e)

(B) Marine waters and estuarine shellfish growing waters: A fecal coliform median concentration of 14 organisms per 100 ml, with not more than 10 percent of the samples exceeding 43 organisms per 100 ml.

RULE REFERENCES BY BASIN

<u>Basin</u>	Old Rule	New Rule
North Coast	340-41-205(2)(e)(B)	340-41-205(2)(e)(B)
Mid Coast	340-41-245(2)(e)(A)	340-41-245(2)(e)(B)
Umpqua	340-41-285(2)(e)(B)	340-41-285(2)(e)(B)
South Coast	340-41-325(2)(e)(A)	340-41-325(2)(e)(B)
Roque	340-41-365(2)(e)(B)	340-41-365(2)(e)(B)

340-41-___(2)(e)

(C) Estuarine waters other than shellfish growing waters: A [log mean of 200 fecal coliform] geometric mean of 35 enterococi per 100 milliliters based on a minimum of 5 samples in a 30-day period with no more than 10 percent of the samples in the 30-day period exceeding [400 per ml] the following one-sided confidence levels:

Nov.	1	through Apr. 30	95%	C.L.
May :	1 1	through Oct.31	75%	C.L.

calculated with a site-specific log standard deviation.

RULE REFERENCES BY BASIN

<u>Basin</u>	<u>Old Rule</u>	<u>New Rule</u>
North Coast Mid Coast Umpqua South Coast Rogue	340-41-205(2)(e)(C) 340-41-245(2)(e)(B) 340-41-285(2)(e)(A) 340-41-325(2)(e)(B) 340-41-365(2)(e)(B)	340-41-205(2)(e)(C) 340-41-245(2)(e)(C) 340-41-285(2)(e)(C) 340-41-325(2)(e)(C) 340-41-365(2)(e)(C)
J	(-, (-, (-,	

PROPOSED RULE AMENDMENTS

Toxic Substances

The following changes are recommended for the toxic substances standards. These recommendations are based on recent EPA guidance. Proposed deletions are bracketed and new language is underlined.

340-41-__(2) (p) Toxic Substances:

- (A) Toxic substances shall not be introduced above natural background levels in waters of the state in amounts, concentrations, or combinations which may be harmful, may chemically change to harmful forms in the environment, or may accumulate in sediments or bioaccumulate in aquatic life or wildlife to levels that adversely affect public health, safety, or welfare; aquatic life; wildlife; or other designated beneficial uses.
- (B) Levels of toxic substances shall not exceed the [most recent] criteria values for organic and inorganic pollutants established by EPA and published in Quality Criteria for Water (1986). A list of the criteria is presented in Table 20. The fish tissue residue concentrations used in calculating criteria values in Table 20 may be used as indicators for determining exceedances of the water quality criteria value. A list of the fish tissue residue concentrations used in calculating criteria values in Table 20 can be found in Table 21.
- (C) The criteria in paragraph (B) of this subsection shall apply unless data from scientifically valid studies demonstrate that the most sensitive designated beneficial uses will not be adversely affected by exceeding a criterion or that a more restrictive criterion is warranted to protect beneficial uses, as accepted by the Department on a site specific basis. Where no published EPA criteria exists for a toxic substance, public health advisories and other published scientific literature may be considered and used, if appropriate, to set guidance values.
- (D) Bio-assessment studies such as laboratory bioassays or instream measurements of indigenous biological communities, shall be conducted, as the Department deems necessary, to monitor the toxicity of complex effluents, other suspected discharges or chemical substances without numeric criteria, to aquatic life. These studies, properly conducted in accordance with standard testing procedures, may be considered as scientifically valid data for the purposes if paragraph (C) of this subsection. If toxicity occurs, the Department shall evaluate and implement measures necessary to reduce toxicity on a case-by-case basis.

Table 21

Fish Tissue Residue Concentrations used in Water Quality Criteria

Development

Parameter	mg/kg
Antimony	4.31
3	A AACA
Arsenic Beryllium	
	10.77
	<u> </u>
Marana and and and and and and and and and	54928
Mercury	1.0 (FDA)
Nickel	215.4
Selenium	5.4
Silver	2.48
THGTTTOM	5.71
Cyanide	215.4
2,3,7,8-TCDD	0.0000007
2,3,7,8-TCDD Acrylonitrile	0.02
7	0 07
Bronoform	1 77
Bromoform Carbon Tetrachloride	1.77
Carbon Tetrachioride	0.003
Chlorobenzene	155.1
Chlorodibromomethane	1.77
2-Chloroethylvinyl Ether	0.0098
Chloroform	1.77
Dichlorobromomethane	
1,2-Dichloroethane	0.118
1.1-Dichloroethylene	0.018
1,3-Dichloropropylene (cis)	3.23
1.3-Dichloropropylene (trans	<u>s)3.23</u>
<u>Ethylbenzene</u>	<u> 1077</u>
Methyl Bromide	1077 1.77
Methyl Chloride	
	1.44
1,1,2,2-Tetrachloroethane	
Tetrachloroethylene	
Toluene	3231
1,2-trans-Dichloroethylene	215.4
1,1,1-Trichloroethane	969.2
1,1,2-Trichloroethane	0.189
Trichloroethylene	0.855
Vinyl Chloride	0.614
<u> </u>	
2-Chlorophenol	53.8
2,4-Dichlorophenol	32.3

2-methyl-4,6-Dinitrophenol	4.2
2,4-Dinitrophenol	21.4
Pentachlorophenol	323
Phenol	6462
2,4,6-Trichlorophenol	0.54
Z,4,0 II ICHIOLOPHENOI	0.34
Acenaphthylene	0.000933
Anthracene	0.000933
Benzidine	0.0000468
Benzo(a) anthracene	
Benzo(a) pyrene	0.000933
3,4-Benzofluoranthene	0.000933
Benzo(ghi)perylene	0.000933
Benzo(k) fluoranthene	0.000933
Bis (2-choroethyl) ether	0.0098
Bis (2-chloroisopropyl) ether	
Bis(2-ethylhexyl)phthalate	0.77
Butylbenzyl phthalate	2154
Chrysene	0.00093
Dibenz(a,h)anthracene	0.00093
1,2-Dichlorobenzene	<u>969</u>
1,3-Dichlorobenzene	<u> 145</u>
1,4-Dichlorobenzene	<u> 145</u>
3,3'-Dichlorobenzidine	0.00624
Diethyl phthalate	8615
	04400
Di-n-butyl phthalate	1077
2,4-Dinitrotoluene	0.0346
1,2-Diphenylhydrazine	0.013
Fluoranthene	62.1
Fluorene	0.000933
Hexachlorobenzene	0.00643
Hexachlorobutadiene	0.138
Hexachlorocyclopentadiene	75.4
Hexachloroethane	0.77
Indeno(1,2,3-cd)pyrene	0.000933
Isophorone	2154
Nitrobenzene	5.38
n-Nirosodimethylamine	
	0.000211
n-Nitrosodi-n-ptopylamine	0.00154
n-Nitrosodiphenylamine	2.2
Phenanthrene	0.000933
Pyrene	0.000933
Aldrin	0.00635
a-BHC	0.0017
b-BHC	0.006
q-BHC	0.0081
Chlordane	0.0083
4,4'-DDT	0.0316
4,4'-DDE	0.0316
4,4'-DDD	0.0449
Dieldrin	0.00067

a-Endosulfan	0.54
b-Endosulfan	0.54
Endrin	3.23
<u>Heptachlor</u>	0.0024
Heptachlor Epoxide	0.0012
PCB-1242	0.0014
PCB-1254	0.0014
PCB-1221	0.0014
PCB-1232	0.0014
PCB-1248	0.0014
PCB-1260	0.0014
PCB-1016	0.0014
Toxaphene	0.0098

Bis(chloromethyl) ether 0.000049 1,2,4,5-Tetrachlorobenzene 54

Basin	Rule
North Coast	340-41-205(2)(p)
Mid Coast	340-41-245(2)(p)
Umpqua	340-41-285(2)(p)
South Coast	340-41-325(2)(p)
Rogue	340-41-365(2)(p)
Willamette	340-41-445(2)(p)
Sandy	340-41-485(2)(p)
Hood	340-41-525(2)(p)
Deschutes	340-41-565(2)(p)
John Day	340-41-605(2)(p)
Umatilla	340-41-645(2)(p)
Walla Walla	340-41-685(2)(p)
Grande Ronde	340-41-725(2)(p)
Powder	340-41-765(2)(p)
Malheur	340-41-805(2)(p)
Owyhee	340-41-845(2)(p)
Malheur Lake	340-41-885(2)(p)
Goose and Summer Lakes	340-41-925(2)(p)
Klamath	340-41-965(2)(p)

Amend Table 20 to include the following compounds:

Table 20 Water Quality Criteria Summary

Compound Name	Fresh Acute Criteria	Fresh Chronic Criteria
Aluminum	<u>750</u>	<u>87</u>
Chloride	860 mg/l	230 mg/l
\underline{D}_{ioxin} (2,3,7,8-TCDD)	3.8 pg/1	0.38 pg/l

Compound Name	Marine Acute	Marine Chronic
_	Criteria	Criteria

Ammonia CRITERIA ARE pH AND TEMPERATURE
DEPENDENT - SEE DOCUMENT USEPA APRIL 1989

Basin	Rule
North Coast	340-41-205(2)(p)
Mid Coast	340-41-245(2)(p)
Umpqua	340-41-285(2)(p)
South Coast	340-41-325(2)(p)
Rogue	340-41-365(2)(p)
Willamette	340-41-445(2)(p)
Sandy	340-41-485(2)(p)
Hood	340-41-525(2)(p)
Deschutes	340-41-565(2)(p)
John Day	340-41-605(2)(p)
Umatilla	340-41-645(2)(p)
Walla Walla	340-41-685(2)(p)
Grande Ronde	340-41-725(2)(p)
Powder	340-41-765(2)(p)
Malheur	340-41-805(2)(p)
Owyhee	340-41-845(2)(p)
Malheur Lake	340-41-885(2)(p)
Goose and Summer Lakes	340-41-925(2)(p)
Klamath	340-41-965(2)(p)

PROPOSED RULE AMENDMENTS

Mixing Zones

The following changes are recommended for the mixing zone standards. These recommendations are based on recent EPA guidance. Proposed deletions are bracketed and new language underlined.

340-41-__(4) Mixing zones:

- (a) The Department may allow a designated portion of a receiving water to serve as <u>an area</u> [a zone of initial dilution] for waste waters and receiving waters to mix thoroughly and this zone will be defined as a mixing zone.
- (b) The Department may suspend all or part of the water quality standards, or set less restrictive standards, in the defined mixing zone, provided the following conditions are met:
 - (A) The water within the mixing zone shall be free of:
- (i) Materials in concentrations that will cause acute [(96HrLC 50)] toxicity to aquatic life. Acute toxicity is measured as the lethal concentration of one hundred percent (100%) effluent that causes 50 percent mortality of organisms within a [96-hour] test period. Acute toxicity test methods will be established by the Department on a case-by-case basis. The Department may allow exceptions to the acute toxicity criteria on a case-by-case basis by allowing acute toxicity within a designated portion of the established mixing zone. This designated portion shall be defined as a zone of immediate dilution (ZID). The size of the zone of immediate dilution will be determined by the Department on a case-by-case basis.
- (ii) Materials that will settle to form objectionable deposits.
- (iii) Floating debris, oil, scum, or other materials that cause nuisance conditions.
- (iv) Substances in concentrations that produce deleterious amounts of fungal or bacterial growths.
 - (B) The water outside the boundary of the mixing zone shall:
- (i) Be free of materials in concentrations that will cause chronic (sublethal) toxicity. Chronic toxicity is measured as the concentration that causes long-term sublethal effects, such as significantly impaired growth or reproduction in aquatic organisms, during a testing period based on test species life cycles. Procedures and end points will be specified by the Department in waste water discharge permits.
- (ii) Meet all other water quality standards under normal annual low flow conditions.
- (c) The limits of the mixing zone shall be described in the waste water discharge permit. In determining the location, surface area, and volume of a mixing zone area, the Department may use appropriate mixing zone guidelines to assess the biological, physical, and chemical character of receiving waters, and

effluent, and the most appropriate placement of the outfall, to protect instream water quality, public health, and other beneficial uses. Based on receiving water and effluent characterisitics, the Department shall define a mixing zone in the immediate area of a waste water discharge to:

- (A) Be as small as feasible;
- (B) Avoid overlap with any other mixing zones to the extent possible and be less than the total stream width as necessary to allow passage of fish and other aquatic organisms;
- (C) Minimize adverse effects on the indigenous biological community especially when species are present that warrant special protection for their economic importance, tribal significance, ecological uniqueness, or for other similar reasons as determined by the Department;
 - (D) Not threaten public health;
- (E) Minimize advers effects on other designated beneficial uses outside the mixing zone.
- (d) The Department may request the applicant of a permitted discharge for which a mixing zone is required, to submit all information necessary to define a mixing zone, such as:
 - (A) Type of operation to be conducted;
 - (B) Characteristics of effluent flow rates and composition;
 - (C) Characteristics of low flows of receiving waters;
 - (D) Description of potential environmental effects;
 - (E) Proposed design for outfall structures.
- (e) The Department may, as necessary, require mixing zone monitoring studies and/or bioassays to be conducted to evaluate water quality or biological status within and outside the mixing zone boundary.
- (f) The Department may change mixing zone limits or require the relocation of an outfall if it determines that the water quality within the mixing zone adversely affects any existing beneficial uses in the receiving waters.

Basin	Rule
North Coast	340-41-205(4)
Mid Coast	340-41-245(4)
Umpqua	340-41-285(4)
South Coast	340-41-325(4)
Rogue	340-41-365(4)
Willamette	340-41-445(4)
Sandy	340-41-485(4)
Hood	340-41-525(4)
Deschutes	340-41-565(4)
John Day	340-41-605(4)
Umatilla	340-41-645(4)
Walla Walla	340-41-685(4)
Grande Ronde	340-41-725(4)
Powder	340-41-765(4)
Malheur	340-41-805(4)
Owyhee	340-41-845(4)

Malheur Lake 340-41-885(4) Goose and Summer Lakes 340-41-925(4) Klamath 340-41-965(4)

PROPOSED RULE AMENDMENTS

Biological Criteria

The proposed rule language is underlined. Since this is a new rule, no deletions to existing language is needed. The language is consistent with other references to aquatic life protection in the rules.

340-41-027 Biological Criteria:

- (1) Waters of the State designated as "Outstanding Resource Waters" shall be maintained such that resident biological communities are to remain as they naturally occur and all indigenous aquatic species are protected and preserved.
- (2) Other waters of the state, including waters outside designated mixing zones, shall be of sufficient quality to support aquatic species without detrimental changes in the resident biological communities.

Add to the Definitions:

340-41-006

- (33) "Aquatic life/species" means any plants or animals which live at least part of their life cycle in waters of the State.
- (34) "As naturally occurs" means that the same species and numbers of organisms should be found in similar habitats that are free of human influence.
- (35) "Biological criteria" means numerical values or narrative expressions that describe the biological integrity of aquatic communities inhabiting waters of a given designated aquatic life use.
- (36) "Ecological integrity" means the condition of an aquatic community as measured by the structural and functional characteristics of an aquatic community of organisms living in the unimpaired waters of a specified ecological habitat.
- (37) "Designated beneficial use" means the purpose or benefit to be derived from a water body, as designated by the Water Resources Department or the Commission.
- (38) "Indigenous" means supported in a reach of water or known to have been supported according to historical records compiled by State and Federal agencies or published scientific literature.

- (39) "Resident biological community" means aquatic life expected to exist in a particular habitat when water quality standards are met. This shall be established by accepted biomonitoring techniques.
- (40) "Without detrimental changes in the resident biological community" means no significant loss of species or excessive dominance by any species or group of species, when compared to an appropriate reference site or region.

PROPOSED RULE AMENDMENTS

Particulate Matter

(Turbidity, Total Suspended Solids, Settleable Solids, and % Embeddedness)

The following changes are recommended for the particulate matter standards. These recommendations are based on the recent changes in units of measurement. Proposed deletions are bracketed and new language underlined.

- 340-41-__(2)(c) Turbidity [(Jackson Turbidity Units, JTU)]
 (Nephelometric Turbidity Units, NTU); No more than a 10 percent cumulative increase in natural stream turbidities shall be allowed, as measured relative to a control point immediately upstream of the turbidity causing activity. However, limited duration activities necessary to address an emergency or to accommodate essential dredging, construction or other legitimate activities and which cause the standard to be exceeded may be authorized provided all practicable turbidity control techniques have been applied and one of the following has been granted:
- (A) Emergency activities: Approval coordinated by DEQ with the Department of Fish and Wildlife under conditions they may prescribe to accommodate response to emergencies or to protect public health and welfare.
- (B) Dredging, Construction or other Legitimate Activities: Permit or certification authorized under terms of Section 401 or 404 (Permits and Licenses, Federal Water Pollution Control Act) or OAR 141-85-100 et seq. (Removal and Fill Permits, Division of State Lands), with limitations and conditions governing the activity set forth in the permit or certificate.

<u>Basin</u>	<u>Rule</u>
--------------	-------------

37 t-1 t-	040 45 005(0)(-)
North Coast	340-41-205(2)(c)
Mid Coast	340-41-245(2)(c)
Umpqua	340-41-285(2)(c)
South Coast	340-41-325(2)(c)
Rogue	340-41-365(2)(c)
Willamette	340-41-445(2)(c)
Sandy	340-41-485(2)(c)
Hood	340-41-525(2)(c)
Deschutes	340-41-565(2)(c)
John Day	340-41-605(2)(c)
Umatilla	340-41-645(2)(c)
Walla Walla	340-41-685(2)(c)
Grande Ronde	340-41-725(2)(c)
Powder	340-41-765(2)(c)
Malheur	340-41-805(2)(c)
Owyhee	340-41-845(2)(c)

 Malheur Lake
 340-41-885(2)(c)

 Goose and Summer Lakes
 340-41-925(2)(c)

 Klamath
 340-41-965(2)(c)

STATEMENT OF THE NEED FOR RULEMAKING

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

1. <u>Legal Authority</u>

ORS 468.735 provides the Commission by rule may establish standards of quality and purity for waters of the state in accordance with public policy set forth in ORS 468.710. ORS 183.545 requires a review every three years of state agency administrative rules to minimize the economic effect these rules may have on businesses. ORS 193.550 requires, among other factors, that public comments be considered in the review and evaluation of these rules.

Need for Rules

The Department reviews the water quality rules in Oregon Administrative Rules (OAR) Chapter 340 Division 41 every three years to incorporate the newest scientific information available and assure that water quality policies and standards are fully protecting beneficial uses. The Department requested public review of the water quality rules to determine if the public was concerned about particular rules and solicited suggestions as to which rules should be considered for revision. Based on public comments and staff review, the Department prepared fourteen issue papers discussing concerns with the rules and proposed rule concepts. Further public comment on the issue papers narrowed the water quality revisions to ten rules. The proposed rules will assist in clarifying certain rules, and providing consistency between state and federal policies, where needed.

3. Principal Documents Relied Upon in this Rulemaking

Oregon Administrative Rules Chapter 340 Division 41

The Clean Water Act and 1987 Amendments

Federal Register, Volume 48, No. 217, November 8, 1983, Water Quality Standards Regulation

Federal Register, Volume 45, No. 231, November 28, 1980, Water Quality Criteria Documents; Availability

Federal Register, Volume 50, No. 145, July 29, 1985, Water Quality Criteria, Availability of Documents

Water Quality Standards Handbook, December 1983

Introduction to Water Quality Standards, September 1988

EPA Quality Criteria for Water, 1986, and Supplements

Technical Support Document for Water Quality Based Toxics Control, September 1985 and revised April 1990

ORS 468.735, 468.710, 183.545, and 183.550

FISCAL AND ECONOMIC IMPACTS

Adoption and implementation of the proposed revisions to water quality standards could result in increased costs to local governments, small businesses and individuals for treatment and control of point and nonpoint source wastes. Specifically, the following proposed rule changes may have some economic impacts.

Antidegradation Policy: Additional costs associated with maintaining existing levels of water quality through implementing best management practices, or improved treatment may affect communities located in high quality waters or upstream of areas designated as Outstanding Resource waters in order to assure that special water quality values are not significantly affected within those areas. There will be no anticipated additional costs immediately, but may potentially occur with designation of Outstanding Resource Waters.

Toxic Substances: Some increased costs for additional wastewater treatment would be incurred by municipalities, private utilities, and industries to test for and reduce toxic substances loading to surface waters, or to provide specific, better outfall designs to minimize impacts on beneficial uses. These costs could break down into two categories: (1) capital construction costs for advance wastewater treatment facilities to improve toxic substances removal, or build and extend outfalls into areas of minimal impact; and (2) increased operating costs for meeting permit limits or best management practices to reduce toxics loading into the waters of the state and (3) additional toxicity testing. Impacts are contingent on the receiving waterbody as well as season of discharge.

Bacteria: Some costs would be associated with changing from fecal coliform testing procedures to enterococcus testing procedures, which would require additional supplies for wastewater treatment plants that discharge to fresh waters. For estuarine discharges near shellfish growing ares, wastewater treatment plants may be required to conduct both the enterococcus and fecal coliform tests. Costs associated with increased treatment efficiency, additional chlorination and reduced loading may also be necessary to meet the enterococcus standards proposed. Some costs may also be associated with improved management practices to control bacterial pollution and improving nonpoint source runoff controls to prevent degradation of water quality and protect beneficial uses in agricultural, and urban areas.

<u>Mixing Zones</u>: Some additional costs may occur if a mixing zone must be reduced to protect beneficial uses and receiving water quality. However, establishing a ZID where acute toxicity may occur could reduce treatment costs.

Public comment on any fiscal or economic impact is welcome and may be submitted in the same manner as indicated for the testimony on this notice. Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON ...

A CHANCE TO COMMENT ON WATER QUALITY STANDARDS

Hearing Dates:

Noted below

Comments Due:

11-16-90

WHO IS AFFECTED:

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

WHAT IS PROPOSED:

The Department proposes to amend water quality standards in Oregon Administrative Rules Chapter 340 Division 41 for definition of waters of the state, antidegradation policy, dissolved oxygen, bacteria, toxic substances, mixing zones, biological criteria, particulate matter and turbidity.

HIGHLIGHTS:

The Department is conducting its triennial review of water quality standards. During this review the Department solicited comments from the public regarding rules that the public was concerned about. The public suggested several rule revisions, which the Department then used as the basis for developing issue papers. Issue papers were prepared and again reviewed by the public. The following proposed rule revisions incorporate public comments on the issue papers:

- 1. Waters of the State: The Department proposes to add "wetland" to definition of waters of the state to be more inclusive of protecting all kinds of marshes and wetlands.
- Antidegradation Policy: The Department proposes including protection for all waters of the state, and establishing a category for Outstanding Resource Waters for those waters needing additional protection.

SW\WC7069 (9/5/90)

D - 1



P.O. Box 1760 Portland, OR 97207

- 3. Dissolved Oxygen: The Department proposes statistically based dissolved oxygen criteria to protect sensitive life stages of all aquatic life.
- 4. Bacteria: The Department proposes using Enterococcus as the indicator organism to protect for public water contact recreation rather than fecal coliform bacteria.
- 5. Toxic Substances: The Department proposes adding standards for ammonia, chlorides and aluminum, and adding wildlife protection. Use of contamination in fish tissue as an indicator of water quality standard violations is also proposed.
- 6. Mixing Zones: The Department proposes to remove reference to a specific test length for acute toxicity bioassays to provide flexibility in testing procedures, and to add a zone of immediate dilution within the mixing zone.
- 7. Biological Criteria: The Department proposes language to assure the protection of indigenous aquatic life communities and ecological integrity.
- 8. Particulate Matter and Turbidity: The Department proposes to change reference from Jackson Turbidity Units to Nephelometric Turbidity Units.

HOW TO COMMENT:

PUBLIC HEARING SCHEDULE

City	Location	<u>Date</u>	<u>Time</u>
Portland	DEQ, 3A 811 SW Sixth Avenue	11-5-90	9:00 am
Eugene	Public Serv. Bldg S. Basement Rm 125 E. 8th	11-5-90	7:00 pm

Medford	City Hall 411 SW 8th Room 340	11-6-90	1:00	pm
Bend	Central Oregon Community College 2600 NW College Way Boyle Center Room 1	11-7-90 54	1:00	pm
Pendleton	DEQ 700 SE Emigrant Suite 330	11-8-90	1:00	pm
Baker	City Hall 1665 First St.	11-9-90	1:00	pm

A Department staff member will be appointed to preside over and conduct the hearings. Written comments should be sent to:

Oregon Department of Environmental Quality Water Quality Division Attn: K. Wolniakowski 811 Southwest Sixth Avenue Portland, Oregon 97204

The comment period will end November 16, 1990 at 5:00 PM

For more information or copies of the Department's issue papers or proposed rules, contact Krystyna Wolniakowski at 229-6018 or toll free at 1-800-452-4011

WHAT IS THE NEXT STEP:

After the public testimony has been received and evaluated, the proposed rule amendments will be revised as appropriate, and will be presented to the Environmental Quality Commission in late 1990 or early 1991 for their consideration. The Commission may adopt rule amendments as proposed, adopt modified rule amendments, or decline to adopt rule amendments and take no further action.



Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: September 21, 1990
Agenda Item: H

Division: Water Quality
Section: Municipal Waste

SUBJECT:

City of Ashland: Request for Approval of Program Plan for Reducing Wastewater Discharges and Meeting the Total Maximum Daily Loads for Bear Creek.

PURPOSE:

The program plan submitted by the City of Ashland describes potential alternatives for reducing wastewater discharges from its sewage treatment plant. The City of Ashland is required by rule of the Environmental Quality Commission (Commission) to reduce wastewater discharges as necessary to comply with total maximum daily loads (TMDLs) for Bear Creek. According to the rule, the TMDL requirements must be met by December 31, 1994. Oregon Administrative Rule 340-41-385(1) requires that final program plans shall be reviewed and approved by the Commission.

The City of Ashland is considering seven alternatives for meeting the requirements of the Environmental Quality Commission. These include: effluent irrigation, effluent utilization in the Talent Irrigation District, transport of raw waste to the City of Medford sewerage facility, phosphate detergent ban, flow augmentation to Bear Creek, advanced wastewater treatment, and marsh treatment using existing degraded wetlands or new constructed wetlands to polish effluent from a secondary treatment plant. Some of these alternatives could be implemented either singularly or in combination with each other. The program plan proposes that the compliance date for achieving the TMDL be extended to November 1996. The plan calls for the facilities plan to be submitted by August 1992.

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 Rulemaking Statements Fiscal and Economic Impact Statement Public Notice	Attachment Attachment Attachment Attachment
	Issue a Contested Case Order Approve a Stipulated Order Enter an Order Proposed Order	Attachment
	Approve Department Recommendation Variance Request Exception to Rule Informational Report Other: Program Plan	Attachment Attachment Attachment
DESCI	The program plan is the first step for a jury developing and implementing modifications to control facilities to meet a TMDL. The prograutline potential options and a time schedule the TMDL. It may also address other issues to achieving the TMDL.	wastewater ram plan should e for achieving
	The Commission's review and approval should a potential options have been included in the plan. The Commission may also define alternates as program plans are approved.	proposed program
<u>AUTH</u>	ORITY/NEED FOR ACTION:	
	Required by Statute: Enactment Date:	Attachment
X	Pursuant to Rule: OAR 340-41-385 Pursuant to Federal Law/Rule:	
	Other:	Attachment

X Time Constraints: Delays in reviewing and approving the program plan could compress the time in which the City can develop and implement upgraded facilities necessary to meet the TMDL.

DEVELOPMENTAL BACKGROUND:

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

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The City has requested that it be allowed until November, 1996 to comply with the Total Maximum Daily Loads. This is based upon the need for further water quality and flow monitoring of Bear Creek in order to assure that the chosen alternative will meet all Department water quality standards and requirements including the TMDL. The request is also made because the waste load allocations for Bear Creek are very stringent and the potential options for meeting the allocations will be difficult and expensive to implement.

PROGRAM CONSIDERATIONS:

The Department believes that the program plan is generally acceptable. It appears to include most reasonable, feasible alternatives for meeting the TMDL. Public testimony suggested three additional options (moving the outfall upstream to a point above the diversion point of the lower east Talent Irrigation Canal, pure oxygen treatment, and use of ozonation for disinfection) which the Department recommends be added to the list of alternatives to be considered by the City.

At this time, it is not possible to determine if an extension of the deadline for meeting the TMDL to November 1996 is necessary. A facilities plan report must be completed before such a determination can be made. The facilities plan report will include engineering analyses of each option. The analyses will determine feasibility, costs, and scheduling requirements and will determine the most cost-effective, environmentally sound alternative. At that point, a determination of the adequacy of the December 31, 1994 deadline can then be made.

> A related issue is: when should the facilities plan report be submitted to the Department? The City believes that two years of water quality and stream flow data will be needed to adequately prepare a facilities plan report that addresses all water quality requirements of the Department's rules. The Department agrees that some of the options may, in fact, require substantial data to assure that water quality standards will be met. Other options, however, will require little or no additional water quality and stream flow data. The Department prefers not to waste time if the chosen alternative is one that requires little or no water quality or flow data in its analysis. The Department recommends that the facility plan report process be broken into two phases. In the first phase, the City would begin data collection and an evaluation of the alternatives in the proposed program (For those alternatives that are affected by water quality issues, the City can evaluate a series of subalternatives that span a range of possible water quality and flow conditions). The Department believes that the first phase of alternative evaluation could be complete by May 1, 1991. The results would be submitted to DEQ in a If the results of this evaluation indicate that the more desirable alternative or alternatives are not ones that depends on a knowledge of current water quality conditions, the City could proceed to complete and submit a final facilities plan report by September 1, 1991. desirable alternative or alternatives are dependent on water quality data, then the Department could extend the time for submittal of a final facilities plan report.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

- 1. Approve the proposed program plan and an extension of the final compliance date to November 1996.
- 2. Approve the program plan, allow two years for submittal of a facilities plan report, and consider extension of the final date after review of the facilities plan report.
- 3. Approve the program plan with the addition of the alternatives suggested at the hearing, require a two-phase facilities plan report with the first-phase report due in May 1991. The first-phase report will determine if another year will be needed to complete the facilities plan report and, perhaps, if an extension of the final compliance date for the TMDLs will be needed.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends alternative 3. This approach has the benefit of allowing the city to skip an additional year of stream monitoring if such monitoring would be found to be irrelevant to evaluation of the more desirable alternative or alternatives.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The program plan includes control strategy alternatives that would be considered environmentally sound. This is consistent with the high priorities within the water quality program component of the strategic plan.

ISSUES FOR COMMISSION TO RESOLVE:

- 1. Should the Commission consider an extension of the final compliance date for the Bear Creek TMDL to November 1996, as requested by the City of Ashland?
- 2. Should the facilities plan report be submitted in two phases with the need for the second phase to be determined by the results of the first phase?

INTENDED FOLLOWUP ACTIONS:

As resources allow, the Department will provide technical assistance to the City during the development of the facilities plan report.

Approved:

Section.

Division:

Director:

Report Prepared By: Richard J. Nichols

Phone: 229-5323

Date Prepared: August 28, 1990

Richard J. Nichols:hs

MW\WH4205

August 31, 1990

HEARING OFFICER'S REPORT

PROPOSED PROGRAM PLAN FOR THE CITY OF ASHLAND FOR ACHIEVING ITS WASTE LOAD ALLOCATION FROM THE TOTAL MAXIMUM DAILY LOAD FOR BEAR CREEK IN THE ROGUE RIVER BASIN

On August 13, 1990, at 7:00 p.m., the Department held a hearing at the Ashland Civic Center in Ashland, Oregon. The hearing was for the purpose of receiving public comments on the proposed program plan for the City of Ashland. The plan describes potential alternatives for either reducing wastewater discharges from its sewage treatment plant or otherwise reducing the impact on Bear Creek that result from the discharge of its treated wastewater. The City of Ashland is required by rule of the Environmental Quality Commission to reduce wastewater discharges as necessary to comply with total maximum daily loads (TMDLs) for Bear Creek. According to the rule, the TMDL requirements must be met by December 31, 1994.

The City of Ashland is considering seven alternatives for meeting the requirements of the Environmental Quality Commission. These include: effluent irrigation, effluent utilization in the Talent Irrigation District, transport of raw waste to the City of Medford sewerage facility, phosphate detergent ban, flow augmentation to Bear Creek, advanced wastewater treatment, and marsh treatment using existing degraded wetlands or new constructed wetlands to polish effluent from a secondary treatment plant. Some of these alternatives could be implemented either singularly or in combination with each other. The program plan proposes that the compliance date for achieving the TMDL be extended to November 1996. The plan would call for the facilities plan to be submitted by August 1992.

The hearing concerned the content of the program plan. The public notice for the hearing expressly requested comments concerning: the alternatives that are being considered; whether or not there are other alternatives that should be considered in the program plan; the June 30, 1994 date for meeting the requirements; and any other associated water quality or environmental issues that should be considered by the Commission when it reviews the program plan.

Approximately, 23 people attended the hearing. Eight people testified at the hearing. Two of these people also submitted a letter for the record. In addition, one letter was received after the hearing. There was no testimony objecting to the proposed program plan.

The following text is a summary, by issue, of the testimony presented at the hearing:

ISSUE:

Several testifiers including officials of the City of Ashland requested that the final date for compliance with the TMDL be extended until November 1996, as stated in the proposed program plan. The basis for extending the compliance date are:

- 1. The additional time will better assure that the best solution will be developed for treating sewage from Ashland and for protecting Bear Creek. City officials stressed that they believed in protecting the environment and were embarrassed that their sewage facility had been found causing water quality problems. They very much want to address their problems, but also want to be sure that the solution is the best one. They are not asking for an extension in order to delay compliance.
- 2. The proposed program plan was submitted September 18, 1989. The Department of Environmental Quality has taken a year to review it and present it to the Commission for approval.
- 3. The City has collected some water quality data in Bear Creek. This data seems to indicate that there are upstream sources of pollutants that may not have been considered in the Department's development of the TMDLs for Bear Creek.
- Substantial work must be done in developing a facilities plan. There is no stream flow data for Bear Creek near Ashland. Flow data at Ashland will be necessary to determine total BOD-5 concentrations necessary to meet the Department's rules for effluent to stream dilution requirements [OAR 340-41-375(1)(c)]. The City's consultant believes two years of flow data is necessary in order to have sufficient data upon which to base the facilities plan. In addition, because of the very stringent waste load allocations for the City of Ashland, the City will be forced to look at unusual alternatives to reduce its wastewater discharges. Because of this, the

facilities plan report will not be easy or quick to complete.

Department's Response: The Department recognizes that some of the alternatives outlined in the proposed program plan will require extensive, complex analyses. In some cases, the analyses will depend upon a good knowledge of existing water quality, particularly winter time conditions, and stream flow in Bear Creek. It is also true, however, that some alternatives, such as transport of Ashland sewage to Medford, will require little or no water quality impact data or analyses. The Department does not want to allow time for data collection if the final chosen alternative is one which does not require stream data analyses.

To address this dilemma, the Department recommends that the facility plan report be broken into two In the first phase, the City would begin phases. data collection and an evaluation of the alternatives in the proposed program plan. (For those alternatives that are affected by water quality issues, the City can evaluate a series of subalternatives that span a range of possible water quality and flow conditions.) The Department believes that the first phases of alternative evaluation could be complete by May 1, 1991. results would be submitted to DEQ in a report. the results of this evaluation indicate that the more desirable alternative or alternatives are not ones that depend on a knowledge of current water quality conditions, the City could proceed to complete and submit a final facilities plan report by September 1, 1991. If the more desirable alternative or alternatives are dependent on water quality data, then the Department could extend the time for submittal of a final facilities plan report.

The Department recognizes the desire to extend the final compliance date for meeting the TMDL to November 1996. The Department believes it is necessary to know the final chosen alternative before it can determine that the current compliance date is not achievable and what alternative date is appropriate.

ISSUE:

One testifier recommended that industrial sources also be granted a TMDL compliance date extension similar to that requested by the City of Ashland. This testifier stated that "a successful program to improve water quality in Bear Creek must depend on an equitably implemented program. Industry is more likely to achieve its share of the program if ODEQ maintains similar schedules for all participants in the program."

Department's Response: A time extension for industrial sources is outside the scope of the program plan for the City of Ashland. The Department has proposed rules to extend the date for submittal of program plans by industrial sources. An extension of the final compliance date for industrial sources should be considered through that rule modification process or, preferably, after review of the program plans submitted by industrial sources.

ISSUE:

One testifier stated that he had property near the existing sewage treatment plant and that he frequently noticed noxious odors from the plant. He wanted this to be addressed when the sewerage facility was upgraded.

Department's Response: The hearings officer will forward this comment to the regional office in Medford to investigate. Properly designed and constructed sewage treatment facilities should not be sources of noxious odors except under upset conditions which should be rare.

ISSUE:

One testifier stated that the expected the population of both Medford and Ashland to increase much more than anticipated by Portland State University's population projections. He wanted to be sure that the solution to Bear Creek's water quality problems be designed and implemented with an expanded population expectation.

Department's Response: The Department agrees.

ISSUE:

One testifier indicated that Bear Creek had unusual flow patterns in that flow rates in the Creek were higher at Ashland that at Medford which is downstream. This make the solutions more complex. id 1.

This testifier also believed that nutrient control is becoming more important with population growth and as other sources of pollution are being reduced.

Department's Response: The Department concurs.

ISSUE:

One testifier suggested that passive treatment systems and a ban on phosphate detergents be considered. This testifier also suggested that ozonation and pure oxygen treatment also be considered.

Department's Response: The City has included marsh or wetland treatment which is a passive approach. A ban on phosphate detergents is also in the program plan. The Department will ask the City to consider ozonation and pure oxygen treatment in its facility plan.

ISSUE:

One testifier recommended an in-depth investigation of using treated effluent for irrigation in parks and pasture land. This testifier also suggested that DEQ compare its requirements for use of treated effluent with that required by California.

Department's Response: Irrigation of treated effluent is included as an alternative in the program plan. The Department has recently adopted rules on use of reclaimed water (treated effluent) from sewage treatment plants. These rules are essentially equivalent to those in effect in California.

ISSUE:

One testifier suggested that the City investigate the discharge of treated effluent above the Talent Irrigation District lower east lateral diversion. This diversion is a short distance upstream from the point where Ashland Creek enters Bear Creek. City effluent is currently discharged into Ashland Creek several hundred feet upstream from the confluence of Ashland Creek and Bear Creek.

Department's Response: The Department will recommend that this alternative be considered in the facilities plan report.

ISSUE:

One testifier recommended that monitoring of Bear Creek above and below Ashland Creek be initiated as soon as possible.

Department's Response: The Department believes additional water quality and flow monitoring data will be essential. The program plan addresses this matter, but does not specifically state how this will be accomplished. The Department, while interested and concerned, probably does not have resources to devote to further monitoring of Bear Creek. The Department will expect that the City of Ashland and others, through cooperative agreement, implement a monitoring program for Bear Creek.

ISSUE:

One testifier (City of Talent, which is downstream on Bear Creek from Ashland) stated that they had concerns about sewage by-passes and upsets occurring at the City of Ashland sewage treatment plant between now and the time the TMDL is achieved. They have a water intake underneath Bear Creek. They have shut the intake down for short periods before, and were down for two weeks last December. They worry about a large event and that possible existing problems at the sewage treatment plant not be neglected during the short term.

Department's response: The City is currently upgrading its main pump station by increasing its pumping capacity and by installing a stand-by generator. The Department believes this will substantially reduce or potential for by-passing. The city is also upgrading its sewer line maintenance equipment so that it can better inspect and maintain its sewer lines.

The Department believes these actions by the city will address the concerns of this testimony.

While the Department is committed to cleaning up Bear Creek by the date required in the rules, the Department is also committed to keeping discharges to the practical minimum during the interim period. The Department does not intend to allow sloppy wastewater control practices during the interim.



Environmental Quality Commission

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

	REQUEST FOR EQC ACTION	и
•		
	Meeting Date: Agenda Item:	Sept. 21, 1990
	Agenda item: Division:	H2.CM
		Waste Tire
	500010111	maste iiie
SUBJECT:		
	le Cleanup: Approval of g Account to Assist Dougl	
PURPOSE:		
to expedite c	of funds from the Waste T leanup of approximately 2 te tire storage site.	
ACTION REQUESTED:		
Potential	Program Background l Strategy, Policy, or Ru tem for Current Meeting	les g
Authorize Rule	emaking Hearing	
Proposed Rulemakir	ng Statements nd Economic Impact Stateme	Attachment Attachment ent Attachment Attachment
Issue a Contes Approve a Stip Enter an Order Proposed		Attachment
Variance Exception	n to Rule Lonal Report	AttachmentAttachmentAttachmentAttachment

Agenda Item: :

Page 2

Allow Waste Tire Recycling Account cleanup funds to be made available to partially pay for immediate cleanup of approximately 25,000 waste tires from Douglas County's (the County) permitted waste tire storage site, pursuant to OAR 340-64-150(1)(a); 340-64-155(1), (2), and (3); and 340-64-160.

DESCRIPTION OF REQUESTED ACTION:

The Waste Tire Recycling Account is funded by a \$1 fee on new replacement tires. The account may be used to help clean up waste tire piles.

The statute (ORS 459.780(2)(a)) requires the Environmental Quality Commission (EQC, Commission) to make a finding before the Department of Environmental Quality (Department) may use funds to assist a permittee in removing waste tires. The Commission must find that special circumstances allow for use of the funds. The Department is proposing a rule change at the November 2, 1990 EQC meeting which would delegate to the Director authority to approve financial assistance. The special circumstances for the County's site are:

The 25,000 automobile waste tires are in one pile on flat land at the landfill and pose an environmental threat; the landfill has a history of vandal-set tire fires, and a waste tire fire would be difficult to extinguish and could result in toxic air and ground emissions that could contaminate the atmosphere, groundwater, the landfill, neighboring properties and possibly the South Umpqua River.

Bill Griffin, Unit Forester for Douglas Forest Protection Association, has concerns about the large volume of waste tires at the County landfill. The landfill has had problems of vandal-set tire fires: one in 1979, the other in 1983. The site is protected only by a locking metal gate at the front entrance road. Mr. Griffin stated local fire fighting crews could not extinguish a large tire fire at the Douglas County site. He recommends an immediate reduction of the tire pile to 2,000 waste tires or less, a size the local fire district can handle.

The Douglas County landfill is 2 miles southwest of the city of Roseburg. The site is adjacent to an unnamed creek and within a half mile of the South Umpqua River and neighboring residential area. Toxic vapors and particulate would tend to dissipate slowly and possibly result in health (respiratory) problems for persons in the local communities. Also, if sufficient quantities of pyrolytic (toxic) oils were generated from a waste tire fire, the oils could run off into

Agenda Item:

Page 3

the creek and possibly contaminate the South Umpqua River and groundwater of neighboring residential areas.

The Department may use cleanup funds in the Waste Tire Recycling Account to partially pay to remove or process waste tires from a permitted waste tire storage site pursuant to OAR 340-64-150(1)(a). OAR 340-64-155(3) allows the Department to financially assist a waste tire storage permittee which is also a local government with up to 80% of the total costs of the cleanup as long as the following criteria are met: the County must have collected no fees on the waste tires accepted, and the waste tires must have been collected before January 1, 1988 (Attachment A). The Douglas County site meets both of these conditions.

This site is the fourth municipal waste tire storage site permittee that has requested and qualifies for financial assistance. The County submitted a letter dated April 22, 1990, to the Department requesting financial assistance (Attachment B).

The Douglas County tire pile was created partly by out-of-county waste tire disposal. Douglas County landfill had no tipping fees until February 1987, and prior to that date many other counties brought their waste tires to Douglas County. In February 1987 the County began charging a tipping fee of \$.40 per tire and \$1.75 per truck tire and the tire flow quickly diminished.

In May 1989 the County entered into a pilot contract to remove the waste tires and expended \$10,000 for the removal of approximately 12,000 passenger and truck tires. The County also began to reduce the waste tire accumulation by transporting waste tires with County equipment. The County moved 600 tons of tires to Delta Sand and Gravel, in early 1990, at a cost of \$30,000.

An estimated 25,000 waste tires accumulated prior to February 1987 currently remain at the landfill. The projected decline in timber-dependent revenues to support the County's General Fund, coupled with the projected high costs of upgrading solid waste disposal practices in compliance with Subtitle D requirements, compel Douglas County to seek available financial assistance.

Douglas County wants to complete cleanup of the tire accumulation to regain regulatory compliance, reduce the potential fire hazard, and to reclaim use of the landfill area occupied by the tires. The cleanup plan is to remove all on-site waste tires by December 30, 1990, and contract with a DEQ permitted waste tire carrier to regularly remove waste tires from the landfill. Douglas County will be able

Agenda Item: .

Page 4

to store up to 2,000 waste tires and by a contract with a Department permitted waste tire carrier, will prevent a similar build-up of waste tires in the future. The Department will financially assist in the removal of those 25,000 waste tires collected prior to January 1, 1988. Waste tires presently collected at the landfill are being stored and ricked in a separate area from the existing pile. The County will be financially responsible for the removal of the waste tires collected at the landfill after January 1, 1988.

OAR 340-64-155(3) allows the Department to assist a local government with up to 80% of the cleanup costs. With assistance from the Waste Tire Advisory Committee, the Department developed quidelines (proposed to be incorporated into rule on November 2, 1990) for determining the percentage of financial assistance that could be allocated to a local government. The quidelines establish percentages of eligible costs which the Department will pay based on an index relating county population to the number of waste tires. A county with an index of 1 (one) to 9.9 will receive 70% of the net cost of cleanup. The County's index is 3.1 (92,150 people divided by 25,000 waste tires). Therefore, the County would receive financial assistance equaling 70% of the net cost of the waste tire cleanup. The cleanup will be conducted by the County. Waste tires will be removed by a permitted waste tire carrier and will be properly processed, recycled, reused or incinerated as fuel.

AUTHORITY/NEED FOR ACTION:

X	Required by Statute: ORS 459.780(2)(a)	Attachment
	Enactment Date: 1987	
	Statutory Authority:	Attachment
X	Pursuant to Rule: OAR 340-64-150(1)(a);	Attachment
	340-64-155(1), (2), and (3); and	
	340-64-160(1)	
	Pursuant to Federal Law/Rule:	Attachment
	Other:	Attachment
		*
X	Time Constraints: (explain)	

The permit allows the permittee until December 1992 to remove the waste tires. It is environmentally desirable, however, to have the permittee remove the tires as quickly as possible because of the problem tire fires and the closeness to Roseburg and neighboring residential areas and creeks.

Agenda Item: I

Page 5

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	
<u>X</u>	Supplemental Background Information	Attachment	
	- Letter from the County certifying date		
	tires accumulated	Attachment	_A
	- Letter from the County requesting financial		
	assistance	Attachment	_B_
	- The County-proposed waste tire cleanup plan	Attachment	C

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The Waste Tire Recycling Account has an adequate fund balance that can reasonably be used for financial assistance. Use of funds now would fulfill legislative intent to clean up tire piles as quickly as possible.

PROGRAM CONSIDERATIONS:

The program currently has about \$2.1 million available for reimbursement to users of waste tires and for site cleanup. We anticipate having adequate funds to meet requests for financial assistance to remove tires.

As required by OAR 340-64-160(1)(b), the permittee has submitted to the Department a waste tire removal plandescribing the proposed action with a time schedule and cost estimate of \$22,300 (Attachment C).

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

- 1. Removal of the tires over a period of two years or longer by the permittee without financial assistance from the Waste Tire Recycling Account. This is the timetable requested by the County if no financial assistance is available.
- 2. Removal of all waste tires by December 31, 1990 or earlier with assistance from the Waste Tire Recycling Account, basing assistance on the existing rule and Department guidelines.

Agenda Item:

Page 6

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

Alternative 2. This is the fourth permitted local government that has completed a request for financial assistance to remove waste tires. We recommend proceeding immediately with financial assistance for the following reasons:

- 1. Many out-of-county waste tires were disposed at the Douglas County landfill in the early 1980s because there was no waste tire tipping fee until February 1987.
- 2. The Waste Tire Recycling Account has an adequate fund balance that can reasonably be used for financial assistance. Use of funds now would fulfill legislative intent to clean up tire piles as guickly as possible.
- 3. The County has had waste tire fire vandal problems in the past, and with support from the local fire department, wish to conduct an immediate removal. The landfill is within the DEQ Open Burning Control Area and is subject to thermal inversion and air stagnation.
 - 4. The Douglas County landfill is located within 2 miles of the city of Roseburg, South Umpqua River and neighboring residential areas. A tire fire could impact people in the local communities, adjacent rivers and groundwater.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The permittee meets statutory and regulatory criteria for receiving financial assistance to clean up the waste tires. The action would follow agency policy and legislative intent in getting the site cleaned of waste tires as quickly as possible, thus eliminating the potential environmental problems associated with tire piles.

ISSUES FOR COMMISSION TO RESOLVE:

The Commission adopted rules establishing criteria for financial assistance to local governments, allowing assistance of up to 80% of the cost. This site is eligible for financial assistance of 70% following Department guidelines.

INTENDED FOLLOWUP ACTIONS:

The County will arrange for the cleanup; the Department will inspect and approve the cleanup operation, and then issue a dual-party check to the County and the contractor for 70% of the net cost.

Agenda Item: I

Page 7

The Department intends to incorporate its guidelines for determining the percentage of financial assistance to local governments into rule. A hearing authorization for this proposed rule change was approved at the August EQC meeting.

Approved:

Section:

Division:

Director:

Report Prepared By: Bradford D. Price

Phone: 229-6792

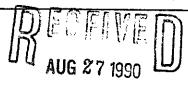
Date Prepared: August 10, 1990

BDP:b WT\SB9822 September 4, 1990



PUBLIC WORKS DEPARTMENT

Administration Room 219 / Courthouse Roseburg, Oregon 97470 (503) 440-4208 Engineering and Construction Room 304 / Courthouse Roseburg, Oregon 97470 (503) 440-4481 Operations and Maintenance 2586 N.E. Diamond Lake Bivd. Roseburg. Oregon 97470 (503) 440-4268 Water Resources Survey Room 103 / Justice Building Roseburg, Oregon 97470 (503) 440-4255



Hozardous & State Wester Division our criment of Enumerical Quality

August 24, 1990

Oregon Department of Environmental Quality Waste Tire Section 811 S. W. Sixth Avenue Portland, OR 97204-2390

Attention: Deanna Mueller-Crispin

Reference: Waste Tire Accumulation - Roseburg Landfill

This will serve as certification that the waste tire accumulation located at the Douglas County Landfill near Roseburg, subject to County's request for DEQ financial assistance, consists of tires deposited at the landfill prior to February 1987.

An enlargement photocopy of a July 7, 1986 photograph has been enclosed to substantiate the quantity of tires on site at that point in time. Note that some tires were subsequently moved and stockpiled to their current location. Tires were processed thereafter by a splitting and burial operation performed by County personnel.

I trust this will alleviate any concerns the Department may have with regard to the time frame in which tire disposal occurred.

Should you need additional information please contact me at 440-4526.

Sincerely,

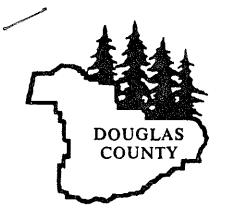
John W. Hebard

JWH/jc

cc: Dave Leonard, Director of Public Works

Brad Price, Waste Tire Section

DEQ.SW



PUBLIC WORKS DEPARTMENT

Administration Room 219 / Courthouse Roseburg, Oregon 97470 (503) 440-4208 Engineering and Construction Room 304 / Courthouse Roschurg, Oregon 97470 (503) 440-4481 Operations and Maintenance 2586 N.E. Diamond Lake Blvd. Roseburg, Oregon 97470 (503) 440-4268 Water Resources Survey Room 103 / Justice Building Roseburg, Oregon 97470 (503) 440-4255



Hezardous & Solid Wasto Division
--- Charlent of Environmental Quality

August 22, 1990

Oregon Department of Environmental Quality Waste Tire Section 811 SW Sixth Avenue Portland, OR 97204-1390

RE: Waste Tire Pile Clean up - Roseburg Landfill

ATTN: Deanna Mueller-Crispin, Program Coordinator

This will serve as formal request for consideration of DEQ financial assistance in the clean up of a waste tire pile at the Douglas County Landfill near Roseburg. An estimated 30,000 tires remain of a long term accumulation which, at the beginning of the year contained approximately 60,000 tires.

Having expended ten thousand dollars in May, 1989, for tire removal which made little impact on the pile size, County realized that complete mitigation would be a costly undertaking. A period of time followed evaluating more cost effective alternatives.

The County's plan to proceed with clean up in conjunction with an application for DEQ financial assistance in early 1990 was diverted with the issuance of a Notice of Non Compliance issued by the Roseburg DEQ office on January 9, 1990 regarding the tires.

In response to the N.O.N., County initiated immediate measures to comply, transporting 600 tons of waste tires to an approved disposal site at an out of pocket expense of \$30,000 not including County labor and equipment costs (See Exhibit A attached). An aggressive program of splitting and burial was also undertaken on a portion of the pile approved for disposal in that manner.

The tires now remaining fairly represents a quantity that was disposed on site prior to February, 1987, the date in which a nominal fee was first instituted for disposal of commercially generated tires. Participation by DEQ in the removal of these tires would benefit the County in reaching earlier compliance to the N.O.N.

County's expenditures in waste tire clean up during the latter half of fiscal year 1989-90 overran budgeted tire removal funds by \$10,000. While funds are budgeted this fiscal year to handle the

incoming waste stream, no funding was specified for total mitigation of the long term accumulation.

Without DEQ financial assistance, completion of tire clean up would likely not occur until mid 1991 provided such time frame could be negotiated with respect to the N.O.N. If additional out of pocket expenditures were required, funds would have to be withdrawn from other budgeted solid waste operation endeavors.

Douglas County is concerned about its financial position. The projected cost of complete landfill rehabilitation in compliance with Subtitle D, R.C.R.A. rules coupled with the significant reduction anticipated in timber dependent revenue to operate the general fund presents a portentous picture for the county. The County is compelled to seek all available forms of assistance.

Sincerely,

Dave Leonard, P. E.

Director of Public Works

DML:JWH:cm

leonard/tirecln.reg

EXHIBIT A

/n 0 #16919		
/ p.O. #16812	TOME:	¢ / I O A D
Maximum amount - \$20,000 Tracer - \$10,000	TONS	\$ / LOAD
Tracer - \$10,000		
01/16/90	14.44	\$722.00
01/17/90	14.87	\$743.50
,,	15.57	\$778.50
01/18/90	15.22	\$761.00
01/19/90	15.70	\$785.00
01/22/90	16.16	\$808.00
01/23/90	16.51	\$825.50
01/24/90	14.69	\$734.50
01/25/90	16.53	\$826.50
,	13.87	\$693.50
01/26/90	16.43	\$821.50
, ,	15.37	\$768.50
01/29/90	15.04	\$752.00
01/30/90	14.68	\$734.00
•	15.00	\$750.00
01/31/90	15.07	\$753.50
•	16.15	\$807.50
02/01/90	15.99	\$799.50
02/02/90	15.27	\$763.50
02/05/90	16.72	\$836.00
02/08/90	17.07	\$853,50
	17.18	\$859.00
02/09/90	16.43	\$821.50
•	17.49	\$874.50
02/15/90	14.38	\$719.00
	14.24	\$712.00
02/19/90	18.17	\$908 .50
•	18.58	\$929 .00
02/20/90	16.81	\$840.50
	17.69	\$884.50
	16.58	\$829.00
02/22/90	18.37	\$918.50
	19.72	\$986.00
02/27/90	16.44	\$822.00
	19.07	\$953 .50
	18.59	\$929.50
03/09/90	·14 . 58	\$729.00
Total	600.67	\$30,033.50
a		W1

ATTACHMENT C

BID FOR REMOVAL OF WASTE TIRES AT ROSEBURG LANDFILL

The undersigned bidder hereby agrees to load and remove approximately 30,000 tires at Douglas County's landfill at McClain Ave., Roseburg, Oregon (the Work) for the following lump sum contract price: Area A \$ 22,300 Pr Area B \$5,500 = Total \$27,800 Pr

This bid is submitted pursuant to an invitation to bid issued by Douglas County on August 22, 1990. By submitting this bid, the undersigned bidder acknowledges that:

The bidder has read and understands the invitation to bid and the terms of the following contract documents: general conditions, special provisions, specifications and exhibits that are incorporated in other contract documents by reference; and

The bidder is familiar with the conditions that will affect the bidder's performance if the bidder is selected as contractor for the work. Such conditions include, but are not limited to, the physical conditions at the work site and the availability of labor, supplies and equipment.

Attached to and incorporated in this bid form are:

The names and addresses of at least three customers who have retained the bidder to do the type of work required by the contract documents.

The removal plan as required by subsection 6.2. of the invitation to bid.

Proof of authority of the undersigned corporate officer to sign (if applicable).

The undersigned bidder (check the appropriate statement):

is a resident bidder as defined in ORS 279.029.

is not a resident bidder as defined in ORS 279.029.

BY South West Tire Recycleres

BY South Seaps

BY TES AWASE

BY Its

1-BID FOR REMOVAL OF WASTE TIRES AT ROSEBURG LANDFILL (h:tires.bid\agree)(8/90)

This Addendum f! shall be signed and included in the proposal when submitted.

Bayed the 30th Day of August 1990.

FOR DAUE LEONARD

Dave Leonard, P. E. Director of Public Works

Morthwest Tire Recycloss
Bidder

836 main st. Philamath
Address

Imula Sage

sw/addltire.rem

NUATHWEST TIRE RECYCLERS F.O. BOX 103 .. PHILDMATH, DR 47370 (503) 727-2748

Removal Plan- Bid no 485 Re

county Landfill Donglas

30 Days from the date of contract signing

S**R**ECIAL CONDITIONS

DIRECTION OF HASTE TIRES

(ARRA B 23,300 E ARRA B 5,500 00 Total \$ 27,800 00

INVITATION TO BID

Douglas County, Oragon, herein referred to as County, is accepting bids for removal of approximately 30,000 waste tires at Roseburg landfill, referred to herein as the work. All bids shall be subject to the following conditions:

1. Time and Place for Receiving Bids: Bids must be received by the Board of Commissioners at the Courthouse, Roseburg, Oregon, on September 5, 1990 at 10:00 a.m. At that time, bids will be publicly opened and read in Room 216, of the Courthouse. Bids may not be withdrawn after the time set for the opening of bids.

Each bid shall be identified on the exterior of the sealed envelope as follows:

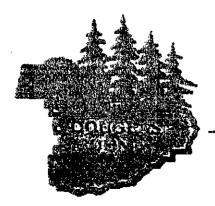
BID NO.	48.5
---------	------

REMOVAL OF WASTE TIRES AT THE ROSEBURG LANDFILL

BID OPENING 10:00 A.M. SEPTEMBER 5, 1990.

- 2. Purchasing Division: The Purchasing Division of Management and Finance Department is the sole point of contact in the County for this procurement action. All correspondence pertaining to this bid should be directed to the Purchasing Division, Room 324, Douglas County Courthouse, Rosaburg, OR 97470. The telephone number is 440-4215. Protests to the contract documents must be filed with the Purchasing Division at least five days prior to the bid opening date. If protests, inquiries or comments by bidders raise issues that require clarification by the County addenda will be issued by the Purchasing Division.
- 3. Examination of Special Provisions, Specifications and Site of Work:
- 3.1. Special provisions and specifications for the work are set forth in attachments to this invitation to bid.
- 3.2. Bidders may view the wasta tires at the landfill on McClain Avenue, Roseburg, Oregon on August 29, 1990 at 1:30 PM. The quantity of tires stated in this invitation to bid and the bid form is approximate only. The County does not expressly or by implication represent or warrant the actual quantity of work. Bidders are admonished view the work to determine the actual requirements of the work.
- 3.3. Bidders must satisfy themselves by personal examination of the specifications, special provisions and the site of the work, and by such other means as they prefer, as to

1-INVITATION TO BID (h:tiresinv.bid\agree)(8/90)



PUBLIC WORKS DEPARTMENT

Administration Room 219 / Courthouse Romanuty, Ortson 77470 (503) 440-4209 Eugineering and Construction Room 304 / Countrouse Runeburg, Oregon 97470 (203) 440-4481 Operations and Maintenance 2586 N.E. Diamond Lake Bird, Roseburg, Oregon 97470 (503) 440-4268 Water Resources Survey Rome 103 / Justice Suiding Raseburg, Oregon 97470 (503) 440-4255

ADDENDOM #1

August 30, 1990

TO:

All Specification Holders

INVITATION TO BID:

Roseburg Landfill Tire Removal

Douglas County, Oregon

BID OPENING:

10:00 AM, September 5, 1990

Addendum #1 consists of the following:

- 1. Special Provisions, Fage 1, Item 3, amend as follows: The contract price shall be lump sum stated in the bid schedule with price <u>separately</u> indicated for tires in Area A and in Area B. Contract will be awarded to lowest responsible, responsive bidder based on <u>combined</u> lump sum of both areas.
- 2. Specifications For Removal, Page 1, Item 1.1, amend as follows: The work includes removal of all tires in both Area A and in Area B as viewed by prospective bidders on August 29, 1990. Area A consists of approximately 20,000 tires in a pile subject to EQC financial assistance. Area B consists of approximately 10,000 tires stored and stacked located about 300 feet east of Area A.
- 3. Bid Form, Page 1, add: Specify lump sum amount separately for Area A and Area B. Contract will be awarded based on the combined lump sum quantity.

This Addendum #1 shall become a part of the specifications and shall be binding as though it were contained therein.



Environmental Quality Commission

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

iri.

- 1

Ü,

1

REQUEST FOR EQC ACTION

Meeting Date: September 21, 1990
Agenda Item: J
Division: Water Quality
Section: Groundwater

SUBJECT:

Methods and criteria for Setting Maximum Measurable Levels for Contaminants in Groundwater

- 1) Presentation of Recommendations by the Technical Advisory Committee's Chair Clinton Reeder
- 2) Request for Authorization to Hold a Public Hearing on Proposed Rules Recommended by the Advisory Committee

PURPOSE:

To present the Advisory Committee's recommendations on a method and criteria for establishing Maximum Measurable Levels (MMLs) in groundwater. The Committee has recommended the method and criteria be adopted as rules; the Department of Environmental Quality (Department) is requesting authorization to take the recommended rules out to public hearing.

ACTION REQUESTED:

	Work Session Discussion		
	General Program Background		
	Potential Strategy, Policy, or Rules		
	Agenda Item for Current Meeting		
	Other: (specify)		
<u>X</u>	Authorize Rulemaking Hearing		
	Adopt Rules		
	Proposed Rules (Pages A-35 to A-44)	Attachment	Α
	Rulemaking Statements	Attachment	C
,	Fiscal and Economic Impact Statement	Attachment	
	Public Notice	Attachment	

	Meeting D Agenda It Page 2	ate: September 21, 1990 em: J	
	Appr	e a Contested Case Order ove a Stipulated Order or an Order	
		Proposed Order	Attachment
	X Appr	ove Department Recommendation	
		Variance Request	Attachment
		Exception to Rule	Attachment
		Informational Report	Attachment
-		Other: Recognize Receipt of Report and	
		Recommendation by the Technical Advisory Committee	Attachment A
		May Iboly Committees	<u> </u>
		Department Recommended Modification	ons
		to Technical Advisory Committee's	
		Proposed Rules	Attachment <u>D</u>
	2)	Recognize Receipt of the Advisory Committee after its presentation to the Environment Commission (Commission, EQC) by the Commission Reeder The Department requests authorization from Commission to hold a public hearing on the commission to hold a public hearing the commission the commission to hold a public hearing the commission to hold a public hearing the commission to hold a public hearing the commi	tal Quality ittee's Chair om the ne proposed
	## TE 111	rules developed by the Technical Advisory //NEED FOR ACTION:	
	X Requ	ired by Statute: <u>ORS 536.137,468.694</u> Enactment Date: <u>July 24, 1989</u>	Attachment <u>F,G</u>
	Stat	utory Authority: ORS 468.020	Attachment <u>G</u>
		suant to Rule:	Attachment
	Purs	suant to Federal Law/Rule:	Attachment
	Othe	er:	Attachment
	X Time	Constraints: (explain)	
	Dead	llines established by HB 3515:	
	afte	to begin rulemaking on establishment of M er receiving recommendation from advisory of 20, 1990.	
	- Adop	otion of final rules establishing MMLs 180 nning rulemaking process, by June 18, 1991	

Agenda Item: J

Page 3

DEVELOPMENTAL BACKGROUND:

<u>X</u>	Advisory Committee Report/Recommendation Hearing Officer's Report/Recommendations Response to Testimony/Comments	Attachment Attachment Attachment	
	Prior EQC Agenda Items: (list) Other Related Reports/Rules/Statutes:	Attachment	
	Interim Numerical Standards for Maximum Measurable Levels of Contaminants in Groundwat (EQC Meeting October 20, 1989)	er.	
	Groundwater: Proposed Adoption of Interim Numerical Standards For Maximum Measurable Levels of Contaminants (EQC Meeting May 25, 19	90) ့	
<u>x</u>	Supplemental Background Information	Attachment	
	Groundwater Act of 1989 (HB 3515; Sections 24, 25, 26, and 36)	Attachment	_ <u>E</u> _

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The proposed rules will codify a procedure for the establishment of Maximum Measurable Levels. These rules will limit, to some extent, what can and cannot be included for consideration in establishing an MML and the public may not be able to comment on certain aspects of establishing an MML. The rules do provide the public a set procedure by which they will know how the Department determines what reference level will be established for an MML. This will give the public the ability to verify the procedures and sources the Department uses in establishing an MML. The rules also allow for the public to be informed sooner of the Department's activities and provided with pertinent information on the effects of substances in the groundwater.

PROGRAM CONSIDERATIONS:

The proposed rules will give the Commission and Department guidance on how to establish MML reference levels in groundwater. Adoption of these rules will have the following effects on the Commission and Department:

Agenda Item: J

Page 4

The reference number established by the proposed rules may in many instances require the MML be set at a different level than the Federal Drinking Water Standard. The Department does not consider this a drawback of the rules since Oregon's groundwater protection is a preventative program seeking to avoid contamination of the groundwater and is based on both public health and environmental considerations. The Federal Drinking Water Standards focus on the public health issues of using water for drinking, but incorporate treatment technology and economic considerations as well. The MMLs would not be constrained by economic or technological considerations.

- 2) Both the legislation and the proposed rules define MMLs as being protective of public health and the environment. The proposed rules limit the procedure for establishing MMLs to nonpoint source problems associated with designating groundwater management areas. This requires the Commission and Department to use a different method and its general standard-setting authority to establish groundwater standards for other program uses. A conflict may result if different reference numbers are adopted for different programs.
- 3) By proceeding with rulemaking for adopting the recommended criteria and method for establishing MMLs and then following those rules, the Department will not be able to meet the final deadline established by the legislation for setting MMLs. The Department will, however, be in the process of establishing the state's first MML by the deadline (June 18, 1991).
- 4) The Department has determined that only a limited number of MMLs can be established each biennium with available resources. The procedure established in the proposed rules will require additional time and resources be allocated beyond those already available.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

 The Department could use the recommendations made by the Committee as guidelines and not propose rules for establishing MMLs. Not adopting a method and criteria in rule form would allow the Department more flexibility in being able to propose MMLs, but is not the recommendation of the Advisory Committee.

Agenda Item: J

Page 5

2. The Department could take the rules as recommended by the committee to public hearing.

- 3. The Commission could direct the Department to develop its own rules using the Committee's recommended rules as guidance, but modifying them where the Department sees an advantage in doing so, and then come back to the Commission to request authorization to put the Department's rules out for public hearing.
- 4. The Department could take the rules recommended by the Committee to public hearing, but include some recommended changes to the rules to make them clearer.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Committee has determined that the method and criteria need to be in rule form, and has developed these rules. The full Committee has participated in the debate, development, and drafting of the rules and has unanimously recommended these rules be provided to the public for comment. Some Committee members may submit additional comments on the Committee's Report, but still appear to support most of the proposed rules content.

The Department supports the Committee's recommendation to put the rules they developed out for public review. The Department does have some reservations about the rule and would recommend several changes to the rules as outlined in Attachment D. The recommended changes are intended to clarify portions of the rules and slightly reorganize the structure of different sections.

The Department recommends that the Commission authorize the Department to hold a public hearing on the Committee's recommended rules. The Department additionally recommends that modifications to the rules included as Attachment D be included in the public review process.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The Groundwater Standards Advisory Committee was established by the Groundwater Act of 1989 (HB 3515, Section 24, Attachment F). The Committee members were appointed by the Strategic Water Management Group and charged with recommending "a criteria and method for the development of standards that are protective of public health and the

Agenda Item: J

Page 6

environment." The Method and criteria were to be used to establish Maximum Measurable Levels in groundwater (groundwater quality standards). The legislation states that groundwater quality reaching a percentage of an MML would be used to trigger the designation of Groundwater Management Area.

In accordance with their charge, the Committee has recommended criteria and a method for development of MMLs and has recommended that the criteria and method be adopted as rules for the Commission and Department to follow in establishing MMLs.

ISSUES FOR COMMISSION TO RESOLVE:

There are no present issues for the Commission to resolve. However, the Department expects to have several issues arise during the public hearing process.

INTENDED FOLLOWUP ACTIONS:

Hold public hearing on proposed rules on November 16, 1990.

Present public hearing comments and request adoption of rules at the January, 1991 Commission meeting.

Begin process of establishing Maximum Measurable Levels in February 1991.

Approved:

Section:

Division:

Director:

Report Prepared By: Richard Kepler

Phone: 229-6804

Date Prepared: August 17, 1990

(RJK:crw) (GW\WC7070) (September 4, 1990) Oregon Groundwater Quality
Technical Advisory Committee
Clinton B. Reeder, Chairman
Star Rt, Box 421
Pendleton, OR 97801
(503) 276-9278

July 24, 1990

To: Oregon Environmental Quality Commission

Subject: Transmittal, Final Committee Report

The Groundwater Quality Technical Advisory Committee (Committee) appointed pursuant to HB 3515 (1989 Oregon Legislature) does hereby transmit their final report to the Oregon Environmental Quality Committee.

The mandated activity of the Committee was completed prior to July 24, 1990 the legislated date for completion of the Committee's work.

The Committee deliberations resulted in sufficient agreement among the Committee members that a formal minority report was not prepared. While this final report should not be interpreted as reflecting total and absolute agreement among the participants serving on the Committee, it can certainly be taken as a significant agreement in principle among the committee members.

Because there are still some issues of concern to certain committee members, I have encouraged those who think their perspective might add positively to the debate of an issue to submit personal statements to the EQC.

In addition, any one of the Committee members might, as representative of an employer or as representative of some organization, at a later date present information to the Environmental Quality Commission or the Department of Environmental Quality that differs somewhat from the specifics stated herein.

Even though such differing statements might be submitted concerning some issues, it appears at this time the Committee members can and will support this report overall in a significant and meaningful manner.

Respectfully submitted,

Clinton B. Reeder, Chairman

ESTABLISHMENT OF MAXIMUM MEASURABLE LEVELS (MML'S) FOR GROUNDWATER CONTAMINANTS IN OREGON

Submitted To The Oregon Environmental Quality Commission

By The Oregon Groundwater Quality Technical Advisory Committee

Clinton B. Reeder, Chairman Star Rt, Box 421 Pendleton, OR 97801 (503) 276-9278

Submitted The 24th Day Of July, 1990

Administrative Support and Assistance For The Project
Provided By
The Oregon Department Of Environmental Quality

ACKNOWLEDGEMENTS

While it is not possible to name all the persons who have made a contribution to the preparation of this report, a few names can be mentioned as having made a particularly meaningful contribution to the project.

First of all, the Committee members themselves deserve to be recognized for a substantial and significant contribution. They have each without exception dedicated a major part of a year to this project. They have undertaken this task voluntarily, performing without complaint or compensation whatever effort was appropriate, to search out information, bring issues of importance to the attention of the whole Committee and then debate the issues and positions with sincerity and concern for the best public interest.

Secondly, the staff of The Department of Environmental Quality deserves acknowledgement for their contribution to the project, especially Greg Pettit, who started the Committee on the project; Rick Kepler, who ably took the reins from Greg Pettit midway through the process; and Amy Patton, who worked closely with Rick Kepler and the Committee. The Committee appreciated the competent manner in which the DEQ staff supported the meetings.

Thirdly, a special note of appreciation to those who maintained an ongoing interest in the proceedings and attended the meetings as "observers" and "informal participants", often times making thereby a rather significant contribution to the deliberations of the Committee. Those who participated most regularly were Jean Cameron, Oregon Environmental Council; Terry Witt, Oregonians For Food And Shelter; Dave Couch and Chris Reive, Attorneys (Bogle and Gates); John McCulley, Lobbyist (Ag Co-op Council, Tree Fruit Growers, NACA); and Tom Donica, Associated Oregon Industries.

Finally, a thank you to Professors Frank Dost and Jim Witt (retired), Oregon State University, for their technical comments concerning the final draft of the report.

Any errors or omissions in the report should not be attributed to any of the above persons, but rather to the Committee Chairman, due to oversight or errors in final editing.

CONTENTS

	Page
Acknowledgements	i
List Of Exhibits	vi
Committee Members	vii
Scope Of Committee Deliberations And Recommended Uses Of Method Outline, Rules Proposal And Standards Established	
Thereunder	ix
Abbreviations Used In The Report	ix
I. Introduction	1
1. Committee Appointment	1
2. Meeting Format And Participation	1
3. Procedural Format	1
4. Meeting Attendance	2
5. Homework	2
6. Committee Professionalism	2 2
7. Participation Of Non-committee Persons	2
9. All Issues Considered	3
10. Perspective Of Final Report	. 3
11. Method Outline	3
12. Rules Proposal	3
13. DEQ Support	4
14. Technical Integrity Of Committee Report	4
15. Committee And DEQ Submit Separate Reports	4
II. Methods Outline	4
1 Conound Comments	4
 General Comments	5
Step 1	5
Step 2	5
Step 3	6
Step 4	6
Step 5	6
Step 6	6
Step 7	6
Step 8	7
Step 9	7
Step 10	7
Step 11	7
Step 12	7

	Step 13, 14	8 8
III	Rules Proposal	8
	1. Statement Of Purpose	8
	2. Definitions	8
	3. General Policies	8
	4. Substances Regulated By These Rules	9
	5. Notice Of Intent To Adopt	10
	6. Methods And Criteria To Be Used To Establish Maximum Measurable Levels	10
	7. Human Health And Environmental Advisories	11
	8. Modification To The Rules	12
	9. Other Concerns Addressed By The Rules	12
	a. Analytical Procedures	12 13 13 14 14
IV.	Issues And Recommendations 1. Rules Or Guidelines 2. Scope Of The Initial Program 3. Public Support vs Scope Of Program 4. Quality Of Evidence 5. "Weight" vs "Strength Of Evidence" 6. Presumed Innocent Or Guilty 7. Multiple MML's For A Given Substance 8. Hazardous Below Detection Level 9. Scientific Advisory Committee 10. Administrative Feasibility and Cost 11. Testing Obligations 12. Threshold Effects	15 15 16 16 17 18 19 20 21 21
٧.	Rules Proposal: Methods And Criteria For Establishment Of Maximum Measurable Levels Of Contaminants In Groundwater	23
-	OAR 340-40-100: Statement Of Purpose	23 23 23

2. Confirmed	23
3. Contaminant	24
4. Detected	24
5. Environment	24
6. Federal Standard	24
7. Maximum Measurable Level	24
8. Natural Water Quality	24
9. Non-point Source	24
10. Point Source	25
11. Protect Public Health And The Environment	25
12. Substance Of Concern	25
OAR 340-40-108: General Policies	25
1. Program Priorities	25
2. Beneficial Uses	25
3. Scientific Evidence	25
4. Naturally Occurring Contaminants	25
5. Wildlife	26
6. Methods Flow Chart	26
7. Public Support via Education	26
8. Other Rules or Statutes	26
	-0
OAR 340-40-110: Substances Regulated Under These	ν.,
Rules	26
OAR 340-40-120: Notice Of Intent To Propose Contaminants For Adoption Of A Maximum Measurable Level	27
OAR 340-40-125: Methods To Establish Maximum Measurable	
Levels	27
Public Health Factors	28
Environmental Factors	29
OAR 340-40-130: Human Health And Environmental	
Advisories	30
OAR 340-40-135: Modification To The Maximum Measurable	20
Level	32
Appendix I: Method Outline For Determining Oregon Groundwater	
Quality Standards	33
gaars, sandaras	-
Appendix II: Case By Case Methods Pathway Review	34
Case I. Substance Detected In Oregon Groundwater And	- •
MCL Exists	34
Case II. Substance Detected In Oregon Groundwater, MCL	_
Exists But It Is Rejected	34
Case III. Substance Detected In Oregon Groundwater,	
No MCL Exists But Information Is Sufficient .	35

Case	IV.	Substance Detected In Oregon Groundwater, No MCL Exists And Information Is Insufficient	35
Case	v.	Substance Not Detected In Oregon Groundwater	
		And MCL Exists	35
Case	VI.	Substance Not Detected In Oregon Groundwater,	
		An MCL Exists But It Is Rejected	35
Case	VII.	Substance Not Detected In Oregon Groundwater,	
		No MCL Exists But There Is Sufficient	
		Information	36
Case	VIII.	Substance Not Detected In Oregon Groundwater,	
		No MCL Exists And There Is Insufficient	
		Information	36

LIST OF EXHIBITS

		Page
1.	Exhibit 1. Method Pathway For Contaminant Detected In Oregon Groundwater And A federal Standard Exists For The Contaminant	37
2.	Exhibit 2. Method Pathway For Contaminant Detected In Oregon Groundwater, federal Standard Exists For The Contaminant But Is Rejected	38
3.	Exhibit 3. Method Pathway For Contaminant Detected In Oregon Groundwater, No federal Standard Exists For The Contaminant, But Information Is Sufficient	39
4.	Exhibit 4. Method Pathway For Contaminant Detected In Oregon Groundwater, No federal Standard Exists For The Contaminant, And Information Is Insufficient	40
5.	Exhibit 5. Method Pathway For Contaminant Not Detected In Oregon Groundwater But A federal Standard Exists For The Contaminant	41
6.	Exhibit 6. Method Pathway For Contaminant Not Detected In Oregon Groundwater, federal Standard Exists For The Contaminant But Is Rejected	42
7.	Exhibit 7. Method Pathway For Contaminant Not Detected In Oregon Groundwater, No federal Standard Exists For The Contaminant, But Information Is Sufficient	43
8.	Exhibit 8. Method Pathway For Contaminant Not Detected In Oregon Groundwater, No federal Standard Exists For The Contaminant, And Information Is Insufficient	44

COMMITTEE MEMBERS

1. Agriculture

Clinton B. Reeder, PhD, Committee Chairman: Farmer - Economist: President, Oregon Wheat Growers League; Chairman, Umatilla County Planning Commission; Former Oregon State University Faculty Member, Department of Agricultural and Resource Economics. (Pendleton)

2. Toxicology

David Chandler, PhD: Toxicologist: Associate Director, Hazardous Materials Program, Oregon University Health Sciences Center; Member, numerous hazardous materials policy making committees. (Portland)

3. Health Professional

Gary Stevens, Registered Sanitarian: Manager, Environmental Health Division, Jackson County Health Department; Member, Council of Health Officials; Member, Health Division Public Water Supply Grant Committee; Technical Advisor, Jackson County Groundwater Committee. (Medford)

4. Water Purveyor

Joe Glicker, Registered Engineer with MS in Biochemistry: Water Quality and Environmental Policy Director, Portland Water Bureau; Member, METRO Solid Waste Technical Advisory Committee; Member, American Water Works Association (AWWA); Member, AWWA National Committee on Disinfection; Chair, Northwest Section, AWWA Water Management Committee. (Portland)

5. Biologist

Chuck Henny, PhD: Research Biologist, specializing in contaminant issues: Leader, Pacific Northwest Research Station, U.S. Fish and Wildlife Service, Patuxent Wildlife Research Center. (Corvallis)

6. Citizen

Christy St. Clair: Rancher: Participant, Soil and Water Conservation District, especially concerning development and utilization of best management practices for water quality protection. (Izee/Canyon City area)

7. Local Government

Ken Cerotsky, Registered Engineer: Director, Engineering and Operations, Water Division, Springfield Utility board: Member, American Water Works Association; Member, American Society of Civil Engineers. (Springfield)

(vii)

- 8. Environmental Organizations
 Mary O'Brien, PhD: Botanist: Staff Scientist, Northwest
 Coalition For Alternatives to Pesticides (Eugene); Chair,
 Steering Committee, North American Region, Pesticide Action
 Network, International (San Francisco).
- 9. Industry
 Lolita Carter, PhD: Aquatic Ecologist: Environmental
 Scientist, Portland General Electric Company: Member,
 Tualatin River Technical Advisory Committee; Past Chair, City
 of Portland Bull Run Watershed Advisory Committee; Member,
 Associated Oregon Industries Water Quality Committee;
 Participant, with DEQ Underground Storage Tank Committee.
 (Portland)

SCOPE OF COMMITTEE DELIBERATIONS

and

RECOMMENDED USES OF METHOD OUTLINE, RULES PROPOSAL AND STANDARDS ESTABLISHED THEREUNDER

The report of the Groundwater Quality Technical Advisory Committee (Committee) was prepared assuming the only use to be made of the report was to fulfill the specific requirements of HB 3515 (1989 Oregon Legislature). The groundwater quality standard setting method and rules proposal submitted by the committee are based solely upon the need for standards to trigger establishing "Groundwater Management Areas", as defined and required by HB 3515.

The Committee is especially concerned about the apparent likely use of the standards established by this method as groundwater clean-up standards. Because such a use was not part of the legislated mandate for the Committee, no consideration has been given by the committee to such a use of the Maximum Measurable Levels for groundwater contaminants.

Any use of the methods outline or rules proposal in this report, or the standards established pursuant thereto, other than that directly called for in HB 3515, should be done with caution, and only following careful review of whether the standards and method are appropriate for the alternative use.

ABBREVIATIONS USED IN THE REPORT

- 1. Committee: The Groundwater Quality Technical Advisory Committee
- 2. Commission: The Oregon Environmental Quality Commission (EQC)
- 3. Department: The Oregon Department of Environmental Quality (DEQ)
- 4. EPA: United States Environmental Protection Agency

ESTABLISHMENT OF MAXIMUM MEASURABLE LEVELS (MML'S) FOR GROUNDWATER CONTAMINANTS IN OREGON

I. INTRODUCTION

- 1. Committee Appointment: The Groundwater Quality Technical Advisory Committee (Committee) was appointed during the month of September, 1989 and began meeting on November 7, 1989. The Committee has met each month since that date for at least one all day meeting. In May, the Committee met for an intensive two day session, and the Committee met twice in June to finalize their work.
- 2. Meeting Format and Participation: In the early Committee meetings, considerable attention was given to providing sufficient training and sharing of personal expertise and interests to bring all committee members up to at least a minimum common understanding relative to groundwater quality concerns. At the beginning of the early meetings, each Committee member was polled concerning their activity since the previous meeting, any new information they had discovered, and any new issues they thought the Committee should consider.

The Committee members were encouraged to share information and concerns between meetings, to pursue independent search for pertinent information, and to bring any information of potential help to the Committee to meetings for review and consideration. One way or another, everyone was encouraged to make known their concerns and positions on various issues.

This process helped identify many of the critical issues that needed to be addressed by the Committee, and the more relaxed early meetings helped the committee members get sufficiently comfortable with each other so that much more intense discussions could occur later in the process.

3. Procedural Format: The sequence of events for the Committee in their first meetings were designed to surface issues and concerns early, and to identify potential positions on the issues for further debate. As this happened, any potential insight into a possible procedural flow of steps to establish the maximum measurable levels was outlined roughly, with the method outline being repeatedly refined as the Committee moved from meeting to meeting.

Once the method outline was developed in a generally acceptable manner, the initial drafting of the rules proposal began, incorporating the issues and the positions in a manner that procedurally followed the methods outline. Any issues

for which the Committee had not reached what seemed to be a generally satisfactory agreement, was re-debated, sometimes several times at different meetings, until the issue had been thoroughly reviewed.

In late spring, the method had been fairly well completed, leaving the Committee to focus attention upon the rules proposal. Several drafts were revised, and then revised again, then ultimately reviewed word by word to assure general agreement among the Committee members.

Next, all the notes from the meetings were reviewed to glean out the central issues that might be addressed to the Commission, with recommendations, as part of the final Committee report.

Finally, the method outline, the rules proposal and the statement of issues with recommendations were reviewed for consistency, and incorporated into a final Committee report.

- 4. <u>Meeting Attendance</u>: Attendance of Committee members has been exceptional! Only one person missed a meeting, to attend a professional conference. That person brought back information from the conference that was helpful to the Committee.
- 5. <u>Homework</u>: There was specified "homework" to be accomplished between meetings from time to time. Without exception, the Committee responded in helpful fashion, and significantly helped move the process along in an effective and timely manner.
- 6. <u>Committee Professionalism</u>: The Committee undertook their charge very seriously, and devoted themselves to the task in a sincere and professional manner. It was obvious from the beginning the Committee members intended to approach their charge with integrity, and to address the legislative intent with as much professionalism as possible.
- 7. Participation of Non-Committee Persons: The Committee seriously considered any issues brought to their attention by agencies, organizations or individuals during the course of Committee deliberations. Interested persons not on the Committee were encouraged to attend meetings, and to participate whenever they thought they had pertinent comments to make. This was generally very helpful, and most likely contributed significantly to the quality of the final report.
- 8. Participation Ground Rules: The Committee worked with only two basic ground rules. One, discussion had to focus on issues, not personalities. No "attacks" on persons were permitted in the deliberations. Two, issues and personal

positions relative to issues, were fair game to be literally "torn apart" by debate, but all debate had to be done in a manner respectful to persons.

- 9. All Issues Considered: The ground rules permitted the Committee to address several very controversial issues in a "no holds barred" fashion, without destroying the process. This intensity of debate assured that no issue would be side-stepped and avoided due to potential conflict. For that reason, the Committee has been able to address directly all the issues that have been brought to the attention of the Committee during our deliberations.
- 10. Perspective of Final Report: The primary limitation in the work of the Committee has been the increasingly obvious lack of research information concerning several questions. As a result, the final product of the Committee effort has been approached with both a short term and a long term perspective -- longer term relative to the method outline and the basic elements of the rules package, but a shorter term perspective in the criteria ("factors") part of the rules package.

The presentation of the Committee results is in two parts: part one, the Method Outline, and part two, the Rules Proposal.

- 11. Method Outline: The Method Outline (Appendix I) has been put together with the expectation it will serve for a considerable time period, providing sufficient flexibility to be useful in both "preventive" and "corrective" groundwater protection activity, while also continuing to be useful without major redesign as the available technology and research base expands over the coming years. The Committee does recognize that this methods outline, while likely to be less frequently subject to change than the rules or criteria, will also require periodic updating.
- 12. Rules Proposal: The Rules Proposal was developed fully recognizing that not only is the available technology and water quality research data base rather limited, but also that the availability of appropriate professional staff within the Oregon Department of Environmental Quality (Department), and other agencies, was wholly inadequate to do any significant amount of original toxicological research. Hence, the initial rule proposal does not provide "criteria" that would guide such research, but rather provides "factors" that can serve to guide the Department as it uses research information, especially federal, in establishing protective standards for the groundwater in Oregon.

Otherwise, the basic rules are intended to be valid for longer term application, with full knowledge some parts will possibly need frequent updating as new information and analytical technology becomes available.

13. <u>DEO Support</u>: The Department of Environmental Quality provided administrative and office support service to the Committee.

The Committee was able to interchange ideas and philosophy rather freely with the Department, which contributed positively to the deliberations of the Committee.

- 14. Technical Integrity of Committee Report: The Committee elected to not modify their report on the basis of DEQ administrative considerations beyond a certain point, in order to protect the "integrity" of the "technical advisory" status of the final Committee Report. The primary modification to the report based upon concerns of the Department, were those which addressed the Departments lack of resources to do original research, especially relative to toxicology (see comments under "Rules Proposal" above).
- 15. Committee and DEO Submit Separate Reports: The Committee and DEQ have discussed and agreed that it will be appropriate for the Committee to submit their report, accompanied by a separate statement from the Department indicating the Department preference as to Method Outline and Rules. This should provide the EQC with the maximum information to consider as they deliberate how best to implement the groundwater quality standard setting process for Oregon, making more clear the more technical concerns of the committee relative to some of the administrative concerns of the Department.

II. METHODS OUTLINE (See Appendix I)

1. General Comments: The Committee thought it very important to have a method outline that would stand the test of time. Hence, the outline has been debated repeatedly, and the rules proposal repeatedly reviewed relative to the method outline to assure that all the pertinent concerns were addressed in the outline, and that the procedural flow from one step in the outline to another was both logical and practical.

The Method Outline incorporates a significant "preventative" concern, permitting Oregon to assess the potential for groundwater contamination from substances either used, or not yet used in Oregon, whether or not detected to date in Oregon

groundwater. This will provide opportunity to address substances with the potential for groundwater contamination, and permit standard setting in an objective manner based on valid scientific evidence prior to detection of a substance in Oregon groundwater.

The intent of providing for such "preventive anticipation" is to allow the distribution of information concerning appropriate safety levels for a substance prior to detection; and to avoid as much as possible the emotionalism that tends to accompany identification of hazardous materials in groundwater.

2. Step By Step Review of Methods Outline:

Step 1. (OAR 340-40-110(1,2)) Identification of a potential contaminant for review might be done by the Department itself, or a contaminant might be brought to their attention by someone outside the Department. If the contaminant has not yet been detected (definition: OAR 340-40-105(4)) in Oregon groundwater, then the Department would, if it decided to take any action on the contaminant, move to step 2 and conduct a Cautionary Review.

Step 2. (OAR 340-40-110(2)) The <u>Cautionary Review</u> is primarily for the purpose of initiating a "character and use" review of a contaminant, to assess a substance prior to it being found in Oregon groundwater as to whether it might be of sufficient concern to warrant establishing an MML. This review would also likely serve as one means of prioritizing the contaminants as to order of establishing the MML's.

If the pattern of current or projected future use of the contaminant in Oregon, together with the basic chemical character of the contaminant indicated it will most probably not reach groundwater in Oregon, then the Department would not proceed to establish an MML for the contaminant, especially not if there were other substances of higher concern.

If the review indicated the contaminant was rather likely to reach groundwater in Oregon, and be a matter of concern if it did, then this assessment would enable establishing an MML for immediate use when and if the substance is later detected in Oregon groundwater. Having the MML already established prior to detection for materials of potential concern would assure immediate designation of the appropriate Departmental (and other agencies) action upon detection.

The following are some examples of the kind of information that might be reviewed in assessing whether a substance

should likely be of concern: chemical characteristics of the contaminant, such as leaching potential, solubility, volatility, ionic or nonionic (to what does it bond); fate of the chemical in the environment, including reference to degradates and metabolites of the chemical; biological effects of the chemical in the environment, including the potential for bioaccumulation: human health effects; current and potential beneficial uses of the groundwater; site vulnerability, where the chemical might be used; risk assessment of the contaminant; adequacy of data; availability of analytical techniques and laboratories with acceptable quality assurance programs; and other related concerns.

- <u>Step 3. Detection</u> of a contaminant in Oregon groundwater might be the result of DEQ testing, or testing done elsewhere and brought to the attention of DEQ. Following a valid detection, DEQ would before proceeding to establish an Oregon MML be required to confirm the detection (definition: OAR 340-40-105(4)).
- Step 4. Confirmation of a contaminant in Oregon groundwater must be accomplished by a laboratory, other than the laboratory making the initial detection analysis, using established analytical techniques. The intent of the confirmation is to make sure the initial detection was not due to a faulty laboratory analysis, or due to some error in sampling. Having a second laboratory confirm will provide assurance the contaminant is indeed present, thus triggering the appropriate Departmental action (definition: OAR 340 40-105(2)).
- Step 5. (OAR 340-40-120) The Notice of Intent to propose a contaminant for adoption of a maximum measurable level is intended to merely alert persons with a potential personal or commercial concern about the contaminant and the standard established for the contaminant. Adequate advance notice will assure that persons have ample time to prepare for formal hearings, including conducting research concerning how an MML might impact their interests.
- Step 6. (OAR 340-40-125(1)) Determining if a federal drinking water standard exists will be a simple matter of contacting EPA and/or reviewing published EPA drinking water standards to see if a drinking water standard has been established for the contaminant of concern.
- Step 7. (OAR 340-40-125(1a,b,c)) The review of scientific reasons to reject the federal drinking water standard must determine that the federal standard is (1) not protective of human health, (2) not protective of the environment and/or (3) not protective of existing and future beneficial uses of the groundwater.

The following are some of the considerations that might be addressed in determining whether or not to reject the federal standard.

The federal standard was established using economic factors; reference to available analytical capability; inadequate or flawed data; disregarded effects; beneficial tradeoffs not relevant to the prevention of groundwater contamination (such as by products of water disinfection processes); etc. which resulted in the federal standard being established at a less (more) protective level than would have been set considering health and environmental criteria alone.

Also, there may be more current "compelling new evidence" concerning health and environmental effects that would likely result in a more (less) protective federal standard, if it were considered in reviewing the Federal standard. Or, The federal standard might have been established on the basis of "strength of evidence" rather than "weight of evidence", and a weight of evidence analysis (or vice versa) would likely result in appropriately setting a more (less) protective Federal standard.

- Step 8. (OAR 340-40-125(1)) The Department shall propose the Federal drinking water standard as the Oregon MML, if there is insufficient scientific reason to reject the federal standard.
- Step 9. The EQC shall proceed with the Oregon Administrative Procedures for Rule Setting, including public hearings, once the Department proposes an Oregon MML.
- <u>Step 10</u>. The EQC shall <u>adopt the MML as an Oregon</u> <u>groundwater quality standard</u>, following hearings and making appropriate modifications to the proposed MML based on testimony at the hearings.
- Step 11. (OAR 340-40-130) The Department shall <u>publish the MML's</u> as they are adopted, for public reference, using a generally standardized publication format. The MML information sheet shall include basic reference material only, and refer readers wanting more detail to the Department staff reports and other sources of pertinent information.
- Step 12. (OAR 340-40-135) Modification of MML's should be made based upon (1) an established review schedule, (2) changes in federal standards adopted or referenced by Oregon in establishing an Oregon MML, or (3) availability of pertinent new information. A regular updating of the MML's seems to be quite appropriate, especially considering the rather inadequate data base for some substances and the

likelihood of a rapid change in available analytical technology and research data as more nations, states and local jurisdictions establish groundwater quality programs.

Steps 13, 14. (OAR 340-40-125(2a-2e,3)) The Department may proceed to review the Oregon public health factors, and the environmental factors to establish an Oregon MML in the event there is no federal drinking water standard, or the federal standard is rejected for scientific reasons. This review might be accomplished simultaneously with having requested assistance from EPA, that might result in an EPA Health Advisory, or some other type of assistance that might be incorporated into the Oregon "factors" to be reviewed.

Step 15. (OAR 340-40-125(4)) The Department may request EPA assistance in establishing an Oregon MML whenever the Department determines there is insufficient information to establish an MML without such assistance.

III. RULES PROPOSAL

This discussion of the Rules Proposal will deal primarily with each major section, rather than with each sub-section.

1. Statement of Purpose: The purpose includes the rationale for the rules; their relationship to non-point sources; and the use of the maximum measurable levels to designate groundwater management areas. It also states that the rules are to be protective of human health and the environment. The purpose acknowledges there is limited data available to determine groundwater effects on wildlife.

The purpose includes the intent of these rules to be protective of groundwater, but not to serve as clean-up standards for remedial action.

- 2. <u>Definitions</u>: The definitions were carefully written for scientific accuracy and legal clarity, to avoid regulatory ambiguities. Wherever possible, the definitions repeat existing definitions from HB 3515, or other laws or rules applicable to groundwater. The definitions were carefully chosen to relate directly to the methods and criteria ("factors") established by these rules. The definitions are intended to enhance and clarify the intent of the rules.
- 3. <u>General Policies</u>: The general policies were compiled from HB 3515 or from existing DEQ water quality regulations. They are used to clarify the intent and directions to be taken in

implementing the rules that follow. The policies, definitions and rules were carefully checked for internal consistency.

It appears the Department can rely upon the EPA Water Quality Criteria for determining protective levels for aquatic and wildlife species, unless valid scientific evidence indicates this would be inadequate.

4. Substances Regulated By These Rules: The Committee agrees that substances regulated by these rules should include both contaminants that presently exist in groundwaters of the state of Oregon and those which have the potential to exist in groundwaters of the state. However, the rules in this section clearly delineate the requirements for substances of concern that have been confirmed in the groundwaters of the state from the requirements for the contaminants which have only a potential to enter groundwaters of the state.

Any substance of concern or contaminant must be at least partially from non-point sources to be included in these rules.

Which substances should be regulated? There are literally hundreds of substances that are potential groundwater contaminants in Oregon. Some means of prioritizing them as to the risk they pose will likely be essential if standards are to be established in a manner most protective of human health and the environment in Oregon.

One possible ordering of priorities might be the following:
(a) substances of concern already confirmed in Oregon
groundwater; (b) substance of concern used in Oregon that
because of their chemical characteristics or use patterns are
predicted to have a reasonably high probability of entering
Oregon groundwater; and (c) contaminants not used in Oregon
but likely to be introduced in the near future, and which
because of their chemical characteristics or use patterns are
predicted to have a reasonably high probability of entering
Oregon groundwater.

Generally, if there is a federal MCL for any contaminant, whether or not the contaminant is used in Oregon, Oregon might consider adopting the MCL as the Oregon MML so that Oregon has in place any standard available at the federal level. However, if the contaminant is not used in Oregon, and adopting an MML would require any substantive resource expenditure by the Department, and/or by another Oregon agency, setting the Oregon standard for that contaminant should likely be a relatively lower priority in order to keep the program resources focused on the higher risk substances.

5. Notice Of Intent To Adopt: Notice of intent to propose contaminants for adoption of maximum measurable levels has been designed to inform the public early in the process that the DEQ is going to propose a maximum measurable level to the Commission for adoption. Interested parties should be assured adequate time to prepare for hearings concerning groundwater standards, including reasonable time to conduct research necessary to assess the likely impact of the standard upon their particular interests.

The sole purpose of such a notice should be to alert interested parties that such action is being implemented, not to invite early participation or submission of materials for consideration. The notice of intent to establish a groundwater standard might indicate information will be received from the public, but that the Department has no obligation to acknowledge it, respond to it, or even use it. Otherwise, especially in the early stages of implementing the standard setting process, the Department could well see its resources being diverted to public response following the notice of intent to adopt a MML, severely delaying the staff work necessary to prepare recommendations for preliminary formal hearings.

The costs for mailing this notice, which may be substantial, are to be borne by the Department. However, it will be a citizen's or institution's responsibility to remain on the Department's list for such mailings.

Any information submitted to the DEQ by the public as a result of the notice is not binding upon the Department.

Early participation of any kind by persons outside the Department should be at the discretion of the Department, but if permitted, the opportunity should equitably be made available to all interested parties and kept relatively informal.

- 6. Methods and Criteria To Be Used To Establish Maximum Measurable Levels: The methods are divided into 4 major sections, which correspond to most likely status situations concerning federal standards and available scientific evidence.
 - (a) A federal standard exists, and the Department adopts the federal standard unless it rejects such use for reasons stated in the rules.
 - (b) A federal standard exists, the Department rejects the standard based on reasons stated in the rules and proposes its own maximum measurable levels based on

criteria for public health and the environment which are stated in the rules.

- (c) No federal standard exists, however the Department has sufficient information to propose a maximum measurable level based on the same criteria for public health and the environment as described in b, above.
- (d) No federal standard exists and insufficient information is available to develop a maximum measurable level. The Department is to request assistance in these situations from the EPA.

Many other states are establishing groundwater quality standards. However, apparently the primary use of the standards differs among the states. Before Oregon uses a groundwater standard from another state as a major piece of technical information in establishing the Oregon MML, it should determine the purpose for which the standard was established in the other state, and whether or not the standard is a reliable reference in establishing a standard in Oregon.

To date, the focus of most of the water quality research has been upon human health. There is limited evidence concerning the adverse impact of various substances upon the environment, although there are some aquatic life standards now, plus an increasing research base for wildlife.

In the event an Oregon MML is established on the basis of questionable environmental data, a substance of concern should automatically become a priority for early review as soon as reasonable after a federal environmental standard does become available, or when new scientific evidence becomes available which could be used as a more reliable basis for establishing an Oregon MML.

7. Health and Environmental Advisories: Once the Commission establishes a maximum measurable level, the Department shall publish the standard along with information concerning the substance for which the standard has been established. The publication should follow a consistent, standardized format and be distributed and available for reference by parties concerned about groundwater quality.

The proposed publication format and content should be a part of the staff report upon which the standard is based, for review and comment at hearings concerning the proposed standard. Once an MML is established, all groundwater users will be subject to enforcement actions relative to the standard. An informed public is more apt to voluntarily comply with the standard and take precautions to assure appropriate protection of groundwater.

Also, for persons who initiate testing of their own groundwater, it will be helpful for them to have ready access to information concerning the level of contamination that might constitute a hazard.

Therefore, once an MML is established, the EQC should cause to be published a statement similar to the EPA Health Advisory, which presents appropriate public education information concerning the substance, any particular hazards associated therewith and appropriate responses if the substance is found in groundwater.

8. Modification To The Rules: The rules to modify the maximum measurable level are based on the existing Oregon Administrative and Clean Water Act regulations which require periodic review of regulations, and require the Department to re-evaluate the maximum measurable level within six months if the EPA changes the federal standard.

If there is no federal standard or the Department has established its maximum measurable level independently of the federal standard, the Department may re-evaluate the maximum measurable level whenever relevant new information becomes available.

The current state of analytical technology and risk assessment is likely to change rather dramatically over the coming years as pressure mounts to protect groundwater. While the current body of available information is limited, it is expected to expand significantly, which will provide ongoing reason to review existing rules and standards.

Therefore, the Department should likely establish a review schedule that assures reasonable frequency of review for any established MML's to assess their continued adequacy. Such review might occur (1) at least each five years, (2) when an improved federal standard becomes available, or (3) when reliable additional research or analytical technology becomes available which would likely, if considered, cause a change in an MML.

- 9. Other Concerns Addressed In The Rules:
 - (a) <u>Analytical Procedures</u>: The method for establishing maximum measurable levels is to use established

analytical techniques and quality control procedures as defined in the Clean Water Act (40 CFR 136), or procedures having reasonably equivalent reliability.

The analytical techniques in the Safe Drinking Water Act are limited to those parameters which are federal Drinking Water Standards and therefore are limited.

The Clean Water Act has analytical techniques for many more chemicals. Groundwaters of the state are regulated pursuant to the Clean Water Act; therefore, the analytical procedures of that law are appropriate for direct use, or use as procedural guidelines.

The primary concern is that the Oregon groundwater program be based upon valid, reliable analytical techniques conducted in laboratories with acceptable quality assurance programs.

(b) <u>Carcinogenic Substances</u>: Only those chemicals in Group A or Group B of the EPA carcinogenic groups are to be regulated to one additional cancer in one million people. Group A chemicals are known human carcinogens. Group B chemicals have at least limited evidence of carcinogenicity to humans and/or laboratory animals. All other EPA categories for carcinogens have inadequate data to show they are carcinogenic to humans or other animals, or the chemicals are considered non-carcinogenic.

The Committee did not come to "comfortable full agreement" that the one in a million additional cancer risk was a generally acceptable standard for carcinogens. This standard was "agreed to" and incorporated into the report with considerable reluctance by some Committee members, and should therefore be reviewed carefully prior to adoption by the Commission.

Also, it should be made clear that this standard does not imply that one additional person in a million will contract cancer. It is a probability reference, meaning that every person exposed to the chemical at the level of exposure associated with the one in a million risk level, has at that level of exposure to the chemical a one in a million chance (likelihood, probability) of contracting cancer due to the exposure.

(c) <u>Valid Scientific Evidence</u>: The rules clearly state that the Department is to base its determination of maximum measurable levels on accepted valid scientific evidence.

By restricting determinations to use of highly reliable and credible evidence, the Department will have a much stronger base upon which to prevent groundwater pollution, and will be likely be able to administer the regulations with far less possibility of legal challenge. Reliance upon highly reliable and credible evidence will also send a clear message to the regulated public that groundwater contamination is a true concern for public health and the environment.

(d) Parent Compounds, Degradates, and Metabolites: The rules allow the Department to set separate Maximum Measurable Levels for those chemicals which are degradates of a parent compound and are shown to be toxic in their own right. The Committee, while not unanimous in the decision, generally did not support adding degradates and metabolites to the parent compound, except in instances where doing so could be substantiated by valid scientific evidence. There is apparently insufficient scientific reason to add a parent compound to its degradates and metabolites, as a general rule, due to differences in the fate of the various materials and the often times different pathway each acts on various organisms. (See "Modification To The Maximum Measurable Level", OAR 340-40-135(4).)

In 51 Fed. Reg. 34025, dated 24 September 1986, the EPA states, "Interactions: An assumption of additivity cannot be justified, and no quantitative risk assessment can be conducted". (Guidelines for the Health Risk of Chemical Mixtures.)

(e) Economics: The Maximum Measurable Levels are to be established independent of economic concerns, at levels protective of human health and the environment. Economic considerations are, however, to be seriously considered in determining practicable and feasible responses to pollution situations, i.e., in establishing the "Best Practicable Management Practices" under a Groundwater Management Area Plan.

Since the Department, and other agencies, now have very significant capacity to impose economic costs and burden upon private landowners, even though it has not been demonstrated that the landowner has not personally caused any pollution, it seem appropriate for the Department to initiate a purposeful effort to provide significant public education concerning both the individual landowner's economic risks and potential financial burdens under various elements of the groundwater protection program, as well as the

potential costs (often difficult to state in economic terms) to the public should groundwater become contaminated.

IV. ISSUES AND RECOMMENDATIONS

The following concerns were addressed to some extent by the Committee. Because of their potential importance to Oregon, regardless of the extent of Committee debate concerning each of the issues, they are listed and discussed briefly. The Committee thought they were worthy of particular consideration by the Commission in addition to the specific material incorporated into the rules proposal.

1. Rules or Guidelines. The Department apparently has two options to implement the groundwater quality protection program: one, establish from the outset a set of formal rules; or two, adopt an informal set of "guidelines" that would not have the force of rules, and would provide greater flexibility for the Department.

From the standpoint of the Department, it is likely the guidelines approach is more attractive. However, from the perspective of the groundwater user subject to the groundwater protection standards and enforcement actions, it would be much preferable to have a formal set of rules so everyone "knows the game" and is assured equal and equitable treatment.

Other persons, interested in making sure that the groundwater protection program have some "teeth", seem to prefer a more formal rules approach also.

Rules will likely assure more uniformity and equity in implementation of the program.

2. Scope Of The Initial Program. The Department apparently has the following limitations relative to groundwater quality program implementation at the current time: (a) limited staff FTE; (b) limited capacity of Department to do and validate needed research; and (c) very limited capacity for Department to do any toxicological analysis. Therefore, the scope of the initial program needs to be somewhat limited to be workable under these limitations, with the intent to expand the scope of the program as resources become available.

If the Department wanted to accelerate the initial phases of the program, it might consider contracting immediately with credible parties outside the Department (1) to recommend procedures and criteria for use by the

Department in determining whether or not a piece of research or other available information is sufficiently credible to incorporate into the process of standard setting, and(2) to recommend guidelines for determining which available risk assessment model is more appropriate for Departmental use.

3. <u>Public Support vs Scope of Program</u>. In order to maintain an adequately funded ongoing groundwater quality program in Oregon the program must be seen both as reasonable, workable, and cost effective -- generating desired results at reasonable cost.

In the early stages of implementation the Department should likely focus on a limited scope program with effective results, and expand the program as the Department and others learn how to make it more effective.

Especially in the early stages, the Department might rely most heavily upon distribution of information, aggressively encouraging voluntary compliance aimed at preventive actions, coupled with demonstration projects to illustrate feasible means of improving the protection of groundwater that have relatively widespread potential application.

4. Quality of Evidence. In debates concerning water quality, there is almost always a mixture of science and personal value judgement, not founded in "fact". It seems clear that the two should be clearly distinguished in the process of establishing standards.

In order for the Oregon MML's to be upheld as reliable, and to maintain the confidence of the general public, the standards should be established on the basis of the best available "reliable scientific data". At the outset of debate concerning the MML for a substance, only valid scientific evidence should be used to establish the adverse effects potential, and the risk associated therewith.

However, there is at times a conflict among the test results from different laboratories, making it rather difficult to determine what the "facts" really are.

Some people would argue that personal value judgments concerning the "acceptable risk level" and the "acceptable adverse effects" to be tolerated in order to obtain whatever the benefits might be, are valid

considerations and therefore should be introduced into the standard setting process.

The risk of making value judgements a specific part of the standard setting process, however, is to create the public impression that the standards are "political compromises" rather than reliable scientifically sound levels of protection, which might undermine the groundwater protection program.

Continuing public support of the Oregon groundwater protection program mandates high priority to maintaining the integrity and quality of the standard setting process, and the scientific reliability of the data upon which the standards are established.

5. "Weight" vs "Strength of Evidence". A "strength of evidence" analysis uses only those studies that demonstrate adverse effects, while a "weight of evidence" analysis uses all studies, both those which indicate adverse and no adverse effects.

A weight of evidence analysis assures that all the available research data is incorporated into establishing the groundwater quality standards, with a decision as to likely risk exposure and therefore the appropriate level of the standard resting upon the preponderance of evidence.

A strength of evidence analysis would only use those research results that indicated adverse effects, which is generally assumed to be the more "cautious". In a strength of evidence analysis one study showing adverse effect can offset a multitude of other studies showing no adverse effects, possibly leading to establishment of a much more restrictive standard than weight of evidence would warrant.

If a federal standard was established using strength of evidence, and weight of evidence analysis would have resulted in the standard being established at a different level, then weight of evidence might be considered by Oregon to establish an Oregon standard different from and more (less) protective than the federal standard. If a federal standard exists, Oregon might want to use the recognized federal standard, regardless of whether it was established on the basis of weight or strength of evidence, unless there is compelling evidence the federal standard would not be protective of human health and the environment.

or a substance will be of concern to some party, but the available scientific evidence does not clearly indicate the substances to be of enough concern to severely restrict its use. When it is not clear whether a substance generates adverse effects, there is a substantial (heated!) debate concerning whether the substance should be treated initially as "safe until proven unsafe" (innocent until proven guilty), or "unsafe until proven safe" (guilty until proven innocent).

The innocent until proven guilty approach seems to be acceptable to persons who are generally willing to assume a somewhat higher personal risk, and/or by those who would prefer not to lose the economic benefits of a substance until there is rather good evidence the substance is harmful.

On the other hand, those who wish not to take any significant risk, known or unknown, prefer the guilty until proven innocent approach, which assures them the greatest protection from the unknown risk factors.

From a public policy standpoint, there may be rather significant implications as to burden of proof, depending which perspective society adopts. If society accepts the innocent until proven guilty approach, then substances might be introduced earlier and with a bit less research into the range of potential harmful effects — the burden of proof to show it is more harmful than anticipated falling more upon those who want to avoid such risk.

On the other hand, if society takes the guilty until proven innocent approach, there will likely be a much greater burden of proof of safety demanded of those who would introduce new substances into the environment.

From the standpoint of statistical theory, it is not generally possible to "prove" innocence, only to fail to prove guilt. Hence, a dilemma: how to absolutely prove innocence, prior to introduction of a substance. In many cases, our information is sufficiently limited with new substances and new technology in general, that until it is introduced and in use for a while, the whole range of possible effects cannot be known. While increased pressure to do such research in advance of introduction will likely be helpful, it is not ever likely to provide full assurance that unexpected adverse effects will not occur.

"Progress" seems to demand at least some risk taking. However, as society becomes increasingly able to impact the environment in such widespread and significant manner, encouragement should likely be provided to widen the search for likely adverse effects prior to unrestricted introduction of new substances and new technologies.

7. Multiple MML's For A Given Substance. When human health protection requires a groundwater quality standard significantly different from that required for one or more environmental concern, there may be compelling reasons to have more than one MML for a given substance, such as a human health standard that applies statewide, plus one or two other standards, possibly for certain limited salt water and fresh water areas to adequately protect certain vulnerable aquatic organisms.

Two arguments arise in this debate. One, "if there is a single state-wide standard, it should protect the most vulnerable organism". Two, "if there is a single state-wide standard, and the most vulnerable organism exists only in a very limited geographic area, then the vast majority of the state would be subject to an overly restrictive standard".

Hence, whenever a single statewide MML for a given substance would clearly cause undue hardship if applied universally to all environments, the EQC might consider establishing multiple MML's for the substance, each applying to particular, definable, reasonably easy to identify environments.

In general, Multiple MML's should likely only be designated upon compelling evidence such is appropriate. If multiple MML's were established with any significant frequency, the administration of the Oregon groundwater protection program could easily become very costly, complicated and burdensome.

8. Hazardous Below Detection Level. There are apparently some substances for which there is currently no detection technology adequate to detect them at a low enough level to assure protection of human health and/or the environment. The debate concerning this issue involves whether or not it makes any sense to establish a groundwater standard below the level of detection. If it is kept in mind that the intended purpose of these standards under HB 3515 is to trigger the establishment of Groundwater Management Areas, then it seems logical that, to the extent practicable and reasonable, MML's

should be established independent of detection technology, so that detection and confirmation would immediately trigger Groundwater Management Area designation, thus providing the maximum level of response available.

However, if the standards are to be used for clean-up standards, then there is a dilemma. Such use would require a clean-up to meet standards that could not be verified with available analytical technology. This seems to be impracticable, and points out one of the essential reasons why the Committee in its "Scope" statement clearly indicates these standards are not intended to be used as clean-up standards.

It is not the intent of the Committee in suggesting it would be appropriate to establish standards below the level of detection to have, by default, a "standard of zero". The enabling legislation, HB 3515, does not seem to call for such an interpretation, and even if it did, several on the Committee would disagree with the validity of such a position.

9. <u>Scientific Advisory Committee</u>. The Department currently does not have the technical capability to adequately conduct scientific groundwater quality testing themselves, or review for credibility much of the available published research.

DEQ might consider establishing an ongoing scientific advisory committee to provide technical assistance not otherwise available among the DEQ staff, to assist in the process of establishing standards. One or more Ad Hoc committees might be more effective in the short term than one formal committee.

The Department might consider establishing a list of persons and institutions that agree to serve either for fee on contract, and/or in an informal capacity to assist them in establishing MML's, especially in the early stages of implementing the program.

Any scientific advisory committee should likely represent only technical expertise essential to determining "protective of human health and the environment", rather than representing various public interests. This would likely help minimize "politicizing" the process of standard setting.

In establishing the initial standards, which are likely to be based primarily upon established federal

standards, there will likely be little need for such a scientific advisory committee, which could materially slow down initial implementation, unless some federal standard becomes subject to review for possible rejection. If so, then such a committee might be considered at such time as their expertise becomes necessary to establish a reliable standard for a particular substance.

- 10. Administrative Feasibility and Cost. Procedures that are too cumbersome and complex will likely lead to excessive cost of compliance for those regulated, and too high cost of implementation for the Department. Public support for the groundwater protection program will likely be much stronger if requirements to administer and comply with the standards are such that industry, cities, agencies, individuals and the Department can reasonably implement, administer and comply with the program without undue office costs, personnel training, and other costs.
- 11. Testing Obligation. Testing for many substances is very expensive, and, in general, testing would likely provide little benefit unless there were a reasonable probability of detecting a substance. Once a standard is established for a substance, all parties required to do periodic groundwater quality testing should probably not be required to test for each substance for which there is an MML, only for those substances of particular concern at the site being tested.

On the other hand, periodically, such as every five years, for general public protection and to trigger where necessary early preventative measures, each aquifer should be tested for all contaminants, especially those contaminants with a reasonable probability of having entered the aquifer.

12. Threshold Effects: The federal standards currently do not consider threshold effects for carcinogens, i.e., the current thinking is that a "linear" philosophy relative to exposure to carcinogens is more appropriate. A threshold concept would indicate that a carcinogenic substance does not generally pose a risk until some particular level of exposure is reached. On the other hand, a linear exposure theory indicates that any level of exposure involves some degree of risk, with the level of risk rising as the level of exposure increases.

There is little information available to support conclusively either theory, in general, or to indicate

which theory should appropriately be used in particular instances. However, prevailing thought seems to support the linear theory -- which would be more conservative as far as protection from risk is concerned.

Currently, the threshold concept is accepted for noncarcinogens. EPA reportedly is now considering use of the threshold concept for certain types of carcinogens.

The EQC might want to watch this debate rather closely over the coming months and years, to see when and if it might appropriately impact the Oregon MML's. If compelling evidence indicates the threshold concept to be valid for any given substance, consideration of the threshold concept would likely result in a more valid, equally protective, possibly less restrictive Federal standard being established for that substance.

RULES PROPOSAL:

METHODS AND CRITERIA FOR ESTABLISHMENT OF MAXIMUM MEASURABLE LEVELS OF CONTAMINANTS IN GROUNDWATER

STATEMENT OF PURPOSE

340-40-100

The rules within this Division establish the methods and criteria the Environmental Quality Commission shall apply to adopt maximum measurable levels (MMLs) of contaminants in groundwater, resulting from actual or suspected nonpoint sources or activities. These MMLs will be used to designate groundwater management areas.

The maximum measurable levels of contaminants adopted by the Commission using these rules are protective of public health and the environment and existing and future beneficial uses of the groundwater which the natural groundwater quality allows. The Commission recognizes, however, that studies of aquatic and wildlife species are extremely limited. This reduces confidence in the Commission's ability to ensure that maximum measurable levels of contaminants will be protective of those groups in the environment.

The maximum measurable levels established by these rules are not designed to be used as clean-up standards for remedial actions, but to initiate the process of designating groundwater management areas where necessary to preserve groundwater quality.

DEFINITIONS

340-40-105

Unless otherwise defined in OAR 340-41-006 or OAR 340-40-010, the following terms used in this Division shall mean:

- (1) Carcinogen: a compound which the United States
 Environmental Protection Agency has classified as Group
 A or Group B under the carcinogenic classification
 procedures described in 51 Fed. Reg. 33992.
- (2) Confirmed or confirmation: a second laboratory quantitatively detects the presence of the contaminant or substance of concern in groundwater by an established sampling, preservation, and analytical technique in a

laboratory using established quality assurance and quality control procedures, such as indicated in 40 CFR 136 or the Standard Methods For Examination of Water and Waste Water (Latest Edition).

- (3) Contaminant: any chemical, ion, radionuclide, synthetic organic compound, microorganism, waste or other substance that does not occur naturally in groundwater or that occurs naturally but at a lower concentration. (HB 3515, Section 17 (2)).
- (4) Detect, detectable, detection or detected: to measure a contaminant by an established sampling, preservation, and analytical technique in a laboratory using established quality assurance and quality control procedures, such as indicated in 40 CFR 136 or the Standard Methods For Examination of Water and Waste Water (Latest Edition).
- (5) Environment: the aggregate of things or conditions affecting the existence, reproduction, growth and development of living organisms, plus the living organisms themselves. The concept shall be interpreted broadly to mean "all aspects of an ecosystem, other than humans".
- (6) Federal standard: a maximum contaminant level, a national primary drinking water regulation or an interim drinking water regulation adopted by the Administrator of the United States Environmental Protection Agency ("EPA") pursuant to the federal Safe Drinking Water Act (HB 3515, Section 24 (1)).
- (7) Maximum measurable level: the maximum allowable concentration of a contaminant or substance of concern that is established by the Commission in accord with these rules, to be used by the Department to initiate the process of designating "Groundwater Management Areas" within the state of Oregon where necessary to preserve groundwater quality. (HB 3515, Section 17 (3)).
- (8) Natural water quality: water quality that would exist as a result of conditions unaffected by human-caused pollution. (OAR 340-40-010).
- (9) Nonpoint source: diffuse or unconfined sources of pollution where contaminants can enter into or be conveyed by the movement of water into public water. (OAR 340-40-010 (12)).

- (10) Point source: any confined or discrete source of pollution where contaminants can enter into or be conveyed by the movement of water to public water. (OAR 340-40-010 (14)).
- (11) Protect public health and the environment: to keep humans and the environment from unreasonable adverse risk, effect or harm, excluding economic concerns.
- (12) Substance of concern: a contaminant confirmed in groundwater in Oregon as a result of actual or suspected nonpoint source activities.

GENERAL POLICIES

340-40-108

Groundwater is a critical natural resource providing domestic, industrial and agricultural water supply; base flow for rivers, lakes, streams and wetlands; and other beneficial uses. Therefore, the following policy are established.

- (1) Program Priorities: Groundwater quality shall be protected throughout the state of Oregon. However, the Commission shall concentrate its groundwater quality protection implementation efforts in areas where the practices and activities related to the use of one or more substances of concern have the greatest potential for degrading groundwater quality and where potential groundwater quality pollution would have the greatest adverse impact on beneficial uses.
- (2) Beneficial Uses: Groundwater shall be protected for both existing and future beneficial uses so that the State may continue to utilize the resource for whatever beneficial uses the natural water quality allows. High quality groundwater shall be maintained for present and future uses.
- (3) Scientific Evidence: The Commission shall set a maximum measurable level for a contaminant or substance of concern only when there is sufficient scientific evidence to show that the contaminant or substance of concern may cause adverse effects to public health or the environment.
- (4) Naturally Occurring Contaminants: For contaminants that naturally occur in groundwater in concentrations above the maximum measurable level, the Commission shall consider the natural background level to be the

- equivalent of the maximum measurable level for that groundwater source.
- (5) Wildlife: A preliminary assessment by EPA indicates that aquatic criteria are not in all cases protective of wildlife (e.g., include mercury, selenium, polychlorinated biphenyls, DDT and possibly chlorinated alkanes, benzene, phenols as well as metals in general). However, for contaminants or substances of concern, the Department may rely on the limited information available in EPA's Water Quality Criteria for protection of aquatic and wildlife species as their foundation for recommendations to the Commission, unless scientifically valid evidence shows this to be inadequate.
- (6) Methods Flow Chart: A flow chart, Appendix I, graphically describes the methods to be used in establishing maximum measurable levels, which may, as appropriate, be used to interpret these rules.
- (7) Public Support via Education: Public support of the groundwater protection program is essential to its long term success, and voluntary compliance will likely lead to the least cost program. Therefore, the Commission is encouraged to conduct ongoing public education and demonstration programs designed to inform the public concerning: (a) various contaminants, (b) the various elements of the groundwater protection program, and (c) how the public can participate in protecting Oregon's groundwater resource.
- (8) Other Rules and Statutes Unchanged: Nothing stated in these rules is intended to change or be changed by OAR 340-40-001 to -080 (General Groundwater Protection); OAR 340, Division 108 (Spills and Other Incidents); OAR 340, Division 150 (Underground Storage Tank Rules); OAR 340, Division 122 (Environmental Clean-up Rules); or OAR 690 Division 10 (Appropriation and Use of Groundwater).

SUBSTANCES REGULATED UNDER THESE RULES

340-40-110

(1) The Department shall, pursuant to the procedures adopted in accord with OAR 340-40-125, et. seq., propose to the Commission that it adopt a maximum measurable level for each substance of concern.

- (2) The Department may, pursuant to the procedures adopted in accord with OAR 340-40-125, et. seq., propose to the Commission that it adopt a maximum measurable level for any contaminant that:
 - (a) Is used or has the potential for use in Oregon; and
 - (b) Has the potential to enter groundwater at least partially from one or more nonpoint sources; and
 - (c) May adversely affect public health or the environment.

NOTICE OF INTENT TO PROPOSE CONTAMINANTS FOR ADOPTION OF A MAXIMUM MEASURABLE LEVEL

340-40-120

- (1) Notwithstanding any other requirement established by law, the Department shall also notify the public of its intent to consider adoption of a maximum measurable level for a contaminant or substance of concern by mailing, first class, postage prepaid, a single page notice to those interested parties who have previously filed written requests to the Department that they be placed on the Department's mailing list for groundwater issues. It shall be the responsibility of the interested parties to maintain their status on that mailing list.
- (2) The notice shall identify the contaminant under consideration and the current federal standard for that contaminant, if any, and shall state the last date by which interested parties may submit to the Department relevant information regarding that contaminant, which date shall not be less than forty-five (45) days after the date of mailing the notice.
- (3) The Department may consider submitted information but need not specifically acknowledge, respond to or address this information in development of its initial proposed maximum measurable levels.

METHODS TO ESTABLISH MAXIMUM MEASURABLE LEVELS

340-40-125

(1) If a federal standard has been promulgated for any substance of concern (OAR 340-40-110(1)) or any

contaminant (OAR 340-40-110(2)), the Department shall review and propose only that federal standard to the Commission for adoption as the maximum measurable level, unless at least one of OAR 340-40-125(a)(b)(c) is determined:

- (a) The Department determines that valid scientific evidence establishes that the federal standard is not protective of human health. To so determine, the Department must declare that at least one of the following applies:
 - (A) For substances of concern or contaminants which are carcinogens, the federal standard represents a risk greater than one additional cancer in one million humans.
 - (B) For all substances of concern or contaminants, the federal standard has not considered relevant scientific evidence that demonstrate the federal standard does not protect public health.
- (b) The Department determines that valid scientific evidence establishes that groundwater contaminated to the level of that federal standard is not protective of the affected environment.
- (c) The Department determines that valid scientific evidence establishes that the federal standard is not protective of existing and future beneficial uses of the natural groundwater in Oregon.
- (2) In the event that the Department proposes to reject the federal standard for one or more of the reasons described in section (1) of this rule, the Department shall state the reason(s) in its proposal and shall propose a maximum measurable level which takes into account the following factors:
 - (a) Public Health Factors:
 - (A) For substances of concern or contaminants that are carcinogens, the scientifically valid evidence which supports a conclusion that the Department's proposed maximum measurable level poses a risk level to public health that is less than or equal to one additional cancer in a million humans.

- (B) Concentration levels of the substance of concern or contaminant that are considered protective of human health, as a result of evaluation by a federal agency or a recognized scientific advisory group. The Department shall evaluate and rank the available data, conclusions, or recommendations reached by said agencies or advisory groups in the following priority order:
 - (i) An EPA proposed maximum con-taminant level (MCL) or maximum contaminant level goal (MCLG);
 - (ii) An EPA federal health advisory;
 - (iii) Assistance from the EPA relative to a federal health advisory or a maximum contaminant level;
 - (iv) Recommendations from EPA's Science
 Advisory Board, the National Academy of
 Science, the International Agency for
 Research on Cancer, the European
 Economic Commission, EPA's Cancer
 Assessment Group, the Carcinogenic
 Assessment Verification Endeavor
 Working Group, the National Toxicology
 Program, other states that follow EPAlike procedures, and other recognized
 scientific advisory groups.
- (C) Risk to public health is greater than the risk to the environment.
- (b) Environmental Factors:
 - (A) Scientifically valid evidence that a contaminant or substance of concern in concentrations less than the federal maximum contaminant level (MCL) will cause adverse effects to the environment.
 - (B) Concentration levels of the substance of concern or contaminant that are considered protective of the environment, as a result of evaluation by a federal agency or a recognized scientific advisory group. The Department shall evaluate and incorporate in its proposal the data and recommendations of EPA's Quality Criteria for Water (1986), unless EPA's

"National Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses", or other valid scientific evidence demonstrates that EPA's Quality Criteria for Water (1986), is not protective of the environment.

- (3) In the event there is no federal standard for a substance of concern or contaminant to be regulated under OAR 340-40-110 and valid scientific evidence exists to support the development of a maximum measurable level for that substance of concern or contaminant, the Department shall propose a maximum measurable level. If the Department proposes a maximum measurable level under this condition, the Department shall consider the public health factors and the environmental factors set forth in section (2) of this rule.
- (4) In the event no federal standard exists for a substance of concern or contaminant to be regulated under OAR 340-40-110 and there are insufficient scientifically valid data available to the Department to establish that the public health factors and the environmental factors set forth in section (2) of this rule can be met:
 - (a) The Department shall request assistance from the EPA to:
 - (A) Set a federal standard when valid scientific evidence warrants; or
 - (B) Initiate research on the federal level to determine if scientific evidence will support establishment of a federal standard; or
 - (C) Establish a criterion as defined in Section 304 of the Clean Water Act (33 USCA Section 1314 (a)) which is protective of the environment; and
 - (b) The Department shall cause to be published a Health and Environmental Advisory as outlined in OAR 340-40-130, for the contaminant.

HUMAN HEALTH AND ENVIRONMENTAL ADVISORIES

340-40-130

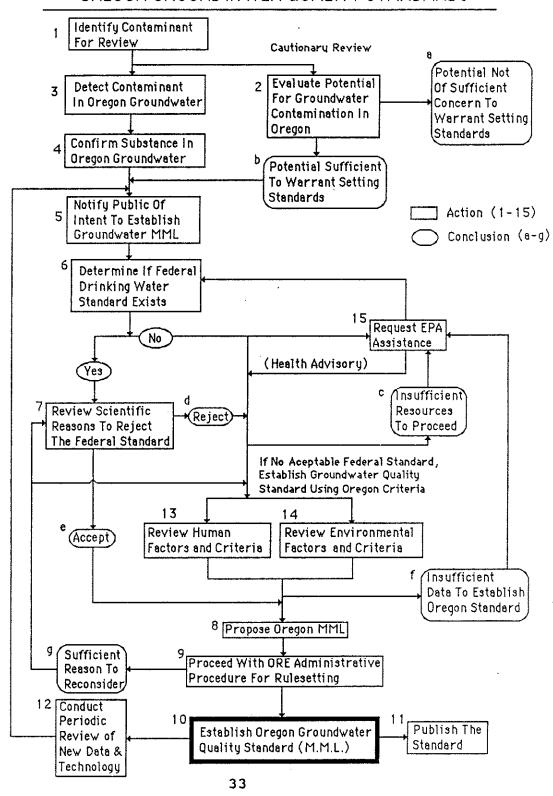
- (1) The Department shall provide Human Health and Environmental Advisories for each substance of concern and contaminant to be regulated under OAR 340-40-110. This advisory shall generally follow a standardized format, and shall include, but not be limited to the following information, if known, for the substance of concern or contaminant:
 - (a) The common and technical name; CAS number; chemical identity; and synonyms;
 - (b) How it is released to the environment; how it occurs naturally; and its fate in the environment, with particular reference to groundwater quality;
 - (c) The occurrence, or potential for occurrence in groundwater in Oregon;
 - (d) Means of human exposure; fate of the chemical in humans and the human health effects;
 - (e) The environmental effects, including both aquatic and terrestrial organisms;
 - (f) The maximum measurable level established, if any, and the basis for its establishment;
 - (g) How to obtain testing;
 - (h) Brief summary of how to initiate the process of establishing a groundwater area of concern, or groundwater management area;
 - (i) Other information, including but not limited to, reference to the Department's staff report upon which the maximum measurable level was proposed; means of treating contaminated water; and reference to various agencies with information relating to groundwater quality.
- (2) A draft of each Human Health and Environmental Advisory shall be submitted with the DEQ staff report when the proposed maximum measurable level is authorized for public hearing.
- (3) The public shall be allowed to comment on the advisory in the public hearing process. The Department will modify the draft advisory, if appropriate, to reflect the public comments.

MODIFICATION TO THE MAXIMUM MEASURABLE LEVEL

340-40-135

- (1) The Department shall follow its established schedule for periodic review of all of its rules to determine that all current maximum measurable levels duly adopted by the Commission remain appropriate.
- (2) If a maximum measurable level is based on a federal standard and that standard is duly modified by the authorized federal agency, the Department shall reevaluate the Commission's adopted maximum measurable level within one hundred eighty (180) days of the date of that federal change. The Department may, after that re-evaluation, either propose to take no action or propose a change to the maximum measurable level, pursuant to these rules.
- (3) The Department may, at any time pertinent scientifically valid information becomes available, propose a change to a maximum measurable level or a new maximum measurable level for any substance of concern or contaminant pursuant to the procedures set forth in these rules.
- (4) The Department may, at any time pertinent scientifically valid information on degredates or metabolites of a parent compound, or interactions thereof, becomes available, propose a change to an existing maximum measurable level or propose a new maximum measurable level for any substance of concern or contaminant pursuant to the procedures set forth in these rules.

Appendix I: METHOD OUTLINE FOR DETERMINING OREGON GROUNDWATER QUALITY STANDARDS



APPENDIX II: CASE BY CASE METHODS PATHWAY REVIEW

The Method Outline will be reviewed step by step, using a "case" basis for illustration. The cases addressed specifically will be as numbered below:

Substance Detected In Oregon <u>Groundwater</u>		Federal MCL Exists	Federal MCL <u>Rejected</u>	Adequate Research Evidence <u>Available</u>	Exhibit Number
I.	Yes*	Yes	No		1
II.	Yes	Yes**	Yes	Yes	2
III.	Yes	No		Yes	3
IV.	Yes	No		No	4
v.	No	Yes	No		5
VI.	No	Yes**	Yes	Yes	6
VII.	No	No		Yes	7
VIII.	No	No		No	8

^{*} Case number

CASE I. Substance Detected in Oregon Groundwater and an MCL Exists: (OAR 340-40-125(1)) In the event a contaminant is detected in Oregon groundwater, the procedural path through the Method Outline would be steps 1,3,4,5,6,7,8,9,10,11 unless (1) there were some scientific reason to reject the federal MCL or (2) in the process of conducting hearings following proposal of the MCL as the Oregon MML, some issue of concern surfaced that looped the procedure back to an earlier step. (See Exhibit 1)

For the contaminants that the Environmental Protection Agency (EPA) has already established the MCL's, this pathway to establishing Oregon MML's should be relatively free of complications. The limiting factor, however, is that while there are over one hundred potential contaminants of concern to Oregon, there are relatively few MCL's established at the current time.

CASE II. <u>Substance Detected in Oregon Groundwater</u>, An MCL Exists <u>But It Is Rejected</u>: (OAR 340-40-125(1a-1c,2) Should there be scientific reasons to reject the MCL, then the expected pathway would be 1,3,4,5,6,7,13,14,8,9,10,11. Most likely, if there is sufficient information to reject the MCL, that same information

^{**} If an MCL exists, it is assumed there is adequate research information available, as reflected in the MCL standard setting procedures.

will at least strongly suggest an alternative level for an Oregon MML. (See Exhibit 2)

CASE III. <u>Substance Detected in Oregon Groundwater</u>, No MCL Exists <u>But Information Is Sufficient</u>: (OAR 340-40-125(3)) If a substance is detected in Oregon groundwater, there is no federal MCL, but there is sufficient information to reference as a potential basis of establishing an Oregon MML, then the procedural pathway would be 1,3,4,5,6,13,14,8,9,10,11 unless it was determined after step 7 that there were insufficient resources to take the substance on through the rest of the Oregon standard setting process. In this latter situation, the pathway would be 1,3,4,5,6,7,15 requesting assistance from EPA prior to proceeding further. (See Exhibit 3)

CASE IV. Substance Detected in Oregon Groundwater, No MCL Exists And Information Is Insufficient: (OAR 340-40-125(4)) If resources were available to proceed through steps 13 and 14 in Case III above, but in so doing (or beforehand) it was determined that insufficient data were available to establish a valid Oregon MML, then the pathway would proceed from steps 13 and 14 to step 15, requesting assistance from EPA before proceeding further. (See Exhibit 4)

CASE V. <u>Substance Not Detected in Oregon Groundwater But An MCL Exists</u>: (OAR 340-40-125(1)) If a substance is not detected in Oregon, the substance may be reviewed as a potential groundwater contaminant in Oregon, considering current and/or potential use patterns plus the basic chemical character of the substance. If this cautionary review indicates the substance does not merit any further actions, none need be taken (box "a"). (See Exhibit 5)

If the cautionary review indicates the substance would likely be a significant problem if detected in Oregon groundwater, then public notice can be given of the Department's intent to proceed with establishing an Oregon MML for the substance.

The pathway options for such a substance would be 1,2, 5...following thereafter the same steps as indicated above for Case I above.

CASE VI. Substance Not Detected in Oregon Groundwater, An MCL Exists But It Is Rejected: (OAR 340-40-125(2)) If review of a substance not detected in Oregon, but for which an MCL exists that is rejected on the basis of scientific evidence, then the pathway option for such a substance would be 1,2, 5...following thereafter the same steps as indicated above for Case II above. (See Exhibit 6)

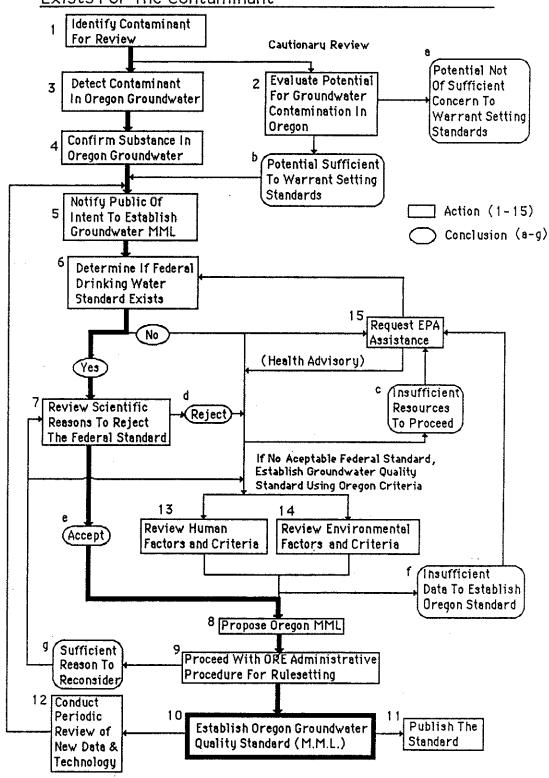
CASE VII. <u>Substance Not Detected in Oregon Groundwater</u>, <u>No MCL Exists But There is Sufficient Data</u>: (OAR 340-40-125(3)) In this case, the basic pathway would be 1,2,5,6,13,14,8,9, 10,11 unless it was decided to ask for EPA assistance in addition to proceeding through steps 13 and 14, in which case step 15 would be added to the pathway. (See Exhibit 7)

CASE VIII. Substance Not Detected in Oregon Groundwater, No MCL Exists And There Is Insufficient Data: (OAR 340-40-125(4)) In this case, if the cautionary review suggested there were cause for concern about the substance under consideration, immediate action to request EPA assistance would be appropriate. The basic pathway would be 1,2,5,6,15. (See Exhibit 8)

If the inadequacy of information was discovered in the process of reviewing 13 and 14, then the pathway would likely be 1,2,5,6,13,14,15.

If there is insufficient data to establish an MML, there will be a dilemma that might in the short term need to be addressed by other alternatives available to the Department and to the EQC. The Department might also, depending upon the urgency of the concern, consider proceeding with an "interim" standard, established based on the limited information available, incorporating an adequate "safety factor" until necessary assistance from EPA can be obtained.

Exhibit 1: Method Pathway For Contaminant Detected In Oregon Groundwater And A Federal Standard Exists For The Contaminant



<u>Exhibit 2</u>: Method Pathway For Contaminant Detected In Oregon Groundwater, Federal Standard Exists For The Contaminant But Is Rejected

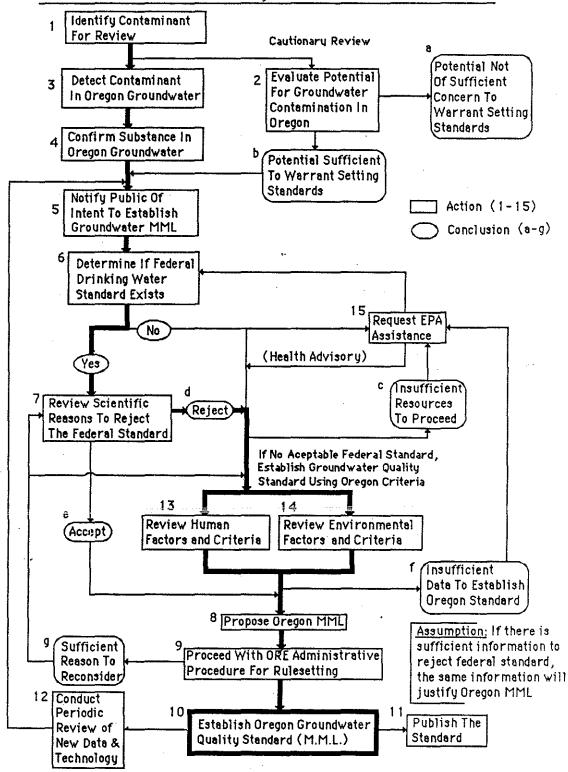
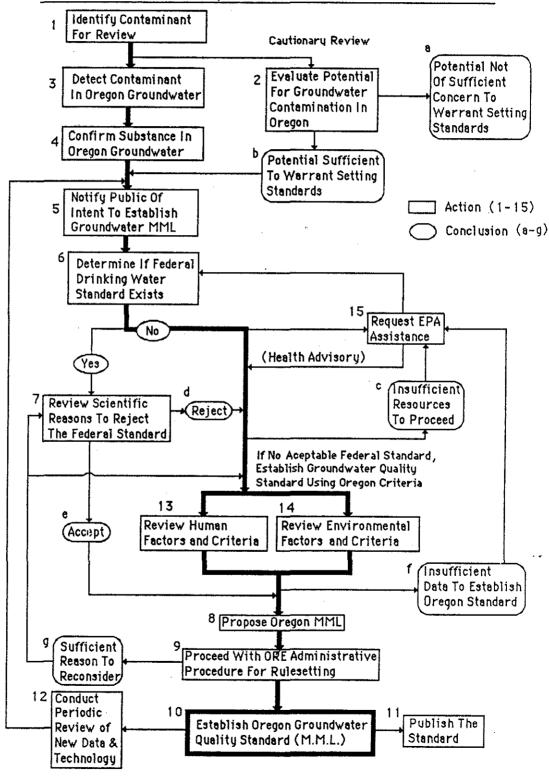


Exhibit 3: Method Pathway For Contaminant Detected In Oregon Groundwater, No Federal Standard Exists For The Contaminant, But Information Is Sufficient



<u>Exhibit 4:</u> Method Pathway For Contaminant Detected In Oregon Groundwater, No Federal Standard Exists For The Contaminant, And Information Is Insufficient

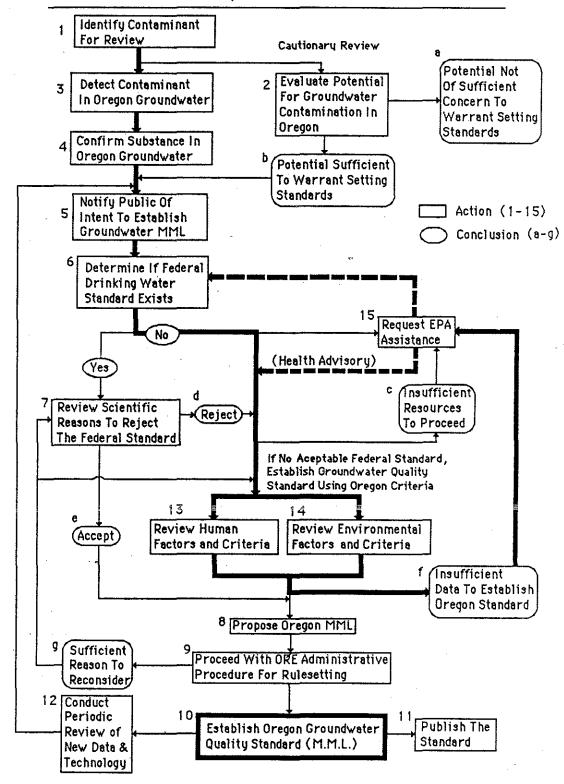
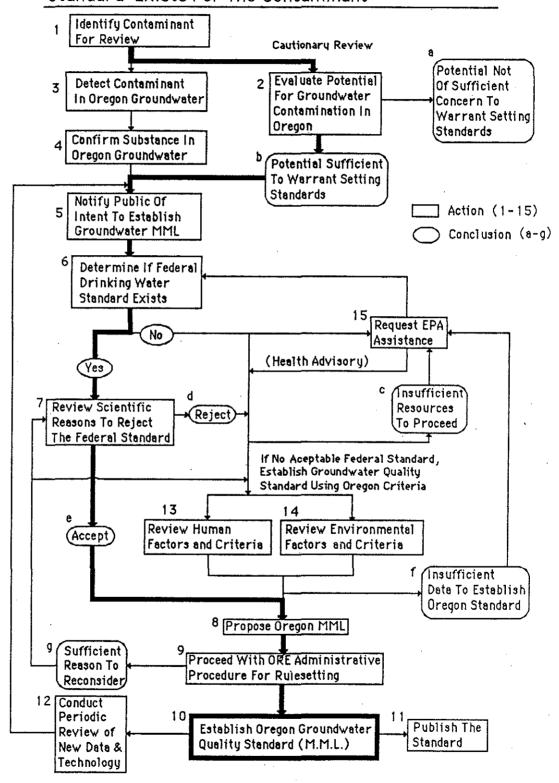
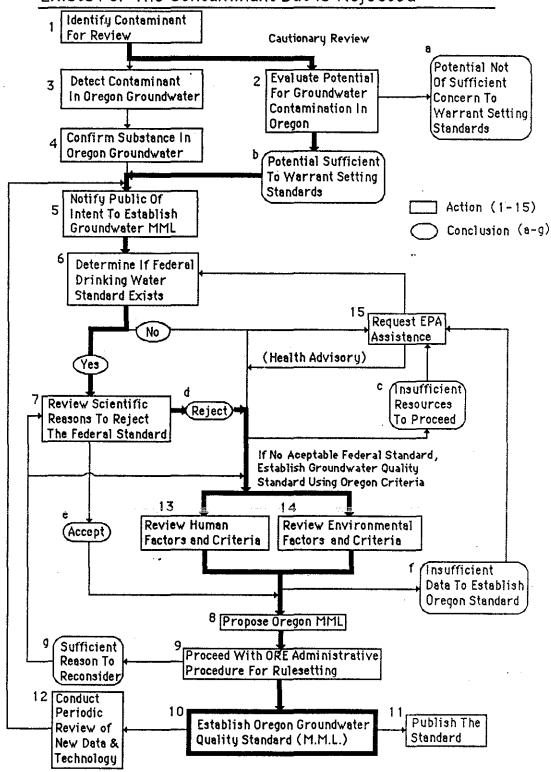


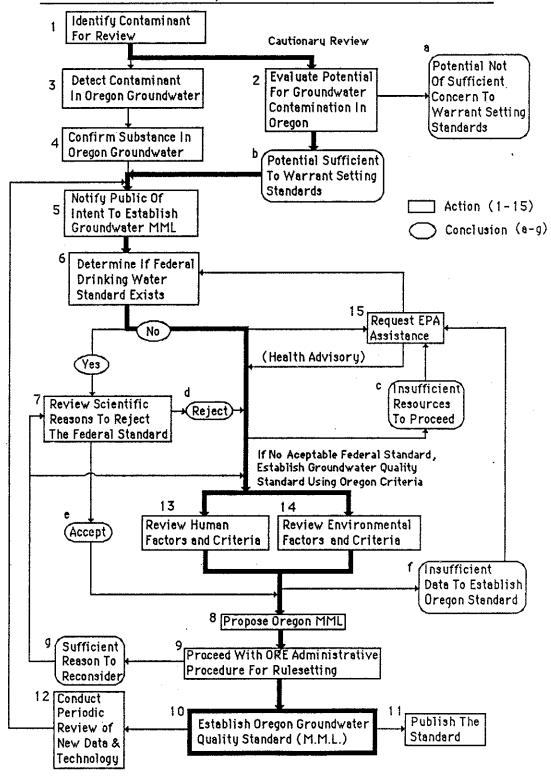
Exhibit 5: Method Pathway For Contaminant Not Detected In Oregon Groundwater But A Federal Standard Exists For The Contaminant



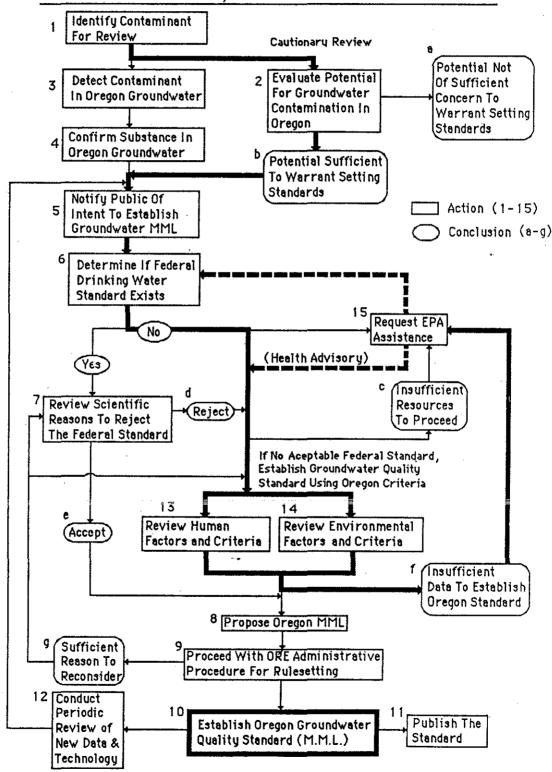
<u>Exhibit 6</u>: Method Pathway For Contaminant Not Detected In Oregon Groundwater, Federal Standard Exists For The Contaminant But Is Rejected



<u>Exhibit 7:</u> Method Pathway For Contaminant Not Detected In Oregon Groundwater, No Federal Standard Exists For The Contaminant, But Information Is Sufficient



<u>Exhibit 8:</u> Method Pathway For Contaminant Not Detected In Oregon Groundwater, No Federal Standard Exists For The Contaminant, And Information Is Insufficient



Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

ESTABLISHMENT OF A METHOD AND CRITERIA FOR SETTING MAXIMUM MEASURABLE LEVELS IN GROUNDWATER

Notice Issued: November 1, 1990 Comments Due: November 30, 1990

WHO IS AFFECTED: Potentially all businesses, land owners, residents, industries and local governments in the state of Oregon.

WHAT IS PROPOSED:

The Department proposes to adopt as rules a method and criteria for the establishment of Maximum Measurable Levels (MML's) in groundwater. These MML's will be reference standards used to trigger the declaration of a Groundwater Management Area.

WHAT ARE THE HIGHLIGHTS:

Oregon's Groundwater Quality Protection Act of 1989 (HB 3515, Oregon Revised Statute (ORS) 536.137) directed the establishment of a Technical Advisory Committee to advise the Environmental Quality Commission (EQC) on a method and criteria for adopting Maximum Measurable Levels. This Committee has recommended that the method and criteria be adopted in rule form. Rules were favored over guidance by the Committee because "Rules will likely assure more uniformity and equity in implementation of the program." The proposed rule will:

- Declare MML's to be protective of public health and the environment.
- 2) Outline a method and criteria for determining what reference number will be used for a MML when a Federal Drinking Water Standard is not used or does not exist.

- 3) Identifies when a Federal Drinking Water Standard can and can not be used as a MML.
- 4) Provides advance notice of when the Department starts the process of establishing a MML.
- 5) Provides for an Advisory to be developed on all substances for which a MML is established.

HOW IS THE PUBLIC AFFECTED:

MML's are used to declare Groundwater Management Areas for which management plans will be developed by local committees to suggest and implement changes in current practices with the goal of reducing contamination of groundwater resources.

HOW TO COMMENT:

Public Hearing -- Friday, November 16, 1990, 10:00 a.m. at the following address:

Department of Environmental Quality Main Conference Room (3A) Third Floor 811 S.W. Sixth Avenue Portland, OR 97204

Written comments should be presented to:

Department of Environmental Quality
Water Quality Division Attn: Richard Kepler
811 S.W. Sixth Avenue
Portland, OR 97204
Telephone: 229-6804

WHAT IS THE NEXT STEP:

After the public testimony has been received and evaluated, the proposed rules will be revised as appropriate, and will be presented to the Environmental Quality Commission at one of their regularly scheduled meeting for consideration. The Commission may adopt the proposed rule, adopt modified rules, or take no further action.

ATTACHMENTS:

Statement of Need for Rule Making Statement of Land Use Consistency Statement of Economic and Fiscal Impact

STATEMENT OF NEED FOR RULE MAKING

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

(1) Legal Authority.

Oregon's Groundwater Act of 1989 (HB 3515, Oregon Revised Statute (ORS) 468.694) directed the Environmental Quality Commission to establish Maximum Measurable Levels of contaminants in groundwater. ORS 468.015 and 468.020 provide the Commission with the authority to establish the policies, rules and standards necessary and proper in performing the functions vested by law in the Commission, including the policies and purposes of ORS Chapter 468.

ORS 468.692 declares that it is the goal of the state to prevent contamination of Oregon's groundwater resource. It is the public policy of the state as defined in ORS 468.710 to protect and improve public water quality for beneficial uses including: "public water supplies, for the propagation of municipal, recreational and other beneficial uses." ORS 468.710, 468.715, and 468.720 go on to further state that "no waste be discharged to waters of the state without first receiving necessary treatment..."; that "all available and necessary methods" be used to prevent pollution and that waste not be allowed to "escape or be carried into the waters of the state by any means." ORS 468.700(7) includes in its definition of wastes "...substances which will or may cause pollution or tend to cause pollution of any water of the state." ORS 468.700(8) includes in its definition of waters of the state "...underground waters...." ORS 468.735 provides that the Commission by rule may establish standards of quality and purity for the waters of the state in accordance with the public policy set forth in ORS 468.710.

2) Need for Rule

Oregon's Groundwater Act of 1989 (HB 3515, Oregon Revised Statute (ORS) 536.137) directed the establishment of a Technical Advisory Committee to advise the Environmental Quality Commission (EQC) on a method and criteria for adopting Maximum Measurable Levels. That Committee has

recommended that the method and criteria used to establish Maximum Measurable Levels be adopted in rule form. Rules were favored over guidance by the Committee because "Rules will likely assure more uniformity and equity in implementation of the program."

(3) Principal Documents Relied Upon in this Rule Making.

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

House Bill 3515, Groundwater Protection Act of 1989

Federal Clean Water Act

Federal Safe Drinking Water Act

40 CFR Parts 136, 141, 142, and 143

Guidelines for Carcinogen Risk Assessment, Federal Register Vol. 51, No. 185 September 24, 1986

Groundwater Protection, "The Use of Drinking Water Standards by the States", December 1988, Report to the Chairman, Subcommittee on Hazardous Wastes and Toxic Substances, Committee on Environment and Public Works, U.S. Senate.

Quality Criteria for water 1986, May 1986, Environmental Protection Agency, Office of Water

LAND USE CONSISTENCY

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

- Goal 2 (Land Use Planning): The use of Maximum Measurable Levels to designate a Groundwater Management Area may require the modification of Land Use Plans during the periodic review process.
- Goal 6 (Air, Water, and Local Resource Quality): The proposed rules are designed to more clearly protect and maintain groundwater quality statewide.
- Goal 11 (Public Facilities and Services): Establishment of Maximum Measurable Levels may require additional costs both in terms of management and operation activities and for capital improvements if implementation of Best Practicable Management Practices (BPMPs) is required to reduce contamination of the groundwater.

Public comment on any land use issue is welcome and may be submitted in the same manner as indicated for testimony in this notice. It is requested that local, state and federal agencies review the proposed action and comment on possible conflicts with their programs affecting land use, and with statewide planning goals within their expertise and jurisdiction. The Department of Environmental Quality intends to ask the Department of Land Conservation and Development to mediate any appropriate conflicts brought to our attention by local, state and federal authorities.

FISCAL AND ECONOMIC IMPACT OF PROPOSED RULES FOR A METHODS AND CRITERIA FOR ESTABLISHMENT OF MAXIMUM MEASURABLE LEVELS OF CONTAMINANTS IN GROUNDWATER

Introduction

The adoption of rules establishing a method and criteria for setting Maximum Measurable Levels (MMLs) will not in itself have a substantial financial and economic impact. Most of the costs incurred will be for additional staff time needed to follow the rules for developing MMLs. The rules will guide the process of setting reference levels for declaring Groundwater Management Areas. Groundwater Management Areas are required by ORS 468.698 to be formed when the Department of Environmental Quality finds a contaminant in groundwater which is due in part to non-point sources and has reach a level in the groundwater which is in most cases, fifty percent (50%) of an established MML.

Fiscal and Economic Impact

There are few direct costs associated with the establishment of the proposed rules. The Department would be required to establish MMLs whether the method and criteria were in rule form or used as guidance. The associated costs to the Department for adopting the proposed rules are:

- 1) The additional time needed to complete the rule adoption process for establishing an MML.
 - The proposed rules require an additional 45 days be allowed, before the public hearing process begins, for the submission of information pertaining to the establishment of an MML.
 - "Human Health and Environmental Advisories" will need to be prepared which will require additional Department staff time.
- The funds required to prepare and mail the "Notice of Intent to Propose Contaminants for Adoption of a MML" and the "Human Health and Environmental Advisories" will cost approximately \$ 1500.00 per MML.
- 3) The Department has estimated that the timely establishment of MMLs will require a toxicologist and support staff at a cost of about \$175,000 per biennium. Under the proposed rules the Department estimates one toxicologist might be able to propose 8 MMLs per year

(16 per biennium). If the Department were to follow internal procedures to propose MMLs, as many as 12 MMLs per year (24 per biennium) could be proposed. If additional MML's beyond the estimated 16 were desired each biennium, under these proposed rules the Department would need a corresponding increase in the staff available for proposing MMLs. Note: The number of MMLs to be completed will vary depending on the substance, the issues involved and the information available on the substance.

Indirect Costs

Once an MML is established it may be used as a trigger level to declare a Groundwater Management Area. Although beyond the scope of this evaluation, some of the associated costs of declaring a Groundwater Management Area are outlined below.

- There will be costs incurred for the investigating, monitoring, and defining a Groundwater Management Area.
- The introduction of Best Management Practices (BMPs) will have both costs and benefits associated with them.
- There could be some increases in the costs of managing the BMPs.

The management plan developed for a Groundwater Management Area will need to make economic sense to be implementable and successful so the plans are anticipated to be either voluntary, cost effective to implement, or cost neutral.

DEPARTMENT CONCERNS AND RECOMMENDED MODIFICATIONS TO TECHNICAL ADVISORY COMMITTEE'S PROPOSED RULES

- 1) The Department recommends that the qualifier about protection of aquatic and wildlife species be included as a policy statement instead of part of the "Statement of Purpose".
- 2) Many of the Definitions are either rewording or modifications of OAR 340 40 Definitions. The Department recommends the removal of the duplicate and modified general policy statements in the proposed rule rather than modifying the Definitions in the existing rules. The Definitions remaining in the proposed rule should pertain to the establishment of MMLs only.
- or modifications of OAR 340 40 General Policy statements. The Department recommends the removal of the duplicate and modified general policy statements in the proposed rule rather than modifying the General Policy statements in the existing rules. The only policy statements remaining in the proposed rule should pertain to the establishment of MMLs.
- 4) Under "Notice of Intent to Propose Contaminants for Adoption of a Maximum Measurable Level" the Department would include a provision to allow for substantial compliance with the rules. This would allow the Department to continue the MML rule making process if the Department made a good faith effort to comply with the rule, but may have inadvertently missed mailing the notice to some interested parties.
- 5) Under "Methods to Establish Maximum Measurable Levels" the Department would suggest reorganizing section (2) to make it clearer that a hierarchical priority order exists. The Department's understanding of the Committee's intent was to follow the sequence outlined below if a Federal Drinking Water Standard is rejected or does not exist.

The Department would consider, in order, the following numerical reference level sources for proposing MMLs unless the Department determines that the numerical reference level is not protective of public health and the environment.

- 1) For carcinogens, a level which corresponds with a risk level of one in a million additional cancers in humans.
- 2) EPA proposed Maximum Contaminant Level (MCL).
- 3) EPA Proposed Maximum Contaminant Level Goal (MCLG).
- 4) EPA Federal Health Advisory.
- 5) Assistance from EPA if it is available
- 6) Consider other state standards and/or recommendations from several officially recognized scientific advisory groups.

If the human health numerical reference level is determined, by the Department, not to be protective of the environment. The Department will use the numerical reference level in EPA's "Quality Criteria for Water, 1986" for protection of aquatic life unless valid scientific evidence demonstrates that the "Quality Criteria for Water, 1986" reference number is also not protective of the environment, in which case the Department would propose the reference number recommended by valid scientific evidence.

- Advisories" will require the Department to coordinate with the Health Division necessitating a new interagency agreement for development of the advisories. In addition, the Department can provide reasonable review of available technical literature and would recommend a statement to that effect be placed in the rules.
- 7) The Department recommends Section (2) and (3) in the "Human Health and Environmental Advisories" be combined under one section.
- 8) Under "Modification to the Maximum Measurable Level" the Department recommends removing the 180 day requirement for reevaluating an established MML. The Department would prefer to reevaluate MMLs during the periodic review process and focus its efforts on those substances which have not had an MML established for them.
- 9) The Department recommends that Sections (3) and (4) in the "Modification to the Maximum Measurable Level" be combined under one section.

B-Eng. HB 3515

536.100 to 536.150,

1

14

15

17

20

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

42

43

2 SECTION 24. (1) Not later than 60 days after the effective date of this 1989 Act, the Strategic 3 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 max-5 imum 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 con-10 curring with the federal standard. As used in this subsection, "federal standard" means a maximum 11 contaminant level, a national primary drinking water regulation or an interim drinking water regu-12 lation adopted by the Administrator of the U.S. Environmental Protection Agency pursuant to the 13 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:
- 16 (a) A toxicologist;
 - (b) A health professional;
- 18 (c) A water purveyor,
- 19 (d) A biologist; and
 - (e) Technically capable members of the public representing the following groups:
- 21 (A) Citizens;
- 22 (B) Local governments:
- 23 (C) Environmental organizations;
- 24 (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 28. (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;

3.

19 -

- (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

2

3

7

9

10

11 12

13

14

16

17

18

19

20

21

22.

23

24

25

26

27

23

29

30

31

- 32

33

34

35

36

37

38

39

40

41 42

43

44

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.
- 15 . (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

[14] E-3

は、「一般などのなど、「ないない」というないのです。

date of the state's comprehensive plan, as described in subsection (3) of this section, to better guide state agencies in communicating applicable plan elements, as interpreted and applied by the appropriate state agencies, to the Federal Energy Regulatory Commission in accordance with section 10(a)(2) of the Federal Power Act (16 U.S.C. 803).

- (3) The comprehensive plan for improving, developing and conserving Oregon's waterways is composed of the following elements:
- (a) All state statutes, interstate compacts and constitutional provisions establishing policy for or regulating waterways, water use and fish and wildlife including but not limited to this chapter and ORS chapters 468, 469, 496, 509, 537, 538 and 543 and ORS 390.805 to 390.925:
- (b) All state agency rules, policies and plans related to the use or management of waterways in Oregon;
- (c) All local comprehensive plans developed pursuant to ORS chapters 196 and 197 insofar as the plans govern the use or management of waterways in Oregon; and
- (d) All appropriate state agency or local government water related data, inventories of river basin resources and evaluations of the anticipated demands for those resources.
- (4) The comprehensive plan referred to in subsections (2) and (3) of this section represents:
- (a) The state's planning to improve, develop and conserve Oregon's waterways;
- (b) The needs and uses of all Oregon rivers; and
- (c) The state's own balancing of the competing uses of Oregon waterways.
- (5) The Strategic Water Management Group may delegate all or part of the responsibility assigned under subsections (1) to (5) of this section to a specific agency represented by a member of the group.
- (6) As used in subsections (1) to (5) of this section, "waterways" includes but is not limited to the water resources of this state as defined in ORS 536.007. [Formerly 536.140]

Note: See note under 536.100.

536.120 [1985 c.666 §3; 1989 c.833 §52; renumbered 536.108 in 1989]

536.121 Assistance to agencies. In addition to other duties assigned, the Strategic Water Management Group shall assist agencies in developing management practices and methods of carrying out their existing duties in a manner that encourages the coordination of the agencies' efforts in compiling and displaying relevant resource data and

standards of the state's comprehensive plan for improving, developing and conserving the state's waterways in a format best suited to serve the needs of waterway developers, agencies and the public. The group shall give priority to compiling and displaying elements of the comprehensive plan that apply to hydroelectric development. [Formerly 536,150]

Note: See note under 536,100.

536.125 Ground water resource protection strategy; advisory committees. (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 ORS 536.133.
- (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. [1989 c.833 §20]

- 536.129 Requests for funding, advice or assistance for ground water projects.

 (1) Any person, state agency, political subdivision of this state or ground water management committee organized under ORS 536.145 or 536.153 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 ORS 536.145 or 536.153.
- (3) The Strategic Water Management Group shall approve only those requests that meet the criteria established by the group under ORS 536.133. [1989 c.833 §21]

536.130 [1985 c.666 §4; renumbered 536.112 in 1989]

536.133 Awarding of grants; purposes.
(1) Of the moneys available to the Strategic Water Management Group to award as grants under ORS 536.129, 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 ORS 468.692; 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. [1989 c.833 §22]
- 536.137 Technical advisory committee; duties; membership. (1) Not later than 60 days after July 24, 1989, the Strategic Water Management Group shall appoint a ninemember 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 July 24, 1989. [1989 c.833 §24]

536.140 [1987 c.409 §§1, 2; renumbered 536.116 in 1989]

- 536.141 Activities of group after declaration of area of ground water concern. 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. [1989 c.833 §34]

Note: 536.141 to 536.169 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 536 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

536.145 Ground water management committee; appointment; duties after

- declaration of area of ground water concern. (1) Upon the request of a local government, or as required under ORS 536.141 or 536.153, 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 ORS 536.129 for limited funding for staff or for expenses of the ground water management committee. [1989 c.833 §35]

Note: See note under 536,141.

536.149 Duties of ground water management committee after declaration of ground water management area. After the

ficial uses so that the state may continue to provide for whatever beneficial uses the natural water quality allows. [1989 c.833 §19]

Note: See note under 468.691.

468.694 Ground water contaminants; maximum levels; establishing; rules. (1) Within 90 days after receiving the recommendations of the technical advisory committee under ORS 536.137, 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. [1989 c.833 §25]

Note: See note under 468.691.

Note: Section 26, chapter 833, Oregon Laws 1989, provides:

Sec. 26. (1) Within 90 days after the effective date of this Act [July 24, 1989], 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 [468,694] until the commission 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. [1989 c.833 §26]

468.695 Strategic Water Management Group; staffing. 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 ORS 468.694 and 536.125 to 536.169, including

scheduling meetings, providing public notice of meetings and other group activities and keeping records of group activities. [1989 c.833 877]

Note: See note under 468.691.

468.696 Declaration of area of ground water concern. (1) If, as a result of its state-wide monitoring and assessment activities under ORS 468.699, 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.

(2) 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. [1989 c.833 §§31, 33]

Note: See note under 468.691,

468.698 Declaration of ground water management area; standards. (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 ORS 468.699, 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 ORS 468.694; or
- (b) Any other contaminants at levels greater than 50 percent of the levels established pursuant to ORS 468.694.
- (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.
- (3) Before declaring a ground water management area under subsections (1) and (2) of this section, the agency shall have a second laboratory confirm the results that cause the agency to make the declaration. [1989 c.833 §\$36, 37]

Note: See note under 468.691.

Note: Section 38, chapter 833, Oregon Laws 1989, provides:

Sec. 38. Notwithstanding the requirements of section 36 of this Act [468.698], for two years after the effective date of this Act [July 24, 1989], 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 [468.694]. [1989 c.833 §38]

468.699 Ground water monitoring and assessment. (1) In cooperation with the Water Resources Department, the Depart-

STATE OF OREGON

ENVIRONMENTAL QUALITY COMMISSION

In the Matter of the Final Alter-)
native Plan to Health Hazard)
Annexation of a Certain Territory)
Commonly Known as the North) CEDULTITANUE
Albany Health Hazard Area,	' CERTIFICATE
Pursuant to the Provisions of ORS	•)
222.840 to 222.915)
)

The Environmental Quality Commission of the State of Oregon on July 19, 1990 received a Final Alternative Plan to Health Hazard Annexation for the provision of sanitary sewer service to a territory commonly known as the North Albany health hazard area, submitted by the Benton County Board of Commissioners acting as the Governing Body of the North Albany County Service District, pursuant to ORS 222.890(2).

Pursuant to ORS 222.890(3), the Environmental Quality Commission has reviewed said Final Alternative Plan and hereby certifies that said Final Alternative Plan meets the requirements of ORS 222.890(2)

Dated this 21st day of September, 1990.

William P. Hutchison, Chairman Environmental Quality Commission



Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: September 21, 1990

Agenda Item: K

Division: Water Quality

Section: Wastewater Finance

SUBJECT:

North Albany Health Hazard Area: Approval of Final Alternative Plan to Mandatory Annexation for Alleviating Health Hazard.

PURPOSE:

At its January 19, 1990 meeting, the Environmental Quality Commission (EQC) approved an initial version of the Alternative Plan submitted by the Benton County Commissioners acting as the Governing Body of the North Albany County Service District (NACSD). In accordance with the Health Hazard Abatement Law, a final version of the Alternative Plan has been submitted for EQC review and certification (i.e., approval).

Approval of the Final Alternative Plan will significantly advance the process leading to provision of sanitary sewer service in the North Albany health hazard area and to the alleviation of conditions that constitute a danger to public health due to inadequate installations for the treatment and disposal of sewage.

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

Agenda Item:

Page 7

INTENDED FOLLOWUP ACTIONS:

In the event that the Final Alternative Plan is certified by the EQC, the Health Division will order its implementation. Thereafter, the Department will:

- 1. Assist the responsible jurisdiction with grant and/or loan applications, and other steps leading to construction.
- 2. Monitor progress in the provision of sewer service in accordance with the certified Final Alternative Plan.

Approved:

Section:

Division:

Director:

Report Prepared By: Richard J. Santner

Phone: 229-5219

Date Prepared: August 22, 1990

RJS:crw\hs CG\WC7001 8/20/90



Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: September 21, 1990
Agenda Item: K
Division: Water Quality
Section: Wastewater Finance

SUBJECT:

North Albany Health Hazard Area: Approval of Final Alternative Plan to Mandatory Annexation for Alleviating Health Hazard.

PURPOSE:

At its January 19, 1990 meeting, the Environmental Quality Commission (EQC) approved an initial version of the Alternative Plan submitted by the Benton County Commissioners acting as the Governing Body of the North Albany County Service District (NACSD). In accordance with the Health Hazard Abatement Law, a final version of the Alternative Plan has been submitted for EQC review and certification (i.e., approval).

Approval of the Final Alternative Plan will significantly advance the process leading to provision of sanitary sewer service in the North Albany health hazard area and to the alleviation of conditions that constitute a danger to public health due to inadequate installations for the treatment and disposal of sewage.

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

Agenda Item: Page 2 Public Notice Attachment ____ Issue a Contested Case Order ____ Approve a Stipulated Order ___ Enter an Order Attachment ____ Proposed Order X Approve Department Recommendation ____ Variance Request Attachment ____ ____ Exception to Rule Attachment ____ ___ Informational Report Attachment _ X Other: Certify the Final Alternative Attachment E Plan and authorize the Chairman

Certificate on behalf of the EQC.

to execute the attached

DESCRIPTION OF REQUESTED ACTION:

Meeting Date: September 21, 1990

The Department of Environmental Quality requests that the Environmental Quality Commission certify the Final Alternative Plan to city annexation for alleviation of conditions dangerous to public health in the North Albany area which has been submitted by the Benton County Commissioners acting as the Governing Body of the NACSD with the endorsement of the Albany City Council, pursuant to a finding that the Final Alternative Plan is the best and most expeditious method for alleviating the hazardous conditions because of these considerations:

- Through intensive local deliberations and intergovernmental cooperation, the Benton County Commissioners and the Albany City Council have formulated an arrangement that will allow the expeditious provision of sewer service to the North Albany health hazard area by the City of Albany without the requirement of annexation.
- Rejection of the Final Alternative Plan would return the health hazard abatement process to one requiring annexation by the City of Albany. Mandatory annexation includes an exclusion process, and is also likely to provoke litigation opposing annexation. These, if protracted, would delay the provision of sewer service to alleviate the health hazard, and would jeopardize the availability of grant and/or loan funding to partially finance the solution.
- The Final Alternative Plan proposes the installation of a sewage collection system in the North Albany health hazard area that would convey all wastewater flows to the

Agenda Item:

Page 3

City of Albany Sewage Treatment Plant. This includes flows currently treated at the Riverview Heights Subdivision Sewage Treatment Plant, a facility which violates its permit. This approach has been determined, through the development of a facilities plan, to be the preferred, most cost-effective method of providing sewer service to the health hazard area. It is the same sewer system design concept that would be employed if the area were to be annexed.

AUTHORITY/NEED FOR ACTION:

<u>X</u>	Required by Statute: ORS 222.890	Attachment <u>A</u>
	<u> Health Hazard Abatement</u>	
	Enactment Date: 1983	
	Statutory Authority:	Attachment
	Pursuant to Rule:	Attachment
	Pursuant to Federal Law/Rule:	Attachment
	Other:	Attachment
	Time Constraints:	
DEVE	LOPMENTAL 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:	Accaciment
	bupplemental background information.	
	Background Information on the Issue	Attachment B
	Final Alternative Plan	Attachment C
	Letter Regarding Adoption of Sewer Ordinance	Attachment D
	necest regarding adoption of sewer ordinance	Accacimient <u>D</u>

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

Opposition on the part of some significant portion of the residents of North Albany to annexation as a means of solving the problem of failing on-site disposal systems is well known and long standing. It is reasonable to predict that EQC approval of the Final Alternative Plan will be more favorably viewed in the area than would rejection and resumption of the mandatory annexation process.

Rejection of the Final Alternative Plan and reversion to the mandatory annexation process is likely to produce litigation.

Agenda Item:

Page 4

It is worthwhile to note that the State Health Division's hearing process was officially described as "vigorously contested". Two local organizations, "Stop Annexation - Not Sewers" and "Kingston Against City Annexation" were represented by attorneys at the hearings.

It is also the case that elected officials and staff of Benton County and the City of Albany have invested considerable resources, time and effort in the development of the Final Alternative Plan. Both jurisdictions have officially committed to support it and have taken steps to facilitate its implementation including adoption of a facilities plan, execution of an intergovernmental agreement, and amendment of the local comprehensive plan. Having taken the effort this far, both are likely to want an opportunity to make the Alternative Plan work.

PROGRAM CONSIDERATIONS:

From the perspective of Department staff workload and other agency program concerns it does not appear that approval or rejection of the Alternative Plan by the EQC would have significantly different impacts. Whether the problems in North Albany are addressed with or without annexation, Water Quality Division staff will be involved with the responsible local jurisdictions in design and other implementation issues.

The North Albany health hazard area is ranked first on the Construction Grants Priority List, and ranks high on the State Revolving Loan Fund Priority List.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

Under the Health Hazard Abatement Law, the EQC must choose between two alternatives when a Final Alternative Plan has been submitted for review subsequent to EQC approval of the initial Alternative Plan. The alternatives for the EQC to consider are:

1. Certify the Final Alternative Plan based on a conclusion that it fulfills the requirements of the Health Hazard Abatement Law and implementation will alleviate the health hazard conditions as satisfactorily and expeditiously as would be the case through annexation.

If the EQC certifies the Final Alternative Plan, the

Agenda Item:

Page 5

responsible jurisdiction must implement the Plan subject to EQC oversight.

2. Reject the Final Alternative Plan based on a conclusion that the requirements of the Health Hazard Abatement Law have not been met and that city annexation provides the best and most expeditious method to alleviate the health hazard.

If the EQC chooses not to certify the Final Alternative Plan, the health hazard abatement process reverts to mandatory annexation.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends alternative number one, certification of the final Alternative Plan.

The Final Alternative Plan proposes a structural solution that would effectively solve the problems of failing on-site sewage disposal systems and an inadequately functioning treatment plant (Riverview Heights Sewage Treatment Plant) that have been determined to constitute a danger to public The proposed facilities consist of a network of interceptor and collector sewers that would convey all wastewater flows in the North Albany health hazard area to the Albany Sewage Treatment Plant (STP). The proposed facilities are technically sound and the most costeffective design concept, taking advantage of the capacity of the Albany STP. Indeed, from an engineering perspective the Final Alternative Plan is not alternative at all in that it is the same structural solution that the City of Albany would pursue if the area were to be annexed.

From an implementation and scheduling perspective, the Final Alternative Plan is advantageous and preferable to annexation because it is more likely to result in the early provision of sewer service. The Final Alternative Plan schedule calls for completion of construction by October, 1991. Because the Final Alternative Plan is more acceptable to the public to be served than annexation, it would avoid the litigation that is likely to be initiated if mandatory annexation proceeds. Moreover, because the NACSD already exists and its boundaries include the entire health hazard area, no exclusion process may be initiated, as would be the case under an annexation process. (The exclusion process allows property owners, through a hearings process before the State Health Division,

Agenda Item:

Page 6

to have individual properties excluded from a mandatory annexation area.)

These facts have allowed grant and loan funding to be applied for much earlier under the Alternative Plan. Delay in application for funds under an annexation scenario significantly decreases the certainty of availability. Also, if the exclusion process were carried out under annexation, there might be a reduction in the number of properties included in the annexation boundary to share the cost of sewer construction, to the extent that individual petitions for exclusion were successful.

The long-standing sewage disposal problem in North Albany has until now proved intractable, principally because of the annexation issue. Through hard work and compromise the local jurisdictions and affected residents have worked out a viable solution that is widely acceptable. The local effort should be recognized by giving the parties involved a chance to make it work.

It is important to note that if the EQC certifies the Final Alternative Plan before it today, the EQC retains the statutory authority to revoke the certification if it determines that the provisions of the Plan are not being implemented. In such a circumstance, the mandatory annexation process would resume.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The Final Alternative Plan is consistent with agency and legislative policy pertaining to water quality and health hazard abatement. It is consistent with Strategic Goal number two of the agency's Strategic Plan.

ISSUES FOR COMMISSION TO RESOLVE:

Should the EQC certify the Final Alternative Plan based on a conclusion that it provides an alternative preferable to city annexation as the most satisfactory and expeditious method for the alleviation of the health hazard conditions in North Albany?

Agenda Item:

Page 7

INTENDED FOLLOWUP ACTIONS:

In the event that the Final Alternative Plan is certified by the EQC, the Health Division will order its implementation. Thereafter, the Department will:

- 1. Assist the responsible jurisdiction with grant and/or loan applications, and other steps leading to construction.
- 2. Monitor progress in the provision of sewer service in accordance with the certified Final Alternative Plan.

Approved:

Section:

Division:

Director:

Report Prepared By: Richard J. Santner

Phone: 229-5219

Date Prepared: August 22, 1990

RJS:crw\hs CG\WC7001 8/20/90

the same or similar general nature as those expressly mentioned or differing therefrom in kind, nature, degree or otherwise, shall thereupon be rights and property of the city into which it is merged. However, all county roads lying within the limits of the merged city which have not been laid out or accepted as streets, shall remain county roads until they are laid out or accepted as streets. All debts and liabilities and obligations of the city surrendering its charter shall thereupon be liabilities of the city into which it is merged and the last named city shall thereupon assume all liabilities of the city surrendering its charter. All valid claims against the city surrendering its charter shall thereafter be valid claims against the city into which it is merged. The inhabitants of the city surrendering its charter shall become subject in all respects to the jurisdiction of the authorities of the city into which it is merged. The jurisdiction of any public authority exercised theretofore in the city surrendering its charter, so far as it is in conflict with the corporate authority of the city in which it is merged, shall cease and the city surrendering its charter shall lose its corporate identity entirely. [Amended by 1983 c.350 §50]

222.700 Effect of merger on pending actions and proceedings; street work proceedings. (1) The merger shall not affect any suits, actions or proceedings pending in any court in which the city surrendering its charter is a party, but all such suits, actions and proceedings shall be defended or prosecuted to termination by the city into which it is merged. All suits, actions and proceedings pending in the municipal, city or recorder's court of the city surrendering its charter shall be transferred to the municipal, city or recorder's court of the city into which it is merged.

(2) The merger shall not affect any proceedings for the opening, widening or extension of any street or for any street improvement or sewer pending at the time of the election in the merged city, but the proceedings shall be continued and all provisions of the charter and ordinances of the merged city shall remain in effect so far as they may affect any matter set out in this section. [Amended by 1983 c.350 §5]

222.710 Return statements filed with county recording officer. If any two cities vote to merge under ORS 222.610 to 222.710, the officer having charge and custody of the records of the city into which the city surrendering its charter is merged, on or before the date on which the merger becomes effective, shall file for record with the officer of the county in which the city is located having charge and custody of the deed records

of the county, certified copies of the written statements of returns of the election in the two cities. The county officers shall enter the statements of returns of record in the deed records of the county. [Amended by 1983 c.350 §52]

222,720 [Repealed by 1983 c.350 §331a]

222.750 Annexation of unincorporated territory surrounded by city. When territory not within a city is surrounded by the corporate boundaries of the city, or by the corporate boundaries of the city and the ocean shore or a stream, bay, lake or other body of water, it is within the power and authority of that city to annex such territory. However, this section does not apply when the territory not within a city is surrounded entirely by water. Unless otherwise required by its charter, annexation by a city under this section shall be by ordinance or resolution subject to referendum, with or without the consent of any owner of property within the territory or resident in the territory. [Amended by 1963 c.444 §1; 1985 c.702 §16]

222.810 (Amended by 1953 c.562 §2; repealed by 1969 c.49 §1)

222.820 [Repealed by 1969 c.49 §1] 222.830 [Repealed by 1969 c.49 §1]

HEALTH HAZARD ABATEMENT

222.840 Short title. ORS 222.840 to 222.915 shall be known and may be cited as the Health Hazard Abatement Law. [1983 c.407 §2]

222.850 Definitions for ORS 222.840 to 222.915. As used in ORS 222.840 to 222.915, unless the context requires otherwise:

- (1) "Affected territory" means an area within the urban growth boundary of a city and which is otherwise eligible for annexation to that city and in which there exists an actual or alleged danger to public health
- (2) "Assistant director" means the Assistant Director for Health.
- (3) "City council" means the legislative body of a city.
- (4) "Commission" means the Environmental Quality Commission.
- (5) "Danger to public health" means a condition which is conducive to the propagation of communicable or contagious disease-producing organisms and which presents a reasonably clear possibility that the public generally is being exposed to disease-caused physical suffering or illness, including a condition such as:
 - (a) Impure or inadequate domestic water.
- (b) Inadequate installations for the disposal or treatment of sewage, garbage or other contaminated or putrifying waste.

- (c) Inadequate improvements for drainage of surface water and other fluid substances.
- (6) "District" means any one of the following:
- (a) A metropolitan service district formed under ORS chapter 268.
- (b) A county service district formed under ORS chapter 451.
- (c) A sanitary district formed under ORS 450,005 to 450,245.
- (d) A sanitary or a water supply authority formed under ORS 450.650 to 450.989.
- (e) A domestic water supply district formed under ORS chapter 264.
- (7) "Division" means the Health Division of the Department of Human Resources. [1967 c.624 §1; 1973 c.637 §1; 1975 c.639 §1; 1983 c.407 §4]

222.855 Annexation to remove danger to public health. In addition to the procedures authorized in ORS 222.010 to 222.750, territory otherwise eligible for annexation in accordance with ORS 222.111 which is within the urban growth boundary of a city may be annexed by passage of an ordinance as provided in ORS 222.900 without any vote in such territory or any consent by the owners of land therein if it is found, as provided in ORS 222.840 to 222.915, that a danger to public health exists because of conditions within the territory and that such conditions within the territory and that such conditions can be removed or alleviated by sanitary, water or other facilities ordinarily provided by incorporated cities. [1967 c.624 §2; 1973 c.637 §2; 1975 c.639 §2; 1981 c.888 §7]

222.860 Proposal for annexation. (1) The city council of any city shall adopt a resolution containing a proposal for annexation without vote or consent in the affected territory. The proposal may contain terms of annexation as provided in ORS 222.111 and shall:

- (a) Describe the boundaries of the affected territory; and
- (b) Describe the conditions alleged to be causing a danger to public health.
- (2) The governing body of any district having jurisdiction over the affected territory may adopt a resolution containing a proposal for annexation to the city without vote or consent in the affected territory. The proposal shall:
- (a) Describe the boundaries of the affected territory; and
- (b) Describe the conditions alleged to be causing a danger to public health.
- (3) The local board of health having jurisdiction shall verify the conditions alleged in the proposal to be causing a danger to public health, based upon its knowledge of those conditions.

(4) The council or governing body shall cause a certified copy of the resolution together with verification by the local board of health having jurisdiction, to be forwarded to the division and request the division to ascertain whether conditions dangerous to public health exist in the affected territory. 1967 c.624 §3; 1973 c.637 §3; 1975 c.639 §3; 1981 c.888 §8; 1983 c.407 §5]

222.865 [1967 c.624 §4; 1973 c.637 §4; repealed by 1975 c.639 §18]

222.870 Hearing in affected territory; notice. (1) Upon receipt of the certified copy of the resolution, and verification by the local board of health having jurisdiction, the division shall review and investigate conditions in the affected territory. If it finds substantial evidence that a danger to public health exists in the territory, it shall issue an order for a hearing to be held within the affected territory or at a place near the affected territory if there is no suitable place within that territory at which to hold the hearing, not sooner than 30 days from the date of the order.

(2) Upon issuance of an order for a hearing, the division shall immediately give notice of the resolution and order by publishing them in a newspaper of general circulation within the city and the affected territory once each week for two successive weeks and by posting copies of the order in four public places within the affected territory. 1973 c.624 §6; 1973 c.637 §5; 1975 c.639 §4; 1983 c.407 §6]

222.875 Purpose and conduct of hearing; written findings of fact. (1) The hearing shall be for the sole purpose of determining whether a danger to public health exists due to conditions in the affected territory. It may be conducted by one or more members of the division's staff to whom authority to conduct such a hearing is delegated. It shall proceed in accordance with rules which may be established by the division. Any person who may be affected by the finding, including residents of the city, may be heard. Within 60 days following the hearing, the person conducting the hearing shall prepare and submit to the division written findings of fact and recommendations based thereon. The division shall publish a notice of the issuance of such findings and recommendations in the newspaper utilized for the notice of hearing under ORS 222.870, advising of the opportunity for presentation of a petition under subsection (2) of this sec-

(2) Within 15 days after the publication of notice of issuance of findings in accordance with subsection (1) of this section any person who may be affected by the findings, including residents of the city, or the affected city, may petition the assistant direc-

tor according to rules of the division to present written or oral arguments on the proposal. If a petition is received the assistant director may set a time and place for receipt of argument. [1967 c.624 §7; 1973 c.637 §6; 1975 c.639 §5; 1983 c.407 §7]

222.880 Health Division order or finding; hearing upon petition; alteration of boundaries; tax differential. (1) Within 30 days following the final hearing of any arguments received by petition under the provisions of ORS 222.875 (2) the assistant director shall review the arguments and the findings and recommendations of the person conducting the hearing as provided in ORS 222.875 (2). If the assistant director finds no danger to public health exists because of conditions within the affected territory, the assistant director shall issue an order terminating the proceedings under ORS 222.840 to 222.915 with reference to the affected territory.

- (2) If the assistant director finds that a danger to public health exists because of conditions within the affected territory, the assistant director shall file a certified copy of findings with the city and, except where the condition causing the danger to public health is impure or inadequate domestic water, with the commission.
- (3) If the assistant director determines that a danger to public health exists because of conditions within only part of the affected territory, the assistant director may, upon petition and hearing, reduce the boundaries of the affected territory to that part of the territory that presents a danger if the area to be excluded would not be surrounded by the affected territory remaining to be annexed and would not be directly served by the sanitary, water or other facilities necessary to remove or alleviate the danger to public health existing within the affected territory remaining to be annexed. The findings shall describe the boundaries of the affected territory as reduced by the assistant director. The assistant director shall file a certified copy of findings with the city and, except where the condition causing the danger to public health is impure or inadequate domestic water, the commission.
- (4) In determining whether to exclude any area the assistant director may consider whether or not such exclusion would unduly interfere with the removal or alleviation of the danger to public health in the affected territory remaining to be annexed and whether the exclusion would result in an illogical boundary for the extension of services normally provided by an incorporated city.
- (5) The city shall, when requested, aid in the determinations made under subsections

- (3) and (4) of this section and, if necessary, cause a study to be made.
- (6) Notwithstanding ORS 222.111 (3), the assistant director, in implementing an order under ORS 222.840 to 222.915, may allow the use of the tax differential authorized by ORS 222.111 (3) for a period not exceeding 15 years with the consent of the affected city. 1967 c.624 §8; 1973 c.637 §7; 1975 c.639 §6; 1983 c.407 §8; 1989 c.780 §1]

222.883 Suspension of proceedings by Health Division; purpose; limit. At any time after the assistant director under ORS 222.880 finds that conditions dangerous to public health exist, the division may order further proceedings on the findings filed under ORS 222.880 halted in order to allow a city, district or persons affected by the findings to develop and propose an alternative plan to annexation for the removal or alleviation of the conditions dangerous to public health. Proceedings may be stayed under this section for not longer than 30 days. [1983 c.407 §3]

222.885 Alternative plan by petition or resolution; stay of proceedings. (1) Within 60 days after the assistant director under ORS 222.880 finds that conditions dangerous to public health exist, a petition, signed by not less than 51 percent of the electors registered in the affected territory, may be filed with the division. Such petition shall suggest an alternative plan to annexation to the city for removal or alleviation of the conditions dangerous to public health. The petition shall state the intent of the residents to seek annexation to an existing district authorized by law to provide facilities within the affected territory necessary to remove or alleviate the dangerous conditions or to seek, with the approval of the city or district, extraterritorial extension of a city's or district's sewer or water lines. The petition shall be accompanied by a proposed plan which shall state the type of facilities to be constructed, a proposed means of financing the facilities, and an estimate of the time required to construct such facilities and place them in operation.

(2) Within 30 days after the assistant director under ORS 222.880 finds that conditions dangerous to public health exist, a resolution adopted by the city council or the governing body of any district having jurisdiction over the affected territory may be filed with the division. The resolution shall suggest an alternative plan to annexation to the city for removal or alleviation of the conditions dangerous to public health. The resolution shall be accompanied by a proposed plan which shall state the type of facilities to be constructed, a proposed means of financing the facilities, and an estimate of

the time required to construct such facilities and place them in operation.

- (3) Upon receipt of such petition or resolution adopted by a district or city council, the division shall:
- (a) Immediately forward copies of any petition or resolution to the city or district referred to in the petition or resolution, and, except where the condition causing the danger to public health is impure or inadequate domestic water, to the commission.
- (b) Order further proceedings on the findings filed under ORS 222.880 stayed pending the review permitted under ORS 222.890 and this section. [1967 c.624 §8a (1), (2); 1973 c.637 §8; 1975 c.639 §7; 1983 c.83 §26; 1983 c.407 §9]

222.890 Review of alternative plan. (1) An alternative plan referred to in ORS 222.885 shall be reviewed by the division in cases where danger to public health is caused by impure or inadequate domestic water and in all other cases by the commission. The plan shall be approved or rejected by the appropriate authority. In reviewing the alternative plan contained in the petition, the authority shall consider whether, in its judgment, the plan contains a preferable alternative for the alleviation or removal of the conditions dangerous to public health. If it determines that annexation to the city provides the best and most expeditious method of removing or alleviating the dangerous conditions, the alternative plan shall be rejected and further proceedings on the finding filed under ORS 222.880 shall resume.

- (2) If the reviewing authority finds that the alternative plan provides a preferable method of alleviating or removing the dangerous conditions, the petitioners or appropriate governing body shall have six months within which to present to such authority information showing:
- (a) That the territory in which the conditions dangerous to public health exist has received approval for the extension of a city's or district's sewer or water lines within the territory or has annexed to a district authorized by law to provide facilities necessary to remove or alleviate the dangerous conditions, and that financing of the facilities for extension of such facilities to the territory has been assured.
- (b) Detailed plans and specifications for the construction of such facilities.
- (c) A time schedule for the construction of such facilities.
- (d) That such facilities, if constructed, will remove or alleviate the conditions dangerous to public health in a manner as satisfactory and expeditious as would be

accomplished by the proposed annexation to the city.

(3) The authority shall review the final plan presented to it by the petitioners, city or district and shall promptly certify whether the requirements of subsection (2) of this section have been met. If the requirements have been met, the division shall certify the alternative plan. Further annexation proceedings on the findings filed under ORS 222.880 shall be suspended and the city shall be so notified. If the requirements of subsection (2) of this section are not met by the petitioners, city or district or whenever the reviewing authority determines that the requirements of the certified plan are not being satisfied, further proceedings on the findings filed under ORS 222.880 shall resume. [1967] c.624 §8a (3), (4), (5); 1973 c.637 §9; 1975 c.639 §8; 1983 c.407 §10]

222.895 [1967 c.624 §9; 1973 c.637 §10; repealed by 1975 c.639 §9 (222.896 enacted in lieu of 222.895)]

222.896 Judicial review. Judicial review of final orders under ORS 222.840 to 222.915 shall be as provided in ORS 183.480 to 183.500 for judicial review of contested cases. [1975 c.639 §10 (enacted in lieu of 222.895)]

222.897 Study and plan for alleviation of health danger by city; procedure if city fails to act. (1) Upon receipt of a certified copy of the division's findings under ORS 222.880, the city council shall cause a study to be made and preliminary plans and specifications developed for the sanitary, water or other facilities necessary to remove or alleviate the conditions causing a danger to public health. The council shall prepare a schedule setting out the steps necessary to put the plan into operation and the time required for each step in the implementation of the plan. A copy of the plans and specifications and the time schedule shall, in the case where the danger to public health is caused by impure or inadequate domestic water, be submitted to the division and in all other cases to the commission.

(2) If the city within 90 days, fails to complete the requirements in subsection (1) of this section, the division shall conduct the necessary studies and prepare plans and other documents required for the consideration of the proposal and the final determination of the proceedings. The expense of the study and preparation of the plans and other documents shall be paid by the city upon vouchers properly certified by the assistant director. [1975 c.639 §12]

222.898 Determination if health danger can be alleviated; approval of plans; notice to city. (1) Within 60 days of receipt of the preliminary plans and other documents submitted as required by ORS 222.897, the appropriate reviewing authority shall deter-

mine whether the conditions dangerous to public health within the territory proposed to be annexed can be removed or alleviated by the sanitary, water or other facilities proposed by the plans and specifications.

- (2) If such authority considers the proposed facilities and the time schedule for installation of such facilities adequate to remove or alleviate the dangerous conditions, it shall approve the proposal and certify its approval to the city.
- (3) If the authority considers the proposed facilities or time schedule inadequate, it shall disapprove the proposal and certify its disapproval to the city including the particular matters causing the disapproval. The city council shall then submit an additional or revised proposal.
- (4) In the event the authority upon review of the plans and other documents submitted under subsection (1) of this section determines that the danger to public health in the area proposed to be annexed cannot be removed or alleviated by sanitary, water or other facilities ordinarily provided by incorporated cities it shall terminate the proceedings upon the proposal and notify the city. [1975 c.639 §13]

222.900 City to adopt ordinance. (1) Subject to subsection (2) of this section, upon receipt of the certified copy of the finding as provided in ORS 222.880 (2) or (3) and certification of approval of plans under ORS 222.898, the city council shall adopt an ordinance which shall:

- (a) Contain the legal description of the territory annexed;
- (b) Contain the terms of the annexation, if any, made under ORS 222.111;
- (c) Adopt the plans, specifications and time schedule as approved by the division or commission; and
- (d) Declare the territory annexed to the city in accordance with ORS 222.840 to 222.915.
- (2) An ordinance shall not be enacted as provided in subsection (1) of this section until the expiration of the time for appeal under the provisions of ORS 222.896 and, in the event an appeal is filed, following the determination of that appeal.
- (3) If the division makes its finding under ORS 222.880 (3), the city shall not annex a greater area than that described in the finding. The recorder, or other officer performing the duties of the recorder, shall transmit a transcript to the Secretary of State, including certified copies of the resolution required in ORS 222.860, the finding of the assistant director, and the ordinance proclaiming annexation of the territory.

(4) If the city council adopts the ordinance of annexation as provided in subsection (1) of this section, it shall within one year thereafter prepare plans and specifications for the sanitary, water or other facilities proposed to be provided in the annexed area, in compliance with ORS 448.115 to 448,285 or 468,742 and shall then proceed in accordance with the time schedule to construct or install these facilities. The commission shall use its powers of enforcement under 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 ORS chapter 468 to insure that the facilities are constructed or installed in conformance with the approved plans and schedule. The manner of financing the cost of the facilities shall be determined by the city council. [1967 c.624 §10; 1973 c.637 §11; 1975 c.639 §14; 1983 c.740 §57]

222.905 Application to initiate annexation. (1) The local board of health or the boundary commission having jurisdiction shall, if it believes a danger to public health exists within a territory otherwise eligible for annexation in accordance with ORS 222.111, proceed in the same manner as a city is authorized to proceed under ORS 222.860.

(2) Any 11 residents of territory otherwise eligible for annexation in accordance with ORS 222.111 who believe a danger to public health exists within such territory may apply to the local board of health to initiate proceedings to annex such territory as provided in subsection (1) of this section. The local board of health shall within a reasonable time, but not more than 90 days, investigate the matters alleged in the application and shall either initiate proceedings or certify to the petitioners that the investigation disclosed insufficient evidence to initiate proceedings. [1967 c.624 §11; 1973 c.637 §12; 1975 c.639 §15; 1981 c.888 §9]

222.910 [1967 c.624 §5; 1973 c.637 §13; repealed by 1975 c.639 §16 (222.911 enacted in lieu of 222.910)]

222.911 Participation of interested division assistant director, officer or employee prohibited. No officer or employee of the division who owns property or resides within affected territory that is subject to proceedings under the provisions of ORS 222.840 to 222.915 shall participate in an official capacity in any investigation, hearing or recommendation relating to such proceedings. If the assistant director is such a person, the assistant director shall so inform the Governor, who shall appoint another person to fulfill the duties of the assistant director in any investigation, hearing or recommendation relating to such proceeding. [1975 c.639 \$17 (enacted in lieu of 222.910)]

222.915 Application of ORS 222.840 to 222.915. The provisions of ORS 222.840 to 222.915 do not apply to proceedings to annex territory to any city if the charter or ordinances of the city conflict with or are inconsistent with ORS 222.840 to 222.915. [1967 c.624 §12; 1971 c.673 §5]

PENALTIES

222.990 Penalties. Failure to comply with the provisions of ORS 222.010 subjects the city to a penalty of \$100 which may be recovered by an action in the name of the county in which the city is located.

Background Information on the Issue

The unincorporated part of Benton County known as North Albany is north of the Willamette River, adjacent to the portion of the City of Albany in the vicinity of N.W. Hickory St. that is also north of the Willamette. The area is primarily residential in nature and is within the Urban Growth Boundary (UGB).

The North Albany County Service District (NACSD) has provided water to most of North Albany through purchase from the City of Albany. The NACSD has also operated a sewage collection system and treatment plant serving the 123 homes in the Riverview Heights Subdivision. The remainder of North Albany relies on on-site sewage disposal systems. Problems with on-site disposal systems have been significant and long-standing in some parts of North Albany, but have never been resolved.

In May of 1987, the Benton County Board of Health received a petition from North Albany residents requesting the initiation of health hazard proceedings under the Health Hazard Abatement Law (ORS 222.840 to 222.915). The Board of Health ordered a sanitary survey for those portions of North Albany that were of most concern as a basis for the health hazard proceedings.

The survey was conducted during the first two weeks of February 1988 by Benton County sanitarians with the participation of sanitarians from DEQ and the State Health Division. The survey found a failure rate of 39% among the 310 on-site disposal systems surveyed, widely distributed over the survey area. As a result of the survey, the Benton County Health Division concluded that there was a reasonably clear possibility that the public was being exposed to hazardous conditions due to inadequate installations for the treatment and disposal of sewage. The Riverview Heights Subdivision Treatment Plant, because of failure to comply with discharge standards, was included in the category of inadequate installations. The survey further concluded that the extension of city sewer service to the area was the only permanent solution to this situation.

As the next step in the Health Hazard Abatement process, the State Health Division held hearings on the proposed annexation between June and September, 1988. Based on the hearings process, the State Health Division Administrator issued a finding in May, 1989 that a public health hazard existed in the area proposed for annexation. The findings included a determination that the Riverview Heights Treatment Plant discharges inadequately treated sewage into the

environment. Documentation provided by DEQ had been incorporated into the findings regarding the treatment plant.

Under the Health Hazard Abatement Law, once the State Health Division has found that a danger to public health exists, the usual course of events is for the city adjacent to the health hazard area to prepare preliminary plans, specifications and a schedule for review by the EQC (except in cases where the problem is related to impure domestic water). If these are approved by the EQC, the City proceeds with annexation, finalizes the plans and specifications, and constructs the facilities.

However, the law allows for submission of an alternative plan to city annexation by a district (such as a county service district) having jurisdiction over the health hazard area. If such an alternative plan is forthcoming, the State Health Division may suspend the city annexation process to allow submission and review of the alternative plan.

On May 16, 1989, Health Division Administrator Kristine M. Gebbie stayed the city annexation process in the case of North Albany to allow time for the development and submission of an alternative plan to city annexation. The stay was initially for 90 days but was extended for an additional 90 days until November 15, 1989.

During the May-November 1989 period the Albany/Benton County (ABC) Committee composed of elected officials from these jurisdictions and deliberating with the support and participation of staff, consultant and interested citizens, worked intensively on the development of an alternative plan to city annexation that would effectively deal with the health hazard problems and would be acceptable to local governments and affected residents.

After an alternative plan to city annexation has been submitted to the State Health Division, it is referred to the EQC as the reviewing authority (except in cases where the danger to public health is caused by impure domestic water). The EQC must approve or reject the alternative based on a judgement as to whether or not the alternative plan is preferable to city annexation for the alleviation of conditions dangerous to public health. If the alternative plan is rejected, the health hazard abatement process reverts to the mandatory city annexation procedure. If the alternative plan is approved, then the entity submitting the alternative plan has six months within which to further develop and submit a final alternative plan. The final alternative plan, if determined to provide a means as expeditious and satisfactory as city annexation for the alleviation of conditions dangerous to public health, will be certified as such by the EQC. If the EQC does not certify

the final alternative plan, the health hazard abatement process reverts to mandatory city annexation.

On November 13, 1989, the Benton County Board of Commissioners acting as the Governing Body of the NACSD submitted an initial Alternative Plan to the State Health Division, which in turn referred it to the EQC for review in accordance with the Health Hazard Abatement Law as outlined above. The City of Albany provided the Benton County Commissioners with a statement of support for the Alternative Plan. The EQC approved the initial version of the Alternative Plan at its January 19, 1990 meeting based on a conclusion that it represented the best and most expeditious method for alleviating the health hazard conditions.

On July 19, 1990, the Benton Commissioners submitted, as required, the Final Alternative Plan with the endorsement of the Albany City Council. The Plan contains the following important elements:

- 1. The City of Albany will provide sewer service from the Albany Sewage Treatment Plant to the health hazard area without requiring annexation.
- 2. Through an ORS Chapt. 190 Intergovernmental Agreement the NACSD transferred operation, maintenance and administration of its water and sewer facilities to the City of Albany effective July 1, 1990. The NACSD will continue to exist, with the Board of Commissioners as the governing body responsible for all legislative and taxation matters.
- 3. New sewer rates will be set by the City and County at the time of completion of the sewer system.
- 4. Benton County will transfer land use and building administration in the UGB to the City of Albany.
- 5. The City and County will hold an election offering some form of annexation to the health hazard area just prior to the imposition of assessments by which time final project costs will be known. Pursuant to ORS 222.880, passed in 1989, the annexation offer may include a fifteen year phased tax rate.
- 6. The facilities design component of the Alternative Plan shows a network of interceptor sewers that would provide sewer service to the health hazard area. The Riverview Heights Subdivision collection system would be connected to the new interceptors. The Riverview Heights Treatment Plant would be abandoned. Collector sewers would be constructed to access properties presently

using on-site disposal systems. All flows would be conveyed to the Albany Sewage Treatment Plant.

In addition to the above listed provisions, the Final Alternative Plan documents that it complies with the requirements of the Health Hazard Abatement Law in that:

- 1. The NACSD is authorized by statute to provide sewer service to the health hazard area. Through changes in the Comprehensive Plan and endorsement of the Final Alternative Plan, the City of Albany and Benton County have provided approval for provision of sewer service from the Albany STP.
- 2. The City of Albany has received a grant of up to \$500,000 from the Oregon Economic Development Department to pay the assessments and connection fees of low and moderate income health hazard area property owners. The NACSD has applied for an EPA Construction Grant and for SRF Loans. The North Albany project is well within the fundable range on the priority lists for these sources of funding. The NACSD has the authority to impose assessments for project costs not covered by grants or loans and can waive remonstrances in a health hazard situation.
- 3. A facilities plan has been prepared documenting that construction of a collection system and treatment at the Albany STP is the preferred, most cost-effective project design. The facilities plan and the City's standard specifications will serve as the basis of actual bid documents for project construction.
- 4. The project will be constructed by October, 1991.
- 5. The Final Alternative Plan is the most satisfactory and expeditious means of removing the hazard conditions because it provides the best technical (design) solution to the problem and does so without mandatory annexation, thereby avoiding the political and legal complications and delays that are virtually certain if mandatory annexation were pursued.

Please refer to Attachment C, the Final Alternative Plan, for further detail.



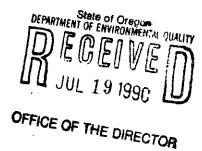
BOARD OF COMMISSIONERS

180 NW 5th Street Corvallis, OR 97330-4777

(503) 757-6800

July 18, 1990

Mr. William P. Hutchison, Chairperson Environmental Quality Commission Attn: Fred Hansen, Director Oregon Department of Environmental Quality 811 S.W. 6th Avenue Portland, OR 97204



Dr. Michael Skeels, Administrator Oregon State Health Division 811 State Office Building 1400 S.W. 5th Avenue Portland, OR 97201

Re: North Albany Health Hazard Proceedings

Gentlemen:

Attached please find a Resolution adopting the Final Alternative Plan to Health Hazard Annexation for alleviation of the declared health hazard in the North Albany area. The Benton County Board of Commissioners, acting as the Governing Body of the North Albany County Service District, adopted this Resolution on July 18, 1990. This Plan was endorsed by the Albany City Council on July 11, 1990. We hereby submit this Final Alternative Plan for your review and certification pursuant to ORS 222.890(3).

The County, the City, and the citizens of North Albany worked long and hard to reach our goal of implementing the Alternative Plan, which we hope will be the first successful plan in the history of the health hazard statute. We greatly appreciate the help which the Health Division and the Department of Environmental Quality (DEQ) have provided. We would especially like to commend Ron Hall of the Division and Richard Santner of DEQ for all their time and effort.

Mr. Fred Hansen Dr. Michael Skeels July 18, 1990 Page 2

Thank you for your consideration.

Sincerely,

John B. Dilworth Chairman

Dale D. Schrock, Commissioner

Pamela S. Folts, Commissioner

cc: Senator Mae Yih
Representative Carolyn Oakley
Bob Rindy, DLCD
Ron Hall, Health Division
Richard Santner, DEQ
Steve Bryant, Albany City Manager

Jeffrey G. Condit, Benton County Counsel

CC: 1109/hd

NORTH ALBANY ALTERNATIVE PLAN TO HEALTH HAZARD ANNEXATION

Adopted by the Benton County Board of Commissioners, Acting as the Governing Body of the North Albany County Service District, on July 18, 1990. Submitted to the Oregon State Environmental Quality Commission and the Oregon State Health Division on July 19, 1990, pursuant to ORS 222.890(3).

BEFORE THE GOVERNING BODY OF THE NORTH ALBANY COUNTY SERVICE DISTRICT, BENTON COUNTY, STATE OF OREGON

In the matter of submitting an alternative plan to annexation) to the City of Albany for removal) or alleviation of conditions) dangerous to public health.

RESOLUTION

WHEREAS, on May 16, 1989, the Administrator of the Oregon State Health Division of the Department of Human Resources issued Findings of Fact, Opinion, Finding of Ultimate Fact, Conclusions of Law and Stay of Proceedings declaring a health hazard in a territory known as the North Albany area pursuant to ORS 222.840 to 222.915; and

WHEREAS, these findings and a subsequent stay issued by the Division on August 10, 1989, stayed further proceedings pursuant to ORS 222.840 to 222.915 until November 15, 1989, to enable area residents and local governments to develop an alternative plan to forced annexation to the City of Albany pursuant to ORS 222.885; and

WHEREAS, the Benton County Board of Commissioners, acting as the Governing Body of the North Albany County Service District submitted the resulting Alternative Plan, endorsed by the City of Albany, to the Department of Environmental Quality (DEQ), on November 13, 1989, pursuant to ORS 222.885(2); and

WHEREAS, the State of Oregon Environmental Quality
Commission (EQC) approved the preliminary Alternate Plan pursuant
to ORS 222.890(2) on January 19, 1990, giving the District and
the City six months pursuant to ORS 222.890(2) to submit the
final Alternative Plan; and

WHEREAS, the District, the County, the City, and the citizens of North Albany have completed the necessary work to submit the final Alternative Plan.

BE IT HEREBY RESOLVED that the Governing Body of the North Albany County Service District adopts the final Alternative Plan to Health Hazard Annexation contained in Attachment A, and directs that this resolution and attachments be submitted to the Oregon State Department of Environmental Quality and the Oregon State Health Division prior to July 20, 1990, along with a request that the Environmental Quality Commission and the Health Division certify the Alternative Plan and suspend further health hazard annexation proceedings as provided by ORS 222.890(3).

Adopted this	167	day	of	July	 1990
Signed this _	1600	day	of	July	 1990

GOVERNING BODY OF THE NORTH ALBANY COUNTY SERVICE DISTRICT

John Rhulworth 7-18-90

John R. Dilworth, Chairman

Dale D. Schrock, Commissioner

Pamela S. Folts Commissioner 1/18/90

Office of County Counsel

ATTACHMENT A: ALTERNATIVE PLAN TO ANNEXATION FOR REMOVAL OF HEALTH HAZARD CONDITIONS IN NORTH ALBANY

- I. Implementation of the Alternative Plan: The Goal of the Alternative Plan is to serve the affected North Albany territory via a new sewage collection system connected to the City of Albany's sewage treatment plant, without requiring forced annexation of the territory to the City. The Plan encourages future voluntary annexation of the territory to the City as required by the City and County Comprehensive Land Use Plans adopted pursuant to ORS Chapter 197 by incorporating incentives to annexation and by incorporating provisions designed to require annexation as new development occurs. As part of its November 1989 submittal, the District set forth eight provisions for effecting the Alternative Plan. Following is a discussions of how those proposals have been implemented:
- 1. Benton County will transfer land use and building administration in the urban growth boundary to the City of Albany. During 1979 to 1981, Benton County and the City of Albany placed the North Albany area, including the entire health hazard area within the City of Albany Urban Growth Boundary (UGB) pursuant to Statewide Land Use Planning Goal 14. To implement the Goal 2 requirement for land use coordination between counties and cities regarding territory included within an urban growth boundary, the County adopted the City of Albany Comprehensive Plan as part of the County Comprehensive Plan for the Albany urban fringe (the area within the UGB but outside the City limits). These plans designated North Albany for eventual annexation, and recognize the City of Albany as the preferred provider of sewer and water services within the urban fringe.

To implement the Alternative Plan, the City, the County, and the North Albany Citizen Advisory Committee (CAC) developed amendments to the Albany Comprehensive Plan. These amendments have been adopted by the City and the County (amendments attached as Exhibit 1). In order to allow the City to serve the health hazard area without requiring annexation, Wastewater Treatment Policy 4 has been amended to allow the City to extend sewer service to the health hazard area without requiring annexation or consent to annex agreements. The amendments also require the City, the County, and the District to comply with the provisions of the proposed Alternative Plan, including transfer of land use and building administration within the urban fringe to the City of Albany (Area of Special Interest 4, Policy 1). Another policy change strengthens current Comprehensive Plan Policies by requiring the City of Albany to be the exclusive provider of sewer services within the urban fringe. Wastewater Treatment Policy #14. Finally, in order to ensure eventual annexation of the area, new development will be required to annex or sign a consent to annex before being allowed to hook up to the sewer or water systems (Id., Policy 4). The parties expect that installation of the new sewer system will stimulate new

CC 1076A/HD

development in North Albany, resulting in eventual annexation over time.

With adoption of these new policies, the former legal impediment to extension of city sewer service in the urban fringe without annexation is removed and a framework has been created to guide the adoption of zoning regulations and amendment of the current Urban Fringe Management Agreement. Transfer of land use administration is scheduled to occur on July 1, 1991, for budgetary reasons and so that transfer of administration will occur just prior to completion of the sewer system to alleviate the health hazard.

2. The North Albany County Service District (NACSD) will transfer its water and sewer service facilities and operation to the City of Albany. On May 23, 1990, the District and the City entered into an agreement pursuant to ORS Chapter 190 whereby administration, operation, and maintenance of the District water and sewer systems were transferred to the City of Albany, effective July 1, 1990 (Agreement attached as Exhibit 2). The District will continue to exist, and the Board of Commissioners will continue to be the Governing Body responsible for all legislative and taxation matters. The purpose of the transfer is to further Comprehensive Plan Policies recognizing the City as the ultimate provider of sewer and water services, to consolidate services, and to begin a relationship between the City of Albany and the citizens of North Albany which will encourage eventual annexation of the territory.

The parties decided to retain the District as a separate municipal corporation for two reasons: First, the bond by which the District originally acquired the water facilities is financed at an extremely favorable rate. Because the bond could not be assumed by the City of Albany without refinancing at a higher rate, it made financial sense to retain the District at least until the water bond was paid off. Second, the District's smaller population enabled the District to qualify for federal and state grants and loans under different criteria than would be applied to the City. As the result of this difference, the District is able to apply more expeditiously for such grants and loans, improving the chances of obtaining funding and resulting in more expeditious solution of the health hazard.

3. The District will not oppose sewer and water rate surcharges imposed by the City of Albany upon areas which are not annexed to the City but which receive sewer and water service. Because City water rates are lower than District rates, a water rate surcharge was deemed unnecessary. Instead, as part of the agreement attached as Exhibit 2, the City has agreed to reduce District rates to the in-city rate upon annexation. Further, future increases and decreases in District rates are now linked to increases and decreases in City rates. The purpose of this provision is to compensate the City for assuming administration and management of the water system, to create a stable framework

for future rate setting, and to create an incentive for future annexation.

New sewer rates will be set by the City and the District at the time of completion of the sewer system pursuant to state and federal requirements [Exhibit 2, clause III(2)]. The County has committed to approving any surcharge needed to cover the City's administrative costs of providing service.

- 4. The County will agree not to provide urban levels of other governmental services. This prohibition has been adopted as an amendment to the Albany Comprehensive Plan by the City and the County. See Exhibit 1.
- 5. The County will support the efforts of Albany and other cities to seek improved annexation options and coordination between the land use laws, the health hazard annexation laws, and the annexation laws in general. Such aid will be provided to the cities in the next legislative session. Of primary concern is the fact that there is currently no legislative authority for contract or delayed annexation. Such authority may be necessary to fully implement the intent of this Alternative Plan.
- The County will provide in-kind planning services to the City of Albany Planning Department to work with the city to implement the alternative plan until the Comprehensive Plan and Zoning Ordinance amendments necessary to effect the alternative plan are completed and adopted. The above language has been refined as The County will provide planning assistance to the City commensurate with the required level of planning services provided by the City to the unincorporated portions of the Urban Growth Boundary. The type and level of planning assistance (e.g., direct financial assistance, adoption of fees for services, in-kind services, and amounts thereof) will be determined prior to the City's being obligated to assume land use and building administration. Subsequent to the City's assumption of land use and building administration, if the City finds that the County's level of planning assistance to the City is not commensurate with the required level of services, then the City may, at its option, be relieved of the land use and building responsibilities assumed in this alternative plan and any other agreements between the City and Benton County.
- 7. After the details and costs of the alternative plan are determined and agreed to by the County and City but prior to implementation, the County and the City will call an election to offer phased-value annexation in lieu of implementation of the alternative plan. It is still the intent of the City and the County to offer some form of annexation to the Citizens of North Albany as an alternative to the Alternative Plan. At this time, the parties plan to offer annexation at some time immediately prior to imposing assessments for the sewer system, which is projected to occur in Fall of 1991 or Spring of 1992.

Originally, the City and County intended to offer annexation in the Spring of 1990, just prior to submittal of the final Alternative Plan. The City and County have decided to wait until the time of assessment before offering annexation based upon citizen comments in various public meetings that the citizens wanted to know exact cost figures before making a choice between annexation and the Alternative Plan. Final costs will not be known until just prior to assessment, at which time the County and City should be able to calculate relative costs on a lot by lot basis.

The City and the County request that the EQC and/or the Health Division allow the City to offer, at the City's option, a phased tax rate annexation¹ for a period of up to fifteen years pursuant to ORS 222.880. This statute, passed by the 1989 legislative Assembly, allows the assistant director (the Health Division Administrator), "in implementing an order under ORS 222.840 to 222.915," to extend the use of the tax differential authorized by ORS 222.111(3) from ten to fifteen years. Benton County Counsel Jeffrey G. Condit and Joseph M. Barkofski, Deputy Legislative Counsel, have opined that the certification of an alternative plan pursuant to ORS 222.878(3) is an "order under ORS 222.840 to 222.915" [See attached Exhibits 3 and 4]. The assistant director may therefore allow the use of a fifteen year phased tax rate annexation if such an annexation is called for in the Alternative Plan.

A fifteen year phased tax rate annexation may not be the final annexation package offered to the residents. The City will choose the best and most equitable method of annexation for the citizens of Albany and the citizens of North Albany at the time annexation is offered, based upon appropriate phasing of services, relative taxation impact, and after consideration of any changes to the annexation statutes that may be made by the 1991 Legislative Assembly. Because fifteen year phased tax rate annexation may prove to be the best method of annexation, however, the parties request that the assistant director authorize the parties to offer fifteen year phased value annexation pursuant to ORS 222.880 as part of the certification of this Alternative Plan.

8. If the alternative plan fails, if any voluntary annexation election fails, and if health hazard annexation fails, and if, as a result of these failures, the Service District constructs the lines and operates its own stand-alone treatment plant to serve the area, the Service District agrees, subject to the limitations

^{1.} The temporary tax differential authorized by ORS 222.111(3) and 222.880 has been referred to by the parties in past documents and hearings as "phased value" annexation. This term is misleading because it is the City tax rate, rather than the annexed territory's assessed value, that is phased in over the ten or fifteen year term. Henceforth, this tax differential shall be referred to as "phased tax rate" annexation.

contained in Article XI Section 10 of the Oregon Constitution, to enter into an agreement to purchase any facilities planning work performed or contracted for by the City of Albany. The City of Albany has contracted with Brown and Caldwell Engineering to complete the facilities plan. The preliminary plan has been completed (incorporated by reference as Exhibit 5 and submitted under separate cover to DEQ and the Health Division). preliminary plan indicates that service of the North Albany area via the Albany Regional Sewage Treatment Plant is the least cost, most environmentally sound, method of serving the area by a substantial degree (Exhibit 5). Further, adopted Comprehensive Plan Policies now recognize the City as the exclusive provider of sewer service within the urban fringe (Exhibit 1). In the unlikely event that the District ever serves the area from a stand-alone plant, the adoption of the new comprehensive plan policies will require compliance with this provision.

- II. Compliance with ORS 222.890(2): This statute provides that the Governing Body which requests and obtains preliminary approval of an alternative plan pursuant to ORS 222.890(1) has six months from the date of EQC's action to present the EQC with information demonstrating:
- 1. That the territory in which the conditions dangerous to public health exist has received approval for the extension of a city's or district's sewer or water lines within the territory or has annexed to a district authorized by law to provide facilities necessary to remove or alleviate the dangerous conditions, and that financing of the facilities for extension of such facilities has been assured. ORS 222.890(2)(a)

The North Albany County Service District (NACSD) is authorized by its formation order adopted pursuant to ORS Chapter 451 to provide water and sewer service. The North Albany health hazard area is located entirely within the boundaries of the NACSD. The adoption by Benton County and the City of Albany of the amendment to the Albany Comprehensive Plan Wastewater Treatment Policy 4 and the endorsement of this submittal by the City of Albany (attached as Exhibit 6) constitute authorization and approval by the City and the County for providing sewer service via the City of Albany Regional Sewage Treatment Plant. The legal framework and necessary approvals to provide service pursuant to the Alternative Plan are therefore in place.

The District and the City have applied or will apply for several grants and loans to help pay for the necessary facilities. The District shall apply for a \$1,261,000 Environmental Protection Agency (EPA) Construction Grant administered by the Oregon Department of Environmental Quality (DEQ) to pay for a portion of the interceptors. In addition, the District has applied for an Oregon State Revolving Fund (SRF) Loan in the amount of \$2,500,000 to pay for design and construction of interceptors, force mains, and/or pump stations, collector sewers, and reserve

capacity (attached as Exhibit 7). This loan will be repaid by connection fees, sewer rates, and/or other local financing The remainder of the cost shall be paid for by assessments against the benefitted property pursuant to NACSD Ordinance No. 2B, the NACSD Improvement District Ordinance (attached as Exhibit 8). Although Section III of this Ordinance provides for a remonstrance process by which 50 percent of the affected property owners representing more than 50 percent of the assessed value can object to the project, Section III(F) provides that the District Governing Body has the power to waive such remonstrances and construct the improvement if a health hazard has been declared by the Benton County Board of Health. in the Health Division's Findings declaring a health hazard in this territory, the Benton County Board of Health initiated proceedings by declaring a health hazard in the territory and forwarding its resolution to the Health Division. The exact proportions of the local financing package will depend on the outcome of the EPA grant application and the amount of SRF funds made available, as well as actual project costs. Given the seriousness of the North Albany health hazard and the high priority of the project with the state, the parties are confident that the maximum amount of available moneys will be awarded.

Financing of the facilities provided for in the Alternative Plan has therefore been assured.

 Detailed plans and specifications for the construction of such facilities. ORS 222.890(2)(b).

In order to comply with this provision and to provide the necessary information for the EPA grant application, the City of Albany hired the consulting firm of Brown and Caldwell Engineering to develop a facility plan for the entire North Albany portion of the urban growth boundary. (Attached as Exhibit 5) Within the context of this overall plan, they developed a solution to provide service to the health hazard area as the first phase of this plan. (See Exhibit 5.)

The facility plan developed and compared alternate means of providing service, ranging from improved on-site systems to new secondary treatment plants to service by the City of Albany treatment facility. Through a combination of screening and cost-effective analysis, it was determined that treatment at the existing City facility was the preferred solution for both economic and environmental reasons.

The recommended project includes construction of approximately 70,000 feet of gravity collection systems to convey sewage to the existing North Albany pump station located at the intersection of Hickory Road and Springhill Drive. The existing pump station and transport system downstream of the pump station will convey the sewage to the City treatment plant. The interceptor portion of the collections system is oversized to provide service to the entire Urban Growth Boundary as development occurs. The flows to

Actachment A Alternative Plan Page 7

the existing Riverview Heights treatment plant will be diverted to the new interceptor and the plant will be abandoned. The total cost of the recommended project including engineering and contingencies is estimated at \$7,292,000.

DEQ has informed the District and City that submittal of the Brown and Caldwell Plan plus the City of Albany's standard construction specifications will be considered "detailed plans and specifications" within the meaning of the statute. (Albany standard construction specifications are incorporated by reference as Exhibit 9, and are submitted under separate cover to DEQ along with this Plan.) A large scale map of the Service Plan is also attached (Exhibit 10). Detailed plans and specifications for the construction of such facilities are therefore complete. For more discussion, please refer to Exhibits 5, 9, and 10.

3. A time schedule for the construction of such facilities. ORS 222.890(2)(c).

Design will occur in late fall of 1990. The project will go out to bid on or about March 1, 1991. Construction shall begin on or about May 1, 1991. The project is scheduled to be completed by October 1991, with hook-up beginning shortly thereafter.

4. That such facilities, if constructed, will remove or alleviate the conditions dangerous to public health in a manner as satisfactory and expeditions as would be accomplished by the proposed annexation to the city. ORS 222.890(2)(d).

The original finding on this issue made by the District and the City in the November 1989 submittal is still current: The Alternative Plan is preferable to health hazard annexation because it would solve the health hazard in the same cost effective and environmentally sound manner as annexation, while at the same time avoiding political and legal complications that could significantly delay and increase the cost of service.

Last summer, the City and the County staff determined that service via the Albany Treatment Plant is the "least cost, most environmentally sound" method of treating the sewage within the meaning of the formula established by the Environmental Protection Agency (EPA). This finding has been confirmed and amplified by the Brown and Caldwell Facilities study (see Exhibit 5), which demonstrates the service via the Albany plant is the most environmentally sound method of service, and is substantially less expensive than other methods. Service via the City treatment plan is even more clearly the preferred method of service and is therefore the only method which would qualify for EPA grant funding.

The Alternative Plan will solve the health hazard without forcing annexation, removing the objection of the majority of persons who oppose the health hazard annexation. Adoption of the Plan will

prevent the litigation that is virtually inevitable if the state proceeds with forced annexation. Any litigation could easily delay provision of services for a minimum of two years. because the County Service District is currently in existence, no exclusion process will be required pursuant to the health hazard annexation statute, substantially shortening the statutory Even in the absence of litigation, proceeding with the health hazard annexation process pursuant to ORS 222.840 to 222.915 would delay service of the health hazard area by at least one year as compared to the alternative plan. Termination of health hazard annexation proceedings pursuant to ORS 222.890(3) will also enable the District to apply for federal grants and loans this year, the optimum time for application to receive grant funding from the Environmental Protection Agency (EPA). Any delay in filing substantially reduces the opportunity to obtain such funds, increasing the local cost of the project.

The Alternative Plan is also preferable to other non-annexation alternatives involving a separate treatment plant in North Albany because it is consistent with the County and City Comprehensive Plan policies recognizing the City of Albany as the preferred provider of sewer services in the urban growth boundary. Adoption of the Alternative Plan will therefore avoid litigation over the land use issues that would have occurred if the Service District had proposed an alternative plan involving a new treatment plant in North Albany.

Finally, the alternative plan development and implementation process has not only resulted in a better coordinated relationship between the District and the City and a better and more clear land use plan for development of the urban fringe area, it has also resulted in a vastly improved working relationship between the City and the citizens of North Albany. This improved relationship will facilitate provision of service pursuant to the plan, and will benefit implementation of the City and County Comprehensive Plans. Resumption of forced health hazard proceedings could destroy this relationship and negatively impact not only this project but future projects as well.

<u>V. Conclusion</u>: The Alternative Plan continues to be the most satisfactory and expeditious method of removing or alleviating the conditions dangerous to public health which have been found to exist in the health hazard area by the Oregon State Health Division. For the reasons discussed above, implementation of the Alternative Plan is clearly preferable to continuation of proceedings pursuant to ORS 222.840 to 222.915 to force annexation of the area to the City of Albany.

JGC:tw

BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR THE STATE OF OREGON FOR THE COUNTY OF BENTON

An Ordinance Amending the Albany Comprehensive Plan to allow the implementation of the "Alternate Plan" for the extension of Sewer Service to North Albany and establishing special	ORDINANCE No. 900076
)
Development Policies.)

WHEREAS Benton County and the City of Albany have adopted an Alternative Plan for the extension of sewers to serve an area contained within the Albany Urban Growth Boundary which has been declared to be subject to a health hazard by the State Health Division; and

WHEREAS amendments to policies within the City Comprehensive Plan are necessary in order for the proposed extension of services to be consistent with the City Comprehensive Plan; and

WHEREAS North Albany residents have identified unique characteristics which they desire to protect as the area develops;

THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY ORDAINS AS FOLLOWS:

SHORT TITLE: Adoption of Amendments to the Albany Comprehensive Plan

The Albany Comprehensive Plan is hereby amended to include changes and additions as shown on the attached Exhibit "A".

First Reading: Second Reading: Effective Date:

July 11, 1990 July 11, 1990

BENTON COUNTY BOARD OF COMMISSIONERS

Ratworth 7-11-90

Approved as to Form:

County Counsel

Recording Secretary



NOTICE OF DECISION TO AFFECTED PARTIES

DATE:

June 28, 1990

RE:

North Albany Alternative Plan

CASE NO:

CP-01-90

AREA:

North Albany portion of the Albany Urban Growth Boundary Area

On June 27, 1990, the Albany City Council approved a Comprehensive Plan Amendment which included amendments to existing Sewer and Water policies and addition of a new "Area of Special Interest Section" in the Albany Comprehensive Plan. The attached amendments provide a legislative framework to continue implementation of the Alternative Plan to Health Hazard Annexation. The City Council decision was unanimous and was based upon findings which can be obtained from the Albany Community Development Department.

Should an affected party wish to Appeal the City Council decision, s/he may file a "Notice of Intent to Appeal" with the State Land Use Board of Appeals not later than 21 days after the date the Council decision becomes final.

Routing:	(For Department	t Use Only)
City Manag	er:	
City Record	er:	
Building Di	vision:	
Fire Suppre	ssion:	
Public Work	:5:	
Applicant:		
Filer:		
Persons Tes	tifying at	-
Planning !	Canumission/	
City Coun	cil Hearings:	

PI POSED COMPREHENSIVE PLAN AML DMENTS NORTH ALBANY ALTERNATIVE PLAN IMPLEMENTATION

AMENDMENT OF THE EXISTING COMPREHENSIVE PLAN

The following amendments need to be made to the Albany Comprehensive Plan in order to implement the Alternative Plan to Health Hazard Annexation. New language is in bold and deleted language has been struck out.

WATER SERVICE

Policy (page 74):

11. Within the Urban Growth Boundary area require new development to annexation or require the property owner(s) and resident electors not currently receiving service to file an annexation petition consent to annex agreements" prior to receiving water service through the City, except if the property is serviced by a County Service District.

WASTEWATER TREATMENT

Policy (page 79):

4. Require execution of annexation or consent to annex agreements to receive sewer service in unincorporated areas except for existing development in the North Albany health hazard area.

New Policy (page 80):

14. The City of Albany shall be the exclusive provider of sewer service within the Urban Growth Boundary area.

PROPOSED COMPREHENSIVE PLAN AMENDMENTS NORTH ALBANY ALTERNATIVE PLAN IMPLEMENTATION

ADDITION OF A NEW TAREA OF SPECIAL INTEREST - AREA 4

In January 1990, the Environmental Quality Commission declared that a public health hazard existed in the North Albany area due to inadequate provision for collection and treatment of sanitary waste. In a spirit of cooperation, Benton County and the City of Albany adopted an alternative plan to forced health hazard annexation. The development and inclusion of the following policies in the Albany Comprehensive Plan recognizes North Albany as an Area of Special Interest. This designation is warranted due to the following factors: the declared health hazard; population density; a land use pattern of near-urban development; and the long standing existence of citizens' advisory groups such as the Albany Benton County Intergovernmental Advisory Committee (ABC Committee) and the North Albany Citizen's Advisory Committee (CAC).

The following policies have been developed jointly by the North Albany Citizen's Advisory Committee and planning staff from Benton County and the City of Albany. These policies are to be used in addition to all other applicable Comprehensive Plan policies and will provide direction regarding future planning actions needed for the area. Where there is inconsistency in the North Albany area between other existing Plan policies and these policies, the North Albany Site of Special Interest policies take precedence over the application of other Comprehensive Plan Policies.

POLICIES

- 1. The City of Albany, Benton County, and the North Albany County Service District (NACSD) shall comply with the provisions of the jointly adopted Alternative Plan to Health Hazard Annexation accepted by the Environmental Quality Commission on January 19, 1990.
- 2. The City of Albany will provide sewer service to the designated North Albany health hazard area without requiring annexation of existing developed properties in order to:
 - a. Resolve the health hazard condition in a timely manner and prevent the occurrence of future health
 - b. Provide for orderly urban development opportunities within the North Albany Urban Growth Boundary (UGB).
 - c. Ensure the coordinated, timely, and cost effective provision of public services to the UGB.
- 3. North Albany residents outside of the designated health hazard area (but within the UGB) not currently receiving sewer or water service but who desire sewer or water service will be required to annex or file an annexation petition prior to receiving service.
- 4. New development will be required to annex or file an annexation petition prior to receiving water and/or sewer service in North Albany.
- 5. Sanitary sewer facilities necessary to serve new development in North Albany shall be:
 - a. Constructed to City of Albany standards.
 - b. Adequately sized to accommodate development densities based on ultimate build-out of either the project or the area to be served.
 - c. Located and developed in accordance with an approved North Albany Sanitary Sewer Facility Plan.
- 6. Sewer and water rates to properties outside the city limits will be established so that generated revenues are sufficient to compensate the City for extra costs of providing the services and to ensure funds necessary to maintain and upgrade the facilities as needed.

- 7. Water service will continue to be provided, consistent with the capacity of the current system, to existing NACSD customers outside the UGB.
- 8. New residential development may be required to connect to the water and/or sewer system if services are within 500 feet of the development and it is feasible to connect.
- 9. When sewer and water service is provided to a developable parcel(s), the property may be developed at an overall density of approximately 10,000 square feet per unit.
- 10. For areas of North Albany where sewer service is not available, property shall not be divided into parcels that create an average density more intense than one dwelling unit per five acres.
- 11. New storm drainage facilities in North Albany shall be:
 - a. Constructed to City of Albany standards.
 - b. Adequately sized to accommodate development densities based on ultimate build-out of either the project or the area to be served.
 - c. Located and developed in accordance with an approved North Albany Storm drainage Master Plan.
- 12. Urban services, provided by Benton County or the City of Albany other than sewer and water, shall only be provided at levels that existed as of June 1990 until annexation occurs.

IMPLEMENTATION MEASURES:

- 1. Develop planning policies and appropriate map designations to promote desirable housing opportunities in North Albany.
- 2. Within North Albany, evaluate the need for neighborhood shopping facilities as part of the on-going evaluation of the Albany Comprehensive Plan. In the interim, allow commercial development to occur within the city limits portion of the UGB as designated for such as of January 1, 1990.
- 3. Provide the opportunity to cluster development within areas subject to environmental constraints to achieve allowed densities and protect public safety and environmental values.
- 4. Develop standards that, where possible, provide for setbacks, buffering, and screening between new residential development that would border farmland outside the UGB to mitigate the potential for conflict.
- 5. Consider development of standards in regard to the keeping of animals in North Albany that maintain neighborhood compatibility, but also provide for greater flexibility than what is possible in the urbanized portion of the UGB.
- 6. Develop standards that would consider the protection of views in North Albany as part of the land development review process.
- 7. When possible, phase public improvement projects in North Albany to minimize the impact of multiple assessments.
- 8. Develop standards to allow extension of water services to areas outside of the UGB but within the NACSD that are consistent with the County Comprehensive Plan.
- 9. Develop site planning review procedures for forest management practices that would assist in maintaining the special character of the North Albany area.

- 10. Within North Albany, maintain open space in areas that are unsuitable for development including steep slopes, in floodway, wetlands, and drainageways.
- 11. Where possible in North Albany, develop linkages between steep slopes, drainageways, wetlands, and publicly owned lands to develop a linear network of open spaces and/or parks.
- 12. In conjunction with Benton County, develop and periodically update a North Albany Storm Drainage Master Plan.
- 13. Work with Benton County to adopt provisions which would provide for the protection of identified North Albany wetlands consistent with state and federal law.
- 14. In conjunction with Benton County, maintain survey information for the North Albany UGB which accurately reflects the historic characteristics and quality of the area's historic resources.
- 15. Utilize historic review procedures to protect North Albany's historic resources.
- 16. Address the need to develop transportation planning in North Albany that emphasizes a balanced transportation system that includes the following:
 - a. Balancing, where possible, the distribution of automobile traffic to avoid overuse of one or two main corridors.
 - b. The need for pedestrian and/or bicycle ways to provide alternative transportation.
 - c. The provision of mass transit opportunities.
 - d. The location of future local, collector, and arterial streets, and pedestrian and bicycle ways.
- 17. Consider the transfer of Benton County Roads and streets to the City of Albany as the area is annexed.
- 18. Work with Benton County and North Albany residents to implement the North Albany minor street plan.
- 19. In conjunction with the North Albany Rural Fire Protection District, plan for future fire protection services in North Albany including methods to levy equitable assessments and fees to be used for facility construction and equipment.
- 20. Encourage the Greater Albany Public School District (GAPS) to recognize the importance of North Albany neighborhood schools and to examine all alternatives before proposing closure.
- 21. Provide for the continued provision of library service for North Albany residents:
- 22. Investigate a park dedication/see system to be collected and utilized within North Albany.
- 23. Continue to utilize the North Albany Citizens' Advisory Committee (CAC) to review major development actions in North Albany.
- 24. Consider North Albany representation on the Albany Planning Commission for at least those land use actions affecting the North Albany UGB, concurrent with transfer of land use planning and building permit authority in the North Albany UGB to the City.

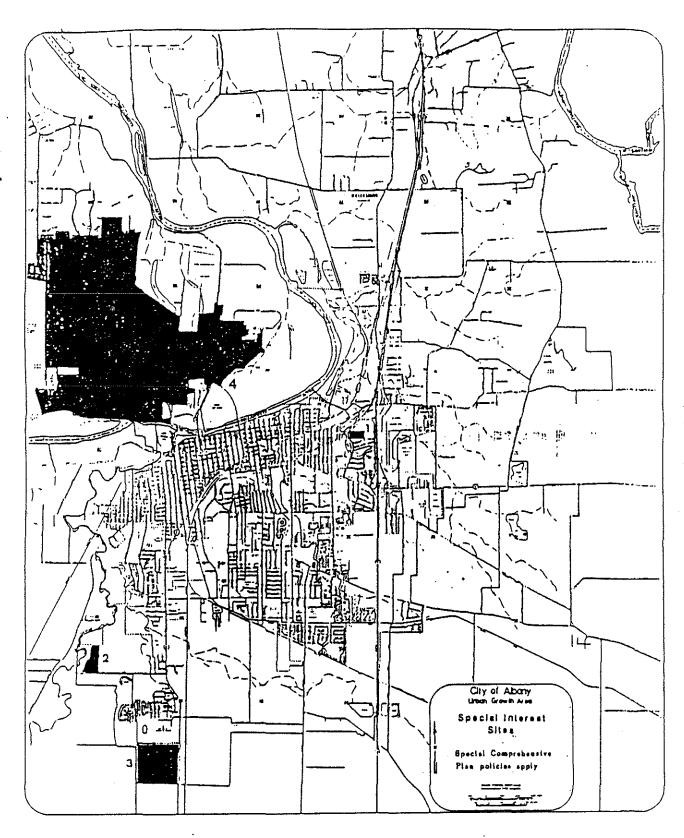


PLATE 15: Special Interest Sites

RESOLUTION NO. 2951

A RESOLUTION ADORTING AN INTERGOVERNMENTAL AGREEMENT FOR TRANSFER OF THE NORTH ALBANY COUNTY SERVICE DISTRICT OPERATION AND ASSETS TO THE CITY OF ALBANY.

WHEREAS, the City of Albany and Benton County have agreed to an alternative plan to health hazard annexation for a portion of the North Albany area; and

WHEREAS, this alternative plan provides for the transfer of operations and assets of the North Albany County Service District to the City of Albany; and

WHEREAS, an intergovernmental agreement has been proposed setting forth the terms and conditions of the transfer which has been found acceptable to both parties.

NOW, THEREFORE, the Albany City Council does hereby resolve to enter into said agreement as set forth in attached Exhibit A.

Dated this 23rd day of May 1990.

ATTEST:

City Recorder

ALBANY/NACSD SEWER AND WATER MAINTENANCE TRANSITION PLAN AND MANAGEMENT AGREEMENT

THIS AGREEMENT is entered into this 23rd day of May , 1990 pursuant to ORS Chapter 190. The Agreement is between the CITY OF ALBANY, an Oregon Municipal Corporation ("City"), and the NORTH ALBANY COUNTY SERVICE DISTRICT ("District"), a county service district created pursuant to ORS Chapter 451 to provide sewer and water service to the North Albany area.

RECITALS

WHEREAS, on May 16, 1989, the Oregon State Health Division adopted Findings of Fact pursuant ORS 222.840 to 222.915 declaring a health hazard to exist in certain portions of North Albany; and

WHEREAS, on November 13, 1989, the District Governing Body, with the support of the City Council, submitted an alternative plan to health hazard annexation pursuant to ORS 222.885; and

WHEREAS, on January 19, 1990, the Oregon State Environmental Quality Commission (EQC) granted preliminary approval to the alternative plan; and

WHEREAS, the alternative plan requires transfer of water and sewer facilities to the City and provision of such services by the City; and

WHEREAS, Comprehensive Plan Policies have been adopted requiring that Albany be the provider of water and sewer services within the Urban Growth Boundary, and requiring eventual annexation of the area to the City of Albany,

THEREFORE, THE CITY AND THE DISTRICT AGREE:

I. PURPOSE.

It is the policy of the parties that the City is the logical and appropriate provider of sewer and water services within the North Albany area, and that assumption by the City of such service will provide superior long term service and will encourage the eventual annexation of the Urban Growth Boundary to the City pursuant to the requirements of the City and Benton County Comprehensive Plans. To further this purpose, it is agreed that the City shall be the sole supplier of water and sewer services for the North Albany Urban Growth Boundary, and to areas outside the boundary currently receiving water service from the district. It is the further intent of the parties to transfer sewer and water facilities and operations currently owned and provided by the District to the City in order to implement the Alternative Plan to Health Hazard Annexation. The District shall remain as the taxing and legislative authority for the area within the current boundaries until such time as the parties agree that

dissolution of the District is in the best interest of the citizens or the City chooses to withdraw annexed territory pursuant to state law.

II. TRANSFER OF OPERATIONS.

- 1. On July 1, 1990, the City shall assume administration, operation and maintenance of the water and sewer systems in North Albany from the District. The City shall assume all rights and responsibilities save those expressly reserved to the District by this agreement. This transfer includes delegation of authority to form local improvement districts and levy special assessments for the purpose of constructing sewer and water facilities.
- 2. On July 1, 1990, the District shall transfer to the City all funds currently contained in North Albany County Service District accounts, excluding the water bond debt service fund which will continue to be maintained and serviced by the District. The City may expend revenues from time to time to cover the costs of providing the services under this agreement. The District may bill the City and the City shall reimburse the District for the reasonable cost of its remaining administrative duties including insurance, legal costs, changes of District organization, audit costs, etc. Both the City and the District shall be allowed to inspect the records and accounts of the other for the purposes of compiling and completing the Comprehensive Annual Financial Report required by state law.
- 3. The City shall provide, at a minimum, the water services provided by the District on June 30, 1990. The City agrees to provide water service to all of the current water services customers of the District, including to current customers located outside of the District and outside of the Urban Growth Boundary. However, nothing in this agreement shall be construed to prevent the City from limiting water service when necessary or prudent to manage the water system or water resource (e.g. where rationing is required, where repairs require interruption of service, where a natural disaster affects service, etc.).
- 4. The District employes providing operation, maintenance, and billing service on June 30, 1990, shall be transferred to the City on July 1, 1990, pursuant to ORS 236.610 to 236.650. Because of the economies of scale, the City and the District recognize that the City will not require the same number or types of employes as the District. The District shall furnish the employment records of the transferred employees to the City at the time of transfer.
- 5. The North Albany County Service District Advisory Committee (NACSD AC) shall be retained to advise the City and the District. The District Capital Improvement Plan (CIP) and the proposed budget shall be submitted to the NACSD AC each

CC 1023/HD Page 2 of 5

year for its review and recommendation. In addition, three members from the NACSD AC shall be selected by the District Governing Body to serve on the District Budget Committee appointed pursuant to local budget law.

III. WATER AND SEWER RATES

- 1. <u>Water Rates:</u> (a) The District agrees to raise its water rates prior to transfer to reflect reasonable costs of operations and systems development. The rates shall be increased as follows:
 - (A) The base rate for all customers shall be increased by \$2.50 per month, effective July 1, 1990.
 - (B) The rate for water usage over the minimum 12,000 gallons per month shall be increased to \$.95 per thousand gallons, effective October 1, 1990.
 - (C) A capital improvement fee of \$5.00 per month shall be charged to each District customer, effective July 1, 1990. Revenue raised by this fee shall be placed by the City into a North Albany Capital Improvement Fund, dedicated to use for capital improvements to the District water system. The base connection fee assessed pursuant to the District Water Operations Ordinance shall also be placed in the North Albany Capital improvement fund.
 - (b) The City shall continue to charge these rates at time of transfer. Thereafter, changes of the rates provided in subsections (a)(A) and (a)(B) shall be linked to water rate changes enacted by the City for customers within the City limits: The District shall increase or decrease the water rates in subsections (a)(A) and (a)(B) of this section so that annual District revenue from these rates will be increased or decreased by the same percentage as annual City water rate revenue is increased or decreased by water rate changes within the City limits. The City shall provide the District with twenty days notice and opportunity to comment before changing water rates.
 - (c) Upon annexation to the City of territory currently served by the District, customers in the annexed territory will be charged the same water rates paid by customers located within the City limits.
 - (d) Pursuant to the District Water Operations Ordinance, customers located outside of the boundaries of the District are charged an additional monthly fee and an additional connection fee assessment in lieu of bond tax payments. The City shall remit revenues raised from these fees to the District, which shall credit such funds to the water bond debt service fund.

2. <u>Sewer rates:</u> Sewer rates will remain the same as they exist on July 1, 1990, until such time as the new North Albany sewer system is constructed pursuant to the alternative plan and begins service. At such time, new sewer rates will be established by mutual agreement.

IV. TRANSFER OF DISTRICT PROPERTY

- 1. Personal property owned by the District used for the operation and maintenance of the District water and sewer facilities shall be transferred to the City on July 1, 1990.
- 2. The District shall convey its real property, including all easements and improvements, to the City within six months of the date assessments are levied against benefitted property in North Albany for the construction of the sewer system to alleviate the health hazard. The City and the District recognize that transfer of the water facilities is subject to review and approval by the Farmers Home Administration (FmHA), which issued the installment water bond by which the District acquired the water facilities. The City and the District further recognized that transfer of sewer facilities may also be subject to conditions in the bonding agreement.

V. TERM; AMENDMENT

- This agreement shall continue until terminated pursuant to subsection (2) of this section, and may only be amended in writing by mutual consent of the parties.
- As stated above, this agreement is intended to implement the alternative plan to health hazard annexation submitted by the District and the City of Albany on November 13, 1989. If the EQC certifies approval of the alternative plan pursuant to ORS 222.898 (2), then this agreement may only be terminated upon mutual consent of the parties. If the EQC disapproves the alternative plan and terminates proceedings pursuant to ORS 222.898 (4), or if the EQG's approval is reversed or remanded by a court of competent jurisdiction, then this agreement may be terminated by either party with six months written notice to the other. If the agreement is terminated, any and all District assets transferred to the City pursuant to Section IV(2) shall be transferred back to the District, and any and all District Assets transferred to the City pursuant to Section IV(1) that have not been expended or which retain value shall be transferred back to the District.
- 3. Termination for Breach: (a) In the event that the District fails to discharge any obligation of this agreement, the City may terminate this agreement and discontinue all water service and other obligations incurred herein. Exercise of this remedy by the City shall not require the return of any real or personal property transferred to the City by the District pursuant to Section IV of this agreement. This

remedy is cumulative and in addition to all other remedies available at law or equity.

(b) In the event that the City fails to discharge any obligation of this agreement, the District may terminate this agreement, and any and all District assets transferred to the City pursuant to Section IV(2) shall be transferred back to the District, and any and all District Assets transferred to the City pursuant to Section IV(1) that have not been expended or which retain value shall be transferred back to the District.

VI. MEDIATION

It is the intent of the parties that this agreement will be carried out in good faith and with mutual cooperation. To accomplish this purpose, the parties agree to submit any dispute under this agreement which the parties are unable to resolve to mediation before seeking termination for breach pursuant to Section V(3) or pursuing other legal action to enforce the terms and conditions of this agreement. The mediator shall be selected and shall conduct the mediation pursuant to the rules and regulations of the Oregon State Mediation and Conciliation Service.

VII. NON-SEVERABILITY

Should it be determined by any court of competent jurisdiction that any portion of this agreement is void as a matter of law, and if such determination prevents any party from discharging its obligations under this agreement, this agreement may be terminated for breach at the option of the party not in breach.

THIS AGREEMENT SHALL BE EFFECTIVE ON JULY 1, 1990.

CITY OF ALBANY

Mayor

City Manager

NORTH ALBANY
COUNTY SERVICE DISTRICT

Chairman

Commissioner

commissioner

Commissioner

ADDREVED AS TO FORM:

-Page 5 of 5

Office of County Counsel

c-26

CC 1023/HD



OFFICE OF COUNTY COUNSEL

180 NW 5th Street Corvallis, OR 97330-4777

(503) 757-6890

May 25, 1990

Honorable Mae Yih 34465 Yih Lane Albany, OR 97321

Re: North Albany Alternative Plan - Statutory Issues

Dear Senator Yih:

At the March 27, 1990, North Albany County Service District (NACSD) Advisory Committee meeting, you asked me a question regarding SB 1059, which was sponsored by you in the 1989 Legislative Session. This bill allows the ten year phased value annexation provided by ORS 222.111(3) to be extended to 15 years in cases of health hazard annexation. You asked me whether this bill would allow the City of Albany to offer 15 year phased value annexation to the citizens of North Albany as an option under the Alternative Plan. Commissioner Folts was also at that meeting and directed me to research the issue.

Although the statute is less than clear, a strong argument can be made that a 15 year phased value annexation can be offered as part of an alternative plan. SB 1059 added the following section to ORS 222.880:

(6) Notwithstanding ORS 222.111(3), the assistant director, in implementing an order under ORS 222.840 to 222.915, may allow the use of the tax differential authorized by ORS 222.111 (3) for a period not exceeding 15 years with the consent of the affected city. (Emphasis added.)

As you know, section 7 of the Alternative Plan calls for an election to offer the citizens of North Albany phased value annexation once costs are known. If the Environmental Quality Commission approves the alternative plan, it must certify to that approval pursuant to ORS 222.878(3). Such a certification is a "final order" subject to judicial review under the Administrative Procedures Act [see ORS 222.896 and 183.310(5)], and therefore would be an "order under ORS 222.840 to 222.915" within the meaning of ORS 222.880(6).

For these reasons, if the City and the District requested the ability to offer a 15 year phased value annexation as part of the final Alternative Plan, I believe that the assistant director

Honorable Mae Yih Page 2 May 25, 1990

(the Health Division administrator) could approve such a plan pursuant to ORS 222.880(6).

I am not the attorney for the Health Division or for the City of Albany, however, both of which would have to approve such a plan. If these agencies disagree with my opinion or are concerned about the uncertainty, there is enough time to request an Attorney-General's opinion: Annexation is not likely to be offered until Spring or Fall of 1991, because the final assessments can not be calculated with any certainty until then. If the Attorney-General disagrees with my analysis, a bill could be introduced in the 1991 session to amend ORS 222.898 to expressly enable the Health Division to allow a 15 year phased value annexation if provided in an alternative plan. I am sure the Board would be willing to authorize me to help you to draft an Attorney-General's Opinion request, if you so desire.

There are several other statutory amendments that would benefit North Albany and aid in implementing the Alternative Plan. SB 987 (another bill you were instrumental in passing in the 1989 Session) amended ORS 316.095 to grant a \$750 income tax exemption to persons forced by health hazard to connect to a sewer system. Unfortunately, this exemption applies only to Health Division Orders issued between January 1, 1989 and January 1, 1990. [ORS 316.095(1)(d)] Because the Health Division administrator has not yet issued a final order, North Albany residents will not be eligible for this exemption. ORS 316.095(1)(d) should be amended to extend or remove these time limitation. Given the potential for delay, I recommend a liberal extension of time.

Lastly, the ability of the County and City to allow for additional development, and thereby reduce costs to the citizens, will be enhanced by legislative authorization of contract or delayed annexation. The League of Cities (LOC) has put together an annexation task force to prepare a package for the next session. Albany City Manager Steve Bryant is a member of that task force. I recommend working with Steve and LOC to provide the flexibility that the cities need.

I hope this discussion proves useful.

Jeffrey G. Condit

County Counsel

JGC: lm

Sincerely

cc: Board of Commissioners Steve Bryant Ron Hall



S101 STATE CAPITOL SALEM, OREGON 97310-1347 AREA CODE 503 378-8148

STATE OF OREGON LEGISLATIVE COUNSEL COMMITTEE

June 12, 1990

Honorable Mae Yih 34465 Yih Lane NE Albany, Oregon 97321

Dear Senator Yih:

You have asked this office to review our opinion of April 27, 1990, in which we concluded that the tax differential procedure authorized by ORS 222.111 (3) and 222.880 (6) was not available to the residents of North Albany. We reached that conclusion because we believed that the North Albany area was not going to be annexed to the City of Albany in order to alleviate the danger to public health, but would alleviate that danger by means of an alternative plan that did not provide for annexation.

We have since been informed that section 7 of the alternative plan calls for an election on the question of annexation to the City of Albany.

We believe that this feature of the alternative plan does allow a 15-year period of property tax differentials to be offered to the residents of North Albany under ORS 222.880 (6).

However, the use of the 15-year period will depend on a number of conditions:

- (1) The alternative plan, in its final form, must contain a provision calling for an election on the question of the annexation of the North Albany area to the City of Albany.
- (2) The provision in the alternative plan calling for an election on the question of annexation must provide for a 15-year period of phased-in property taxation by the City of Albany within the area proposed to be annexed.
- (3) The Environmental Quality Commission must approve and certify the alternative plan.

June 12, 1990
Page 2

(4) The Assistant Director for Health must certify and implement the alternative plan.

We agree that certification of an alternative plan by the Environmental Quality Commission is an "order" for the purposes of ORS 222.880 (6). Therefore, the assistant director, in implementing that order, may allow the use of the tax differential authorized by ORS 222.111 (3) for a period not exceeding 15 years.

However, as clearly expressed in ORS 222.880 (6), the City of Albany must consent to the 15-year period of phased-in property taxation within the area. Without the city's consent, the proposal for annexation may not provide for a period of phased-in property taxation that exceeds 10 years as provided in ORS 222.111 (3).

In accordance with the functions of the Legislative Counsel office, the opinions written by this office are intended only for the information and guidance of members of the Legislative Assembly and are not intended as guides for public officials in their administration of the law. For this reason, whenever an opinion written by the Attorney General, a district attorney, a county counsel or a city attorney is within the scope of that attorney's specific authority to provide opinions for the guidance of public officials, that opinion, insofar as it conflicts with an opinion rendered by this office, will control.

Very truly yours,

THOMAS G. CLIFFORD Legislative Counsel

Joseph M. Barkofski Deputy

TGC: JMB: 1b LC 452

RESOLUTION NO. 2970

A RESOLUTION TO ENDORSE THE ALTERNATIVE PLAN TO HEALTH HAZARD ANNEXATION FOR THE NORTH ALBANY HEALTH HAZARD AREA

WHEREAS, the City, Benton County, and the North Albany County Service District (NACSD) have collaborated in the creation of an Alternative Plan to provide sewer service to the North Albany Health Hazard Area as an alternative to mandatory annexation; and

WHEREAS, the City has engaged the professional services of Brown and Caldwell Consultants to create a Facility Plan for service for the entire North Albany area as a part of the Alternative Plan; and

WHEREAS, the Facility Plan has been completed following extensive staff input and review and public participation in the form of three public meetings; and

WHEREAS, the next step in the alternative plan process requires submittal of the Alternative Plan to the State Environmental Quality Commission (EQC) for approval; and

WHEREAS, a condition of EQC approval is the consent of all governmental entities involved in providing services to the area; and

WHEREAS, the Benton County Board of Commissioners, acting in their capacity as the governing body of the NACSD, will adopt the Alternative Plan to Health Hazard Annexation at their July 18, 1990 meeting;

NOW, THEREFORE, BE IT RESOLVED that the City Council endorses the Alternative Plan to Health Hazard Annexation as the preferred method of providing sewer service to the North Albany Health Hazard Area.

DATED this 11th day of July, 1990

Mavor

ATTEST:

City Recorder

BEFORE THE GOVERNING BODY OF THE NORTH ALBANY COUNTY SERVICE DISTRICT, BENTON COUNTY, STATE OF OREGON

A resolution authorizing application for and receipt of a state revolving RESOLUTION fund loan from the Oregon Department of Environmental Quality.

WHEREAS, the North Albany County Service District (NACSD) has the opportunity to apply for a State Revolving Fund (SRF) loan to fund a portion of the sanitary sewer system required to serve all or part of the North Albany area; and

WHEREAS, the North Albany project has been ranked by the Department of Environmental Quality (DEQ) on the priority list, thereby making the NACSD eligible to submit a preliminary application for an SRF loan;

NOW, THEREFORE, BE IT RESOLVED that a preliminary application for a State of Oregon SRF loan be submitted to the DEQ. If the preliminary application is approved by DEQ and if adequate loan funds are available in the SRF, the NACSD will submit a final SRF application.

Dated this 20th day of June

GOVERNING BODY OF THE NORTH ALBANY COUNTY SERVICE DISTRICT

Schrock, Commissioner

77-69840-85

BEFORE THE NORTH ALBANY COUNTY SERVICE DISTRICT GOVERNING BODY FOR THE STATE OF OREGON FOR THE COUNTY OF BENTON

In the Matter of Establishing)	
Procedures for Formation of)	ORDINANCE No. NACSD-28
Local Improvements Districts.)	

The Governing Body for The North Albany County Service District ordains as follows:

Section I. Short Title

This Ordinance shall be known as the "NACSD Improvement District Ordinance".

Section II. Definitions

As used in this Ordinance:

- A. "County" means Benton County, a Political Subdivision of the State of Oregon.
- B. "District" means the North Albany County Service District in Benton County, Oregon.
- C. "Governing Body" means the Governing Body of the North Albany County Service District (NACSD).
- D. "Local improvement" means engineering, constructing, or repairing any sewage or water main, or performing any related public work including acquiring any interest in land, for a water distribution or sewage collection system for which an assessment may be made against the property specially benefited.
- E. "Lot" means lot, block, or parcel of land.
- F. "Owner" means the owner of the title to real property or the contract purchaser of record, as shown on the latest available assessment roll in the office of the County Assessor.
- G. "Property benefited" means all property specifically benefited by a local improvement.
- H. "Property description" means a description
 - 1. By subdivision according to the United States survey coincident with the boundaries;
 - 2. By lots, blocks and addition names;
 - 3. By reference to the book and page or microfilm number of any public record of Benton County;
 - 4. By designation or tax lot number in a record maintained by the County Assessor.

Z-33

Any of the above descriptions is sufficient in all proceedings pursuant to this ordinance.

Section III. Creation of an Improvement District.

- A. Resolution of Intent to Improve: The Governing Body shall initiate the local improvement process by resolution, either upon petition of affected property owners or on its own motion. The resolution shall declare the intent to initiate an improvement, shall assign a project number to the improvement, and shall direct the County Engineer to prepare an engineering report.
- B. Engineering Report: The Engineering Report shall be filed with the Governing Body within 30 days after the date of the Resolution of Intent to Improve. This filing deadline may be extended by motion of the Governing Body. The Engineering Report shall contain:

1. The project title and number.

2. Map of the project.

3. A general description of the project.

4. A description of the area specially benefitted and the names of all property owners within the district as shown by the records of the County Assessor.

5. A description of any interests in land to be acquired.

- 6. An estimate of the cost of the project, including construction, legal, engineering, administrative and other direct or indirect costs attributable to the project.
- 7. A proposed assessment formula and estimated cost to each property owner in the district.
- 8. A statement of the total assessed value of the property within the district as determined by the County Assessor.
- 9. A feasibility recommendation.

C. Determining the Assessment Formula

- Any proposed formula for assessment of the costs of a local improvement shall be based upon:
 - A reasonable determination of the improvement district boundaries consistent with the benefits derived, and
 - b. A reasonable method of apportioning the sum to be assessed among the properties within the area determined to be specifically benefitted.
- 2. The Governing Body may reduce the total amount assessed to the benefitted properties by the amount received through other means of financing. Examples of alternative financing include: federal or state grants, service charges, bonds, or other legal means of financing a local improvement.
- 3. The Governing Body may also pay all or part of any improvement from the general fund of the North Albany County Service District when, in the opinion of the Governing Body, the proposed improvement either wholly or in part benefits the entire district. Any proportion to be paid by the District shall represent a reasonable relation between the benefits derived by the property specially assessed and the benefits derived by the service district as a whole.

6-34

۵. Public Hearing

> Scheduling: The Governing Body shall schedule a public hearing on the proposed improvement within five (5) days following the filing of the Engineer's Report.

2. Notice: The Governing Body shall provide at least ten (10) days notice of the hearing to property owners within the proposed improvement district. Notice may be given by posting, by newspaper publication, or by mail. The notice shall contain:

The time, date and location of the hearing.

The Date of filing of the Engineers' Report, and a b. statement that copies of the report are available at the __District Business office and the County Public Works Department.

A general description of the proposed improvement.

The estimated cost of the improvement, including estimated d. individual property costs.

The boundaries of the proposed district.

- A statement that objections and remonstrances should be filed prior to the hearing at the office of the Governing Generally Bedy Body.
- Conducting the Hearing: The Board of Commissioners shall 3. consider the objections and remonstrances, the map and Engineering Report, and the public testimony and evidence submitted at the hearing.

E. Resolution to Create the Local Improvement District

Following the close of the public hearing, the Governing Body may create the local improvement district by resolution, unless the governing body receives, prior to the conclusion of the public hearing, written objections signed by more than 50 percent of the affected property owners, representing more than 50 percent of the affected property. If the Governing Body receives such remonstrance, the proposed public improvement shall not be implemented.

2. The resolution shall contain:

- A provision that the costs of the improvements which are assessed to the benefitted properties shall be charged and liens placed against the property, and that the District may enforce collection of such assessments as provided by ORS-223.505 to 223.650, or any other method provided by
- A determination of the amount of the assessment to be b. charged against each lot within the district, according to the special benefits accruing to each lot from the improvement. The Governing Body may modify the proposed assessments in the engineering report if, after consideration of the public testimony, the Governing Body determines that different assessments are more equitable.
- A direction that the County Engineer shall prepare detailed plans and specifications of the improvement and shall invite bids for the construction of the improvement in accordance with the State law and the County Public /-35 Contracting Ordinance.

- When a local improvement district is being proposed for the solution purpose for improvements to undeveloped land, the Governing Body may require in the resolution additional participation from the proposing property owners of up to 50 percent of the total estimated project costs, in the form of a cash deposit. This deposit shall be placed with the County Finance Director. The deposit shall be invested and interest credited to the specific deposit. Once the improvement has been completed, but prior to the assessment, the total actual project cost shall be reduced by the deposit plus all accrued interest.
 - a. If, on completion of the project, the deposit plus interest is not sufficient to meet the percentage established in the resolution, the depositor shall pay an additional sum to meet the percentage.
 - b. If on completion of the project, the deposit plus interest exceeds the percentage established in the resolution, the excess amount shall be refunded to the depositer.
- F. In the event that a health nuisance or hazard is declared by the Benton County Board of Health, the North Albany County Service District Governing Body shall have full power and authority to create a Local Improvement District, waive all remonstrances, and construct such facilities as in the Governing Body's judgment are necessary to effectively abate the hazard or nuisance, and may assess the costs to the benefitting property in accordance with this ordinance.

Section IV. Preassessment

A. Preassessment and Estimation

The Governing Body may levy an assessment prior to construction of a local improvement. When the estimated cost of a local improvement has been ascertained on the basis of the County Engineer's estimate of costs, the award of a contract, or any other basis acceptable to the Governing Body, the County Engineer shall prepare the proposed assessment roll for the lots within the local improvement district. The assessment role must be approved by the Governing Body. Following approval, the County Engineer shall file the roll at the office of the County Finance Director. If a cash deposit is required in accordance with Section III(E)(3), the deposit must be made within thirty (30) days of acceptance of the proposed assessment roll by the Governing Body.

B. Notice

Notice of the proposed assessment shall be given in accordance with Section VI of this Ordinance. If a deposit is required under Section III, the deposit must be made prior to notice being given. The proposed assessment roll shall be considered by the Governing Body and processed by staff in accordance with the procedures described in Section 10 of this Ordinance.

C. Supplemental Assessment

If, upon completion of the improvement, the actual cost of the project is found to be greater than the estimated cost, the Governing Body may make a supplemental assessment for the additional cost and require an additional deposit as pursuant to Section III(E)(3). The process for determining and ordering a supplemental assessment shall be made in the same manner as the original assessment.

D. Assessment Credits

If actual cost is found to be less than the estimated cost upon completion of the improvement project, the Governing Body shall declare the same by order. The excess amounts shall be entered on the County lien docket as a credit upon the appropriate assessment. Thereafter, the person who paid the original assessment, or his legal representative or successor, shall be entitled to repayment of the excess amounts. If the property owner has filed an application to pay the assessment by installment, he shall be entitled to such refund only when such installments, together with interest, are fully paid. If the property owner has neither paid such assessment nor filed an application to pay in installments, the amount of such refund shall be deducted from such assessment, and the remainder shall be a lien on such property until legally satisfied.

Section V. General Procedure for Constructing Improvements

A. Bidding

It shall be the general policy of the District to call for bids for construction of local improvements and to award the bid to the lowest responsible bidder. This general policy, however, shall not prohibit the Governing body from providing that the District, rather than private contractors, shall construct a local improvement. The Governing Body may, in its discretion, reject any bid submitted for any local improvement construction project if the lowest responsible bid exceeds the estimated cost for construction as stated in the engineering report, or for any other reason consistent with the best interests of the District.

B. Combining Bid

In the event that two or more local improvement districts are combined for advertising for bids at the same time, each local improvement district so combined shall be bid separately. As an alternate, the County Engineer may lump together the total estimated bid quantities of all the districts combined for bidding and may call for bids on the total, and shall allocate and compute the amount bid for the combined districts and for each separate district.

C. Change in Specification

1. In the course of constructing an improvement, if the Engineer determines that the improvement cannot be constructed in compliance with the plans and specifications he may order one or more changes in those plans and specifications if he determines:

- a. That the improvement including the proposed change will be completed substantially as proposed and in the manner consistent with reasonable engineering and construction practices.
- b. That the modified improvement cost will not be more than ten (10) percent greater than the estimated assessable cost.
- 2. If the proposed improvement cannot be completed within the above limit by changing the plans and specifications, a revised assessment roll shall be produced based upon the higher estimates, in the manner provided for the initial assessment.

Section VI. Final Report and Assessment

A. Total Cost

When the improvement has been completed, the total cost shall be determined by adding the costs of the work, the cost of right-of-way, condemnation expenses, cost of engineering, supervision, inspection, advertising, legal expenses, and any other necessary and proper expenses, which costs and expenses shall be a part of the amounts to be assessed to the benefited properties. The Final Report of the above costs shall be submitted to the District Governing Body.

B. Preparation of Assessment Roll

When the Final Report has been approved by motion of the Governing Body, the County Engineer shall prepare a proposed assessment roll ordering and describing each lot to be assessed, with the names of the owners and shall levy against those lots in a manner directed by the Governing Body, this ordinance, and state law. When the proposed assessment roll has been completed, it shall be filed with the County Finance Director.

C. Notice of Final Hearing

When the proposed assessment roll is filed, the County Finance Director shall mail ten days notice of the time and place of the final hearing to each owner of property to be assessed. The notice shall be deposited in a post office in the County, prepaid and certified, addressed to affected land owners shown on the latest Benton County assessment records, at their last known address. If the address of the owner is unknown to the County Finance Director, the notice shall be mailed to the owner or his agent at the address where the property to be assessed is located. A notice may also be published in a newspaper of general circulations in Benton County. The mailed notice shall state:

- The amount proposed to be assessed against the property owned by the addressee;
- 2. The time and place of the public hearing at which the Governing Body will consider oral and written remonstrances to the proposed assessment roll;
- 3. Written remonstrances should be filed with the County Finance Director prior to the public hearing.

- D. Final Hearing on Assessment Role

 After the close of the public hearing, the Governing Body may refer
 the proposed assessment roll to the County Engineer for correction or
 adjustment or may make corrections or adjustments consistent with the
 standard provided in Section 4 of this Ordinance, and shall pass an
 assessment order confirming the assessment roll.
- E. Docketing Assessments
 Immediately after the Governing Body has approved the assessment order, the County Finance Director shall enter the assessments in the County unbonded lien docket, which assessments shall be a lien upon the respective lots against which they are placed. Such liens shall be first and prior to all other liens or encumbrances insofar as the laws of Oregon allow.
- F. Notice of Assessments
 The County Finance Director shall mail a notice of the approved order to each property owner. If there is no response from a property owner within 30 days after the notice and application is mailed, the County Finance Director shall verify the ownership of the property with a licensed title company or by any other means and shall mail a copy of the assessment notice to the owner so identified by certified mail. The notice shall state:
 - 1. That within thirty (30) days of the time of adoption of the assessment order, the owner of the assessed properties may file an application with the County Finance Director to pay the assessment in whole or in part on an installment basis, as provided by the Bancroft Bonding Act, ORS 223.205 to 223.295;
 - That, if the assessment is not eligible under the provision of the Bancroft Bonding Act, or if the owner of the assessed property does not apply to use the installment basis, all or part of the assessment shall be excluded from the installment payment procedure, and shall be paid in full by cash within 30 days of the date of entry in the unbonded lien docket.
- G. Payment of Assessments
 - Payment Options

 Payments may be made in whole or on an installment basis, as provided in the Bancroft Bonding Act, ORS 223.205 to ORS 223.295, which act is incorporated by reference into this ordinance. If installment payment has been chosen the County Finance Director shall cause the proper entries to be made in the bond lien docket as provided by ORS 223.230.
 - Interest
 Interest shall be charged at a minimum rate of 10% per annum or such other rate approved by the Governing Body until paid on the principal balance remaining in the lien docket from date of such entry, or of such entry corrected pursuant to any provision of this Ordinance, except that no interest shall be charged on that portion of the assessment paid within 30 days of the passage of the assessment resolution.

2.

H. Foreclosure

The District may proceed to foreclose or enforce any lien at any time after 60 days from the date of entry of the assessment in the unbonded lien docket, as provided by ORS 223.505 to 223.650, or any other method provided by law.

Section VII. Reassessments, Rebonding, Reinstatement

- A. The provisions of ORS 223.405 to 223.485 concerning reassessments, are adopted.
- B. The provisions of ORS 223.705 to ORS 223.750 concerning rebonding of bonded assessments which have not been fully paid are adopted and made a part of this Ordinance. The applicable interest rate for ORS 223.715 shall be the higher of 10% per annum or such other rate as approved by the Governing Body.
- C. The provisions of ORS 223.755, concerning reinstatement of delinquent bonded assessments before the property affected has been sold, are adopted and made a part of this Ordinance.
- D. The provisons of ORS 223.770, concerning assessment of public property benefited by improvements are adopted and made a part of this Ordinance.

Section VIII. Abandonment of Proceedings

The Governing Body may abandon or rescind any proceedings for improvements undertaken under this ordinance at any time. If liens have been assessed upon any property under this procedure, they shall be cancelled, and any payments made may be refunded to the current owner of the assessed property at time of repayment.

Section IX. Curative Provision

No improvement assessment shall be invalidated by failure to give the name of the owner of any lot or parcel of land, or the name of any person having a lien upon or interest in such property, or by reason of any error or omission, in any of the proceedings specified, unless it appears that the assessment made is unfair and unjust to the person complaining. The Governing Body shall have power and authority to remedy and correct all such matters by order.

Section X. Data Processing

The County Finance Department is authorized to use data processing forms and print out registers in lieu of an unbonded lien docket and a bonded lien docket provided the essential required information is recorded and maintained.

6-40

Section XI. Separability

If any portion of this Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portions shall be deemed independent provisions, and such holding shall not affect the validity of the remaining portions.

NORTH ALBANY COUNTY SERVICE DISTRICT GOVERNING BODY

YOTE

First Reading: August 7, 1985

Second Reading: August 21, 1925

Effective Date: Scanting 20 1975

Kacimin Manner

Approved as to Form:

District Legal Counsel

EXHIBIT 5

North Albany Health Hazard Area Sewer Facilities Plan

Brown and Caldwell Consultants' July, 1990 Plan contained in the files of Benton County and the City of Albany, and submitted to the Health Division and DEQ under separate cover.

EXHIBIT 9

Standard Construction Specifications

City of Albany, Oregon, March, 1986 Revised Edition. Document contained in the files of the City of Albany and submitted to the DEQ under separate cover.

EXHIBIT 10

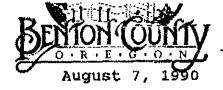
Large Scale Map entitled "Alternative Plan for Sewer Service to North Albany Health Hazard Area"

C-42

June, 1990. Map contained in the files of Benton County and the City of Albany, and submitted to the DEQ and the Health Division under separate cover.

OFFICE OF COUNTY COUNSEL

180 NW 5th Street Corvallis, OR 97330-4777



(503) 757-6890

Mr. Tim Gerling City of Albany P.O. Box 490 Albany, OR 97321

Re: North Albany Alternative Plan - Sewer Regulations

Dear Mr. Gerling:

You asked for written confirmation of the intent of the City of Albany and the North Albany County Service District (NACSD) regarding the applicable sewer ordinance.

As you know, under the adopted Alternative Plan the District will remain in place until the water bond is paid off or until the area is annexed by the City of Albany. Until such time, the Benton County Board of Commissioners will remain the Governing Body responsible for adopting any ordinance regulations.

During development of the Alternative Plan, County and City staff concluded that the current NACSD sewer operations ordinance should remain in place until the new sewer system is completed and the assets of the District are transferred to the City. This should occur in the Fall of 1991 or Spring of 1992. At that time, the District intends to adopt the City's sewer operations ordinance in order to provide for consistent and coordinated operation.

If you have any further questions, please don't hesitate to call.

Sincerely

Jeffrey G. Condit County Counsel

JGC: tw

cc: Board of Commissioners

DECEIVED

AUG 8 1990

Water Quality Division
Dept. of Environmental Quality

Title 10

SEWERS

Chapters:

10.08	Sewage Disposal PlantRegulationsFees
10.12	Regulations of Industrial Wastes
10.14	Sewer Connections of Unassessed Properties

Chapter 10.08

SEWAGE DISPOSAL PLANT--REGULATIONS--FEES1

Sections:

	10.08.010	Purpose and scope.
	10.08.020	Abbreviations.
	10.08.030	Definitions.
	10.08.040	Public policy.
	10.08.050	Sewer funds.
	10.08.060	Sewer rates.
	10.08.070	Sewer connection fees.
	10.08.080	Collection.
	10.08.090	General discharge prohibitions.
	10.08.100	Public sewers required.
	10.08.101	Nuisance.
	10.08.102	Notice to abate.
	10.08.103	Abatement procedure.
	10.08.104	Assessment of costs.
	$\overline{10.08.110}$	Industrial waste regulations.
	10.08.120	Approval of irregular discharge.
•	10.08.130	Service lateral construction.
	10.08.140	Power and authority of inspectors.
	10.08.150	Maintenance responsibility.
	10.08.160	Protection from damage.
	10.08.170	Alternate disposal methods.
	10.08.180	Special agreements.
	10.08.190	Discontinuation of services.
	10.08.200	Severability.
	10.08.210	Penalties.

10.08.010 Purpose and scope. Pursuant to the general laws of the State and the powers granted in the Charter of the City, the City Council does hereby declare its intention to acquire, own, construct, equip, operate and maintain within or without the city limits, a wastewater treatment plant or plants, sanitary sewers, equipment and appurtenances necessary, useful or convenient for a complete sewerage and treatment system. (Ord. 4555 §1, 12-22-1982).

10.08.020 Abbreviations. The following abbreviations shall have the designated meanings:

¹Prior ordinance history: Ord. 1960, 1975, 1998, 2153, 2510, 2524, 2657, 2716, 2739, 2786, 3253, 3330, 3472, 3484, 3491, 3565, 3788, 3800, 3820, 3843, 3857, 3875, 4015, 4102, 4144, 4555, and 4616.

to the POTW. In no case shall a slug load have a flow rate or contain concentrations or qualities of pollutants that exceed for any time period longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration, quantities, or flow during normal operation.

(11) Radioactive material. Any wastewater containing any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Public Works Director in compliance with applicable State

or Federal regulations.

(12) Hazard or nuisance. Any wastewater which causes a hazard to human

life or creates a public nuisance.

(13) Unpolluted water. No user shall contribute, cause or permit to be discharged any stormwater, surface drainage, subsurface drainage, groundwater, cooling water or unpolluted water into any sanitary sewer. (Ord. 4555 §9, 12-22-1982).

- 10.08.100 Public sewers required. (1) Connection Requirements. All structures or buildings normally used or inhabited by people and located within one hundred fifty feet of a public sanitary sewer shall have a connection to such sewer.
 - (2) Non-connection permit. The only exception to this shall be where a City waste nonconnection permit as defined in Ordinance 4129² has been issued and kept current. At such time as a public sewer becomes available to a property served by a private sewage disposal system, a direct connection shall be made to the public sewer in compliance with this ordinance, and any septic tanks, cesspools, and similar private sewage disposal facilities shall be abandoned and filled with suitable materials.
 - (3) Polluted discharges. It shall be unlawful to discharge to any natural outlet within the City or in any area under the jurisdiction of the City, any sanitary sewage, industrial waste, or other polluted water, except where suitable treatment has been provided in accordance with provisions of this chapter. (Ord. 4555 §10, 12-22-1982).
- 10.08.101 Nuisance. (1) A structure or building normally used or inhabited by people and located within 150 feet of a public sanitary sewer which is not connected to said sewer and for which a Nonconnection Permit has not been issued is declared a nuisance and may be abated as hereinafter set forth.
 - (2) The abatement procedures set forth herein are not exclusive but are in addition to abatement procedures provided by other ordinances, statutes, and common law. Nor are these abatement procedures a penalty for violating this code. Rather, these procedures are a supplement to all existing penalties. (Ord. 4641 §1, 8-8-1984)
- 10.08.102 Notice to Abate. (1) If the City Manager or his designate determines that a nuisance exists pursuant to Section 10.08.101(1) above, and,

Title10 Dated: 8/1/90 10

²Codified as Chapter 9.04.

in the exercise of his discretion, that the nuisance should be abated, he shall cause a notice to be posted on the premises upon which said structure or building is located directing the property owner to abate said nuisance.

- (2) At the time of posting, the City Manager of his designate shall cause a copy of the aforesaid notice to be forwarded by registered or certified mail, postage prepaid, to the record owner or owners of said property, or their agent at the address designated on the Linn County real property tax assessment roles.
 - (3) The notice to abate shall contain:
- (a) A description of the real property, by street address or otherwise, upon which the nuisance exists.
- (b) A direction to abate the nuisance by a specified time which may be set by the City Manager or his designate. Said time shall be at least 30 days and at most 180 days.
 - (c) A description of the nuisance.
- (d) A statement that unless the nuisance is corrected, the City may abate the nuisance and the cost of abatement, including but not limited to, the costs of all permits, connection fees, construction fees and material costs shall be assessed against the real property upon which the structure or building is located.
- (4) Upon completion of the posting and mailing, the persons doing said posting and mailing shall execute and file certificates stating the date and place of mailing and posting respectively.
- (5) An error in the name or address of the property owner/owners/agent shall not make the notice void and in such case the notice shall still be sufficient. (Ord. 4641 §1, 8-8-1984)
- 10.08.103 Abatement Procedures. (1) In the event that the structure or building in question has not been lawfully connected to a public sanitary sewer nor obtained a nonconnection permit within the time specified in the notice of abatement, the City Manager or his designate may cause said structure or building to be connected to the public sewer.
- (2) The aforesaid connection may be completed by the City or by private contractors hired by the City for the completion of said work.
- (3) The City, or the aforesaid private contractor and all authorized employees and agents thereof, shall have the right at reasonable times to enter into or upon the property in question as necessary to complete said connection.
- (4) Notwithstanding the foregoing, if the City Manager or his designate finds that the structure or building has not been connected to the public sewer within the time specified in the notice but finds that the property owner/owners are making a good faith effort to complete said connection, the City Manager, or his designate, may grant one or more 30-day extensions upon the written request from the property owner/owners in question. (Ord. 4641 §1, 8-8-1984)
- <u>10.08.104 Assessment of Costs</u>. (1) Upon completion of the connection pursuant to the foregoing abatement procedures, the City Manager or his designate, shall prepare a recap of all costs incurred in construction of the

Title10 Dated: 8/1/90 sewer connection in question. Said costs shall include the costs of all permits and connection fees customarily charged by the City at the time of said connection. To this sum shall be added 15 percent to help defer the City's engineering, legal and administrative expenses incurred in the aforesaid connection.

(2) A summary of costs shall be mailed by registered or certified mail to the same person or persons to whom the notice of abatement was sent as per Section 10.08.102(2) above, or their successors in title, and shall advise of the City's intent to assess said costs against the real property upon which the structure or building is located and shall further advise the owner/owners of their right to a hearing before the City Council prior to assessment upon receipt by the City Manager, within 30 days of the date of mailing, of a written request for hearing.

(3) If the costs of abatement are not paid to the City within 30 days from the date of the mailing of the summary of costs, said summary shall be presented to the City Council and if the Council finds said costs to be reasonable, the Council shall pass an ordinance directing the amount of said costs be entered in the docket of City liens; and upon such entry being made, said costs shall constitute a lien upon the property in question. Prior to passing said ordinance, the Council will afford the property owner/owners a right to be heard by the Council if a written request for hearing has been received by the City Manager within 30 days of the date of mailing of the aforesaid summary of costs.

(4) The lien shalld be enforced in the same manner as liens for street improvements and shall bear interest at a rate to be determined by the Council at the time of the ordinance referred to above. The interest shall commence from the date of entry of the lien in the lien docket and shall have priority over all other liens and assessments to the maximum extent permitted by law.

(5) An error in the name of the property owner/owners/agents shall not void the assessment nor will a failure to receive the notice of the proposed assessment render the assessment void, but it shall remain a valid lien against the property. (Ord. 4641 §1, 8-8-1984)

10.08.110 Industrial waste regulation. Any user that is classified by the City as an industrial user shall be subject to the provisions of Ordinance No. 4509, the Industrial Pretreatment Ordinance³. (Ord. 4555 §11, 12-22-1982).

10.08.120 Approval of irregular discharges: (1) Pollutant concentrations. Review and approval by the Public Works Director shall be obtained prior to the discharge into the public sewers any water or wastewater having a concentration greater than 1,000 mg/l of either BOD or SS.

(2) Combined sewers. Stormwater, surface drainage, subsurface drainage, groundwater, roof runoff, cooling water or unpolluted water may be admitted to a combined sewer only with the prior approval of the Public Works Director. (Ord. 4555 §12, 12-22-1982).

Title10 Dated: 8/1/90 12

³Codified as Chapter 10.12 of this title.

STATE OF OREGON

ENVIRONMENTAL QUALITY COMMISSION

In the Matter of the Final Alter- native Plan to Health Hazard Annexation of a Certain Territory Commonly Known as the North Albany Health Hazard Area, Pursuant to the Provisions of ORS 222.840 to 222.915)) CERTIFICATE)
	1

The Environmental Quality Commission of the State of Oregon on July 19, 1990 received a Final Alternative Plan to Health Hazard Annexation for the provision of sanitary sewer service to a territory commonly known as the North Albany health hazard area, submitted by the Benton County Board of Commissioners acting as the Governing Body of the North Albany County Service District, pursuant to ORS 222.890(2).

Pursuant to ORS 222.890(3), the Environmental Quality Commission has reviewed said Final Alternative Plan and hereby certifies that said Final Alternative Plan meets the requirements of ORS 222.890(2)

Dated this 21st day of September, 1990.

William P. Hutchison, Chairman Environmental Quality Commission

CG\WC7012 E - 1

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE MEMORANDUM

DATE: September 19, 1990

TO:

Environmental Quality Commission

FROM:

John H. Loewy JHL

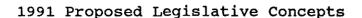
Assistant to the Director

SUBJECT: Legislative Update

Attached to this memorandum is a list of Legislative Counsel "drafts" which have been presented to the Legislative Interim Committee on Environment, Energy, and Hazardous Materials for their consideration. These "drafts" are being prepared by the committee staff either at the request of the committee cochairs or other members of the committee. If the committee supports these proposals they will be introduced at the beginning of the upcoming legislative session as "committee bills" and will be the subject of hearings and potential enactment.

I have also attached, for your information, an outline of LC 413 which is a comprehensive solid waste bill being developed by Senator Springer. It is similar in part to the solid waste bill being prepared by DEQ. It does, however, go substantially farther in dealing with recycling markets, procurement policies, minimum content requirements, and several other areas. Senator Springer is convening a work group, on October 2, of interested parties including DEQ, to further refine the bill before introduction. On the morning of the same day, a similar group will meet to discuss the provisions of the proposed comprehensive air fee bill.

I will keep you advised on developments in these areas along with the other DEQ bills which are currently being drafted.





OFFICE OF THE DIRECTOR .

LC 413: Comprehensive Solid Waste Bill (requested July 9)

- -market development (work group)
- -procurement policies (work group)
- -minimum content for newspapers
- -recycling standards (?)
- -funding (Sen. Bunn)
- LC 414: Extension of battery recycling bill to cover mercury and dry cell batteries (Minnesota)
- LC 415: Prohibition on contracts that prevent pass through of state tipping fees
- LC 419: Authority for DEQ or Governor to order mandatory curtailment of woodstoves under certain conditions.
- LC 420: PUC monitoring of garbage haulers (SB 1088)
- LC 422: Encapsulation of floatation devices
- LC 448: Integrated pest management, SB 1154
- LC 537: Unreclaimed bottle deposit pass through into DEQ recycling programs
- LC 590: Stack Burning modification
- LC 301: Oil spill penalty bill

Proposed legislation not yet drafted

- LC 416: Requirements for added tipping fees for closure and post closure costs at all landfills.
- LC 417: Comprehensive air quality bill (working group discussed July 18)
- LC 421: Oil spill prevention and response

>propose

PROPOSED SOLID WASTE LEGISLATION: LC 413-1 (9-11-90)

Preliminary Staff Summary

- 1. Sets recycling goals
 - a. 50 percent of total solid waste in state shall be recovered by 2000

2. Service Standards

- a. Local government units responsible for solid waste management shall by July 1, 1992:
 - create a collection and rate structure that encourages and rewards recycling
 - 2. implement a comprehensive education and promotion program
 - 3. provide information packets to new customers
 - 4. in communities of 4000 or more provide weekly curbside collection
 - 5. in communities of 10000 or more:
 - a. offer recycling collection service to commercial sources with 10 or more employees and 1000 square feet for at least two of three: cardboard, glass, or office paper
 - recycling information available quarterly in local media
- b. Local governments (over 4000 pop.) shall by July 1, 1993:
 - 1. provide residential recycling containers
 - 2. recycling for multi-family dwellings
 - 3. in communities of 10000 or more establish local government unit procurement programs
- c. DEQ may allow variance from 1993 standards if the local government can demonstrate that the 1995 goal and the 2000 goal can be achieved through existing recycling programs.
- 3. Requires DEQ to conduct biennial solid waste composition study.

- 3a. Requires local governments to produce solid waste management plans. Funding will be provided.
- 4. Eliminates "wastesheds" and places responsibility with local governments.
- 5. Adds "composting" to hierarchy of preferred solid waste management options. Composting is ranked fourth, behind recycling.
- 6. Environmental Quality Commission (EQC) develops and enforces service standards.
- 7. EQC establishes standards specific to jurisdiction, designed to meet overall state recycling goal.
- 8. EQC establishes supplemental standards that a local government unit must comply with if it fails to meet 1995 interim goal.
- 9. Requires annual recycling report or waste composition study from local governments.
- 10. Amends current tipping fee provision to include out-of-state waste as well as in-state; increases it by \$1 to \$1.50 total. The local government unit may keep the additional \$1 per ton if DEQ determines it is providing the opportunity to recycle. This money must be used to carry out implementation of service standards.
- 11. Local governments failing to provide opportunity to recycle are subject to civil penalties.
- 12. Requires certain state and public agencies to use compost
- 13. Requires certain consumers of newsprint, by 1993, to insure that 25 percent of all newsprint used is made from recycled content newsprint. Recycled content newsprint is defined as newsprint containing 40 percent post-consumer waste paper.
 - This requirement applies only if the recycled content newsprint is available at a price comparable to virgin newsprint and is available within a reasonable period of time.
- 14. The percentage of newsprint used that is made from recycled content newsprint shall be calculated in tons used and increase on a periodic basis up to 50 percent by 2000.
- 15. Requires the DEQ, in cooperation with the Department of Education to develop a recycling education program for schools.

- 3a. Requires local governments to produce solid waste management plans. Funding will be provided.
- 4. Eliminates "wastesheds" and places responsibility with local governments.
- 5. Adds "composting" to hierarchy of preferred solid waste management options. Composting is ranked fourth, behind recycling.
- 6. Environmental Quality Commission (EQC) develops and enforces service standards.
- 7. EQC establishes standards specific to jurisdiction, designed to meet overall state recycling goal.
- 8. EQC establishes supplemental standards that a local government unit must comply with if it fails to meet 1995 interim goal.
- 9. Requires annual recycling report or waste composition study from local governments.
- 10. Amends current tipping fee provision to include out-of-state waste as well as in-state; increases it by \$1 to \$1.50 total. The local government unit may keep the additional \$1 per ton if DEQ determines it is providing the opportunity to recycle. This money must be used to carry out implementation of service standards.
- 11. Local governments failing to provide opportunity to recycle are subject to civil penalties.
- 12. Requires certain state and public agencies to use compost
- 13. Requires certain consumers of newsprint, by 1993, to insure that 25 percent of all newsprint used is made from recycled content newsprint. Recycled content newsprint is defined as newsprint containing 40 percent post-consumer waste paper.
 - This requirement applies only if the recycled content newsprint is available at a price comparable to virgin newsprint and is available within a reasonable period of time.
- 14. The percentage of newsprint used that is made from recycled content newsprint shall be calculated in tons used and increase on a periodic basis up to 50 percent by 2000.
- 15. Requires the DEQ, in cooperation with the Department of Education to develop a recycling education program for schools.

- 16. Prohibits disposal in a landfill or solid waste incinerator of:
 - a. mercuric oxide, silver oxide or nickel cadmium batteries; the ban on lead-acid batteries continues.
 - b. waste tires
 - c. discarded or abandoned vehicles
 - d. discarded home or industrial appliances
 - e. used oil
 - f. yard debris
- 16a. Amends current lead-acid battery law to include mercuric oxide, silver oxide and nickel cadmium as well. Persons selling these batteries would be required to accept used batteries in exchange.
- 16b. Manufacturers of products using nickel-cadmium batteries would be required to make the batteries removable.
- 17. After Jan 1, 1992, any retail establishment that offers plastic bags shall also offer paper bags as an alternative and inform customers that a choice is available.
- 17a. Requires retailers to charge five cents for each bag over two gallons provided to customers.
- 18. Creates the Oregon Packaging Task Force charged with recommending specific actions to DEQ and the Legislature to reduce the volume of solid waste generated in the state.
- 19. Creates the Recycling Market Development Commission charged with making recommendations for expansion of markets for recyclable materials.
- 20. The Recycling Market Development Commission shall also:
 - a. establish a liaison with private industry to promote increased use of recycled feedstock.
 - b. assist local governments in including recycling in local economic development plans.
 - c. promote use of all available funds for expansion of recycling industry capacity.
 - d. review and advise DEQ on research and development programs.
 - e. review government procurement practices.

- f. review applications for grants and tax credits (contained in another bill).
- 21. DEQ shall provide technical assistance and training to local governments and businesses.
- 22. Establishes plastics recycling information clearinghouse.
- 23. Requires a study to develop a uniform cost accounting methodology to evaluate the costs of integrated solid waste management program options.
- 24. DEQ may establish a comprehensive research and development program to identify, develop and refine processes and technologies that will assist state and local governments and private industries.
- 25. Provides that all unclaimed bottle deposits be submitted to the OLCC by distributors. These moneys would be continuously appropriated to DEQ for administering solid waste management and recycling.
- 26. Expands definition of CFCs to include all ozone depleting chlorofluorocarbons. (ORS 468.612)
- 27. State agencies shall maintain procurement programs for the purchase of lubricating and industrial oil containing the maximum amount of recycled oil.
- 28. By July 1, 1992, al tires for use on state vehicles at the next replacement time shall be retreaded tires.
- 29. The Department of Transportation shall conduct paving projects using rubberized paving materials.
- 30. The State Parks and Recreation Department, from July 1, 1991 to June 30, 1995, shall conduct demonstration projects using recycled plastic for structures and materials in the state parks.
- 31. Expands price preference given to recycled products purchased by public agencies
- 32. Requires Legislative Assembly to use recycled products.

Sept. 11, 1990 Peter Green

- f. review applications for grants and tax credits (contained in another bill).
- 21. DEQ shall provide technical assistance and training to local governments and businesses.
- 22. Establishes plastics recycling information clearinghouse.
- 23. Requires a study to develop a uniform cost accounting methodology to evaluate the costs of integrated solid waste management program options.
- 24. DEQ may establish a comprehensive research and development program to identify, develop and refine processes and technologies that will assist state and local governments and private industries.
- 25. Provides that all unclaimed bottle deposits be submitted to the OLCC by distributors. These moneys would be continuously appropriated to DEQ for administering solid waste management and recycling.
- 26. Expands definition of CFCs to include all ozone depleting chlorofluorocarbons. (ORS 468.612)
- 27. State agencies shall maintain procurement programs for the purchase of lubricating and industrial oil containing the maximum amount of recycled oil.
- 28. By July 1, 1992, al tires for use on state vehicles at the next replacement time shall be retreaded tires.
- 29. The Department of Transportation shall conduct paving projects using rubberized paving materials.
- 30. The State Parks and Recreation Department, from July 1, 1991 to June 30, 1995, shall conduct demonstration projects using recycled plastic for structures and materials in the state parks.
- 31. Expands price preference given to recycled products purchased by public agencies
- 32. Requires Legislative Assembly to use recycled products.

Sept. 11, 1990 Peter Green

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE MEMORANDUM

TO:

Environmental Quality Commission

FROM:

Director

SUBJECT:

Agenda Item O; September 21, 1990, EQC Meeting

City of Coos Bay and Charleston Sanitary District

Petition from the City of Coos Bay Requesting Compliance Order and WPCF Permit for Charleston Sanitary District

Motion to Intervene to Specifically Appeal Contest Jurisdiction, and Motion to Dismiss forwarded by Charleston Sanitary District

Petition

On August 13, 1990, the City of Coos Bay (City) filed a petition asking the Environmental Quality Commission (Commission) to:

- 1) issue a compliance order to the Charleston Sanitary District (District) approving a cost allocation of \$892,000 as the District's share of construction costs for needed sewerage system improvements;
- 2) require the District's financial participation in the improvement project; and
- make the District liable (along with the City) for 3) meeting compliance dates in Commission Order WO-SWR-88-72.

In addition, the City requests that the Commission require that the District apply for and hold a Water Pollution Facilities Discharge permit to regulate the District's collection system.

Attachment A is a copy of the City's petition.

Motion

On August 27, 1990, the Department received a motion from the Charleston Sanitary District. It requests the Commission to:

1) allow the District to intervene in the proceedings; Memo to: Environmental Quality Commission September 21, 1990

Page 2

2) stay the petition pending circuit court review; and

dismiss the petition after a final decision by the 3) circuit court.

Attachment B is a copy of the District's motion.

Brief Chronology

1971 A sewerage basin management plan for the South Coast area, entitled "Coos-Curry Environmental Protection Program," identified pollution problems associated with raw sewage discharges in the Charleston area. 1973 Coos Bay received a grant from EPA to upgrade the Coos Bay No. 2 treatment plant from primary to secondary treatment (as required by 1972 Federal Clean Water Act)

and to expand the plant capacity to accept and treat wastes from the Charleston Sanitary District area

To comply with Environmental Protection Agency requirements, an intermunicipal agreement was prepared and signed by the City and District to govern financing, operations and other relationships for a twenty-year period with provisions for a 10-year extension.

Sanitary surveys by the Department documented septic tank failures and water quality degradation of Coos Bay from septic tanks in the Charleston area.

The Water Quality Division completed a shellfish protection study of Coos Bay and prepared a report entitled "Coos Bay Drainage Basin Bacterial Water Quality Management Plan." The study documented fecal coliform bacteria pollution in Coos Discharges from municipal sewage treatment plants were identified as major contributors to the pollution.

1974

1978-83

1983

September 21, 1990

Page 3

1986-88

Substantial violations of permitted limits for total suspended solids were documented at the Coos Bay No. 2 sewage treatment plant which serves portions of Coos Bay and the Charleston Sanitary District. The violations were attributed to high flow conditions and hydraulic overloading.

The Department required that the City perform a reliability evaluation of the future performance of the treatment plant. This evaluation included minimum Environmental Protection Agency reliability requirements for discharges into sensitive shellfish growing waters (Class I Reliability Criteria). A report was completed in June 1988 which concluded that most of the plant equipment was worn out and that Class I reliability requirements could not be met.

September 1988

The City and the Commission entered into a Stipulation and Final Order requiring sewage treatment facility improvements. The Order was subsequently amended and requires completion of construction by October 15, 1991, and attainment of full operational level by December 15, 1991. Charleston officials requested at the September 1988 Commission meeting that the City evaluate the cost effectiveness of a separate treatment plant to serve the Charleston area. Representatives of the City agreed to do so.

August 1989

A facility plan was completed for the Coos Bay No. 2 sewage treatment plant. This plan incorporated State and Federal requirements for secondary treatment; did not allow any increase in mass loadings; incorporated Class I Reliability Criteria for discharge into sensitive estuarine waters; and required sufficient capacity to handle population and commercial growth over a 20-year planning period (1989-2009). The plan screened out several alternatives and evaluated two in detail: 1) reconstruction and expansion of the existing plant, and 2) renovation of a second

September 21, 1990

Page 4

plant to serve the Charleston area. The facility plan concluded that reconstruction, upgrading, and expansion of the existing plant was the cost effective and environmentally sound solution.

The recommended plan addressed Class I Reliability Criteria, dry weather and wet weather flows, increased peaking capacity, treatment needs, and treatment facility capacity to handle forecasted growth over a 20-year period.

September 1989

The District contested the cost effective analysis in the facility plan. District engineering analysis concluded that some minor improvements at the existing plant and construction of a second plant to serve the Charleston area was cost effective.

September 1989

Department staff completed an environmental assessment of the facility plan and recommended grant award. The Environmental Protection Agency awarded a grant for improvements to the Coos Bay No.2 facility.

September 1989

Charleston Sanitary District, at the request of the Department, submitted an application for a Water Pollution Control Facilities permit for construction and operation of a collection system. The application was returned based on Justice Department legal advice that existing rules do not require a permit because the District waste is discharged to the Coos Bay facility and the District collection system is operated by Coos Bay (the permittee) pursuant to an intermunicipal agreement.

September 1989

The District applied for a permit to construct and operate a separate sewage treatment plant. The application was denied. Upon advice of legal counsel, the denial was rescinded and the District was given until September 10, 1990, to submit additional needed information.

Additional information was received on

September 21, 1990

Page 5

September 11, 1990, and is being evaluated by the Department.

Fall 1989

Arbitration of issues raised by the District was completed in December 1989 with a final decision in August 1990. The arbitrator dismissed charges that Coos Bay falsified records and that the sewage treatment plant was poorly operated, but reduced Coos Bay's charges to the District for past treatment of wastes.

May 1990

The Department approved detailed engineering plans for construction of improvements to Coos Bay No. 2 facility.

July 1990

The City submitted for Department review a proposed new intermunicipal contract between the City and the District, and a proposed allocation of the city and district shares of construction costs. The proposed contract was reviewed by the District. The District has not agreed to the proposed revisions, and believes the current contract is satisfactory. (No Department action has been taken to date.)

Summer 1990

The City has called for and received construction bids, and a contractor has been tentatively selected. The City has negotiated an extension of the contract award date pending Commission action on the Coos Bay petition.

August 1990

The Coos Bay City Council took unilateral action to rescind the 1974 intermunicipal agreement based on alleged non-payment by the District of wastewater treatment service fees. The District has specifically stated that it does not agree to termination of the contract.

August 1990

The City submitted a petition to the Commission, and the District submitted a motion to intervene.

August 1990

The City requested that consideration be given to extending the October 15, 1991 deadline identified in the Stipulation and Final Order to allow reasonable additional

September 21, 1990

Page 6

time for construction of improvements to the Coos Bay No. 2 sewage treatment plant.

<u>Issues</u>

Significant issues of equity have been raised by Coos Bay and Charleston Sanitary District. A summary of these issues, and the Department's view, is presented in Attachment C.

<u>Director's Recommendations</u>

The Director recommends that the Commission give consideration to one or more of the following alternatives:

- Advise Coos Bay and Charleston Sanitary District that the Commission declines to act on their requests because the matters at issue appear to be governed by the provisions of their own intergovernmental agreement.
- 2. Direct Department staff to consider whether any rule changes are needed to better handle this sort of situation in the future. (It would not be expected that any rule changes could be developed quickly enough to have an effect on the Coos Bay - Charleston conflict.)
- 3. Determine the extent to which any of the specific issues raised by the petitioners may warrant expression of the Commission's view of appropriate public policy. Options may include, but are not limited to:
 - A clear preference exists for a cost effective, environmentally sound regional approach to waste treatment as opposed to multiple, smaller treatment facilities.
 - Financial assistance (grants and loans) should continue to be limited to facilities that are determined to be cost effective and environmentally preferred in accordance with EPA regulations.
 - All users of a sewage treatment facility should pay their fair share of the full costs for providing treatment and disposal (capital costs as well as operation and maintenance costs).

September 21, 1990

Page 7

 The Commission expects the Department to take enforcement action in the event permittees fail to comply with duly established permit limits and compliance schedules.

Fred Hansen

Attachments:

A. Coos Bay Petition

B. Charleston Sanitary District Motions

C. Issues of Equity between District and City

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

. 23

24

25

26

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

OFFICE OF THE DIFFECTOR DEPARTMENT OF ENVIRONMENTAL QUALITY OF THE STATE OF OREGON. 4

PETITION

Department,

No. WO-SWR-88-72

Vs.

COOS COUNTY

CITY OF COOS BAY,

Respondent.

I.

- The City of Coos Bay operates a wastewater treatment plant (Plant No. 2) under NPDES Permit No. OR-002358-2 (100036).
- 2. Charleston Sanitary District discharges wastewater into Coos Bay's Plant No. 2.
- The Environmental Quality Commission issued a 3. Stipulation and Final Order to the City of Coos Bay (No. WQ-SWR-88-72) on September 9, 1988, requiring new or modified treatment facilities to be constructed and put into operation so as to meet the City's NPDES permit requirements by December 15, 1991.
- Pursuant to that Order a Facility Plan was 4. completed and submitted to DEQ which included a review and evaluation of an alternative plan for an independent treatment facility for the Charleston Sanitary District.
- The facility plan concluded, and DEQ and EPA 5. agreed, that the most cost effective, environmentally acceptable

BECHTOLD & LAIRD, P.C. ATTORNEYS AT LAW P.O. BOX 3295 650 NEWMARK AVENUE COOS BAY, OREGON 97420 (503) 988-3245

PAGE 1 - PETITION

A-1

treatment alternative was an improvement at the existing Plant No. 2 to serve both the City of Coos Bay and the Charleston Sanitary District.

- 6. An EPA grant was awarded to the City on September 29, 1989, in the amount of \$1,326,138 for the improvements to Plant No. 2. Those improvements are to include continued provision of services to the Charleston Sanitary District.
- 7. The City has just received approval to proceed with contract award for the construction project in the amount of \$3,128,806.
- 8. All users of Plant No. 2 must share in the costs of the improvements.
- 9. The City has estimated that the Sanitary District's fair and equitable share of the costs of the engineering to date associated with the improvements to Plant No. 2 and of the construction-period costs is \$892,000.
- 10. The City has prepared an intermunicipal agreement with the Sanitary District which addresses cost sharing and future operations. That agreement has been reviewed by DEQ for compliance with EPA and Oregon rules and regulations.
- 11. The District has neither agreed to sign the agreement nor to pay any portion of the construction costs. The District has not been paying its fair and equitable share of the costs of operation and maintenance of the plant for more than three years. For example, in June, 1990, it was billed \$5,085;

BECHTOLD & LAIRD, RC.
ATTORNEYS AT LAW
P. O. BOX 3295
650 NEWMARK AVENUE
COOS BAY, OREGON 97420
(503) 888-3245

PAGE 2 - PETITION

11 12

13

14 15

16

17

18

19

20

21 22

23

24

25 26

BECHTOLD & LAIRD, P.C. ATTORNEYS AT LAW P. O. BOX 3295 650 NEWMARK AVENUE COOS BAY, OREGON 97420 (503) 886-3245

approximately 1,250 District has The it paid \$1,306. connections.

- In order for the City of Coos Bay to remain in 12. compliance with the schedule set forth in the Stipulation and Final Order, and to pay the contractor as work progresses, it must receive the funds from the Sanitary District.
- The Sanitary District must be made jointly and 13. severally responsible with the City for meeting the compliance dates.
- By letter to the District dated May 31, 1989, DEQ required that the District complete "local funding arrangements" for its share of the costs of the improvements to Plant No. 2 To the best of and forward material to DEQ by June 20, 1989. the City's knowledge, the District has not yet complied.

THEREFORE, the City requests that a compliance order be issued to the Charleston Sanitary District approving the allocation of costs associated with the improvement project, requiring immediate District financial participation in the construction project so that the project can be completed consistent with the City's compliance order, and making the District jointly and severally liable for meeting the compliance dates in Order No. WQ-SWR-88-72 issued to the City of Coos Bay.

II.

Charleston Sanitary District owns and operates a l. collection system with 8 pump stations, serving approximately

BECHTOLD & LAIRD, P.C.

P. O. BOX 3295 650 NEWMARK AVENUE COOS BAY, OREGON 97420 (503) 888-3245 1,250 residential and commercial connections, with an average current daily flow of 221,000 gallons.

- 2. Under ORS 468.700(1) and (5), the District operates a "sewerage system" which is a "disposal system." Under ORS 468.700(2) and (6) the District's disposal system discharges "industrial waste" into the "treatment works" owned and operated by the City of Coos Bay.
- 3. ORS 468.740 requires a permit from DEQ for operation of any disposal system. OAR 340-45-010(24) defines a "WPCF permit" as a permit to construct and operate a disposal system with no discharge to navigable waters. Therefore, the District is required to have a WPCF permit to operate its system under Oregon law.
- 4. OAR 340-45-015(4) exempts persons who discharge wastes into a sewerage system from the requirements of obtaining a WPCF permit or NPDES permit, provided the owner of the sewerage system has a valid permit. The owner of the Sanitary District's sewerage system is the Sanitary District and it does not have a permit. If DEQ does not require a WPCF permit for the District, then all those persons within the District who discharge into the District's sewerage system would need a discharge permit from DEQ.
- 5. CAR Chapter 340, Division 49, further sets forth regulations pertaining to certification of wastewater collection system personnel. One of the purposes of a WPCF permit would be

to monitor compliance with those requirements by the Sanitary District in its operation of its collection system.

THEREFORE, the City requests that the Charleston Sanitary District be required to apply for, hold and comply with a valid WPCF permit in order to continue operation of its sewerage (collection) (disposal) system.

DATED this 10th day of August, 1990.

Respectfully submitted,

By Taule M Bechtold
Paula M. Bechtold

City Attorney

LYNN H. HEUSINKVELD

ATTORNEY AT LAW

A PROFESSIONAL CORPORATION 336 NORTH FRONT STREET COOS BAY, OREGON 97420

TELEPHONE (503+269-7511



DEPARTMENT OF ENVIRONMENTAL QUALITY

August 22, 1990

Environmental Quality Commission 811 S. W. Sixth Avenue Portland, Oregon 97204

Re: Dept. of Environmental

Quality v. City of Coos Bay Case No. WQ-SWR-88-72 Our File No. 212-28.13-21

E Steer Room

Dear Sir or Madam:

Enclosed for filing in the above referenced matter please find Motion to Intervene, To specially appear to Contest Jurisdiction and Motion to Dismiss.

For purposes of setting this matter for hearing, following is a list of my conflict dates:

DATES OF CONFLICT

September 4, 5, 6, 7, 1990

October 1, 2, 3, 4, 5, 10, 11, 12, 15, 22, 23, 24, 25, 26, 1990

Sincerely,

Lynn H. Heusinkveld

LHH:s

enc.

cc: client (w/enc) HGE, Inc. (w/enc)

P. Bechtold (w/enc)

LYNN H. HEUSINKVELD

ATTORNEY AT LAW

A PROFESSIONAL CORPORATION

336 NORTH FRONT STREET

COOS BAY OREGON 97420

TELEPHONE (503) 269-7.511



August 23, 1990

OFFICE OF THE DIRECTOR

Environmental Quality Commission 811 S. W. Sixth Avenue Portland, Oregon 97204

Re: Dept. of Environmental
Quality v. City of Coos Bay
Case No. WQ-SWR-88-72
Our File No. 212-28.13-21

Dear Sir or Madam:

In the Motion to Intervene, To Specially Appeal to Contest Jurisdiction and Motion to Dismiss forwarded to you yesterday the attachments to the attachments to the Motion were deleted to eliminate unnecessary bulk. Enclosed please find a copy of the documents with all exhibits attached to allow the Commission to refer to the exhibits as necessary.

By copy of this letter I am providing Ms. Bechtold a true and correct copy of the enclosure to this letter so that her file remains consistent with the Environmental Quality Commission's file.

Sincerely,

Lynn H. Heusinkveld

it bear your

LHH:s enc.

cc: client

P. Bechtold

Attachnest mercel 4/1/90 ge

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

01 1111 011112 01 0	
DEPARTMENT OF ENVIRONMENTAL QUALITY OF THE STATE OF OREGON,)) MOTION TO INTERVENE,) TO SPECIALLY APPEAR
Department,) TO CONTEST JURISDIC-) TION AND MOTION TO
vs.) DISMISS
CITY OF COOS BAY,) No. WQ-SWR-88-72
Respondent.) COOS COUNTY _)

COMES NOW the Charleston Sanitary District and respectfully requests permission to intervene in the above captioned proceedings for the purpose of entering a special appearance in order to contest jurisdiction and request dismissal.

POINTS AND AUTHORITIES:

A. STANDING:

- 1. On August 16, 1990 the Charleston Sanitary District received a Petition filed by Coos Bay in the above entitled proceedings. The proceedings appear to be directed towards the Charleston Sanitary District.
- 2. Charleston has not been allowed any standing in matters concerning the Regional Treatment Plant governed by the 1974 Regional Agreement which the District signed at Department of Environmental Quality's and Environmental Protection Agency's request.
- 3. At some time the Sanitary District should be allowed an opportunity to be heard and defend its interests.
 - 4. If punitive measures are to be taken against the

MOTION TO INTERVENE, TO SPECIALLY APPEAR TO CONTEST JURISDICTION AND MOTION TO DISMISS

-] -

2

3

4

5

6

7

8

9

District and its people then the District should be allowed to appear and contest.

- RES JUDICATA/AGREEMENT TO ARBITRATE: В.
- 5. The Charleston Sanitary District respectfully submits that issues presented for determination by the City of Coos Bay have previously been submitted for arbitration pursuant to the terms of the 1974 Regional Contract.
- The issues Coos Bay would have the Environmental Quality Commission decide have either already been resolved by arbitration or are subject to arbitration.
- A Final Judgment of the Circuit Court has been entered and the issues are now governed by the doctrine res judicata.
- 8. The Charleston Sanitary District believes that is was improper for the City of Coos Bay to resubmit these issues to the Commission and is challenging the City in the Circuit Court. A copy of the motions and pleadings filed in Circuit Court are attached.
- The issues raised by the City involve not treatment issues but the allocation of Contract and financing rights and responsibilities issues which are covered by the 1974 Regional Agreement and its arbitration clause.
 - ORS 36.315 provides as follows:

"Abatement of action or suit involving arbi-If any action, suit or proceeding trable issue. is brought upon any issue arising out of an agreement which contains a provision for arbitration of the matter in controversy in such action, suit or proceeding, then, upon application, any judge of a circuit court, upon being satisfied that the issue is referable to ar-

MOTION TO INTERVENE, TO SPECIALLY APPEAR TO CONTEST JURISDICTION AND MOTION TO DISMISS

26

27

28

1

2

3

4

5

6

7

8

9

bitration, shall abate the action, suit or proceeding so that arbitration may be had in accordance with the terms of the agreement. application shall be heard similarly to hearings on motions.

WHEREFORE, the Charleston Sanitary District request

- that this matter be stayed pending review by the Circuit Court.
- that these proceedings be dismissed upon an appropriate final decision of the Circuit Court.

Respectfully submitted, LYNN H. HEUSINKVELD, P. C.

By: Lynn H. Heusinkveld Attorney for Charleston Sanitary District Oregon State Bar # 76392 336 North Front Street Coos Bay, Oregon 97420 (503) 269-7511

MOTION TO INTERVENE, TO SPECIALLY APPEAR TO CONTEST JURISDICTION AND MOTION TO DISMISS

B-6

•

•

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF COOS

State of Oregon, ex rel

CHARLESTON SANITARY DISTRICT,

Petitioner,

and

ORDER TO SHOW CAUSE

RE: CONTEMPT

ORS 33.010(1)(e)

CITY OF COOS BAY,

Respondent.

Respondent.

ORCP 82A(1), (b),

(ii)

Based on the Motion and Affidavit filed herein on behalf of the Petitioner and upon the records in case numbers 89CV0284 and 90CV0011, it appears

- (1) The City of Coos bay has been required to submit to the arbitration of various issues between the City of Coos Bay and the Charleston Sanitary District relating to capital improvements, operations and maintenance, and the sharing of the costs thereof;
- (2) Arbitration Decisions determining said issues have been filed with the Court and Judgments entered thereon as provided by ORS 36.350;
- (3) No appeal has been taken from the Judgments nor have any exceptions been filed;
- (4) The Petition filed by the City of Coos Bay with the Environmental Quality Commission (Case No. WQ-SWR-88-72 (Exhibit H)) appears to include issues which have been resolved by the above described Arbitration;
- (5) The Petition (Exhibit H) also appears to be brought upon issues arising our of the Agreement between the parties, subject to Arbitration and therefore subject to abatement pending Arbitration pursuant to ORS 36.315;
- (6) the City of Coos Bay appears to be aware of and capable of complying with the Judgments of this Court;

IT IS THEREFORE ORDERED as follows:

1. That Respondent City of Coos Bay present itself after the fifth day following service of this Order, to-wit on the _______ day of _______, 1990, at _______ house, Coquille, Oregon, to show cause, if any there be,

ORDER TO SHOW CAUSE

RE: CONTEMPT

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

2

3

4

5

6

7

8

9

10

11

12

13

14

15

17

18

19

20

21

22

23

24

25

26

27

28

(a) Why the Respondent should not be held in contempt
for failure to comply with those portions of the 1989 Judg-
ment requiring Respondent to submit issues to arbitration and
the Court's 1990 Judgments enforcing the Arbitration Deci-
sions between the parties.

- why Judgment should not be entered in favor of the Petitioner and against the Respondent in the sum of not less than the amount required to indemnify the Charleston Sanitary District for any loss and/or injury prejudicial to Petitioner's rights caused by your alleged contempt,
- why the Court should not: punish Respondent's contempt by fine not exceeding Three Hundred Dollars (\$300.00), or in addition to the above described fine constrain the performance of the Judgments by appropriate Order,
- why the Respondent should not be enjoined during the pendency of this action from pursuing the Petition attached as Exhibit H to the Affidavit of Counsel, be required to cause the abatement or dismissal of the said Petition until these proceedings and any appropriate arbitration can be completed,
- why Respondent should not be required to pay not less than Five Hundred Dollars (\$500.00) attorney's fees and costs incurred in this proceeding,
- why Respondent should not pay Petitioner's cost and disbursements on this proceeding,
- That Respondent may file Affidavits with the Court and may present testimony at the hearing,
- That if Respondent fails to appear at the hearing, the Court may enter an Order in conformity with the assertions of Petitioner and the provisions of paragraph 1 of this Order to Show Cause.

Dated this	day of		_,	1990.
	CIRC	CUIT JUDGE		

ORDER TO SHOW CAUSE

RE: CONTEMPT

Submitted by:
Lynn H. Heusinkveld
Lynn H. Heusinkveld, P. C.
Attorney for Petitioner
Oregon State Bar # 76392
336 North Front Street
Coos Bay, Oregon 97420
(503) 269-7511

ORDER TO SHOW CAUSE RE: CONTEMPT

B-10

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF COOS

State of Oregon, ex rel CHARLESTON SANITARY DISTRICT,

Petitioner,

and

CITY OF COOS BAY,

Respondent.

Case Mo. 90CV0011 (and 89CV0284)

MOTION FOR ORDER TO SHOW CAUSE RE: CONTEMPT

Petitioner Charleston Sanitary District moves for an Order setting a time and place for hearing at which time Respondent shall appear and show, if any,

- why Respondent should not be held in contempt for failure to comply with those portions of the judgments on arbitration award resolving controversies between the parties as hereinafter enumerated,
- (2) why Respondent should not be enjoined from relitigating such issues before the Environmental Quality Commission and be compelled to dismiss the Petition filed before the Environmental Quality Commission a copy of which is attached to the Affidavit of Counsel as Exhibit H,
- (3) why Respondent should not be required to arbitrate issues described in the Petition remaining to be resolved as provided in the Contract between the parties and/or the Judgment heretofore entered, a copy of which are attached to the Affidavit of Counsel as Exhibits A and D.
- (4) for a judgment of indemnity and for Petitioner's reasonable attorney's fees, cost and disbursements.

-- 1 --

MOTION FOR ORDER TO SHOW CAUSE RE: CONTEMPT

16

17

18

19

20

21

22

23

24

25

26

27

28

1

2

3

4

5

6

A PROFESSIONAL CORPORTI 336 NORTH FRONT STREET COOS BAY, OREGON 97420 TELEPHONE (503) 269-751

POINTS AND AUTHORITIES

Following a contested arbitration Judgments were entered in this matter. The Judgments were not appealed by the Respondent. Respondent simply failed to comply with the Judgments and filed a Petition with the Environmental Quality Commission. The Petitioner has set forth those items which Respondent has failed to comply with in an Affidavit.

ORS 33.010 provides in pertinent part as follows:

"The following acts or omissions, in respect to a court of justice or proceedings therein, are contempts of the authority of the Court:

"(e) Disobedience of any lawful judgment, decree, order, or process of the Court, except as provided in ORCP 78C."

ORCP 78B provides as follows:

"B. Enforcement; Contempt
The Court or Judge thereof may enforce an order
or judgment directing a party to perform a
specific act by punishing the party refusing or
neglecting to comply therewith as for a contempt
as provided in ORS 33.010 through 33.150."

This contempt is subject to the limitations contained in ORS 33.020. The rights and remedies of the Petitioner are being defeated or prejudiced by the Respondent's contempt in that in order to secure the benefits of arbitration, Petitioner is having to resort to multiple proceedings at considerable additional expense.

The Court has the power to punish the contempt by fine, the fine being limited to \$300.00.

By reason of ORS 33.110 if any loss or injury to the Petitioner in this proceeding prejudicial to the Petitioner's

-2-

MOTION FOR ORDER TO SHOW CAUSE RE: CONTEMPT

LYNN H. HEUSINKVELD ATTORNEY AT LAW A PROFESSIONAL CORPORATION 336 NORTH FRONT STREET GOOS BAY, OREGON 97420 rights has been caused by the contempt, the Court may in addition to any punishment give judgment to the Petitioner granting recovery from the Respondent a sum of money sufficient to indemnify the Petitioner and to satisfy costs and disbursements. Here Respondent attempts to subject Petitioner to more that \$890,000.00 in liability by neglecting to disclose and abide by the arbitration results herein.

ORS 20.105 provides in pertinent part that in any civil action, suit or other proceeding in a Circuit Court, the Court may in it's discretion award reasonable attorneys fees appropriate in the circumstances to a party against whom a claim, defense or ground for appeal or review is asserted, if that party is a prevailing party in the proceeding and to be paid by the party asserting the claim, defense, or ground, upon a finding by the Court that the party willfully disobeyed a Court order or acted in bad faith, wantonly or solely for oppressive reasons. The facts in this case present a basis for application of the ORS 20.105 sanction.

Respectfully submitted,
LYNN H. HEUSINKVELD, P. C.

By: LYRE " REPRESENTED

Lynn H. Heusinkveld Oregon State Bar # 76392 Attorney for Petitioner 336 North Front Street Coos Bay, Oregon 97420 (503) 269-7511

MOTION FOR ORDER TO SHOW CAUSE RE: CONTEMPT

-3-

IN THE CIRCUIT COURT OF THE STATE OF OREGON 1 FOR THE COUNTY OF COOS 2 State of Oregon, ex rel 3 CHARLESTON SANITARY DISTRICT, 4 Petitioner, Case No. 90CV0011 5 (and 89CV0284) and 6 AFFIDAVIT OF CITY OF COOS BAY, COUNSEL Respondent. 8 9 STATE OF OREGON)ss. 10 County of Coos 11 12

I, Lynn H. Heusinkveld, being first duly sworn state:

Following the initiation of arbitration proceedings by the Charleston Sanitary District (Exhibit A to Complaint in Case No. 89CV0284), the City of Coos Bay filed a Complaint for Injunction and Declaratory Relief to restrain the District from arbitrating its differences with the City of Coos Bay.

Following Rule 21 Motions the Court took the matter under consideration and on April 7, 1989 returned a Memorandum Opinion which provided in pertinent part as follows:

> "The Court is bound by the interpretation of Section 15 of the Agreement of the parties. There is clearly a dispute as to the terms of the Agreement and the interpretation of the language of Section 15 itself which is subject to arbitration. A breach of the contract could be included as a failure by the participants, 'to agree or any aspect of implementation of the agreement.'

"It should be left to the arbitrator to interpret the terms of the Agreement and determine what matters are arbitrable.

AFFIDAVIT OF COUNSEL

エデコシニンベンドーロ

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

"The preliminary injunction should be denied and the arbitration should proceed."

Thereafter a Final Judgment (Exhibit A) was filed and entered granting the Charleston Sanitary District judgment against the City of Coos Bay, allowing the District to proceed with arbitration under the parties' Contract (Exhibit D), dismissing the City of Coos Bay's complaint in it's entirety, and granting the Charleston Sanitary District judgment for it's costs.

Thereafter the parties proceeded to arbitrate and a Decision of the arbitrator dated December 21, 1989 (Exhibit E) was secured and duly filed with the Court in case number 90CV0011 on or about January 3, 1990. Thereafter no exceptions having been filed, a Judgment (Exhibit B) on the December 21, 1989 arbitration decision was entered on February 26, 1990.

Thereafter the arbitrator entered a supplemental decision (Exhibit F) entitled Final Determination and this decision was also filed in file number 90CV0011. Following compliance with the requirement of ORS 33.310 and the lapse of twenty days, the Court entered a Judgment on arbitration award dated July 26, 1990 (Exhibit C).

No appeal has been taken from any of the aforementioned judgments and the same are now final decisions of the Circuit Court subject to any appeal rights remaining upon the July 26, 1990 judgment on arbitration award.

The Charleston Sanitary District has complied with the judgments.

AFFIDAVIT OF COUNSEL

The City of Coos Bay has not complied but has instead

(1) declared a recision of the Contract by letter signed by

Jim Watson, City Manager (Exhibit G), and (2) filed a Petition

with the Environmental Quality Commission requesting the

Commission redetermine the issues already determined in ar
bitration. A copy of the City's Environmental Quality Commis
sion Petition is attached as Exhibit H. Charleston contends

that all material issues raised by the Petition have been

determined by arbitration or are subject to arbitration:

1. ISSUE: CONSTRUCTION OF A REGIONAL TREATMENT PLANT

1.1 In City's Environmental Quality Commission Petition (paragraph 4 through 9 of the Petition (Exhibit H)) Coos Bay refers to its Facilities Plan and alleges that the most cost effective, environmentally acceptable treatment alternative is an improvement at the existing treatment plant no. 2 to serve both the City of Coos Bay and Charleston Sanitary District requiring continued provision of sanitary sewer services to the Charleston Sanitary District and that the City has estimated that the Charleston Sanitary District's fair and equitable share of the cost of engineering to date associated with the improvements to plant number 2 and of the construction period cost is \$892,000.00.

1.2 This issue has been fully arbitrated.

According to the Arbitration Decision the District owes nothing. The City was held responsible for it's actions regarding any potential liability from the operation and maintenance at plant number 2 (Arbitration Decision Questions

AFFIDAVIT OF COUNSEL

-3-

H. HELSINKVELD

3, 7, pp. 14, 15)¹ Charleston has been determined to have the right to rely upon the City to provide a plant capable of meeting the requirements of DEQ and EPA.² Charleston has been held not responsible for the hydrology problem at the plant and the accompanying cost of cure at the plant has been held not the responsibility of Charleston.³

Charleston has a contract which guarantees it 420,000

¹The City has assumed all duties of operating and maintaining plant number 2. The City is therefore responsible for it's action regarding any potential liability arising from the operation and maintenance at plant number 2.

Arbitration Decision, Question 7, pp. 14 & 15

²Question 3: Has the City breached the Agreement by failing to operate the plant in accordance with State and Federal guidelines?

Findings:

It is obvious from the testimony of both parties that the City has not been able to operate the plant in accordance with State and Federal guidelines.

Arbitration Decision, Page 8

³Many other analysis (sic) can be made using submitted data, but the fact is overwhelmingly clear to the arbitrator that the peak flows that occur at the plant are primarily from the Empire side of the system. It is reported by the City's own retained engineers that it is the hydraulic overloading that is causing <u>all</u> of the problems at plant number 2. The City has expended many man hours, considerable power, and equipment costs to combat the hydraulic overload problems. (emphasis added).

The City could also have expended great sums of money to upgrade the Empire collection system to reduce I/I and therefore reduce hydraulic overloading at the plant with a subsequent lowering of plant operating cost. The City did not choose to invest the necessary funds and the District has incurred higher annual costs as a result.

Arbitration Decision, Question 4.5, pp. 12 & 13
It is the arbitrator's decision that the hydraulic overloading is caused by the Empire side of the system and that the accompanying cost of cure in the plant should not be the responsibility of Charleston.

Arbitration Decision, Question 9, page 18

AFFIDAVIT OF COUNSEL

gallons of capacity⁴. As long as Charleston does not exceed that capacity, it has no duty under the Contract or under the Arbitration Decision to participate in a plant expansion.⁵

These issues have been submitted in arbitration and final Judgment has been entered. The City is barred by the principles of res judicata from relitigating these issues.

Any issues which remain unlitigated should be framed for arbitration and submitted to arbitration pursuant to the arbitration provisions of the 1974 Regional Agreement (Exhibit D, Section 15, Page 19).

2. ISSUE: THE CITY HAS PREPARED AN INTRAMUNICIPAL AGREEMENT WITH THE SANITARY DISTRICT WHICH ADDRESSES COST SHARING AND FUTURE OPERATION. THAT AGREEMENT HAS BEEN RE-VIEWED BY DEO FOR COMPLIANCE WITH EPA AND OREGON RULES AND REGULATIONS. THE DISTRICT HAS NEITHER AGREED TO SIGN THE AGREEMENT. . .

 $^{^{4}}$ A minimum capacity of 0.259 ((sic) the actual figure is 0.420) mgd shall be reserved for Charleston. . . .

In the event that Charleston shall produce sewage in a volume which exceeds their reserved capacity provided hereinabove . . . said participants shall pay on a pro rata basis for all additional construction, maintenance and operational costs made necessary thereby in order to provide wastewater treatment services contemplated by this Agreement.

Agreement for Secondary Waste Water Treatment (Exhibit D), Page 9, Paragraphs 2 & 3

⁵Question 6: Should the City be required to secure the approval of the Operations Committee to any modifications which will entail either operations or capital expense or modify the functioning of the existing treatment plant?

Findings:

The City should account to the Operations Committee for any proposed alterations of the plant which would affect the operational and maintenance costs.

Arbitration Decision, Page 14

with the City of Coos Bay. That Contract has been in force for sixteen (16) years. The Charleston Sanitary District has paid the City of Coos Bay hundreds of thousands of dollars on the basis of that Contract. The Charleston Sanitary District secured through arbitration a determination of it's rights under the Contract and has secured a Circuit Court Judgment affirming those rights. The City of Coos Bay's transparent effort to rescind the Regional Contract (Exhibit G) and then force it's own version of what contract rights the District should have (Exhibit H, Paragraph 10) is abhorrent and a patent abuse of contract law, the District's arbitration rights and the principles of res judicata.

3. ISSUE: THE DISTRICT HAS NOT BEEN PAYING IT'S FAIR
AND EQUITABLE SHARE OF THE COST OF OPERATION AND MAINTENANCE
OF THE PLANT FOR MORE THAN THREE YEARS. For example, in June,
1990 it was billed \$5,085.00. It paid \$1,306.00. The District has approximately 1,250 connections. . . . In order
for the City of Coos Bay to remain in compliance with the
schedule set forth in the stipulation and final order . . .
it must receive the funds from the Sanitary District.

3.1 The Arbitration Decision ordered correction of years of City overcharge and set the District rate at $$0.5896/1,000.^{6}$

-6-

⁶The arbitrator has analyzed a considerable amount of data submitted by both the City and Charleston. Exhibit B prepared by the arbitrator from the City billings, shows an ever increasing cost of operation at plant number 2. The City offered testimony that the plant never did operate properly.

⁽footnote 6 continued on Page 7)
AFFIDAVIT OF COUNSEL

22

23

24

25

26

27

28

1

The District has been paying it's sewer usage fees in accordance with the Arbitration Decision.

4. ISSUE: THE CHARLESTON SANITARY DISTRICT MUST BE
MADE JOINTLY AND SEVERALLY RESPONSIBLE WITH THE CITY FOR
MEETING THE COMPLIANCE DATES.

Petition, Paragraph 13.

Charleston should have been able to rely upon the City to provide a plant capable of meeting the requirements of DEQ and EPA.

From 1979 to 1983 the cost remained fairly constant with the exception of the 1980-81 fiscal year. A downtrend actually existed from 1980 to 1983. This may be partly explained by the addition of new connections to the system by Charleston which should have led to an overall reduction in cost per unit served due to new, relative (sic) water-tight connections. During the 1984-85 fiscal year the cost per unit treated made a remarkable jump of almost fifty per cent. only explanation offered that seems reliable to the arbitrator is that the City made many changes in operation procedures at the plant to combat hydraulic overloading. It is the arbitrator's decision that the hydraulic overloading is caused from the Empire side of the system and that the accompanying cost of cure at the plant should not be the responsibility of The average cost for the fiscal years . . . 1979-80 through 1983-84 was determined by dividing the cost of operating the plant in each year by total flow reported. Average cost per thousand gallons for this period equals \$0.5896.

The arbitrator has used this number to calculate the costs which should be billed to the District for each of the following years from 1984-85 to 1988-89. Additional connections to the Charleston system may have actually helped in reducing average costs but inflation costs would have worked to reduce any potential savings.

Table

Amount of overcharge by City equals \$47,496.00. The City should adjust it's bill to the District to reflect the downward adjustment.

Until an independent consultant has assisted in recommended flow measuring devises that are equal in accuracy the arbitrator recommends using the same cost per one thousand gallons measures (i. e. \$0.5896/1,000 gallons.

AFFIDAVIT OF COUNSEL

ATTORNEY AT LAW
A PROFESSIONAL CORPORATION
336 NORTH FRONT STREET
COOR BAY, OREGON 97420
TELEPHONE (503) 269-7511

problem at plant number 2 results from the City's decision not to do I & I work in Empire as it agreed in it's Contract⁷ and that Charleston should have been able to rely upon the City to provide a plant capable of meeting the requirements of DEQ and EPA (see footnote number 3). The arbitrator has also indicated that the City of Coos Bay is responsible for the consequences of it's actions regarding the replumbing and modification of the treatment plant, the inadequate detention time in the plant, and the release of sludge and grit and organic screenings and that it is responsible for any potential liability arising from the operation and maintenance at plant number 2 (see footnote number 1).

Paragraph 13 of Respondent's Environmental Quality
Commission Petition is an attempt to shift this liability to
the District contrary to the Arbitration Decision. The Arbitration Decision resolved this issue adversely to the City.
Res Judicata should prevent the City from relitigating this issue.

Arbitration Decision, Page 8 See also footnote number 3

 $^{^{7}{\}rm In}$ regards to determining the CSD annual charges based on flow records it is important to note several factors which enter into the operation.

^{5.)} Section 8 of the agreement states . . . 'The participants agree to adopt and enforce ordinances compelling and regulating the use of their respective sewage collection systems for the purpose of preserving a high standard of maintenance and efficiency in the operation of sewerage facilities and the sewage treatment plant. . .".

5. <u>ISSUE: REQUIREMENT FOR COMPLETION OF LOCAL FUNDING</u> ARRANGEMENTS.

5.1 The arbitrator ruled in favor of the District. He had the available information in evidence which included Coos Bay's complete Facility Plan (Exhibit 122 in arbitration) and documents from the Coos Bay concerning the award of a \$1.3 million EPA/DEQ grant referred to in Paragraph 6 of Exhibit H. The arbitrator nevertheless determined that the District's share was zero.

It is, therefore, unnecessary for the District to make any "local funding arrangements". This paragraph, paragraph 14 of the Environmental Quality Commission Petition, is actually just another effort by the City to ask the Environmental Quality Commission to ignore res judicata and do what the City failed to do in arbitration.

This issue has been litigated. If there are any new issues they should be submitted to arbitration under the Contract. Unless there are new matters for consideration in arbitration under the Coos Bay/Charleston Contract, the City should be required to abide by the Arbitration Decision.

SUMMARY:

Coos Bay should be required to withdraw and dismiss the Petition in case number WQ-SWR-88-72 before the Environmental Quality Commission of the State of Oregon.

The second cause of action is a bootstrap argument that relies upon the "absence" of a contract resulting from rescission. There is no Coos Bay Charleston Contract because of

AFFIDAVIT OF COUNSEL

-9-

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

the City's rescission based on the District's "failure to comply with the requirement that it pay it's fair and equitable share of the cost of operation and maintenance". reasoning is circular and is dependent on a rejection of the Arbitration Decisions and Judgments thereon. The Petition should be dismissed.

Charleston's fair share was determined in arbitration. The District is paying its fair share. Any new issues that the City has with the District should be discussed with the District, then submitted to the arbitration process established by the Contract if the parties cannot come to a mutual agreement.

Coos Bay should be required to withdraw and dismiss recently filed Petition in case number WQ-SWR-88-72 before the Environmental Quality Commission of the State of Oregon and indemnify the District from any costs, damages and attorney's fees the District has been made to suffer by the City's failure to honor the contract, Decisions in Arbitration and Judgments of this Court.

Lynn H. Heusinkveld

Subscribed and sworn to before me this 22 day of

Notary Public for Oregon
My Commission expires: 9-8-93

نئے۔۔۔

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF COOS

1909 APR 25 PM 4: 25

CITY OF COOS BAY, an Oregon municipal corporation,

COOS COUNTY COURT

Plaintiff,

Case No. 89CV0284)REGON

FINAL JUDGMENT

VS.

CHARLESTON SANITARY DISTRICT, a domestic sanitary district,

Defendant.

The Court having entered Orders against Plaintiff and finding generally in favor of Defendant on all issues and there being no just reason for delay; now, therefore,

IT IS HEREBY ORDERED AND ADJUDGED that Defendant have judgment against Plaintiff, the City of Coos Bay, dismissing the complaint in it's entirety and for Defendant's costs and disbursements incurred herein taxed at \$100.50 and that execution issue therefor.

Dated this 24th day of

ROBERT F. WALBERG, JUDGE

COURT REPORTER: BETSY CARROLL BARRETT Coos County Courthouse Coquille, Oregon 97423

SUBMITTED BY:

LYNN H. HEUSINKVELD, P. C.

HEUSINKVELD By:

Lynn H. Heusinkveld, OSB # 76392 Attorney for Defendant 336 North Front Street Coos Bay, Or. 97420 269-7511

EXHIBIT A

1	IN THE CIRCUIT COURT FOR THE STATE OF OREGON
2	FOR THE COUNTY OF COOS
3	CHARLESTON SANITARY DISTRICT,)
4	Petitioner,) Case No.
Б	and) JUDGMENT ON
6	CITY OF COOS BAY, ARBITRATION AWARD
7	Respondent.
8	· · · · · · · · · · · · · · · · · · ·
9	WHEREAS, Petitioner filed the award of the arbitrator
10	in the above captioned matter, along with the written agreement for regional secondary wastewater treatment between the parties
11	which contains the arbitration provisions and the petition for
12	upon each of the parties interested on January 3, 1990, and that
13	award, and that pursuant to ORS 33.310 judgment is to be entered upon the award,
14	IT IS HEREBY ORDERED that judgment is entered on the
15	
16	DATED CHIEF CHIEF
17	Richard L. Barroft
18	CIRCUIT COURT JUDGE
19	Presented by:
20	1. C. M. Decklard
21	Paula M. Bechtold, OSB #75031 Of Attorneys for Respondent
	Approved as to form:
22	Approved as to zermi
23	Lynn II. Heusinkveld, OSB #76392
24 	Attorney for Petitioner
25	
26	

LD & LAIRD, P.C RNEYS AT LAW D BOX 3295 WMARK AVENUE IN THE CIRCUIT COURT OF THE STATE OF OREGON | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 150 | 15

WHEREAS, Petitioner filed the Final Award of the arbitrator in the above captioned matter, and it appearing that the Final Award has been served upon each of the parties interested on June 13, 1990, and that no exceptions were filed within twenty (20) days after service of the Final Award, and that pursuant to ORS 33.310 judgment is to be entered upon the Final Award,

IT IS HEREBY ORDERED that judgment is entered on the Final Award.

Dated this 26th day of

1990

Billian I. Pouch

CIRCUIT COURT

Presented by:

Lynn II. Heusinkveld Lynn II. Heusinkveld, P. C. Oregon State Bar # 86392 336 North Front Street Coos Bay, Oregon 97420 (503) 269-7511

EXHIBIT C

AGREEMENT FOR REGIONAL SECONDARY WASTE WATER TREATMENT

CUOS BAY

AND

CHARLESTON SANITARY DISTRICT

1974

AGREEMENT

WHEREAS, Coos Bay and Charleston desire to provide secondary waste water treatment for the protection of the public health and to make provisions for future residential, commercial and industrial gorwth,

NOW, THEREFORE, for and in consideration of the covenants and agreements hereinafter set forth to be kept and performed by the parties hereto it is mutually agreed as follows:

SECTION 1. <u>Definitions</u>. The following words, phrases and terms used in this contract shall have the meaning hereinafter set forth in this section:

- A. Biochemical Oxygen Demand, or BOD, means the quantity of oxygen expressed in parts per million by weight, utilized in the biochemical oxidation of organic matter under standard laboratory conditions for five days at a temperature of 20 degrees C. The laboratory determinations shall be made in accordance with procedures set forth in "Standard Methods."
- B. <u>Charleston Pump Stations</u> shall mean all pump stations owned by the Charleston Sanitary District.

C. <u>Combined Sewer</u> means a sewer receiving both surface runoff and sewage.

D. <u>Chlorine Requirement</u> means the amount of chlorine, in parts per million by weight, which must be added to sewage to produce a specified residual chlorine content, or to meet the requirements of some other objective, such as odor control, in accordance with procedures set forth in "Standard Methods."

- E. <u>Debt Service Benefit</u>. Debt Service Benefit shall mean the monetary advantage realized by the City of Coos Bay (as a result of the combined participation of all parties to this agreement in the Regional Sewerage Plan contemplated by this agreement) resulting from the reduction of total capital expenditure and interest cost for the construction of the Regional Treatment Plant and related facilities within the City of Coos Bay by the City of Coos Bay.
- F. <u>DEQ</u> shall mean the Oregon State Department of Environmental Quality acting through and by the Environmental Quality Commission.
- of food, and from the handling, storage, and sale of food products and produce.
- and dispensing of food that has been shredded to such degree that all particles will be carried freely in suspension under the flow conditions normally prevailing in public sewers with no particle greater than one-half inch in any dimension.

- I. <u>Domestic Waste or House Sewage</u> means any sanitary sewage which is derived principally from dwellings, business buildings and institutions.
- J. <u>Industrial Waste or Trade Waste</u> means liquid wastes from industrial processes, thus being distinguished from domestic sewage. To differentiate between business and industrial waste, any non-residential waste having an excess of 300 ppm of BOD or suspended solids shall be classified as industrial waste.
 - K. MGD means one million gallons per day.
- L. <u>Parts Per Million or ppm</u> means a weight-to-weight ratio; the parts per million value multiplied by the factor 8.345 shall be equivalent to pounds per million gallons of water.
 - M. Participant shall mean any party hereto.
- N. pll means the logarithm (base 10) of the reciprocal of the hydrogen-ion concentration expressed in moles per liter. It shall be determined by one of the procedures outlined in "Standard Methods."
- tion costs, and shall also include the costs of field engineering, construction supervision and inspection and administrative costs incurred for the construction of Coos Bay Waste Water Treatment Plant #2. "Net Project Cost" shall mean Project Cost less any State or Federal grants which serve to offset or reduce the cost of construction of the waste water treatment plant.

- P. <u>Sanitary Sewer</u> means a sewer that conveys sewage or industrial wastes, or a combination of both, and into which storm, surface and ground-waters or unpolluted industrial wastes are not intentionally admitted.
- Q. <u>Sewage</u> means the water-carried human, animal, or household wastes in a public or private drain, and may include ground-water infiltration, surface water intrusion, and industrial waste.
- R. <u>Waste Water Treatment Plant</u> means Coos Bay's No. 2 Waste Water Treatment Plant, as expanded to provide secondary treatment facilities.
- S. <u>Sewerage System</u> means the system of sewers and appurtenances for the collection, transportation, and pumping of sewage and industrial wastes. For the parties to this agreement the following shall be included in conjunction with the Sewerage Plans as hereinafter defined.

Charleston shall include metering and sampling facilities, to be approved by Coos Bay and constructed by Charleston, to measure the total flows from the entire Charleston sanitary sewer system including both domestic waste and industrial waste, if any. Such metering equipment shall include a compatible transmitting device suitable to transmit flow data on a leased telephone line to Plant #2 recording equipment.

dures set forth in the latest edition of "Standard Methods for the Examination of Water, Sewage and Industrial Wastes," published jointly by the American Public Health Association, the American Water Works Association, and the Federation of Sewage and Industrial Wastes Association.

- U. <u>Storm Drain</u> means a drain that carries storm, surface and ground-water drainage, but excludes sewage and industrial wastes.
- Y. Storm Water means that portion of the rainfall that is drained into the drains.
- W. <u>Suspended Solids</u> means solids that either float on the surface of, or are in suspension in water, sewaye, or industrial waste after pre-treatment by one or more of the following methods:
 - (1) Grit Removal
 - (2) Grinding
 - (3) Settling for a minimum of 2 hours
 - (4) Screening
- X. Unpolluted Nater or Liquids means any water or liquid containing none of the following free or emulsified grease or oil; acids or alkalies; substances that may impart taste-and-odor or color characteristics; toxic or poisonous substances in suspension; colloidal state or solution; odorous or otherwise obnoxious gases, and shall contain not more than 30 parts per million each of suspended solids or biochemical oxygen demand.

 Analytical determinations shall be made in accordance with procedures set forth in "Standard Methods."

SECTION 2. Local Finance

A. Basis for Allocating Costs

(1) It is hereby agreed by the Participants that the following

tables are to be used as a basis for determining benefits received by the Participants, and allocation of construction costs and operation and maintenance costs.

(2) The Participants further agree that the following tables represent the best engineering estimates available to them at the date of this agreement and that the average percentages and estimated costs set forth are valid and shall be used as a realistic means of determining the amount of benefits received, and as a method of assigning the actual construction costs and operation and maintenance costs to be paid by each participant.

ESTIMATED REGIONAL TREATMENT CONSTRUCTION COSTS

" 	Flow, .m.g.d.	Percentage of Flow	Percentage of B.O.D.	Percentage of Construction Costs
Coos Bay	1.20	74.1	66.7	70.4
Charleston	0.42	25.9	33.3	29.6
	1.62	100.0	100.0	100.0

the participants that each receives certain benefits from the use of a regional treatment plant in terms of decreased operation and maintenance costs, more reliable operation because of the larger treatment plant, a larger staff of qualified operators and technicians and the eligibility of each participant to receive Federal and/or State grants to assist in the construction of both conveyance and secondary treatment facilities.

- C. <u>Percentage of Payment for Participants</u>. Each of the participants shall be obligated to pay the following list percentages of the new project cost as herein defined, such amounts to be used by Coos Bay for construction of Treatment Plant #2.
 - (1) Coos Bay 70.4%

100.0%

D. <u>City Maintenance</u>. Each Participant shall make all reasonable effort to obtain all funds necessary to construct, equip, renovate and/or remodel the particular plant or transmission lines and sewer lines which it is the obligation of such Participant as provided herein to so construct, equip, removate and/or remodel; such funds shall be obtained from the proceeds of the sale of general obligation bonds (or by a combination of the sale of such bonds and the obtaining of State and/or Federal grants and/or loans). This Agreement shall be null and void if any Participant fails to obtain the approval of its voters to a bond issue submitted by such Participant to provide all or part of said funds so required to be raised by such Participant.

SECTION 3. Construction and Operation of Facilities

A. Division of Responsibility

(1) The Sewerage Systems and Waste Water Treatment Plant to serve the areas, shall be planned, financed, constructed, operated, maintained and expanded in accordance with the terms of this Agreement, and any Supplements thereto as hereinafter provided.

- struction for Coos Bay Waste Water Treatment Plant #2, for sewage treatment facilities. Coos Bay shall design, finance, construct, operate and maintain the waste water treatment plant at the site of Coos Bay's present waste water treatment plant #2. Said treatment plant shall have a capacity of not less than 2.02 MGD, such capacity being the estimated sewage from a population equivalent of not more than 20,200 persons at an average flow of 100 gallons per capita per day. A minimum capacity of 0(259 MGD shall be reserved for Charleston, and the Participants shall participate in the cost of design, financing, construction, operation and maintenance of said waste water treatment plant as hereinafter set forth.
- (3) In the event that Charleston shall produce sewage in a volume which exceeds their reserved capacity provided hereinabove in Paragraph 3.A.(2), said participants shall pay on a pro-rata basis for all additional construction, maintenance and operational cost made necessary thereby in order to provide waste water treatment services contemplated by this agreement.
- capacities, and there exists unused treatment capacity at the Waste Water Treatment Plant, said participant shall pay to the City of Coos Bay the prorata portion of the original net project cost of said waste water treatment plant ascribed to such additional treatment capacity, the use of which is made necessary by the additional contribution to the system over and above that participalit's reserved capacity as defined herein.

- _(5) The waste water treatment plant shall be capable of providing secondary treatment meeting the standards of the DEQ.
- (6) Charleston shall have the primary responsibility for collection and transmission of its sewage to the Coos Bay Waste Water Treatment Plant site #2. They shall design, finance, construct, operate and maintain their sewage systems.

B. Waste Water Treatment Plant.

- (1) Coos Bay shall pay the project cost of Waste Water

 Treatment Plant #2 and from profits of General Obligation Bonds to be

 issued by Coos Bay or from Grants and Loans. Charleston shall contribute
 thereto when General Obligation Bonds are sold for construction of collection and transmission facilities.
- (2) The Participants shall contribute to the cost of operation and maintenance of the Waste Water Treatment Plant for waste water pumped and treated in the Waste Water Treament Plant, in the manner provided hereinafter in Section 4 of this agreement.
- immediately initiate a record keeping system, when flows are developed, to record flows and BOD loadings, in addition to flow transmission to the waste water treatment facility. Coos Bay shall maintain records pertaining to flows, BOD and suspended solids at the treatment plant. Both Participants shall have the right of access to all such information and further shall have the right of access to such meters and sampling stations for

the purpose of reading such meters or collecting samples, and a right to maintain a separate record of such information.

- (4) Based on actual flows and BOD londings from Charleston and Coos Bay, an Operations Committee shall establish the Charleston service fee to be paid to Coos Bay for operating and maintenance costs. Such rate shall be reviewed at the end of the first year and may be adjusted to reflect the actual costs of operating and maintenance costs. After the review and adjustment of any of the first year's rates, the Operations Committee shall review and adjust any or all of the rates as hereinafter set forth, but in any case review and adjust the rates annually.
- (5) All sums paid to Coos Bay under this paragraph shall be kept by Coos Bay in a separate fund and Coos Bay shall hold such fund in trust, account annually to both Participants, and disburse from the fund only such amounts as are necessary to, in order of priority:
- (A) Operate and maintain the plant in accordance with State and Federal guidelines, and
- (B) Pay deficits in the foregoing and accumulate from the balance, if any, such reserve fund as the Participants may deem reasonable.
- (6) Coos Bay's books and records regarding said receipts and said funds and records of the cost of operation and maintenance of the plant shall be available for inspection and audit at all reasonable times by authorized representatives of Charleston. Both Participants, shall each

month file with Coos Bay, for purposes hereof, a statement showing the total flow, BOD loading within its jurisdiction as of the date thereof, which statement shall be available for inspection by all Participants.

The Operations Committee shall have the right to audit and redetermine the statement of customers filed by any Participant.

(7) Coos Bay shall establish and maintain a record system to show the operation and maintenance costs of the Waste Water Treatment Plant #2 which will clearly show both budgeted and actual expenditures in terms of personnel services, materials and supplies and capital expenditures. Such records shall be made available upon request at all reasonable times to authorized representatives of each Participant.

cipants agree that operation and maintenance of the Charleston sewerage system by the City of Coos Bay appears desirable to both parties. When the Charleston system is completed, Coos Bay shall assume full responsibility for operation and maintenance of the system, and shall charge Charleston monthly for services provided. All charges for personnel and equipment shall be itemized by Coos Bay with monthly billings. Operation of this system shall be managed by the Operations Committee, and disputes shall be handled in accordance with applicable portions of this agreement.

SECTION 5. Operations Committee.

A. <u>Formation</u>. The Participants shall cooperate in the appointment of an Operations Committee. The Committee shall consist of two persons selected as follows: One representative appointed by the governing body

of each of the Participants. In addition, the members shall be entitled to

use the services of such advisors as they deem advisable.

B. Tenure. A member selected by a Participant shall serve until he is replaced by the governing body of such Participant which may be done at any time and for any reason or until he resigns.

C. Procedure.

- (1) Any and all decisions made by the Operations Committee shall require a unanimous vote of both members. Should a unanimous vote not be possible the question shall be submitted to arbitration as hereinafter specified.
- (2) All rules governing the procedure of the Operations

 Committee shall be determined and established by said Committee with the only limitation being that such rules shall not be contrary to any express provision of this contract.

D. Dutles.

- (1) The Committee shall be charged with establishing uniforms: charges applicable to the Participants. The Committee shall take into consideration such factors as volume of sewage flow, and strength of sewage measured in terms of both Bio-Chemical Oxygen Demand and Suspended Solids.
- (2) Either Participant has the right to a hearing before the Operations Committee if it objects to the base charge. The uniform

charges so established shall constitute a portion of the sewer service fee which each Participant shall be responsible to collect and to contribute for using the Regional Sewerage Facilities. The uniform charge shall be referred to herein as the "base charge" or minimum charge. In setting the amount of the "base charge," the Committee will set it in such an amount as to produce adequate funds with which to meet the following obligations:

- (A) Operate and maintain the plant in accordance with State and Federal guidelines, and
- (b) Pay deficits in the foregoing and accumulate from the balance, if any, such reserve fund as the Participants may deem reasonable.
- by the Operations Committee using available information.
- (4) Each Participant shall have authority within its sound discretion to increase or decrease the sewer service fee over and above the base charge to meet local requirements. It is the policy of the Participants, and such policy shall be followed by the Committee, that whenever feasible, the base charge shall be reduced to make greater financial resources from monthly sewer service fees available to the Participants.
- E. <u>Power</u>. All decisions of the Committee on any subject which is within its jurisdiction by the express or implied terms of this contract shall be final and completely binding on all of the Participants.

SECTION 6. Payments.

A. The Participants shall annually make adequate and appropriate provisions in their budgets to meet their financial obligations to this Agreement.

B. Payments by Charleston shall be made monthly.

SECTION 7. Rights of Way and Easements Upon Public Streets and the Moving of Conflicting Utilities.

Public Rights of Way. The Participants shall provide plans and give at least sixty (60) days prior notice of its intention to construct sewerage facilities on a public street or road, owned by a Participant, and such notice shall indicate the location and right of way requirements for installation. The Participants agree that the required right of way, within the street or road, as the case may be, will be made available for the installation without cost, except that the Participant doing the work shall be responsible for the repairs of all damaged facilities and the restoration of areas to the condition existing prior to construction.

SECTION 8. Rules and Regulations for the Disposal of Sewage and for the Construction and Use of Sewerage Facilities.

Ordinances. The Participants agree to adopt and enforce ordinances compelling and regulating the use of their respective sewage collection systems for the purpose of preserving a high standard of maintenance and efficiency in the operation of the sewerage facilities and the sewage treatment plant, and mutually undertake to cooperate to the fullest extent in thereby

B-41

establishing a reasonable degree of uniformity in regulations, having due regard for local conditions.

SECTION 9. Federal and State Grant Programs. The Participants agree to join to make timely application for all available Federal or State Grants in order to secure help in paying for the costs of the sewage treatment plant and sewerage facilities, and to conform to such orderly development, planning and land-use regulations and standards as may be required therein.

sponsible only for claims arising from its own activities hereunder, and shall save all other parties hereto harmless from any claim of any third party arising from such Participant's act or omission.

SECTION 11. Connection of Local Sewerage Facilities.

A. All Participants shall have a right to connect their domestic waste collection facilities to the appropriate sewerage facilities and to the regional waste water treatment plant after all are ready for operation.

B. Excessive Flow.

(1) For the purposes of this section "excessive flow" shall be defined as any flow, BOD loading or suspended solids loading which exceeds the average of any one or more of these by 30% or more.

- pense meter the flow of sewage coming from the other Participant; however, he must first give ten (10) days written notice of the time and place that the metering will occur to the Participant whose flow is to be metered. The Participant whose flow is to be metered shall have the right to be present and to also meter the flow of sewage coming from its own jurisdiction. The results will be delivered to the Operations Committee and it shall by unanimous vote determine whether there is an excessive flow coming from the jurisdiction of the Participant whose flow was metered.
- (3) Should the Operations Committee determine that excessive flow is coming from the jurisdiction of the Participant under investigation, they shall immediately establish a new base charge for such Participant.

 This new base charge shall remain in effect until such time as the excessive flow has been eliminated.
- C. Because of the possible adverse effect on the regional treatment plant, Coos Bay reserves the right to determine whether or not it will accept any "industrial waste" as defined in this Agreement. Charleston shall not make any industrial waste connection that will eventually reach the regional treatment plant without prior approval in writing from Coos Bay.
- D. Either Participant may require pre-treatment of industrial wastes entering the sewerage systems. Pre-treatment may be required to modify or eliminate wastes that would be harmful to the structures, processes, or operation of the regional treatment plant, or sewerage facilities,

in order to render such waste acceptable for admission to the plant or other facilities.

E. Charges for the treatment of industrial wastes shall be recommended by the Operations Committee in accordance with Section 4 of this Agreement. The determination of such charges shall be based on design capacity of the regional treatment plant, taking into account the average design flow, average BOD capacity, average suspended solids capacity, and debt service costs.

SECTION 12. Effective Date and Term of Contract. This Agreement shall be effective from the date of the execution hereof by the Participants and shall continue in full force and effect for twenty (20) years. However, all obligations under this agreement will terminate if either Participant falls to provide adequate financing required to construct the sewerage facilities and regional sewage treatment plant.

for an additional ten years (after said twenty year period) if Charleston gives written notice to that effect to Coos Bay at any time before the expiration of said twenty year period (unless said waste water treatment plant is at such time no longer in operable condition or unless state or federal laws in existence at such time forbid the continued operation of said plant by Participants.

SECTION 14. <u>Severability</u>. Should any part of this Agreement be held by a court of competent jurisdiction to be illegal or unenforceable,

Exhibit XXXX D-18

such event shall not be deemed to affect the validity of any other portion hereof.

SECTION 15. Arbitration. In the event that any of the terms of this agreement shall be subject to dispute or if the participants fail to agree on any other aspect of implementation of this agreement, the Participants shall submit such matters to arbitration on demand of either Participant as hereinafter specified. Within ten (10) days of notice to the governing bodies of both Participants, said governing bodies shall petition the President of the Professional Engineers of Oregon to select a panel of potential arbitrators. The governing bodies of each of the Participants shall then agree on one arbitrator who shall decide the matter in dispute within thirty (30) days after acceptance of the responsibility. The decision of the arbitrator shall be final and binding upon the Participants and, enforceable by decree or judgment or both in any court of competent jurisdiction.

Should the governing bodies of the Participants fail within ten (10) days to select an arbitrator agreeable to both, the President of the Professional Engineers of Oregon shall then select said arbitrator to act in accordance with the terms of this Agreement.

A. The arbitrator shall be a Registered Professional Civil or Mechanical Engineer having a thorough knowledge of the operation and maintenance of Secondary Waste Water Treatment Plants.

- B. All matters subject to arbitration shall be conducted under the rules of the American Arbitration Association and the laws of Oregon.
- C. At the conclusion of the arbitration the arbitrator shall submit a joint billing to each Participant. Upon receipt of such bill, each Participant shall pay a one/half (1/2) share of the total cost of arbitration.

IN WITNESS WHEREOF, the parties hereto have caused their names to be hereunto subscribed and their seals hereto affixed.

CITY OF COOS BAY

Robert Hale, Mayor

Attest:

Richard Kalianek, City Manager

Approved as to Form

James B. Bedingfield, Jr. City Attorney, Coos Way

Exhibit MXXXX D-20

B-46

CHARLESTON SANITARY DISTRICT

Attest:

Approved as to Form

Cameron Thom,
Sanitary District Attorney

"villiam I. Peterson" Engineering Consultants, Inc.

1155 13th Street S.E., . Salem, Oregon 97302 . Th. 503-363-9227

December 21, 1989

TO: City of Coos Bay

Charleston Sanitary District

RE: Arbitration Decision

FROM: William I. Peterson, Arbitrator

Attached is my decision on the request from Charleston Samitary District for arbitration regarding many issues involving operation and maintenance of Wastewater Treatment Plant No. 2.

As was evidenced by the considerable testimony from both sides, the agreement between the City of Coos Bay and the Charleston Sanitary District is confusing and inconsistent. It is not too difficult, however, to understand the basic intent of the agreement, which is to provide a regional treatment facility which both parties assist in financing and which the City of Coos Bay operates.

In my review of all of the data submitted I can find no meaningful testimony that indicates that the city deliberately set out to cause increases in the plant operation costs that would be detrimental to either party.

did find, however, that the city's own consultants have determined that the problems at the plant are from excessive flows and that the excessive flows are coming from the city side of the collection system. The city appears to have been able to operate the plant efficiently from 1980 to 1983. A review of Exhibit C, prepared from information presented at the hearings, indicates the charges to Charleston per 1,000 gallons of flow were declining. This seems to be consistent to what one would expect as new customers were added to the system from fairly tight new lines from the Charleston side, while the City's side remained essentially the After 1983, however, the costs per 1,000 gallons began to rise instead of continuing to decline as even more users were added to Charleston's system. It is my opinion that the costs should have remained fairly constant unless the plant had reached it's capacity causing additional expenses in the operation maintenance of the plant. In any event, Charleston should not be the party paying for the problems with excessive flows at the plant.

I have presented my decision regarding the adjustment in Charleston's share of operation of the plant both graphically and numerically in the text.

The City and District need to modify the contract between the two parties to provide a third, independent party to hopefully resolve future conflicts before they become issues that require arbitration.

B-48

I am making two additional requirements as part of my decision. First, a metering system that accurately measures both sides of the flow separately needs to be installed. The individual flows can then be compared with the total flows that are kept at the plant. Secondly, a separate trust fund shall be established which both parties pay into which the City can draw from monthly to reimburse City expenses. This will require extra bookkeeping by the City but the extra effort should help keep track of Plant Number Two's actual expenses in a manner which is easy to follow from month to month.

I have been pleased with the conduct of both City and District representatives and have enjoyed the hospitality of the people involved in this arbitration.

Yours truly,

William I fetuan

William I. Peterson, P.E.

BOARD OF ARBITRATION

CHARLESTON SANITA	RY DISTRICT,	
	Petitioner,	,
vs.		DECISION
CITY OF COOS BAY,)) ·
	Respondent.))

The agreement between the City of Coos Bay and the Charleston Sanitary District will hereinafter be referred to as Exhibit A.

Section 2 (B) speaks to the "Benefits of Regional Treatment Plant. It is hereby agreed by the participants that each receives certain benefits from the use of a regional treatment plant in terms of decreased operation and maintenance costs, more reliable operation because of the large treatment plant, a larger staff of qualified operators and technicians and the eligibility of each participant to receive Federal and/or State grants to assist in the construction of both conveyance and secondary treatment facilities."

Section 2 (D) Is entitled <u>City Maintenance</u> However, no mention of maintenance is included in the text of 2 (D).

Section 3 (A) (6) states "Charleston shall have the primary responsibility for collection and transmission of its sewage to the Coos Bay Waste Water Treatment Plant Site #2. They

shall design, finance, construct, operate and maintain their sewage systems."

Section 4 is entitled "Maintenance of Charleston Pump Stations." However, the text following refers to the "Charleston Sewerage System." The City and District agreed thatoperation and maintenance of the Charleston Sewerage System by the City of Coos Bay appears desirable to both parties.

It is the Arbitrator's opinion that at a subsequent time it might not "appear desirable to both parties."

Section 3 A (2) states..."Coos Bay shall design, finance, construct, operate and maintain the waste water treatment plant at the site of Coos Bay's present waste water Plant #2."....
"a minimum capacity of 0.259 MGD shall be reserved for Charleston..."

Section 2 A (2) indicates a flow of 0.42 MGD from Charleston. The table is to be used "as a method of assigning the actual construction and operation and maintenance costs to be paid by each participant."

It is the Arbitrator's opinion that the District's share of the operation and maintenance costs shall be proportionate to the actual flow and B.O.D. as indicated by the example in the table. Actual flows and B.O.D. will vary from month to month and year to year as indicated in the testimony received. It should be the responsibility of the operations committee to review the measured flows and B.O.D. loadings and determine the percentage of

costs each participant is to incur. The costs may vary considerably from year to year or even from month to month, with adequate cost accounting and accurate flow measurement, along with reasonable growth projections, it should be possible to accurately predict a reasonable ratio required from each participant to manage and maintain the wastewater treatment plant.

It appears to the Arbitrator that the duties of the operations committee has essentially been assumed by the City of Coos Bay from the time of inception of the agreement until very recently.

It also appears that all operation and maintenance decisions regarding Plant No. 2 have also been essentially made by the City of Coos Bay.

The following rulings are hereby presented in the order requested by the District:

1. Has the City breached the 1974 Regional Agreement the City's refusal to be bound by the procedures in the Agreement for formation and operation of an Operations Committee.

Findings: The City has not breached the 1974 agreement in respect to refusing the information and operation of an operations committee.

2. Has the City breached Section 3B of the Regional Agreement by the City's refusal to operate the water treatment plant in accordance with the provisions of Section 3, Paragraph B of the Agreement.

Findings: The City has not refused to operate the wastewater treatment plant.

- 2.1 by failing to establish a budget and budget process for the treatment plant as required by Section 3B(2), (4), and (5) which includes input into the budget process by the District through the Operations Committee and recognizes the binding effect of the vote of the District's Operations Committee;
- 2.2 by failing to establish and maintain a consistent record system to show the operation and maintenance costs of the wastewater treatment plant which clearly shows budgeted and actual expenditures in terms of personal services, materials and supplies, and capital expenditures;
- 2.3 by failure of the City to keep all sums paid to it under Paragraph 3B in a separate "fund" as such term is used in ORS 294.450, 294.470 and Section 3B(5) of the Agreement;
- 2.4 by failing to keep sums paid to Coos Bay pursuant to Section 3B of the Regional Agreement in trust as required by Section 3B(5);
- 2.5 by providing records that contain materially false representations;
- 2.6 by failing to account to the Charleston Sanitary

 District;
- 2.7 by failing to disburse from the fund only such amounts as are necessary to, in order of priority.

Findings: The City has not failed to provide an accounting of the costs of operating Wastewater Treatment Plant No.

2. The City has provided an accounting using a system which has been available for the District to analyze from year to year. It is apparent that the District would benefit considerable if a "separate trust fund" was created to keep track of actual costs of operating and maintaining the plant. The trust fund should be funded by both the City and the District. The City should draw from the fund from month to month as needed to operate and maintain the plant according to the budget process set up by the operations committee on an annual review.

3. Has the City breached the Agreement by failing to operate the plant in accordance with state and federal guidelines.

Findings: It is obvious from the testimony of both parties that the City has not been able to operate the plant in accordance with state and federal guidelines.

- 4.1 Has the City of Coos Bay made material false representations to the Charleston Sanitary District concerning the necessity for purchase of equipment for Plant No. 2 and either purchased equipment over Charleston's objections or purchased equipment for purposes other than use at the treatment plant with Charleston's money?
- 4.2 Has Coos Bay secured funds from Charleston based on data which was inaccurate in terms of number of hours of work charged to Charleston?

- 4.3 Has the City of Coos Bay secured funds from Charleston based on data which was false in terms of the City's failure to account for secret profits or reimbursements secured in connection with the hiring of employees from vocational rehabilitation programs?
- 4.4 Has the City of Coos Hay secured funds from Charleston based on data which was false in terms of a failure to account for the proceeds from sales of Plant No. 2 equipment?

Findings: The City has made decisions on operation of the plant which has resulted in modification of the plant from time to time in an effort to reduce violations and allow the plant to handle excessive flows.

4.5 Has the City of Coos Day secured funds from Charleston based on data which was false in terms of innaccurate flow records and thereby overcharged the Charleston Sanitary District? And if so, should the City be required to account for such over charges?

Findings: It has not been conclusively proven that inaccurate flow records have resulted in an overcharge to the District. The District has offered evidence that the District's flow meter is accurate and has been calibrated several times. (It is not clear to the Arbitrator whether the calibrations are accurate through all of the ranges of flows, particularly during heavy, wet weather flows.) The District has also offered evidence that the City's total flow measurements are not reliable.

The City has offered evidence that the District's flow meter is not properly installed according to the manufacturer's recommendations (it is not clear what the City assumes should be the District's actual flows). The City has offered evidence that its flow measurements at the plant are reliable.

المورد المنظار

Regardless of the potential inaccuracies of the meters, they have been used for many years to determine the basis of charges to the District without much discussion by the District. Recently, the District has requested that new flow metering equipment be installed to eliminate any confusion. (Section 11 of the contract provides that..."(2) either participant may at any time and at his own expense meter the flow of sewage coming from the other participant....)"

Exhibit 122, Section IV, pp S4-21 states: "Based upon recorded observations and an evaluation of the plant's operations data, us discussed above, past violations in NPDES permit effluent discharge limitations for TSS and BOD can generally be attributed to one factor, periodic high influent flow levels that exceed the plant's existing hydraulic capabilities." (emphasis added).

System contributes significantly more peak 1/1 than the CSD system. For all three storm events, the Empire per capita contribution exceeds the CG-85 guideline of 275 gpcd. This condition is explainable because the Empire system is much older than the CSD system. (emphasis added).

In regards to determining the CSD annual charges based on flow records it is important to note several factors which enter into the equation.

- questioned the accuracy of the CSD flow measurement.
- 2.) The City's share of the total flow must be calculated by subtracting the CSD flow measurements from the total flow measurements at Plant No. 2. The CSD has questioned the accuracy of the City's total flow measurements.
- 3.) Charges to the CSD are calculated based on % of total flow and it is important to establish a flow measurement that is accurate for both parties.
- 4.) Section 11 of the agreement at B.(2) states "either participant may at any time and at his own expense meter the flow of sewage coming from the other participant..."
- 5.) Section 8 of the agreement states..."The participants agree to adopt and enforce ordinances compelling and regulating the use of their respective sewage collection systems for the purpose of preserving a high standard of maintenance and efficiency in the operation of the sewerage facilities and the sewage treatment plant..."
 - 6.) Exhibit 122, Section IV, pp S4-23 states:
- 2. Appraisal of current operating procedures states..."In an attempt to enhance plant performance during high flow periods, plant operators have tried a number of special operating

procedures...

- a.) chemical additions...
- b.) RAS chlorination...
- c.) Mixed liquor pumping control...
- d.) Cleaning chlorine contact basin...
- e.) Primary clarifier sludge blanket control...
- f.) Increasing SRT's...
- g.) Adjusting RAS flow rates...
- h.) Split stream treatment...
- 7.) Exhibit 122, Section IV, pp S4-34 states "4 waste discharge limitations. The past performance of Plant No. 2 and evaluation of the plant's capabilities have shown that the existing facilities are generally incapable of consistently meeting the effluent discharge requirements under high flow and loading conditions."...

Exhibit 193 - Coos Bay Wastewater System Rate Study

September 1987 by Brown and Caldwell Consulting Engineers

Section A - pp 7 (Table 3-2) shows a flow breakdown of:

Coos Bay 0.43 mgd

Charleston 0.09 mgd

Infiltration 0.38 mgd

Section A - pp 3-2

Shows for Plant No. 2 the following:

<u>Parameter</u>	Plant 1,	Percent	Plant 2.	Percent
•	Flow	41		54
	BOD	22	•	
	SS	17		12
	1/1	20		12

"The allocation shown above typically establishes the basis for recovering capital costs and a significant portion of operation and maintenance costs.

(emphasis added)

It can be determined from the foregoing analysis of exhibits that approximately 12% of the cost of operating Plant No. 2 can be attributed to I/I.

From Exhibits 164 (rainfall vs. flow), and exhibit 125 (Coos Bay DEQ reports)

A record of connections to plant No. 2 collection systems can be compared to dry weather flows and wet weather flows.

In September of 1985 (a dry period of rainfall) monthly plant flow was measured at 17.06 MG. The City records indicate that 2180 connections existed (exhibit 125) those connections produced an average of 260 gallons per day.

The dry period of October 1988 was also used to determine average daily dry weather flows for the month. Exhibit 125 indicates total connections now equaled 3012. Flow for the month was reported at 19.05 MG. Average flow per connection therefore equals 204 gallons per day. The reduction in the dry weather flow

DECISION

EXHBIIT E-12

averages can partly be explained by the fact that additional connections are almost all residential and that all reported new connections may in fact not have been connected for the entire month.

This analysis certainly indicates that the Charleston sewer District is not adding any unusual hydraulic loadings to the system in the summer time and if anything, their contribution per service to plant loading is allowing an overall reduction in average daily flows per connection.

. A similar analysis can be done regarding winter time flows after major storm events. In November of 1984, total plant flow equaled 35.9 MG. Reported connections equaled Therefore average daily flows for the month per connection equaled (This flow corresponds with a monthly rainfall total in November of 18.22 inches.) In January of 1988, total plant flow equaled 37.2 MG. Reported connections equaled 2860. Therefore average daily flows for the month per connection equaled 419. (This flow corresponds with a monthly rainfall in January of 12.12 Almost all of the new connections were made in the inches). Charleston side of the collection systems. It is the Arbitrator's opinion that the reduction in monthly wet weather flows has been achieved by the addition of newly constructed sewer lines which tend to help the overall average.

In 1983-84, the reported Coos Bay flow to Plant No. 2 = 388.60 MG. Connections to the system = approximately 1750.

Therefore average flow to the plant per connection equaled 388,600,000 divided by 365 divided by 1750 = 608 gallons per day per connection.

During the 1987-88 fiscal year, a dryer year, the average equaled 217,480,000 divided by 365 divided by 1750 = 340 gallons per day per connection.

It can be seen that the Empire Collection system benefits greatly during periods of lower rainfall, the average for Charleston per connection is considerably lower, equaling approximately 162 gallons per day for 1987-88. (A calculation of reported connections was made to determine an average of 1085 connections for CSD during this period).

Many other analysis can be made using submitted data, but the fact is overwhelmingly clear to the Arbitrator that the peak flows that occur at the plant are primarily from the Empire side of the system. It is reported by the City's own retained engineers that it is the hydraulic overloading that is causing all of the problems at Plant No. 2. The City has expended many man hours, considerable power and equipment costs to combat the hydraulic overload problems.

The City could also have expended great sums of money to upgrade the Empire Collection system to reduce I/I and therefore reduce hydraulic overloading at the plant, with a subsequent lowering of plant operating costs. The City did not choose to

12

DECISION

EXHIBIT E-14

B-61

invest the necessary funds and the District has incurred higher annual costs as a result.

The City and the District must obtain a disinterested third party to make a recommendation on installation and monitoring of flows from each system.

- 4.6 Has the City of Coos Bay secured funds from Charleston based on data which was false in terms of BOD records and inaccurate suspended solids and thereby overcharged the Charleston Sanitary District? And if so, should the City be required to account for such over charges?
- 4.7 Has the City obscured the facts and hampered the District in exercising it's Contract rights to supervise, operate, budget and manage the Treatment Plant by instructing it's employees not to discuss issues with the District?

Findings: It is not conclusive to the Arbitrator that BOD and suspended solids data used by the City is false.

by Charleston or with Charleston's assistance from the Regional Treatment Plant without Charleston's knowledge or permission to other uses within the City or for purposes of sale without accounting to the Charleston Sanitary District for the proceeds? And if so, should the City be required to account for such diversions?

Findings: The City has obviously altered the treatment plant from its original configuration. It is the opinion of the

DECISION EXHIBIT E-15

Arbitrator that the alterations were made for the purpose of improving the plant's operation.

6. Should the City be required to secure the approval of the Operations Committee to any modifications which will entail either operational or capital expense or modify the functioning of the existing treatment plant?

Findings: The City should account to the operations committee for any proposed alternations of the plant which would affect the operational and maintenance costs.

- . 7. Should the City be held solely responsible under Section 10 of the Agreement for any damages caused by the following:
- 7.1 Without Charleston's knowledge or consent the City of Coos Bay has disassembled and replumbed the regional treatment plant, disassembled and removed all the designed thickener equipment thereby causing health and environmental problems to become integral to the City's operations (The plant is unable to properly handle flows without the dewatering equipment the City disassembled and sold or otherwise disposed of). The City has without Charleston's knowledge or consent:
- 7.1.1 voluntarily opened the supernute valve to take the hydraulic pressure off the system on a frequent basis during the rainy system;
- 7.1.2 been hauling six (6) trucks a day of liquified sludge when with proper dewatering equipment the number of daily

'loads could'be reduced to one (1);

- 7.1.3 the detention time in the treatment plant is now inadequate; and
- 7.1.4 the City has exposed its employees and citizens to sludge not meeting EPA limits for volatile reduction on a regular basis.
- 7.2 Sludge and grit and organic screenings have been disposed in a manner which is not conducive to public health and is in violation of EPA/DEQ guidelines. The City has not taken proper steps to protect humans, natural resources, and cattle from the adverse effects of contact with disposed material.

Findings: The City has assumed all duties of operating and maintaining Plant No. 2. The City is therefore responsible for its actions regarding any potential liability arising from the operation and maintenance at Plant No. 2.

- 7.3 The City has not taken proper steps to protect its own employees from bacterial, viral and the other pathogenic substances with which it has polluted coast land of the District, the area's dairy lands and the oyster and clamming beds of Coos Bay and the District.
- 8. Has the City failed to maintain the District's pump stations has failed to maintain equipment purchased by the District and installed at the treatment plant?

Findings: The City and District have previously agreed that the City should provide operation and maintenance of the

District's pump stations. It is apparent to the Arbitrator that a higher level of maintenance on the pump stations could have been provided by the City. It is not clear, however, what the bill to the District would have been for a higher level of service. The District has the right, in the Arbitrator's opinion, to select an alternate method of maintenance on the pump stations. The City should be notified by the District in writing if the District intends to take over all operation and maintenance of the pump stations (including emergency services).

- ...9. Has the District been damaged by the City's violation of the Regional Agreement.
- 9.1 for overcharges (or such greater or lessor amount as proved at hearing) \$195,000.00

Findings: The City agreed in the hearings before the Arbitrator that some mis-communications between departments in the City resulted in billings to the District that were not consistent with a proposed change by the City in the costs for Operating Plant No. 2.

The lateness of the notification along with the incorrect billing statements have created problems for the District. New customers were being added periodically to the District's system and it would be difficult to go back after the fact to determine which customers should be required to make up the difference. The District needs to be able to rely on the City's cost projections in the budget process set up by the City.

The Arbitrator therefore rules that the District should not be required to pay the additional sum billed by the City at the end of the $\underline{1986-1987}$ budget year.

Subsequent budgets for Plant No. 2 were adopted by the City for 1987-88 and 1988-89. Those budgets were based on information provided at the beginning of each of the budget years. It is the opinion of the Arbitrator that the costs proposed by the City were the best projections the City could make at the time. It is not clear, however, whether the flow projections assumed by the City are accurate (particularly since the District requested that "identical" meters be installed to correctly quantify the actual flows).

The Arbitrator has analyzed a considerable amount of data submitted by both the City and Charleston. Exhibit B, prepared by the Arbitrator from the City billings, shows an ever increasing cost of operation at Plant No. 2. The City offered testimony that the plant never did operate properly. Charleston should have been able to rely on the City to provide a plant capable of meeting the requirements of DEQ and EPA.

Exhibits C and D, prepared from data submitted to the arbitrator, shows the cost per 1000 gallons of treated sewage at Plant No. 2 as billed by the City. From 1979 to 1983 the costs remained fairly constant, with the exception of the 1980-81 fiscal year. A downward trend actually existed from 1980 to 1983. This may be partly explained by the addition of new connections to the

system by Charleston which should have led to an overall reduction per unit served due to new, relative water-tight During the 1984-85 fiscal year the cost per unit treated made a remarkable jump of almost 50%. The only explanation offered that seems reliable to the Arbitrator is that the City made many changes in operation procedures at the plant to combat hydraulic overloading. It is the Arbitrator's decision that the hydraulic overloading is caused from the Empire side of the system and that the accompanying costs of cure at the plant should not be the responsibility of Charleston. The series 2 bar graph is a representation of the calculations made by the Arbitrator to determine a reasonable "cost per 1000 gallons" to be charged by the City to the District. The average cost for the fiscal years 1979-80 through 1983-84 was determined by dividing cost of operating the plant in each year by total flow reported. The average, is determined as follows:

Year	Amount Billed	Charleston Total Flow	Cost per
÷		in 1,000 gallons	1000 gallons
1979-80	\$17,590.09	31,140	\$.565°
1980-81	21,045.07	29,670	0.709
1981-82	23,073.00	37,987	0.607
1982-83	25,706.59	45,886	0.560
1983-84	22,886.00	45,080	0.507

Average cost per 1,000 gallons for period equals \$0.5896.

The Arbitrator has used this number to calculate the costs

which should be billed to the District for each of the following years from 1984-85 to 1988-89. Additional connections to the Charleston system may have actually helped in reducing average costs but inflation costs would have worked to reduce any potential savings.

Fiscal Year	Flow(1000 gal.)	Cost/1000 gal.	Charleston Share
1984-85	40,110	\$0.5896	23,649
1985-86	42,460	19	25,034
1986-87	47,700	н	28,124
1987-88	64,160	H	37,829
1988-89	73,750	**	43,483

Total Calculated from 84-85 to 88-89 = 158,119.00

Amount Billed by City = 205,615.00

Amount of Overcharge by City = \$47,496.00

The City should adjust its bill to the District reflect the downward adjustment.

The above calculations are highly dependent on the accuracy of the flow meters—both the City's and the District's. Until an independent consultant has assisted in recommending flow measuring devices that are equal in accuracy, the Arbitrator recommends using the same cost per 1000 gallons measured.

The balance of the District's requests for action by the arbitrator are denied. Overcharges by the City shall be adjusted by the City for the years in which they occurred and new calculations shall be made on a yearly basis to be submitted to the

arbitrator for review and approval.

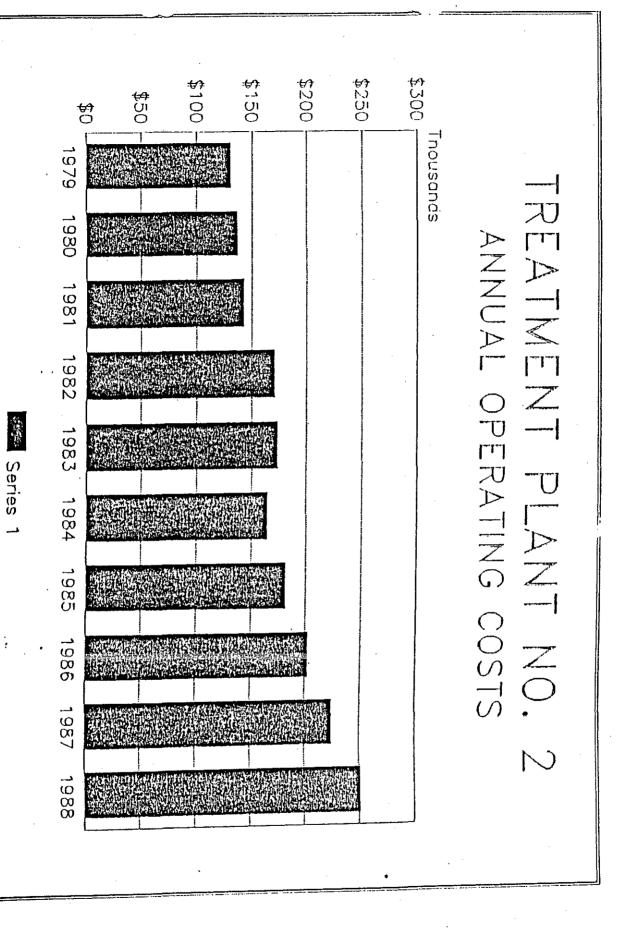
The City and District shall submit a method for determining an independent third party to analyze the existing flow measuring systems and to make recommendations for modifications, if necessary.

The City shall submit a method for establishing a separate fund to be reviewed and approved by the arbitrator. The separate fund shall be held in trust by the City and a complete accounting of the fund shall be made available to the District at all times.

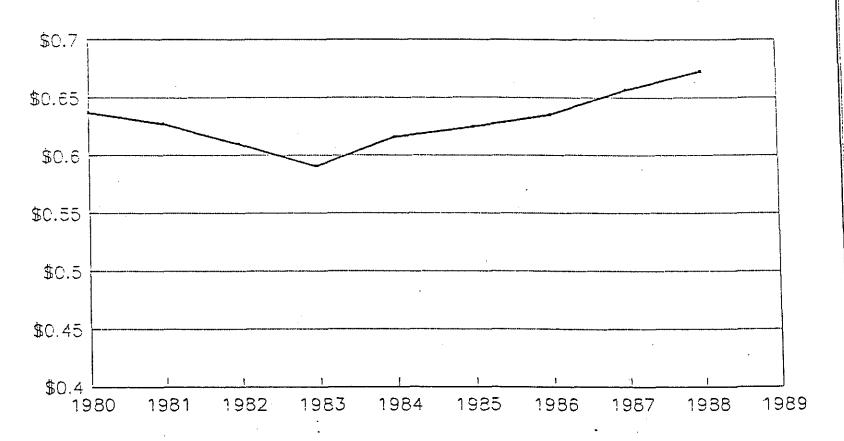
Arbitrator

William L. Peterson

William 1 Felison 12-21-8.9.



Ave. Charges to Charleston From 1979-80 to 1988-89



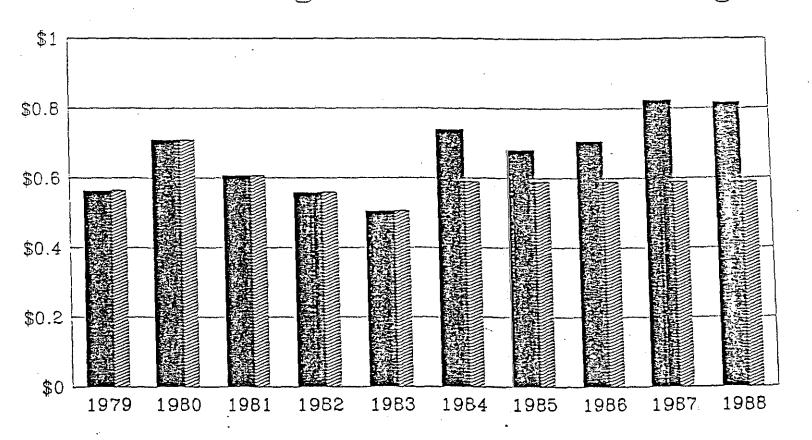
Series 1

Averages are obtained by adding 1979-80 fiscal year to subsequent years.

1980 plot = (1979-80 amount + 1980-81 amount) 2 = (\$0.565 + \$0.709) 2 = \$0.64

Charges are \$ per 1,000 gal.

Charleston Sanitary District Actual Charges vs Uniform Charges

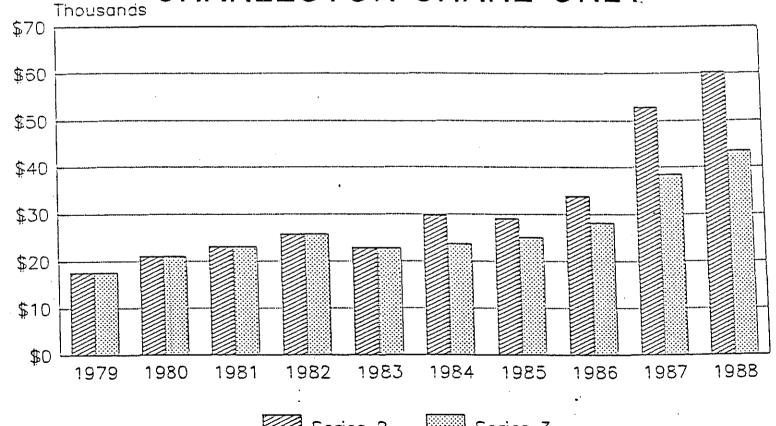


Charges are \$ per 1000 gal.

Series 1
Cost per 1,000
gallons of flow
from CSD as billed
by the City:

Series 2
Cost per 1,000
gallons of flow
from CSD as determined
by Arbitrator.

TREATMENT PLANT NO. 2 ANNUAL OPERATING COSTS CHARLESTON SHARE ONLY



Series 2

Amount billed by
City to District

Series 3 ...
Amount City should
bill District

TOTAL VS CHARLESTONS SHARE

BOARD OF ARBITRATION

CHARLESTON SANITARY DISTRICT,		
Petitioner,)	
vs.) FINAL) DETERMINATIO	N
CITY OF COOS BAY,	'	
Respondent.) 	

The decision in this matter dated December 21, 1989 (12-21-89), required the resolution of three elements of the petition. The following submittal will serve as an addition to the decision. This submittal will be the final determination in this matter by the board of arbitration.

1. The Arbitrator requested that the City of Coos Bay and the Charleston Sanitary District submit data to indicate actual payments made by the District to the City for waste processing. The City submitted a document to the Arbitrator dated May 9, 1990 which outlines the payments made to the City by Charleston. A letter from the District's attorney dated May 14, 1990 indicates agreement by the C.S.D. of the amounts outlined by the City. A later letter, dated May 16, 1990 submitted by the attorney for the District indicates a record of payments to the City which is substantially the same as the payments indicated by the City. Two years differ, but it appears to the Arbitrator that the only difference is in which year the payments were credited.

The Arbitrator requests that the Charleston Sanitary District advance the amount of \$23,598.15 to the City of Coos Bay to bring the C.S.D. current for waste processing by Plant No. 2 through April 30, 1990.

2. The Arbitrator understands that both parties agree that the Operations Committee will select an independent third party to analyze the existing flow measuring systems to make recommendations for potential modifications of the existing metering facilities.

The City of Coos Bay and the Charleston Sanitary District will be obligated to pay

B-74

for any revisions to the metering system/systems on an equal basis up to a maximum of \$30,000 per each party.

3. The City of Coos Bay will include as a separate line item in it's annual budget the proposed costs of operating Plant No. 2. All costs associated with operation of Plant No. 2 will be kept separate from other City budgets. Funds for the budgeted amounts will not be required to be kept in a separate account or "trust fund". The City will bill the Charleston Sanitary District monthly for plant operation.

Arbitrator

William I. Peterson



CITY OF COOS BAY

500 Central Avenue Coos Bay, Oregon 97420 269-1181

Office of the City Manager

August 13, 1990

Charleston Sanitary District Board of Directors P.O. Box 5522 Charleston, Oregon 97420

RE: RESCISSION OF THE 1974 PLANT NO. 2 AGREEMENT

Dear Sirs and Madam:

The City of Coos Bay, by Council action on August 7, 1990, has rescinded the 1974 Plant No. 2 agreement for non-payment by the Charleston Sanitary District of its wastewater service fees.

Enclosed is a copy of the Wastewater Discharge Permit application, a copy of the permit as it will be issued, and a copy of the City's Wastewater System User Ordinance. Failure to apply for the permit will subject Charleston Sanitary District to enforcement action, possibly including suspension of service.

As per Section 8(2) of Ordinance No. 132 you will be allowed 30 days from receipt of this letter to make application to the City. Special attention to Sections 8 through 12 should be given when filling out the application. If you have any questions regarding the application process you can contact Lanuy Sloan, Public Works Director, at 269-8916 for assistance.

Sincerely,

Jim Watson

City Manager

LS:smb

Enclosures

cc:

Ruben Kretzschmar, DEQ Fred Hansen, DEQ 1

4

Б

в

7 8

9

10

11 12

13 14

15

17

16

18 19

20

22

21

23 24

25

26

DEPARTMENT OF ENVIRONMENTAL QUALITY PETITION OF THE STATE OF OREGON,

Department,

No. WQ-SWR-88-72

COOS COUNTY

vs.

CITY OF COOS BAY,

Respondent.

I.

- The City of Coos Bay operates a wastewater treatment plant (Plant No. 2) under NPDES Permit No. OR-002358-2 (100036).
- Charleston Sanitary District discharges wastewater 2. into Coos Bay's Plant No. 2.
- The Environmental Quality Commission issued a Stipulation and Final Order to the City of Coos Bay (No. WQ-SWR-88-72) on September 9, 1988, requiring new or modified treatment facilities to be constructed and put into operation so as to meet the City's NPDES permit requirements by December 15, 1991.
- that Order a Facility Plan 4. Pursuant to completed and submitted to DEQ which included a review evaluation of an alternative plan for an independent treatment facility for the Charleston Sanitary District.
- The facility plan concluded, and DEQ and EPA 5. agreed, that the most cost effective, environmentally acceptable

treatment alternative was an improvement at the existing Plant No. 2 to serve both the City of Coos Bay and the Charleston Sanitary District.

- 6. An EPA grant was awarded to the City on September 29, 1989, in the amount of \$1,326,138 for the improvements to Plant No. 2. Those improvements are to include continued provision of services to the Charleston Sanitary District.
- 7. The City has just received approval to proceed with contract award for the construction project in the amount of \$3,128,806.
- 8. All users of Plant No. 2 must share in the costs of the improvements.
- 9. The City has estimated that the Sanitary District's fair and equitable share of the costs of the engineering to date associated with the improvements to Plant No. 2 and of the construction-period costs is \$892,000.
- 10. The City has prepared an intermunicipal agreement with the Sanitary District which addresses cost sharing and future operations. That agreement has been reviewed by DEQ for compliance with EPA and Oregon rules and regulations.
- agreement nor to pay any portion of the construction costs. The District has not been paying its fair and equitable share of the costs of operation and maintenance of the plant for more than three years. For example, in June, 1990, it was billed \$5,085;

D & LAIRD, P.C. INEYB AT LAW B. BOX 3293 WMARK AVENUE COREGON 97420

EXHIBIT XXX H-2 PAGE 2 - PETITION

- 12. In order for the City of Coos Bay to remain in compliance with the schedule set forth in the Stipulation and Final Order, and to pay the contractor as work progresses, it must receive the funds from the Sanitary District.
- 13. The Sanitary District must be made jointly and severally responsible with the City for meeting the compliance dates.
- 14. By letter to the District dated May 31, 1989, DEQ required that the District complete "local funding arrangements" for its share of the costs of the improvements to Plant No. 2 and forward material to DEQ by June 20, 1989. To the best of the City's knowledge, the District has not yet complied.

the requests that a compliance order be issued to the Charleston Sanitary District approving the allocation of costs associated with the improvement project, requiring immediate District financial participation in the construction project so that the project can be completed consistent with the City's compliance order, and making the District jointly and severally liable for meeting the compliance dates in Order No. WQ-SWR-88-72 issued to the City of Coos Bay.

II.

1. Charleston Sanitary District owns and operates a collection system with 8 pump stations, serving approximately

D & LAIRD, P.C.
NEYS AT LAW
BOX 3295
/MARK AVENUE
OREGON 97420

1

2

3

4

Б

в

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

EXHIBIT XXX H-3

PAGE 3 - PETITION

3

4 Б

7 8

6

10

9

11 12

13

14

15

16 17

18

19

20 21

22

23 24

25

26

1,250 residential and commercial connections, with an average current daily flow of 221,000 gallons.

- 2. Under ORS 468.700(1) and (5),the District operates a "sewerage system" which is a "disposal system." Under ORS 468.700(2) and (6) the District's disposal system discharges "industrial waste" into the "treatment works" owned and operated by the City of Coos Bay.
- ORS 468.740 requires a permit from DEQ operation of any disposal system. OAR 340-45-010(24) defines a "WPCF permit" as a permit to construct and operate a disposal system with no discharge to navigable waters. Therefore, the District is required to have a WPCF permit to operate its system under Oregon law.
- OAR 340-45-015(4) exempts persons who discharge wastes into a sewerage system from the requirements of obtaining a WPCF permit or NPDES permit, provided the owner of the sewerage system has a valid permit. The owner of the Sanitary District's sewerage system is the Sanitary District and it does not have a permit. If DEQ does not require a WPCF permit for the District, then all those persons within the District who discharge into the District's sewerage system would need a discharge permit from DEQ.
- OAR Chapter 340, Division 49, further sets forth regulations pertaining to certification of wastewater collection system personnel. One of the purposes of a WPCF permit would be

to monitor compliance with those requirements by the Sanitary District in its operation of its collection system.

THEREFORE, the City requests that the Charleston Sanitary District be required to apply for, hold and comply with a valid WPCF permit in order to continue operation of its sewerage (collection) (disposal) system.

DATED this 10th day of August, 1990.

Respectfully submitted,

By Youla M Exchiold

Paula M. Bech City Attorney

26

25

LD & LAIRD, P.C. RNEYS AT LAW O. BOX 3295 EWMARK AVENUE AY, OREGON 97420

EXHBIIT XXX H-5

PAGE 5 - PETITION

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

19

20

21

22

23

24

25

26

27

28

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF COOS

State of Oregon, ex rel CHARLESTON SANITARY DISTRICT, Petitioner, Case No. 90CV0011 (and 89CV0284) and MEMORANDUM OF CITY OF COOS BAY, LAW - RES JUDICATA Respondent.

The Charleston Sanitary District respectfully submits the following Points and Authorities on the issue of res judicata.

A judgment conclusively settles a controversy so far as the parties or their privies are concerned, except where impeachable for fraud or want of jurisdiction. Thielsen v. <u>Linde</u>, 127 Or 639, 271 P 983 (1928)

The rules of res judicata apply to previous rulings in an action on a similar determination in a subsequent action. State v. Scott, 68 Or App 386, 681 P2d 1188, review denied 297 Or 547, 685 P2d 998 (1984)

If the decision on a particular issue or fact is determinative in a subsequent action between the parties on the same claim, there is direct estoppel, but if the judgment in a different action between the parties as to the issues actually litigated and determined in the prior action is conclusive because the determination is essential to the judgment, there is collateral estoppel. State Farm, Fire and Casualty Co. v. Reuter, 299 Or 155, 700 P2d 236 (1985)

MEMORANDUM OF LAW -RES JUDICATA

In determining whether the doctrine res judicata applies a Court must first determine whether the second action is on the same cause of action as the first, and if it is on the same cause of action, then the second action is barred by res judicata. Stone v. Beneficial Standard Life Insurance Co., 273 Or 594, 542 P2d 892 (1975)

Term "cause of action" as it relates to the law of res judicata is an aggregate of operative facts which compose a single occasion for judicial relief. Dean v. Exotic Veneers.

Inc., 271 Or 188, 531 P2d 266 (1975)

A judgment is a bar to a subsequent suit between the same parties as to the matters actually determined, and as to other matters which the parties might have litigated in the suit. Colgan v. Farmers' & Mechanics' Bank, 69 Or 357, 138 P 1070 (1914)

Generally a plaintiff who has prosecuted one action against a defendant through to a final judgment binding on the merits is barred on res judicata grounds from prosecuting another action against the same defendant where the claim in the second action is one which is based on the same factual transaction that was at issue in the first, seeks a remedy additional or alternative to the one sought earlier, and is of such a nature as could have been joined in the first action.

Rennie v. Freeway Transport, 294 Or 319, 656 P2d 919 (1982)

In determining whether the same cause of action is involved in two suits for purposes of res judicata, criteria include whether the rights or interests established in a prior

judgment would be destroyed or impaired by prosecution of a second action; whether substantially the same evidence is presented in the two actions; whether the suits involve infringement of the same right; and whether the suits arise out of the same transactional nucleus of facts. Harris v. Jacobs, 621 F2d 341 (Court of Appeals, Oregon 1980)

Res judicata is applicable to the City's Petition. The Petition would destroy the District's Arbitration Decisions.

A judgment is on the merits so as to bar further litigation, when it amounts to a declaration of the law as to the parties' respective rights and duties based upon ultimate facts disclosed by the pleadings and evidence, irrespective of formal, technical or dilatory objections or contentions; "merits" meaning matter of substance as distinguished from matters of form. Haney v. Neace-Stark Co., 109 Or 93, 219 P 190 (1923)

The city's issues in its Environmental Quality Commission Petition are barred by res judicata.

Respectfully submitted,
LYNN H. HEUSINKVELD, P. C.

By: "Example of the Children o

Lynn H. Heusinkveld Or. State Bar # 76392 Attorney for Petitioner 336 North Front Street Coos Bay, Oregon 97420 (503) 269-7511

MEMORANDUM OF LAW - RES JUDICATA

B-84

STATE OF OREGON

In the CIRCUIT Co	urt of the	State of Oregon	
For the County of	oos		
CHARLESTON SANITARY DISTRICT			
CITY OF COOS BAY	Plaintilf	No	
		} SUMMO	NS
o City of Coos Bay	Defendant		
	••••••••••••	•••••	
utomatically. To "appear" you must file with the court a legal aper called a "motion" or "answer." The "motion" or "answer" nust be given to the court clerk or administrator within 30 days long with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the laintiff does not have an attorney, proof of service upon the laintiff. If you have any questions, you should see an attorney impediately.	336 No. Coos Ba	. Heusinkveld THOR'S NAME (TYPED OR PRINTED) The Front Street ADDRESS TRY, Oregon 97420 STATE THE OTHER THAN ABOVE (TYPED OR PR	269-751 ZIP PHONE
TATE OF OREGON; County of	ss.	the foregoing is an exact a	nd complete copy
f the original summons in the above entitled action.		ATTORNEY OF RECORD FOR PLAINT	(FF(S)

PHYTHARAITS __ r 20140

FORM No. 190—SUMMONS © 1985 Stevens Hers Frey Puly Fre Portland, UR 9/204 OS 3-86

IN	THE	CIRCUIT	COURT	OF S	THE	STATE	OF	OREGON
		FOR	THE CO	UNTY	OF	coos		

CHARLESTON	SANITARY	DISTRICT,

Plaintiff,

Case No.

vs.

CITY OF COOS BAY,

COMPLAINT,
INJUNCTION AND
DECLARATORY RELIEF

Defendant.

Plaintiff alleges

FIRST CLAIM FOR RELIEF - INJUNCTION

1.

Plaintiff is a sanitary district organized and existing under the laws of the State of Oregon and situated in Coos County, Oregon.

2.

Defendant is a municipal corporation organized under the laws of the State of Oregon and situated in Coos County, Oregon.

3.

The parties have heretofore entered into and operated under a written agreement for the regional treatment of sanitary sewage, a true and correct copy of which is attached hereto as Exhibit A and by this reference incorporated herein.

4.

On or about November 17, 1988 Plaintiff submitted a Petition for Arbitration.

COMPLAINT, INJUNCTION AND DECLARATORY RELIEF

On or about March 14, 1989 Defendant filed a Complaint

for injunction and declaratory relief in case number 89CV0284
to enjoin Plaintiff from proceeding with arbitration pursuant
to a November 17, 1988 Petition for Arbitration which was
attached by Defendant City of Coos Bay to it's complaint as
Exhibit A.

6.

On or about April 25, 1989 the Court entered a Final

On or about April 25, 1989 the Court entered a Final Judgment against the City of Coos Bay denying the City's requested injunction and allowing the Sanitary District to proceed to arbitration.

7.

Thereafter in case number 90CV0011 the Sanitary District secured an Arbitration Decision (Exhibit E to Affidavit of Counsel in case number 90CV0011) and Judgment on that Arbitration Decision (Exhibit B to said Affidavit of Counsel) and a Final Determination and Judgment on that Final Determination (Exhibits F and C to said Affidavit of Counsel).

8.

On or about August 7, 1990 the City of Coos Bay purported to cancel the Contract with the Charleston Sanitary
District and thereafter on or about August 10, 1990 the City
of Coos Bay petitioned the State of Oregon Environmental
Quality Commission for an order requiring that the Charleston
Sanitary District pay \$892,000.00 plus in construction costs
for modifications to the Regional Treatment Plant which had

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

been fully considered in the above referenced arbitration and sought to impose a new contract prepared by the City of Coos Bay on the Charleston Sanitary District, and to require the Charleston Sanitary District to pay \$5,085.00 or some other amount determined by the City of Coos Bay as a "fair and equitable share of costs of operation and maintenance of the plant for the last three (3) years", notwithstanding said arbitration, and to impose upon the Sanitary District liability for the City's failure to maintain compliance with a schedule set forth in.a previous stipulation and final order made between the City of Coos Bay and the Environmental Quality Commission. The City additionally sought an order requiring the Sanitary District to secure a permit in order to continue to operate its system based upon the fact that the City has cancelled or purported to cancel the District's 1974 Agreement.

9.

The issues on which the City has relied in the above proceeding have been finally determined in arbitration.

10.

The Defendant City should be made to comply with the terms of the Contract concerning arbitration and with the arbitration decision heretofore rendered.

11.

Unless enjoined Defendant will continue to proceed to violate the Contract's arbitration provisions and Judgments heretofore granted in the District's favor. The District

COMPLAINT, INJUNCTION AND DECLARATORY RELIEF

B.

1

2

3

4

5

6

8

9

10

18

19

20

21

22

23

24

25

26

27

28

seeks to enjoin the City to restrict its activities to its available judicial remedies and the remedies available to the City pursuant to the City's Agreement to arbitrate.

SECOND CAUSE OF ACTION - DECLARATORY JUDGMENT

12.

Plaintiff refers to paragraph 1 through 11 hereinabove and by this reference incorporates the same.

13.

There is a justiciable controversy between the parties.

14.

The Court has jurisdiction under ORS 28.020 interpret Section 15 of the Agreement between the parties as set forth in Exhibit A.

15.

The issues set forth in the Petition filed by Defendant (attached hereto as Exhibit B and as Exhibit H to the Affidavit of Counsel) have either already been decided or fall within the scope of the Contract's arbitration provision.

WHEREFORE, Plaintiff prays for a Judgment and Decree as follows:

- 1. A Decree restraining and enjoining the Defendant from proceeding to initiate and maintain a harassing multiplicity of lawsuits on issues already decided adversely to the Defendant.
- A Declaratory Judgment that as to any remaining issues which are subject to arbitration under the Agreement between the parties the same should be arbitrated.

COMPLAINT, INJUNCTION AND DECLARATORY RELIEF

Plaintiff's costs and disbursements and attorney's For such further relief as the Court deems just and LYNN H. HEUSINKVELD, P. C. LYNII II. Lynn H. Heusinkveld Or. State Bar 76392 Attorney for Plaintiff 336 North Front Street Coos Bay, Oregon 97420 I, KENNETH L. BASTENDORFF, being first duly sworn, depose and say that I am the President of the Charleston Sanitary District herein and that the foregoing Complaint is KENNETH L. BASTENDORFF Subscribed and sworn to before me this 📈 day of Notary Public for Oregon My Commission expires:

AGREEMENT FOR REGIONAL SECONDARY WASTE WATER TREATMENT

COOS BAY

and

CHARLESTON SANITARY DISTRICT

1974

C. <u>Percentage of Payment for Participants</u>. Each of the participants shall be obligated to pay the following list percentages of the new project cost as herein defined, such amounts to be used by Coos Bay for construction of Treatment Plant #2.

(1)	Coos Bay .		•		-	•		70.4%
/								
121	Charleston							20 67

100.0%

effort to obtain all funds necessary to construct, equip, renovate and/or remodel the particular plant or transmission lines and sewer lines which it is the obligation of such Participant as provided herein to so construct, equip, renovate and/or remodel; such funds shall be obtained from the proceeds of the sale of general obligation bonds (or by a combination of the sale of such bonds and the obtaining of State and/or Federal grants and/or loans). This Agreement shall be null and void if any Participant fails to obtain the approval of its voters to a bond issue submitted by such Participant to provide all or part of said funds so required to be raised by such Participant.

SECTION 3. Construction and Operation of Facilities

A. Division of Responsibility

(1) The Sewerage Systems and Waste Water Treatment Plant to serve the areas, shall be planned, financed, constructed, operated, maintained and expanded in accordance with the terms of this Agreement, and any Supplements thereto as hereinafter provided.

struction for Coos Bay Waste Water Treatment Plant #2, for sewage treatment facilities. Coos Bay shall design, finance, construct, operate and maintain the waste water treatment plant at the site of Coos Bay's present waste water treatment plant #2. Said treatment plant shall have a capacity of not less than 2.02 MGD, such capacity being the estimated sewage from a population equivalent of not more than 20,200 persons at an average flow of 100 gailons per capita per day. A minimum capacity of 0,259 MGD shall be reserved for Charleston, and the Participants shall participate in the cost of design, financing, construction, operation and maintenance of said waste water treatment plant as hereinafter set forth.

(3) In the event that Charleston shall produce sewage in a volume which exceeds their reserved capacity provided hereinabove in Paragraph 3.A.(2), said participants shall pay on a pro-rata basis for all additional construction, maintenance and operational cost made necessary thereby in order to provide waste water treatment services contemplated by this

capacities, and there exists unused treatment capacity at the Waste Water Treatment Plant, said participant shall pay to the City of Coos Bay the prorata portion of the original net project cost of said waste water treatment plant ascribed to such additional treatment capacity, the use of which is made necessary by the additional contribution to the system over and above that participalit's reserved capacity as defined herein.

agreement.

- _(5) The waste water treatment plant shall be capable of providing secondary treatment meeting the standards of the DEQ.
- (6) Charleston shall have the primary responsibility for collection and transmission of its sewage to the Coos Bay Waste Water Treatment Plant site #2. They shall design, finance, construct, operate and maintain their sewage systems.

B. Waste Water Treatment Plant.

- (1) Coos Bay shall pay the project cost of Waste Water

 Treatment Plant #2 and from profits of General Obligation Bonds to be

 issued by Coos Bay or from Grants and Loans. Charleston shall contribute
 thereto when General Obligation Bonds are sold for construction of collection and transmission facilities.
- (2) The Participants shall contribute to the cost of operation and maintenance of the Waste Water Treatment Plant for waste water pumped and treated in the Waste Water Treament Plant, in the manner provided hereinafter in Section 4 of this agreement.
- immediately initiate a record keeping system, when flows are developed, to record flows and BOD loadings, in addition to flow transmission to the waste water treatment facility. Coos Bay shall maintain records pertaining to flows, BOD and suspended solids at the treatment plant. Both Participants shall have the right of access to all such information and further shall have the right of access to such meters and sampling stations for

the purpose of reading such meters or collecting samples, and a right to maintain a separate record of such information.

- (4) Based on actual flows and BOD loadings from Charleston and Coos Bay, an Operations Committee shall establish the Charleston service fee to be paid to Coos Bay for operating and maintenance costs. Such rate shall be reviewed at the end of the first year and may be adjusted to reflect the actual costs of operating and maintenance costs. After the review and adjustment of any of the first year's rates, the Operations Committee shall review and adjust any or all of the rates as hereinafter set forth, but in any case review and adjust the rates annually.
- (5) All sums paid to Coos Bay under this paragraph shall be kept by Coos Bay in a separate fund and Coos Bay shall hold such fund in trust, account annually to both Participants, and disburse from the fund only such amounts as are necessary to, in order of priority:
- (Λ) Operate and maintain the plant in accordance with State and Federal guidelines, and
- (B) Pay deficits in the foregoing and accumulate from the balance, if any, such reserve fund as the Participants may deem reasonable.
- (6) Coos Bay's books and records regarding said receipts and said funds and records of the cost of operation and maintenance of the plant shall be available for inspection and audit at all reasonable times by authorized representatives of Charleston. Both Participants, shall each

month file with Coos Bay, for purposes hereof, a statement showing the total flow, BOD loading within its jurisdiction as of the date thereof, which statement shall be available for inspection by all Participants.

The Operations Committee shall have the right to audit and redetermine the statement of customers filed by any Participant.

(7) Coos Bay shall establish and maintain a record system to show the operation and maintenance costs of the Waste Water Treatment Plant #2 which will clearly show both budgeted and actual expenditures in terms of personnel services, materials and supplies and capital expenditures. Such records shall be made available upon request at all reasonable times to authorized representatives of each Participant.

cipants agree that operation and maintenance of the Charleston sewerage system by the City of Coos Bay appears desirable to both parties. When the Charleston system is completed, Coos Bay shall assume full responsibility for operation and maintenance of the system, and shall charge Charleston monthly for services provided. All charges for personnel and equipment shall be itemized by Coos Bay with monthly billings. Operation of this system shall be managed by the Operations Committee, and disputes shall be handled in accordance with applicable portions of this agreement.

NECTION 5. Operations Committee.

A. <u>Formation</u>. The Participants shall cooperate in the appointment of an Operations Committee. The Committee shall consist of two persons

B-97

selected as follows: One representative appointed by the governing body of each of the Participants. In addition, the members shall be entitled to use the services of such advisors as they deem advisable.

B. <u>Tenure</u>. A member selected by a Participant shall serve until he is replaced by the governing body of such Participant which may be done at any time and for any reason or until he resigns.

C. Procedure.

- (1) Any and all decisions made by the Operations Committee shall require a unanimous vote of both members. Should a unanimous vote not be possible the question shall be submitted to arbitration as hereinafter specified.
- (2) All rules governing the procedure of the Operations

 Committee shall be determined and established by said Committee with the only limitation being that such rules shall not be contrary to any express provision of this contract.

₩. Duties,

- charges applicable to the Participants. The Committee shall take into consideration such factors as volume of sewage flow, and strength of sewage measured in terms of both Bio-Chemical Oxygen Demand and Suspended Solids.
- (2) Either Participant has the right to a hearing before the Operations Committee if it objects to the base charge. The uniform

charges so established shall constitute a portion of the sewer service fee which each Participant shall be responsible to collect and to contribute for using the Regional Sewerage Facilities. The uniform charge shall be referred to herein as the "base charge" or minimum charge. In setting the amount of the "base charge," the Committee will set it in such an amount as to produce adequate funds with which to meet the following obligations:

(A) Operate and maintain the plant in accordance with State and Federal guidelines, and

the balance, if any, such reserve fund as the Participants may deem reasonable.

- by the Operations Committee using available information.
- (4) Each Participant shall have authority within its sound discretion to increase or decrease the sewer service fee over and above the base charge to meet local requirements. It is the policy of the Participants, and such policy shall be followed by the Committee, that whenever feasible, the base charge shall be reduced to make greater financial resources from monthly sewer service fees available to the Participants.
- E. <u>Power</u>. All decisions of the Committee on any subject which is within its jurisdiction by the express or implied terms of this contract shall be final and completely binding on all of the Participants.

SECTION 6. Payments.

A. The Participants shall annually make adequate and appropriate provisions in their budgets to meet their financial obligations to this Agreement.

B. Payments by Charleston shall be made monthly.

SECTION 7. Rights of Way and Easements Upon Public Streets and the Moving of Conflicting Utilities.

Public Rights of Way. The Participants shall provide plans and give at least sixty (60) days prior notice of its intention to construct sewerage facilities on a public street or road, owned by a Participant, and such notice shall indicate the location and right of way requirements for installation. The Participants agree that the required right of way, within the street or road, as the case may be, will be made available for the installation without cost, except that the Participant doing the work shall be responsible for the repairs of all damaged facilities and the restoration of areas to the condition existing prior to construction.

SECTION 8. Rules and Regulations for the Disposal of Sewaye and for the Construction and Use of Sewerage Facilities.

Ordinances. The Participants agree to adopt and enforce ordinances compelling and regulating the use of their respective sewage collection systems for the purpose of preserving a high standard of maintenance and efficiency in the operation of the sewerage facilities and the sewage treatment plant, and mutually undertake to cooperate to the fullest extent in thereby

establishing a reasonable degree of uniformity in regulations, having due regard for local conditions.

SECTION 9. <u>Federal and State Grant Programs</u>. The Participants agree to join to make timely application for all available Federal or State Grants in order to secure help in paying for the costs of the sewaye treatment plant and sewerage facilities, and to conform to such orderly development, planning and land-use regulations and standards as may be required therein.

sponsible only for claims arising from its own activities hereunder, and shall save all other parties hereto harmless from any claim of any third party arising from such Participant's act or omission.

SECTION 11. Connection of Local Sewerage Facilities.

A. All Participants shall have a right to connect their domestic waste collection facilities to the appropriate severage facilities and to the regional waste water treatment plant after all are ready for operation.

B. Excessive Flow.

(1) For the purposes of this section "excessive flow" shall be defined as any flow, BOD loading or suspended solids loading which exceeds the average of any one or more of these by 30% or more.

- pense meter the flow of sewage coming from the other Participant; however, he must first give ten (10) days written notice of the time and place that the metering will occur to the Participant whose flow is to be metered. The Participant whose flow is to be metered. The Participant whose flow is to be metered shall have the right to be present and to also meter the flow of sewage coming from its own jurisdiction. The results will be delivered to the Operations Committee and it shall by unanimous vote determine whether there is an excessive flow coming from the jurisdiction of the Participant whose flow was metered.
- (3) Should the Operations Committee determine that excessive flow is coming from the jurisdiction of the Participant under investigation, they shall immediately establish a new base charge for such Participant.

 This new base charge shall remain in effect until such time as the excessive flow has been eliminated.
- ment plant, Coos Bay reserves the right to determine whether or not it will accept any "industrial waste" as defined in this Agreement. Charleston shall not make any industrial waste connection that will eventually reach the regional treatment plant without prior approval in writing from Coos Bay.
- D. Either Participant may require pre-treatment of industrial wastes entering the sewerage systems. Pre-treatment may be required to modify or eliminate wastes that would be harmful to the structures, processes, or operation of the regional treatment plant, or sewerage facilities,

in order to render such waste acceptable for admission to the plant or other facilities.

E. Charges for the treatment of industrial wastes shall be recommended by the Operations Committee in accordance with Section 4 of this Agreement. The determination of such charges shall be based on design capacity of the regional treatment plant, taking into account the average design flow, average BOD capacity, average suspended solids capacity, and debt service costs.

SECTION 12. Effective Date and Term of Contract. This Agreement shall be effective from the date of the execution hereof by the Participants and shall continue in full force and effect for twenty (20) years. However, all obligations under this agreement will terminate if either Participant falls to provide adequate financing required to construct the sewerage Construct facilities and regional sewage treatment plant.

for an additional ten years (after said twenty year period) if Charleston 2009 gives written notice to that effect to Coos Bay at any time before the expiration of said twenty year period (unless said waste water treatment plant is at such time no longer in operable condition or unless state or federal laws in existence at such time forbid the continued operation of said plant by Participants.

SECTION 14. Severability. Should any part of this Agreement be held by a court of competent jurisdiction to be illegal or unenforceable,

such event shall not be deemed to affect the validity of any other portion hereof.

this agreement shall be subject to dispute or if the participants fail to agree on any other aspect of implementation of this agreement, the Participants shall submit such matters to arbitration on demand of either Participant as hereinafter specified. Within ten (10) days of notice to the governing bodies of both Participants, said governing bodies shall petition the President of the Professional Engineers of Oregon to select a panel of potential arbitrators. The governing bodies of each of the Participants shall then agree on one arbitrator who shall decide the matter in dispute within thirty (30) days after acceptance of the responsibility. The decision of the arbitrator shall be final and binding upon the Participants and, enforceable by decree or judgment or both in any court of competent jurisdiction.

Should the governing bodies of the Participants fall within ten (10) days to select an arbitrator agreeable to both, the President of the Professional Engineers of Oregon shall then select said arbitrator to act in accordance with the terms of this Agreement.

A. The arbitrator shall be a Registered Professional Civil or Mechanical Engineer having a thorough knowledge of the operation and maintenance of Secondary Waste Water Treatment Plants.

- B. All matters subject to arbitration shall be conducted under the rules of the American Arbitration Association and the laws of Oregon.
- C. At the conclusion of the arbitration the arbitrator shall submit a joint billing to each Participant. Upon receipt of such bill, each Participant shall pay a one/half (1/2) share of the total cost of arbitration.

IN WITNESS WHEREOF, the parties hereto have caused their names to be hereunto subscribed and their seals hereto affixed.

CITY OF GOOS BAY

4 Robert Hale, Mayor

Attest:

Richard Kahanek, City Manager

Approved as to Form

James B. Bedingfield, Jr. City Attorney, Coos Bay

Exhibit A-20

B-105

CHARLESTON SANITARY DISTRICT

Attest:

Approved as to Form

Cameron Thom,
Sanitary District Attorney

Exhibit A-21

DEPARTMENT OF ENVIRONMENTAL QUALITY OF THE STATE OF OREGON,

PETITION

Department,

No. WQ-SWR-88-72

vs.

COOS COUNTY

CITY OF COOS BAY,

Respondent.

8

1

2

3

4

Б

в

7

9

10

11

12

13

14 15

16

17

18

19

20

21 22

23

24

25

26

I.

- 1. The City of Coos Bay operates a wastewater treatment plant (Plant No. 2) under NPDES Permit No. OR-002358-2 (100036).
- 2. Charleston Sanitary District discharges wastewater into Coos Bay's Plant No. 2.
- 3. The Environmental Quality Commission issued a Stipulation and Final Order to the City of Coos Bay (No. WQ-SWR-88-72) on September 9, 1988, requiring new or modified treatment facilities to be constructed and put into operation so as to meet the City's NPDES permit requirements by December 15, 1991.
- 4. Pursuant to that Order a Facility Plan was completed and submitted to DEQ which included a review and evaluation of an alternative plan for an independent treatment facility for the Charleston Sanitary District.
- 5. The facility plan concluded, and DEQ and EPA agreed, that the most cost effective, environmentally acceptable

treatment alternative was an improvement at the existing Plant No. 2 to serve both the City of Coos Bay and the Charleston Sanitary District.

- 6. An EPA grant was awarded to the City on September 29, 1989, in the amount of \$1,326,138 for the improvements to Plant No. 2. Those improvements are to include continued provision of services to the Charleston Sanitary District.
- 7. The City has just received approval to proceed with contract award for the construction project in the amount of \$3,128,806.
- 8. All users of Plant No. 2 must share in the costs of the improvements.
- 9. The City has estimated that the Sanitary District's fair and equitable share of the costs of the engineering to date associated with the improvements to Plant No. 2 and of the construction-period costs is \$892,000.
- 10. The City has prepared an intermunicipal agreement with the Sanitary District which addresses cost sharing and future operations. That agreement has been reviewed by DEQ for compliance with EPA and Oregon rules and regulations.
- agreement nor to pay any portion of the construction costs. The District has not been paying its fair and equitable share of the costs of operation and maintenance of the plant for more than three years. For example, in June, 1990, it was billed \$5,085;

- 12. In order for the City of Coos Bay to remain in compliance with the schedule set forth in the Stipulation and Final Order, and to pay the contractor as work progresses, it must receive the funds from the Sanitary District.
- 13. The Sanitary District must be made jointly and severally responsible with the City for meeting the compliance dates.
- required that the District complete "local funding arrangements" for its share of the costs of the improvements to Plant No. 2 and forward material to DEQ by June 20, 1989. To the best of the City's knowledge, the District has not yet complied.

THEREFORE, the City requests that a compliance order be issued to the Charleston Sanitary District approving the allocation of costs associated with the improvement project, requiring immediate District financial participation in the construction project so that the project can be completed consistent with the City's compliance order, and making the District jointly and severally liable for meeting the compliance dates in Order No. WQ-SWR-88-72 issued to the City of Coos Bay.

II.

1. Charleston Sanitary District owns and operates a collection system with 8 pump stations, serving approximately

Б

1,250 residential and commercial connections, with an average current daily flow of 221,000 gallons.

- 2. Under ORS 468.700(1) and (5), the District operates a "sewerage system" which is a "disposal system." Under ORS 468.700(2) and (6) the District's disposal system discharges "industrial waste" into the "treatment works" owned and operated by the City of Coos Bay.
- 3. ORS 468.740 requires a permit from DEQ for operation of any disposal system. OAR 340-45-010(24) defines a "WPCF permit" as a permit to construct and operate a disposal system with no discharge to navigable waters. Therefore, the District is required to have a WPCF permit to operate its system under Oregon law.
- 4. OAR 340-45-015(4) exempts persons who discharge wastes into a sewerage system from the requirements of obtaining a WPCF permit or NPDES permit, provided the owner of the sewerage system has a valid permit. The owner of the Sanitary District's sewerage system is the Sanitary District and it does not have a permit. If DEQ does not require a WPCF permit for the District, then all those persons within the District who discharge into the District's sewerage system would need a discharge permit from DEQ.
- 5. OAR Chapter 340, Division 49, further sets forth regulations pertaining to certification of wastewater collection system personnel. One of the purposes of a WPCF permit would be

to monitor compliance with those requirements by the Sanitary District in its operation of its collection system.

THEREFORE, the City requests that the Charleston Sanitary District be required to apply for, hold and comply with a valid WPCF permit in order to continue operation of its sewerage (collection) (disposal) system.

DATED this 10th day of August, 1990.

Respectfully submitted,

By Youla M Exchold

Paula M. Bechtold City Attorney

Б

EXHBIT MXXXXX B-5

PAGE 5 - PETITION

STATE OF OREGON

B-1/2

EQUITY ISSUES BETWEEN COOS BAY AND CHARLESTON

Arbitration

The District and the City attempted to resolve through arbitration, disputes pertaining to past charges by the City to the District for system operations, and disputes pertaining to alleged falsification of records and treatment plant operations. Arbitration was completed in fall 1989, and the arbitrator's decisions were issued in December 1989 (decisions were final in August 1990). The City was exonerated of all disputes pertaining to falsification of records and plant operation; system finance charges to the District were reduced. The City requested an independent investigation by the state attorney general of the "criminal charges" (falsification of records). Again the City was exonerated.

The District asserts that the arbitrator's decision relieves the District of all future capital costs for rehabilitation, expansion, and upgrade of the Coos Bay No. 2 sewage treatment plant. The City disputes this assertion claiming that the arbitration covered past issues and not future financing. Department staff have reviewed material and do not believe recently completed arbitration addressed future funding issues. In any event, the resolution of such issues is covered by the terms of the current contract which establishes arbitration as the process for resolution of issues.

An issue related to the arbitration is payment of fees for treatment of the District's wastes. The City asserts that the District is not paying required fees. On August 7, 1990, the City council took action to rescind the 1974 contract for non-payment of service fees. Again, the agreement provides the mechanism for the resolution of such disputes.

Intermunicipal Contract

The intermunicipal contract was signed in 1974 and expires in 1994, with a provision for the District to unilaterally extend the contract for an additional 10 years. The City believes the contract is difficult to administer and does not provide for a correct capital cost allocation to the two parties for the proposed reconstruction of the Coos Bay No. 2 treatment plant. The City has written and proposed a new intermunicipal contract, a new cost allocation formula and new costs for the City and the District necessary to pay for the plant improvements. The

District does not believe that the existing contract should be changed but rather there are provisions within the contract to arbitrate all relevant disputes.

Department staff have concluded that the existing intermunicipal contract needs to be updated or replaced by a new contract. The existing contract appears to include capacity and cost allocations tailored to the 1974 sewage treatment plant improvement project when the plant was upgraded from primary to secondary treatment and plant capacity was increased. The new improvement project includes reconstruction of a worn out treatment plant, capacity increases to handle flows and waste loads to year 2010 and upgrade in the plant to meet new EPA requirements for Class I Reliability. The EPA construction grants program (40 CFR 35.2107) requires approval of intermunicipal contracts for projects that serve two or more municipalities. The contract must include "the basis upon which the costs are allocated, the formula by which costs are allocated, and the manner in which the cost allocation system will be administered."

The Department recommended the existing intermunicipal agreement be considered as a sufficient basis for grant award, subject to the condition that grant funds be withheld until the intermunicipal agreement was updated to include allocation of costs between the City and the District and submitted to and approved by the Department. The grant was awarded with this condition included. When it became apparent that the parties were unable to reach agreement, and the continued withholding of funds could jeopardize orderly project implementation, the Department requested that EPA release funds to the City. EPA removed the entire condition from the grant rather than modifying the condition to allow release of funds as the Department had EPA has indicated that elimination of the grant condition does not relieve the requirements for compliance with federal rules requiring the agreement, and failure to satisfy EPA regulations regarding the intermunicipal service agreement could result in withholding of grant funds.

Finance Issues

The City prepared a financial capability analysis and identified financing mechanisms to fund the local share costs of the proposed improvements. This information was necessary for the City to comply with conditions of the Commission Order and to comply with EPA construction grant requirements. The financing program identified by the City allocated 30% of the capital costs to the District and 70% of the costs to the City. Department staff accepted this allocation to expedite the grant process, and recommended that Coos Bay receive a federal construction grant. As a result of the Department's action the City now has approximately \$1.7 million in EPA grant funds committed to the

project and \$424 thousand in HUD funds. Failure to proceed with construction could result in loss of grant funds.

There are two issues associated with the 30/70 split in the capital cost allocation. First, as mentioned above, the District does not believe that it should pay for any of the sewage treatment plant improvements. Second, Department staff has insisted that the cost allocation be updated and that it be based on each community's respective use of the treatment capacity, both waste flow and waste strength, at ultimate plant design. will result in an equitable and reasonable cost allocation. concept of equitable and reasonable allocation of costs underlies the EPA grant program, and is a matter of Environmental Quality Commission policy. This Commission policy was fully and clearly established as a precedent through hearings, findings and order to construct sewers in Mid-Multnomah County. (In the Mid-Multnomah County case, the Commission insisted that the financing plans assure that everyone paid their full fair share of the cost of constructing and operating sewerage facilities. Specifically, the Commission expressed the policy that residents outside the cities of Portland and Gresham should not subsidize construction or operation costs for residents inside the Cities, and similarly that residents inside the cities should not subsidize any costs for residents outside the cities.)

The City of Coos Bay has responded to Department requests for a fair and equitable cost allocation and has developed an allocation based on each community's projected design flows both for wet weather and for dry weather. The resultant allocation of the local share of construction costs, based on recent bids is \$892,000 to the District and \$1,391,703 to the City. The City wants a commitment from the District to pay their fair share.

The Department believes that Coos Bay may have other options for funding the needed construction if the District does not agree to the current proposal. One such option would be the issuance of revenue bonds sufficient to pay the full local share costs with debt service on the bonds provided by an appropriate incremental charge added to the user charges levied for all customers of the facility. This option would likely increase costs slightly because interest rates on revenue bonds are usually higher than for general obligation bonds. In addition, the user charges could be challenged and end up in arbitration pursuant to the terms of the current intermunicipal agreement.

Finally, it should be noted that failure to arrange the local financing and get on with construction could result in loss of grants as well as enforcement action for failure to meet compliance schedules and permit limits.

Project Planning

The treatment alternatives, engineering analysis and cost estimates were completed in summer 1989. The reconstruction and expansion of the existing treatment plant was approved by the Department as being the most cost effective and environmentally sound solution for providing the needed treatment facilities. Department recommended to EPA that a grant be awarded. concurred with the Department's recommendation and awarded a construction grant. The EPA regulations require that a cost effective solution be recommended, otherwise a grant cannot be The Charleston Sanitary District has never concurred in the Department's recommendations; instead District officials assert that the recommended solution was not cost effective, and that a separate plant should be constructed to treat District In late summer 1989, the District prepared an engineering analysis to support their assertion. Neither Department staff nor EPA officials agreed with the District's analysis.

The Department staff still believe that the one plant approach is the cost effective solution.

Permit Issues

The Coos Bay Plant No. 2 is presently covered by an NPDES Permit issued to Coos Bay as the owner and operator, and by a stipulated compliance order with the EQC which establishes a compliance schedule for construction of treatment plant improvements.

At present, the Department has not issued any permit to Charleston Sanitary District. In April 1989 the Department requested that the District apply for a Water Pollution Control Facilities permit (WPCF) to regulate the District's collection system. The application was requested because the Department concluded that the City did not have full control of the waste entering the system from the District. City of Coos Bay officials supported the Department's efforts to issue a collection system permit to the District. The District submitted an application in September 1989.

In January 1990, the Justice Department was asked to review Oregon Administrative Rules 340-45-015(4) upon which the Department based its decision to request a permit application. This rule states that:

"Persons discharging wastes into a sewerage system are specifically exempted from requirements to obtain a WPCF or NPDES permit, provided the owner of such sewerage system has a valid WPCF or NPDES permit. In such cases, the owner of such sewerage system assumes ultimate responsibility for controlling and treating the wastes which he allows to be discharged into said system."

The Department had historically interpreted this rule to exempt the owner of a collection system which was connected to a different owner's permitted treatment facility from the permit requirement if the permitted treatment facility was responsible for the operation and maintenance of the collection system.

The Justice Department concluded that although the statute, ORS 468.740(2) does require a permit, the rule as presently worded does not. Consequently the Department returned the permit application.

The Department is exploring this matter further at this time. The City has concluded that the District is now performing maintenance work on District pump stations; and the City will no longer be performing this service after October 1, 1990. If the District will be responsible for operation of its collection system and pump stations, and the Department were to apply the rule as it has in the past, then the activity should be regulated through a permit. However, based on advise of the Attorney General's office, it may be necessary to modify the wording of the rule to accomplish the originally intended purposes of minimizing paperwork while having the construction and operation of collection systems covered by a responsible permittee.

The District has applied for a national pollutant discharge elimination (NPDES) permit to construct and operate a separate sewage treatment plant. The Department initially denied the permit, and the District requested a hearing. Based on legal advice from the Department of Justice the denial was rescinded and additional information was requested by September 10, 1990. Additional information was received on September 11, 1990, and is being evaluated by the Department at this time.

The Department concludes that it has clear authority to take enforcement action against the City for any failure to meet permit limits or the compliance schedule contained in the stipulated order. The Department has not identified any clear authority for direct action against a customer of a municipal sewerage system where the relations between the customer and the municipality are covered by an intermunicipal agreement and where the customer is not discharging wastes to public waters in violation of Department rules.

LYNN H. HELSINKVELD ATTORNEY AT LAW A PROFESSIONAL CORPORATION 336 NORTH FRONT STREET COOS BAY. OREGON 97420

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION OF THE STATE OF OREGON

DEPARTMENT OF ENVIRON	MENTAL QUALITY)	
OF THE STATE OF OREGO	j	CHARLESTON SANITARY	
	Petitioner,)))	DISTRICT MEMORANDUM OF LAW - RES JUDICATA
and		í	
CITY OF COOS BAY,)	No. WQ-SWR-88-72
CITI OF COOS BAI,)	COOS COUNTY
	Respondent.)	
		J	

The Charleston Sanitary District respectfully submits the following Points and Authorities on the issue of resjudicata.

A judgment conclusively settles a controversy so far as the parties or their privies are concerned, except where impeachable for fraud or want of jurisdiction. Thielsen v. Linde, 127 Or 639, 271 P 983 (1928)

The rules of res judicata apply to previous rulings in an action on a similar determination in a subsequent action.

State v. Scott, 68 Or App 386, 681 P2d 1188, review denied 297 Or 547, 685 P2d 998 (1984)

If the decision on a particular issue or fact is determinative in a subsequent action between the parties on the same claim, there is direct estoppel, but if the judgment in a different action between the parties as to the issues actually litigated and determined in the prior action is conclusive because the determination is essential to the judgment, there is collateral estoppel. State Farm, Fire and Casualty Co. v. Reuter, 299 Or 155, 700 P2d 236 (1985)

In determining whether the doctrine res judicata ap-

H. HEUSINKVELD

ATTORNEY AT LAW
PROFESSIONAL CORPORATION
336 NORTH FRONT STREET
COOS BAY, ORESON 97420
TELEPHONE (503) 269-7511 12 13 14 15 16 17 18

1

2

3

4

5

6

7

8

9

10

11

19

20

21

22

23

24

25

26

27

28

plies a Court must first determine whether the second action is on the same cause of action as the first, and if it is on the same cause of action, then the second action is barred by Stone v. Beneficial Standard Life Insurance Co., 273 Or 594, 542 P2d 892 (1975)

Term "cause of action" as it relates to the law of res judicata is an aggregate of operative facts which compose a single occasion for judicial relief. Dean v. Exotic Veneers, Inc., 271 Or 188, 531 P2d 266 (1975)

A judgment is a bar to a subsequent suit between the same parties as to the matters actually determined, and as to other matters which the parties might have litigated in the Colgan v. Farmers' & Mechanics' Bank, 69 Or 357, 138 P suit. 1070 (1914)

Generally a plaintiff who has prosecuted one action against a defendant through to a final judgment binding on the merits is barred on res judicata grounds from prosecuting another action against the same defendant where the claim in the second action is one which is based on the same factual transaction that was at issue in the first, seeks a remedy additional or alternative to the one sought earlier, and is of such a nature as could have been joined in the first action. Rennie v. Freeway Transport, 294 Or 319, 656 P2d 919 (1982)

In determining whether the same cause of action is involved in two suits for purposes of res judicata, criteria include whether the rights or interests established in a prior judgment would be destroyed or impaired by prosecution of a second action; whether substantially the same evidence is CHARLESTON SANITARY DISTRICT MEMORANDUM

-2-OF LAW - RES JUDICATA

LYNN H. HEUSINKVELD ATTORNEY AT LAW A PROFESSIONAL CORPORATION 336 NORTH FRONT STOFFT

presented in the two actions; whether the suits involve infringement of the same right; and whether the suits arise out of the same transactional nucleus of facts. <u>Harris v. Jacobs</u>, 621 F2d 341 (Court of Appeals, Oregon 1980)

Res judicata is applicable to the City's Petition. The Petition would destroy the District's Arbitration Decisions.

A judgment is on the merits so as to bar further litigation, when it amounts to a declaration of the law as to the parties' respective rights and duties based upon ultimate facts disclosed by the pleadings and evidence, irrespective of formal, technical or dilatory objections or contentions; "merits" meaning matter of substance as distinguished from matters of form. Haney v. Neace-Stark Co., 109 Or 93, 219 P 190 (1923)

The city's issues in its Environmental Quality Commission Petition are barred by res judicata.

Respectfully submitted,
LYNN H. HEUSINKVELD, P. C.

By:
Lynn H. Heusinkveld
Or. State Bar # 76392
Attorney for Petitioner
336 North Front Street
Coos Bay, Oregon 97420
(503) 269-7511

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF OREGON,

Department,
Department,
Department,
DISTRICT MEMORANDUM
RE: JURISDICTION

Vs.

CITY OF COOS BAY,
Respondent.

Respondent.

COOS COUNTY

The Charleston Sanitary District respectfully submits the following Memorandum concerning jurisdiction of the Environmental Quality Commission to consider the matters proposed for consideration by the City of Coos Bay.

1. <u>Constitutional and Statutory Basis for Jurisdiction:</u>

Jurisdiction is the power of a Court to decide a particular case and grant appropriate relief. <u>School District</u> No. 1, <u>Multnomah County v. Nilsen</u>, 262 Or 559, 566, 567, 499 P2d 1309 (1972).

The party seeking to invoke jurisdiction has the burden of alleging facts supporting jurisdiction in its initial pleading and must prove those facts at trial. Parmele v. Mathews, 233 Or 616, 619-620, 379 P2d 868 (1963) Failure to allege such facts will subject the pleading in a court case to a motion to strike or dismiss. ORCP Rule 21A(1), 21E Coos Bay has failed to assert a basis for EQC jurisdiction against the District on any of the claims in its First Cause and such Cause should be stricken.

If a Court lacks the power to decide a given case, the parties cannot create jurisdiction by consent. Wilson v. Mathews, 291 Or 33, 39, 628 P2d 393 (1981) Lack of subject matter jurisdiction is never waived and may be raised at any time, even on appeal, by a litigant or by the Court itself. ORCP Rule 21G(4)

2. Personal Jurisdiction:

In order to impose a personal obligation on a particular defendant in favor of another person such as the City has proposed jurisdiction in personam is required. Shaefer v. Heitner, 433 US 186, 199, (1977) The first requirement of in personam jurisdiction is that the party have been lawfully served. The District has not been served as a party in these proceedings and appears only for the purpose of contesting jurisdiction and in requesting that these proceedings be dismissed.

2728

CHARLESTON SANITARY DISTRICT MEMORANDUM RE: JURISDICTION

LYNN H. HEUSINKVELD ATTORNEY AT LAW A PROFESSIONAL CORPORATION 336 NORTH FRONT STREET COOS BAY, OREGON 97420 TELEPHONE (503) 269-7511 1

2

3

4

5

6

8

9

10

11

12

13

14

16

17

18

19

20

21

22

23

24

25

26

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

3. Joint and Several Liability:

A. Common Law Indemnity:

For purposes of this motion the Sanitary District has respectfully suggested some additional factors which should be considered by the Commission:

- 1) At the same time as the Commission was issuing notices of violation of the treatment plants discharge permit, the District was questioning the City's operations of the plant in a process that ultimately led to arbitration.
- 2) The City made an economic decision in consenting to the Department's Stipulation and Final Order in Case No. WQ-SWR-88-72 to enlarge the treatment plant rather than fix its collection system The EQC order sanctions an abandonment of the Department's requirement that the City maintain it's collector lines and eliminate I & I. The Order abandons an agreement on which the District relied in its decision to sign a Regional Agreement. The Order places the Commission in conflict with the interests of the Charleston Sanitary District. The District continues to insist that the City minimize flows into the treatment plant as the District has a right to insist under the Contract's paragraph 8.

If the District was to ever become obligated to perform or indemnify City commitments on the Order, the District should have been included in negotiations prepatory to the Stipulation which resulted in the Commission's Final Order and the District's contractual interests should have been considered along with the interests of the DEQ and EPA in the enforcement of grant condition number 8 in the 1974 Grant If the Charleston Sanitary District was to have equal liability Charleston Sanitary District should have been allowed to participate in the process as an equal party. obligation of indemnity arises out of an express or an implied Where the parties are "in pari delecto" indemnity Kennedy v. Colt, 216 Or 647, 339 P2d 450 (1959). will be lie. An active tort feasor is not permitted at common law to pass his liability on to a passive party. Siebrand v. Eyerly Aircraft Co., 196 F Supp 936 (1961)

Since the adoption of the Stipulation and Final Order many decisions have been made in the planning of the new facility, in the evaluation of the Charleston alternative and in the development of a Facilities Plan acceptable to the City and to it's engineers and to the DEQ. The Charleston Sanitary District has been excluded from the process, has had no control over design, no control over costs or over the thousands of decisions which had to be made, and there is no proposal to give the District any control at this stage. The proposal is to merely press down responsibility for compliance on the District and to press upon the District joint and several liability with the City for the consequences of the City's decisions, their ability to perform and their failure to perform.

The District has been denied access to information.
The City continues to impose a blanket attorney-client privi-

CHARLESTON SANITARY DISTRICT MEMORANDUM RE: JURISDICTION

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

lege on it's employees. The District does not know one-tenth what it would have to know in order to undertake performance of the multitude of obligations which the City must have incurred. The District has no funding for the proposed undertaking. In order to undertake to perform or to assure the Department that Coos Bay performs the District would necessarily perform a certain amount of due diligence investigation into the current status of the project, and what is required. The District has no funding nor present ability nor any present desire to perform such a guarantor's duties.

The City purports to have "rescinded" it's agreement to treat the Sanitary District's waste and with it all contractual rights of the District to the treatment plant embodied in Thus according to the City's version the Disthe Contract. trict has no particular right of audit or inspection nor any right to the continued treatment of it's waste at the former Regional Treatment Plant. If this continues to be the City's position, and if the City is successful in causing the contractual relationship between the parties to be dissolved, the District would have no appropriate interest in becoming jointly and severally liable with the City of Coos Bay on a project which is to be developed for the sole and exclusive use of the City of Coos Bay. In order to go forward with the City of Coos Bay, something which is a possibility, the parties must have a strong contractual relationship which protects the citizens of Charleston and the citizens of Coos Bay equally. If the Sanitary District is to pay roughly one-half the local cost of a treatment plant, the Sanitary District should own one-half.

\$892,000/\$1,391,703 = 39/61, not 30/70. And when Coos Bay's funding from the Economic Development is considered the ration is as follows:

\$892,000/(\$1,391,703-\$424,000) =

\$892,000/\$967,703 = 48/52. These cost allocations give no consideration to the fact that the project is made necessary by reason of poor Coos Bay maintenance of the plant and Coos Bay collection lines.

Control should be joint - possibly with the addition of a neutral third party to prevent deadlock and politics should be taken out of the relationship. Only with such a contract or the contract which presently exists, honestly kept by the parties, can the regional goals be achieved.

B. Rates and Charges Analysis

It appears that the authority of the Commission to institute actions or proceedings for legal or equitable remedies to enforce compliance or to restrain violations is based on ORS 468.100. That statute authorizes the Commission having good cause to believe that any person is engaged in or about to engage in any acts or practices which constitute a violation of certain statutes to institute proceedings. Jurisdiction where it exists is jurisdiction to prosecute law violators.

CHARLESTON SANITARY DISTRICT MEMORANDUM RE: JURISDICTION

ORS 454.030 pertaining to rates and charges authorizes the Commission to adopt a system of charges and rates for a municipality or to institute actions or proceedings for legal or equitable remedies where a municipality fails to do so. The District has not refused to discharge its legal and equitable duties; it has instead attempted to enforce the contractual and equitable remedies included within its Regional Contract. The District has paid the rates which were determined equitable by the Arbitrator and has urged the City to arbitrate the issues which the parties have including those which the City now attempts to bring before the Commission.

ORS 454.030 authorizes a municipality to adopt a system of charges and rates to assure that each recipient of treat-

ORS 454.030 authorizes a municipality to adopt a system of charges and rates to assure that each recipient of treatment work services within the municipalities jurisdiction or service area will pay its proportionate share of the cost of operation, maintenance and replacement of any treatment work facilities or services provided by the municipality.

But in this case the City of Coos Bay has signed a Contract with the Charleston Sanitary District. That Contract requires the rates be set by an Operations Committee consisting of one representative from the City of Coos Bay and one representative from the Charleston Sanitary District. If the City of Coos Bay would honor its Contract with the Charleston Sanitary District and submit to the authority of the Operations Committee as it has agreed, then the rates and charges to meet the cost of the treatment works would be legally set by the parties and not subject to the vagaries of the Contract's arbitration clause.

In considering whether Charleston should be made jointly and severally liable with Coos Bay for the consequences of Coos Bay's decisions and actions, consideration should be given to whether the Commission could or should give authority to the City to make unilateral decisions binding upon and frequently harmful to the Charleston Sanitary District. The authority, if any, must emanate from the 1974 Contract whereby Charleston agreed to participate in the Regional Treatment System. Legislation does not extend the City's authority so far. And the Contract simply does not grant the City that authority.

Based on the reality of five years of attempting to work with the City of Coos Bay, the District has determined that the best alternative for the District is to become independent as soon as financially reasonable.

With each new act of defiance and attempt to injure the District's interests the necessity of removal from the Regional Treatment Plant becomes more apparent. The parties made many mutual promises and the Sanitary District has many rights contained in the 1974 Regional Agreement, but if Coos Bay is unwilling to honor the Agreement without being taken into arbitration, the cost of justice becomes too dear. Certainly under these circumstances no legal or equitable basis exists for compelling the District to pay nearly \$900,000 for plant improvements.

2

3

4

5

6

7

8

9 10

11

12

13

LYNN H. HEUSINKVELD
ATTORNEY AT LAW
A PROFESSIONAL GORPORATION
336 NORTH FRONT STREET
GOOS BAY, OREGON 97420
TELEPHONE (503) 269-7511 14

15

16 17

18

19

20

21

22

23

24

25 26

27

28

The City has proposed a new Contract which makes the Sanitary District jointly and severally liable with it for any violations by the treatment plant of unknown origin.

The Agreement also proposes that the Sanitary District surrender any control now possessed by the District through the Operations Committee and also surrender the right to arbitrate differences with the City.

The Agreement provides that the City will bill the District for what the City determines to be its share of the treatment plant expenses together with a punitive surcharge. The Agreement authorizes the City to unilaterally deny the District service, requires the District to pay operations, maintenance and repair costs set by the City without any control by the District on the costs, and requires the District to pay on top of that amount a risk assessment factor of The Contract would increase the District's fees to approximately 45% of the total costs of the treatment plant even though its' usage of the plant will be approximately 30% and despite the fact that costs may be exaggerated by poor maintenance at the plant and in Coos Bay. The proposed Agreement would deny the District the benefits of the rate reduction secured through arbitration, allow the City to withdraw from its contractual obligation to maintain the District's pump stations and sewer lines, and impose upon the District an obligation to periodically inspect, clean and repair its own collection lines, interceptor service laterals and pumping stations according to a plan approved by the City. tract would tighten the City's grip on the District in a number of ways including a requirement that the City review and approve all plans and specifications for any additions to or modifications of or reconstruction of the District's sewer system and prevent the District from performing any such work prior to City approval. The District would be required to allow the City to access to all parts of the District's system for the purpose of installing such metering devices and sampling stations as the City deems necessary. The District would be subjected to substantial record keeping requirements with no similar obligation on the part of the City. District would essentially become the City's colony.

The District would be asked to give the City a carte blanche to increase and modify the treatment plant as it deemed necessary - at District expense. The District would be required to surrender all the rights and obligations inherent in ownership of the wastewater treatment plant to the City and the City would be given the right to terminate the proposed Contract upon 60 days notice in the event of a District failure to comply with any of the conditions or obligation on its part in which event all District collection lines and service laterals within the District and all District pump stations would immediately become the property of the City without any compensation.

The Agreement is repugnant to the District. The agreement is unacceptable.

If a new Agreement is made with the City, the Agreement should hold true to the arbitrator's recommendation: "The City and District need to modify the Contract between the two parties to provide a third independent party to hopefully resolve future Contract conflicts before they become issues that require arbitration." The contract's supervisorial role for the Operations Committee should be preserved. The Operations Committee should have a sufficient budget and authority to determine the most efficient method of operating the plant whether it be through the use of more employees, enhanced equipment or by the assistance of a third party contractor. The Operations Committee should have the right to prepare the plant's annual budget and monitor that budget throughout the year.

By the existing Regional Contract Coos Bay promised to provide the Charleston Sanitary District 420,000 gallons per day of treatment plant capacity until the year 2004. That promise was made in exchange for the mutual promises and the initial consideration of 29.6% of the local share of the construction cost paid by Charleston. Coos Bay cannot be relieved of its bargain with the Charleston Sanitary District because it now finds that it has to spend additional money to perform the service it promised to perform for the District. "Equity will not relieve a party of an improvident bargain simply because his opinion of its value proves incorrect." Gardner v. Meiling, 280 Or 665, 572 P2d 1012 (1977).

Coos Bay purports to have rescinded the 1974 Regional Agreement based on the District "failure to pay". But the City has not found or shown any amounts justly due which the District has not paid.

"In order to justify rescission of contract, breaches of contract must be substantial so as to defeat the purpose of the contract." Hay v. Pacific Tastee Freeze, Inc., 276 Or 569, 555 P2d 1256 (1976) Contested amounts should be arbitrated.

"Before a party to a contract is justified in rescinding it because of its breach by the other party, the breach must be substantial." <u>Bollenback v. Continental Casualty Co.</u>, 243 Or 498, 414 P2d 802, 34 ALR 3rd 228 (1966).

"A court of equity will not rescind an executory contract for an occasional and immaterial breach not going to the very substance of the Contract." <u>Vaughn v. Wilson</u>, 203 Or 243, 279 P2d 521 (1955).

Contract law requires that when a contract is rescinded the parties should be restored as nearly as possible to their situations prior to the transaction. Bodenhamer v. Patterson, 278 Or 367, 563 P2d 1212 (1977). Prior to this contract the Sanitary District was unbuilt. The people of the District were basically using their own septic systems - all of which have now been removed. The most logical method of constructing a sewer system might well have been to direct flow towards the mouth of the bay. The District spent approximately

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

\$7,000,000 to construct in the direction of Coos Bay. If Coos Bay is going to attempt to rescind its Contract with the Charleston Sanitary District, logically the District should be permitted to take care of its own sewage waste.

5. Pump Station Permit

The City's second cause of action relies again upon the City's unilateral rescission of the Regional Agreement. Section 4 of the 1974 Agreement provides as follows: "Section 4. Maintenance of Charleston Pump Stations The participants agree that operation and maintenance of the Charleston sewage system by the City of Coos Bay appears desirable to both parties. When the Charleston system is completed, Coos Bay shall assume full responsibility for operation and maintenance of the system, and shall charge Charleston monthly for services provided. All charges for personnel shall be itemized by Coos Bay with monthly Operation of the system shall be billings. managed by the Operations Committee, and disputes shall be handled in accordance with applicable portions of this Agreement."

Coos Bay should not benefit by its breach of the Contract but rather Coos Bay should be required to adhere to the Contract. If there is a dispute with Charleston concerning maintenance, the Contract says that the dispute ought to be arbitrated.

Conclusion

All of the disputes the City attempts to bring before the Commission are capable of being framed for arbitration or have already been considered by the Arbitrator. If there was an underpayment justifying a rescission of Contract, the underpayment should have been made known to the District and then if the parties were unable to agree, that issue should have been submitted for arbitration under the Contract. there was a dispute with respect to the actual performance of maintenance or with respect to Charleston's unhappiness with the level of maintenance provided by Coos Bay and Coos Bay was interested in having the dispute considered by a third party, Coos Bay should have submitted the matter to arbitration. Cessation of service and rescission, a forced Contract, and Commission imposed joint and several liability are not appropriate remedies under the circumstances and the District believes that under the present circumstances it is inappropriate for the Commission to become officially involved in what is basically a local contractual dispute.

CHARLESTON SANITARY DISTRICT MEMORANDUM RE: JURISDICTION

LYNN H. HEUSINKVELD ATTORNEY AT LAW A PROFESSIONAL CORPORATION 336 NORTH FRONT STREET GOOS BAY, OREGON 97420 TELEPHONE (503) 269-7511

Respectfully submitted,
LYNN H. HEUSINKVELD, P. C.

By:
Lynn H. Heusinkveld
Attorney for Charleston
Sanitary District

CHARLESTON SANITARY DISTRICT MEMORANDUM RE: JURISDICTION

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRON OF THE STATE OF OREGO Vs.)) CHARLESTON SANITARY) DISTRICT MEMORANDUM) OF FACTS - JURISDICTIONAL ISSUE
CITY OF COOS BAY,)	No. WQ-SWR-88-72
	Respondent.)	COOS COUNTY

All of the issues raised by the City of Coos Bay could be or have been arbitrated under the terms of the 1974 Contract. The District is not the holder of the Discharge Permit in question, has been denied access to information by the City, had no way of preventing the incidents which resulted in Commission Action except with DEQ intervention and no way of controlling them in the future except possibly through arbitration (and the proposed new Coos Bay Contract seeks to take away even that control).

The City uses their unilateral decision to terminate pump station and sewer line service after October 1, 1990 as the reason the District's collector system should be separately permitted. The City has no authority to terminate a Contract which has been in existence for 16 years.

The City's continuing obligation to maintain the Charleston system is subject to the Contract's arbitration provi-The City's effort to take this issue around the back door to the Commission is wearisome.

SUGGESTED ADDITIONS TO CHRONOLOGY TO MEMORANDUM PREPARED BY DEQ:

1974

The EPA Grant Agreement contained the following commitment:

The grantee shall give assurance in the form of a resolution that a program is now, or will be underway to determine the extent of infiltration entering the existing sewer system and that a systematic program and schedule for the repair or replacement of leaky sewer is proposed."

The 1974 Agreement with Charleston committed supervisorial control of the treatment plant to a joint Operations Committee. Coos Bay also

CHARLESTON SANITARY DISTRICT MEMORANDUM OF FACTS - JURISDICTIONAL ISSUE -1-

YNN H. HELGINKVELD ATTORNEY AT LAW PROFESSIONAL CORPORATION NORTH FRONT STREET S BAY, OREGON 97420 PHONE (503) 269-7511 13 14 15 16 17

18 19 20

21

1

2

3

4

5

6

7

8

9

10

11

12

22 23

24

25

26

27

28

agreed to adopt and enforce ordinances compelling and regulating the use of the City's sewage collection system for the purpose of preserving a high standard of maintenance and efficiency in the operation of the sewerage facilities and the sewage treatment plant (Contract, Paragraph 8).

The City passed a Resolution in 1977 but did not initiate a work program to accomplish removal of excess inflow and infiltration into it's existing sewer system.

Minimal maintenance was done by the City at Plant 2 (see Jan Davis Affidavit; also DEQ Inspection Reports - Exhibit D).

The District offered \$225,200 towards Plant 2 improvements estimated at \$1,527,000 in 1985 and 1986 (see article, Exhibit A) but the City sought to match the District on a 50/50 basis and attempted to change the Contract to take away District control. Later approximately April, 1988 the District's offer was withdrawn. Flow, solids and quality control were problems (see Jane Davis Affidavit - Exhibit D)

In the 1989 Arbitration the following findings were

made:

1985

"Exhibit B, prepared by the Arbitrator from the City billings, shows an every increasing cost of operation at Plant No. 2. The City offered testimony that the plant never did operate Charleston should have been able to properly. rely on the City to provide a plant capable of meeting the requirements of DEQ and EPA. "Exhibits C and D, prepared from data submitted to the Arbitrator, shows the cost per 1000 gallons of treated sewage at Plant No. 2 as From 1979 to 1983 the costs billed by the City. remained fairly constant, with the exception of the 1980-81 fiscal year. A downward trend This may be actually existed from 1980 to 1983. partly explained by the addition of new connections to the system by Charleston which should have led to an overall reduction in cost per unit served due to new, relative water-tight connections. During the 1984-85 fiscal year the cost per unit treated made a remarkable jump of The only explanation offered that almost 50%. seems reliable to the Arbitrator is that the City made many changes in operation procedures

CHARLESTON SANITARY DISTRICT MEMORANDUM OF FACTS - JURISDICTIONAL ISSUE -2-

at the plant to combat hydraulic overloading. It is the Arbitrator's decision that the hydraulic overloading is caused from the Empire side of the system and that the accompanying costs of cure at the plant should not be the responsibility of Charleston."

Winter 1987

1

2

3

4

5

6

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Significant discharges into the Bay appear to have been made (see Jan Davis Affidavit/Williams testimony - Exhibits D & F)

Sept 1988

By this time relations between the District and the City were intolerable. Charleston had expected the City to keep Grant Condition #8 and The City did not appear Contract Paragraph 8. interested in honoring its contractual commit-If the City was going to ment to the District. continue to overspend, continue to avoid any District restraint or controls over spending, cost allocation and asset control, then the contractual relationship with the City would be at an impasse. On top of this Plant Operator Jan Davis had come clean with the District and confirmed the District's worst fears about the inner workings of the treatment plant. long range solution for the District appeared to be an independent plant built to go into operation in 2005 - with or without EPA/DEQ grant assistance.

Until 2004 the District resolved to attempt to continue under the existing Contract.

The 1974 Contract provides the District 420,000 gallons per day of sewage treatment capacity. That means treatment service meeting the requirements of EPA and DEQ. The District may be able to live within the gallonage limits of the current contract until the end of the Contract. (see Exhibit B)

Nov 1988

Arbitration requested by Charleston Sanitary District. (Exhibit E)

Jan 1989

Coos Bay pursues plant modifications without Charleston Sanitary District consent. Charleston is excluded from process.

CHARLESTON SANITARY DISTRICT MEMORANDUM OF FACTS - JURISDICTIONAL ISSUE -3-

Sept 1989

1

At this time the District share was stated by Coos Bay & DEQ as \$426,000. Coos Bay insisted the District must participate financially in a plant expansion but otherwise excludes the District.

Fall 1989

The Arbitrator determined that the problems at the plant are from excessive flows and that the excessive flows are coming from the City side of the collection system (E-1). The arbitrator determined that the duties of the

The arbitrator determined that the duties of the Operations Committee have been essentially assumed by the City and that all operation and maintenance decisions regarding the treatment plant have been essentially made by the City (E-5).

The Arbitrator indicated that the City breached the Regional Agreement by failing to operate within DEQ and EPA guidelines. (This failure is the principal basis for the DEQ's enforcement Order WQ-SWR-88-72 and principal reason the City has been required to spend large sums on treatment plant improvements.)

"3. Has the city breached the Agreement by failing to operate the plant in accordance with state and federal guidelines?

"Findings: It is obvious from the testimony of both parties that the city has not been able to operate the plant in accordance with state and federal guidelines. (E-7)"

The basic problem at the regional plant has been a failure by the City to maintain it's own collection system.

"4.1 - 4.4 . .

"Findings: The City has made decisions on operation of the plant which has resulted in modification of the plant from time to time in an effort to reduce violations and allow the plant to handle excessive flows. (E-8)
"In regards to determining the CSD annual charges based on flow records it is important to note several factors which enter into the equation.

"5). Section 8 of the agreement states . . .
'The participants agree to adopt and enforce ordinances compelling and regulating the use of their respective sewage collection systems for the purpose of preserving a high standard of maintenance and efficiency in the operation of the sewerage facilities and the sewage treatment

CHARLESTON SANITARY DISTRICT MEMORANDUM OF FACTS - JURISDICTIONAL ISSUE -4-

plant . . . (E-10) Many other analysis can be made using submitted data, but the fact is overwhelming clear to the Arbitrator that the peak flows that occur at the plant are primarily from the Empire It is reported by the side of the system. City's own retained engineers that it is the hydraulic overloading that is causing all of the problems at Plant No. 2. The City has expended many man hours, considerable power and equipment costs to combat the hydraulic overload problems. (emphasis added) "The City could also have expended great sums of money to upgrade the Empire Collection system to reduce I/I and therefore reduce hydraulic overloading at the plant, with a subsequent lowering of plant operating costs. The City did not choose to invest the necessary funds and the District has incurred higher annual costs as a result. (E 14, 15) (emphasis added) **"7.** The City also neglected its contractual duty to maintain the plant in compliance with DEQ and EPA regulations. "Findings: The City has assumed all duties of operating and maintaining Plant No. 2. The City is therefore responsible for its actions regarding any potential liability arising from the operation and maintenance at Plant No. 2 (E 14, 15). (emphasis added) Has the District been damaged by the City's violation of the Regional Agreement? "The Arbitrator has analyzed a considerable amount of data submitted by both the City and Exhibit B, prepared by the Arbi-Charleston. trator from the City billings, shows an ever increasing cost of operation at Plant No. 2. The City offered testimony that the plant never did operate properly. Charleston should have been able to rely on the City to provide a plant capable of meeting the requirements of DEQ and EPA (E 18, 19) (emphasis added) "It is the Arbitrator's decision that the hydraulic overloading is caused from the Empire side of the system and that the accompanying costs of cure at the plant should not be the responsibility of Charleston (E 20)"

Oct 1989

By this time the District's share was said by Coos Bay to be \$600,000.

<u>May 1990</u>

27

28

The City gave written notice of intention to

CHARLESTON SANITARY DISTRICT MEMORANDUM OF FACTS - JURISDICTIONAL ISSUE -5-

LYNN H. HEUSINKVELD
ATTORNEY AT LAW
A PROFESSIONAL CORPORATION
336 NORTH FRONT STREET
COOS BAY, OREGON 97420
TELEPHONE (503) 269-7511

terminate pump station maintenance because of District criticism and unhappiness with a District employee. The City could have asked for arbitration.

August 1990

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

The arbitration judgment became final. judgment set Charleston's monthly usage fee a \$0.5896/1,000 gallons. The District has paid For 1988-89 the cost set by the this amount. Decision was \$43,483/year or an average of \$3,600/month. In August, 1990 the District's flow was 5.99 (see attached Exhibit B). \$0.5896/1,000 the District's bill should have been \$3,531.70 but the City is now charging the District \$15,400 per month for wastewater treatment service as an industrial customer since it has "rescinded" it's 1974 Regional Agreement The cost effective analysis with the District. projected a \$286,000 annual O & M cost for Plant #2; Charleston O & M cost alone is currently being billed by the City at a \$185,000 annual rate (This is 65% of the projected after construction O & M costs and twice the cost of the Charleston WWTP - See Exhibit G).

By the time the City claimed to have rescinded the 1974 Regional Agreement. The District's share was said to be \$892,000 - approximately 50% of the cost of locally financed improvements. Charleston is now being pressured to finance a 20 year treatment plant without the benefit of an undisputed workable Contract.

Nobody remotely associated with the District would agree to such use of resident's funds.

The City of Coos Bay has no basis to attempt to rescind their 1974 Regional Contract with the District or to insist the District share the liability burden of the City's failure to maintain the treatment plant and their own collection system as promised the Charleston Sanitary District in the The Regional Contract has been in effect Regional Contract. The District has paid for an equity in the for 16 years. Regional Plant and annually paid for reasonable operation and The Contract provides for arbitramaintenance of the plant. tion of unsettled issues - not resolution of contract issued by the EQC or before some other forum. The Commission punishes violators not victims and in its legal proceedings. The Commission should respect and assist enforcement of the 1974 Regional Agreement. It is the District's position that those issues already decided should be accorded the deference of res judicata and those remaining to be resolved should be arbitrated in accordance with the 1974 Regional Contract.

CHARLESTON SANITARY DISTRICT MEMORANDUM OF FACTS - JURISDICTIONAL ISSUE -6-

Respectfully submitted,
LYNN H. HEUSINKVELD, P. C.

By:

Lynn H. Heusinkveld Attorney for Charleston Sanitary District

glary Sts Orted

Police believe they the string of burglaries to Bandon area with the Bandon people Monday North Bend, according

Engebretson, 22, was forth Bend police on st-degree and second-yand theft and the conmit burglary and theft, arrest stems from reat Andrea's Old Town don residence in which ash were taken, acte.

Bandon police in conle Andrea's burglaries James Wilson, 22, and ilson, 20, both former te cafe, police said.

son was arrested on inspiracy to commit eft by receiving, police vilson was arrested on first-degree burglary, cond-degree burglary, conspiracy to commit heft, and one count of ng, police said.

ld Bandon girl was Coos County Juvenile in charges of firsty and second-degree ion with the incidents,

were made after a tigation into recent owntown Bandon and and more arrests are

\$225,000 for sewer plant

Contribution argued

By LINDA MEIERJURGEN Staff Writer

Charleston Sanitary District has \$225,000 it wants to spend on the Empire sewage treatment plant — but it wants that money to count toward its share of possible Coos Bay sewer system improvements, too.

That's the bottom line from a lengthy discussion between Coos Bay City Council, Charleston representatives and staff at a Monday night work session on the city's pending sewer improvements, once estimated with a \$9 million price tag.

The council also learned from Councilman Mike Lybarger that the estimated 20-year interest on general obligation bonds or revenue bonds, using a ballpark figure of \$6 million, isn't that much different. Though the council decided to postpone any sessions with securities firms, members did learn the difference in the two was about two-tenths of 1 percent, or a difference of \$558,000 to \$566,000 in annual payments. Both rates now hover around 7 percent in today's market. No decision on the bonds has been reached, pending new cost figures from Brown and Cardwell, engineers.

An executive session was held to discuss the city's arbitration with HGE Inc., over termination of services on the original sewage system update plan. That arbitration is scheduled in Coos Bay Feb. 9 to Feb. 11.

Charleston Sanitary District attorney Lynn Heusinkveld stressed his clients want to contribute to the total cost — in proportion to their use of the system. In the current contract between the two parties, the sanitary district is estimated to use about 30 percent of the average flow and biological oxygen demand at the Empire plant; the city of Coos Bay uses about 70 percent.

But Charleston is in the midst of an almost \$4 million sewer project itself, which will connect 900 homes to the main trunk lines carrying sewage to the Empire plant.

These homes were already calculated in the plant capacity of about 1.62 million gallons daily, but money wasn't available until recently to connect them, Heusinkveld said. The district is using \$1.8 million from Farmers Home Administration and \$2 million local match including \$480,000 in community development funds for assistance to low-income families paying for look-ups.

The \$225,000 comes from the current project, Heuskinveld said, adding the district would like to have it committed by the time it lets the final contract around April, but needs to know when drawing

Charleston in midst of almost \$4 million sewer project itself

up specifications in February. The city of Coos Bay must also have its own system plan in place in February.

Agreement on what has to happen to the plant, and what Charleston's share of the bill will be, will have to be negotiated, however.

Charleston officials say they still have about half of their share of the Empire plant's total capacity available to them. City officials say that's not so, that in some cases the flow from Charleston makes the plant exceed its permits.

Both seem to agree the plant does not have major problems, though changes in handling flows, and in particular, in handling of solids, could help it function more efficiently.

more efficiently.

Because the plant is not exceeding its permitted effluent levels, none of the work will be eligible for federal Environmental Protection Agency funds. The EPA is more worried about the downtown Coos Bay plant, city officials noted.

Allegany So offer annou

The Millicoma Parks and Recreation District will have the first chance at the closed Allegany School, but not without a price.

The Coos Bay School District 9
Board voted 5-1 Monday to offer the
newly-created district a leasepurchase arrangement on the school
calling for payments of \$1,000 a year,
with a \$17,500 balloon payment in 10
years.

The option was arranged by a property disposition committee set up by the school board. Board Member, Mike Lehman, who sits on that committee, said the arrangement would satisfy arguments that the school property did not belong just to the people of Allegany, but was a "School District 9 school."

The offer, which expires next October, caught representatives of the new district off guard and angered

several in to president of said she had school for weren't exlease," she

lease," she
Bob Pedig
Oscar Johns
maintained
owners had
school in
North Bend
its closed La
for a nomin
district will
proposed op
the lease.

Members budget come at the school future levy it Millicoma di meeting will Pedigo.

Terms of Lorenze report delivers

GOLD BEACH — The Land Conservation and Development Commission would re-acknowledge all resource lands and 11 of 75 rural exception areas if Curry County will amend certain provisions in its land use plan, according to an LCDC staff report delivered to the Curry County com-

rural except the plan.

The count meet Monday position on the of the LCDC of Thursday, The conse

EXHIBIT A

Daily Sewage Flows From Charleston And Coos Bay To Plant No. 2; Million Gallons Per Day (MGD)

	Ch	arleston*	•	Co		
FISCAL YEAR	FY AVE. (MGD)	Max Month (MGD)	Min Month (MGD)	FY AVE. (MGD)	Max Month (MGD)	Min Month (MGD)
•						
1983/1984	0.124	0.185	0.089	1.065	1.378	0.682
1984/1985	0.110	0.161	0.079	0.682	1.021	0.501
1985/1986	0.119	0.193	0.079	0.642	1.010	0.410
1986/1987	0.131	0.213	0.078	0.677	0.998	0.403
1987/1988	0.176	0.249	0.122	0.596	0.977	0.468
1988/1989	0.202	0.234	0.179	0.654	1.151	0.440
1989/1990**	0.201	0.254	0.174	0.548	0.788	0.438

^{*} Daily flows based on monthly average.

^{**} Daily flows based on monthly average from July thru February.

WASTEWATER DISTRIBUTIONS PLANT 02, C.B., CHARLESTON 1989-1998

			PLANT # TOTAL HONTHLY FLOW HG	PLANT # AVERAGE HONTHLY TSS, HG/L	PLANT # AVERAGE MONTHLY BOD, MG/L	DISTRICT TOTAL HONTHLY FLOW HS	C.B. TOTAL HONTHLY FLOW HG	DISTRICT AVERAGE HONTHLY TSS, MG/L	DISTRICT AVERAGE MONTHLY BOD, MG/L
-	TULY	1989	28. 87	279	234	6.29	14.67	247	223
é	U6	1989	19.96	267	215	5.83	14.13	284	239
9	EPT	1989	18.68	288	242	5.28	13.32	381	255
(CT .	1989	20.55	286	239	5.77	14.78	375	278
ł	łov	1989	28. 78	284	248	5.38	15. 48	312	254
I	ÆC	1989	20.80	388	233	5.68	15.12	302	257
,	TAN	1998	28.91	289	179	7.25	21.86	328	221
<u>.</u> [EB	1998	31.68	219	123	7.73	23.95	214	142
. *	1AR	1998	26-81	156	238	7 . 29	19-52	244	182
1	APR	1998	22.77	273	181	6.26	16.51	229	181
1	ΙΑΥ	1998	23.24	314	288	6.43	16.81	248	193
,	JUNE	1998	22.67	273	172	6-73	15.94	222	162
	EMINIE		18.68	158	123	5.28	13.32	214	142
i	MAXIMUM		31.68	314	242	7.73	23.95	381	278
	AVERAGE		23.14	262	298	6.30	16.84	279	215
	TOTAL		277.64	3141	2496	75.55	292.89	3349	2579

MASTEMATER DISTRIBUTIONS PLANT #2, C.B., CHARLESTON 1989-1998

		PLANT : TOTAL TSS+LBS	PLANT # TOTAL BOD, LBS	DISTRICT TOTAL TSS,LBS	DISTRICT TOTAL BOD, LBS	C.B. TOTAL TSS.LBS	C.B. TOTAL BOD,LBS	TSS Y PERC. OF PLANT C.B.	TSS X PERC. OF PLANT DISTRICT	I PERC. OF PLANT C.B.	Z PERC. OF PLANT DISTRICT	Z PERC. OF PLANT C.B.	I PERC. OF PLANT DISTRICT	AVE. I CONTRIBUTED
JULY	1989	46995	48729	12772	11531	34223	29198	72.82	27.18	71.69	28.31	78.29	29-71	28.48
AU S	1989	4444 7	35798	13889	11621	38638	24170	68.93	31_87	67.53	32.47	79.79	29.21	30.92
SEPT	1989	44676	37540	16777	11229	27898	26311	62. 4 5	37.55	78.89	29.91	71.61	28.39	31.95
OCT	1989	49917	48961	18 8 46	12993	38971	27969	63.18	36.82	<i>5</i> 8. 28	31.72	71.92	28.88	32.28
NOV	1989	49219	41593	13791	11227	35428	38366	71.98	28.82	73.01	26.99	74.49	25.51	26.84
DEC	1989	53429	48419	14386	12174	39123	28245	T3.22	26.78	69.88	36.12	72.69	27.31	28.97
JAN	1998	50392	43159	18129	12994	32282	30164	64.86	35.94	69.89	38.11	75.61	24.39	38.14
FEB	1990	57862	32498	13796	9154	44866	23343	76.16	23.84	71.83	28.17	75.60	24.40	25.47
HAR	1999	33539	53216	14835	11865	18784	42150	55.77	44-23	79.21	20.79	72.81	27.19	38.74
APR	1998	51843	34372	11486	9458	+0357	24923	77.85	22.15	72.51	27.49	72.51	27.49	25.71
MAY	1999	68868	38764	12978	18358	47998	28414	78.85	21.15	73.38	26.70	72.33	27.67	25.17
JUNE	1998	51616	32529	12469	9293.	39155	23427	75.86	24.14	72.84	27.96	78.31	29.69	27,26
	HINIMM	33539	32498	11486	9293	18704	23343	55.77	21.15	67.52	28.79	78, 29	24.39	25.17
	HAXIHUH	86893	53216	18197	12994	47998	42150	78.85	44.23	79	32,47	75.61	29.71	32.28
	AVERSEE	49491	39297	14421	11273	35979	25723	78.29	29.91	71.33	29.48	72.58	27.42	28,57
									u		~ ~ —	675 AC	700.00	745 00

WASTEMATER DISTRIBUTIONS PLANT #2, C.B., CHARLESTON 1998-1991

		PLANT & TOTAL MONTHLY FLOW HG	PLANT # AVERAGE HONTHLY TSS, HG/L	PLANT # AVERAGE MONTHLY BOD, MG/L	DISTRICT TOTAL MONTHLY FLOW MG	C.B. TOTAL MONTHLY FLOW MG	DISTRICT AVERAGE MONTHLY TSS, MG/L	DISTRICT AVERAGE MONTHLY BOD, MG/L
JULY	1992	21.28	273	201	6.48	14.72	239	194
AUS	1998	21.21	323	213	5.99	15.02	288	184
SEPT	1998							
OCT	1998							
NOV	1990							
DEC	1998							
JAN	1991							
FEB	1991				•			
MAR	1991					•		
APR	1991							
HAY	1991							
JUNE	1991							
MINIHUM		21.01	273	201	5.99	14.72	239	184
MAXIMUM		21.28	323	213	6.48	15.82	288	194
AVERAGE		21.11	298	207	6.24	14.87	264	189
TOTAL		42.21	596	414	12.47	29.74	527	378

HASTEHATER DISTRIBUTIONS PLANT #2, C.B., CHARLESTON 1990-1991

		PLANT ≇ TOTAL TSS∗LBS	PLANT # TOTAL BOD, LBS	DISTRICT TOTAL TSS.LBS	DISTRICT TOTAL BOD.LES	C.B. TOTAL TSS,LBS	C.B. TOTAL BOD, LBS	TSS I PERC. OF PLANT C.B.	TSS % PERC. OF PLANT DISTRICT	EOD % PERC. OF PLANT C.B.	BOD Z PERC. OF PLANT DISTRICT	FLOW % PERC. OF PLANT C.B.	% PERC.	DISTRICTS AVE. 1 CONTRIBUTED
JULY AUG SEPT	1999 1998 1998	48269 56597	35538 37323	12916 14388	1 8484 9192	35352 42210	25 9 54 28131	73.24 74.58	26.76 25.42	70.50 75.37	29.50 24.63	69.43 71.49	38.57 28.51	28.94 26.19
OCT NOV DEC	1998 1998 1998													*
JAN FEB Mar	1991 1991 1991													
apr Hay June	1991 1991 1991									•				
	HINIMAN MAXIMAN AVERAGE TOTAL	48269 56597 52433 184866	35538 37323 36438 72861	12916 14388 13652 27384	7192 18484 9838 19676	35352 42218 38781 77562	25854 28131 26592 53185	73.24 74.58 73.91 147.82	25.42 26.76 26.89 52.18	70.50 75.37 72.93 145.87	24.63 29.58 27.87 54.13	69.43 71.49 78.46 148.92	28.51 38.57 29.54 59.88	26.19 28.94 27.56 55.13

	BOARD OF ARBITRATION
1 2	In the Matter of the) Arbitration between:
3	CHARLESTON SANITARY DISTRICT, Case No.
4	Petitioner,) AFFIDAVIT OF) JAN DAVIS
5	and)
6	CITY OF COOS BAY,
7	Respondent.
8	STATE OF OREGON)
9)ss. County of Coos)
10	I, JAN DAVIS, being first duly sworn state:
11	I was born in Concord, New Hampshire and attended high
12	school in Penacook, New Hampshire. I studied environmental
13	engineering at Chelmsford, Massachusetts and have a certifica-
14	tion in wastewater and collection systems. I am now in my

engineering at Chelmsford, Massachusetts and have a certification in wastewater and collection systems. I am now in my early forties and have worked as an electrical trouble shooter, a carpenter, and a tradesman cabinet finisher. I have also developed certain mechanical skills.

In 1981'I worked in wastewater maintenance for the City of Salem. I worked for the City of Coos Bay from October of 1982 until April of 1988 as a wastewater operator principally at Plant No. 2 and hauling sludge from Plant No. 2.

During my years with the City of Coos Bay I observed hardly any maintenance being done on Plant No. 2. Stan Sharp, the supervisor, required virtually no preventive maintenance at all.

AFFIDAVIT OF JAN DAVIS -1-

EXHIBIT D-1

LYNN H. HELSINKVELD
ATTORNEY AT LAW
A PROFESSIONAL CORPORATION
336 NORTH FRONT STREET
COOS BAY, OREGON 97420
TELEPHONE (503) 269-7511

LYNN H. HEUSINKVELD ATTORNEY AT LAW A PROFESSIONAL CORPORATION 336 NORTH FRONT STREET

During my tenure the City of Coos Bay removed the dewatering equipment. This was significant to Charleston because if properly dewatered, the sludge would be thick enough to haul in a dump truck. This would not only cut hauling from approximately ninety thousand (90,000) gallons per month to less than fifteen thousand (15,000) gallons per month, it would also cut the number of trips from approximately six (6) per day to one (1) per day and the hauling process would be much less complicated.

The City of Coos Bay had secured a study by CH2M/Hill which said the dewatering equipment could work. That study was available during my employment with the City of Coos Bay. Had the employees taken the time to operate the installed dewatering equipment as designed or as recommended by CH2M/Hill they could have saved a good deal of money. Two (2) years ago efforts were resumed to do something in the area of dewatering. A gravity thickener utilization of the floatation thickener was attempted. The City failed to achieve the desired results and continues to haul about ninety-six per cent (96%) or more water when it hauls sludge.

I remember that the dewatering equipment was in a room with an ocean view which Stan Sharp wanted to use as his office. The study indicated that dewatering was possible but Stan wanted the office, so the equipment was removed. There were valuable motors and pumps involved. I do not know what happened to them.

AFFIDAVIT OF JAN DAVIS -2-EXHIBIT D-2

24

25

26

27

28

1

2

3

4

5

6

7

8

9

I'm aware of several systems on the west coast and east coast. No system I know of pumps unthickened sludge off the bottom of the primary clarifier to the digester like Coos Bay does. Coos Bay's method is very expensive and very unusual. Most plants at least have a small filter press or thickener so the sludge will take up less room and be started in its digestive mode when it gets to the digester. Plant No. 2 was designed with one, but the staff didn't want to use it. way the plant is operated (with raw sludge introduced to the digester) upsets are more frequent and fuel costs extremely high.

The failure of the City to use the floatation thickener and absence of any other efforts to remove excess water from the system allows excess water to remain in the system and makes the plant incapable of handling sewage in the plant during the rainy season. When it would rain at Plant No. 2 the ground water would cause excess flow to come from the Empire side and cause washouts and hydrological overloads. Stan Sharp's solution was to open the supernatent valve to The valve would allow untreated By washing IT THOO OF THE SYSTEM AND OUT HE DELLA CHAINENT.

He did this repeatedly when it make room in the digester. sludge to flow into the Bay, rained.

During the last five and one-half (5.5) years the Plant This is because Stan has used increasing dosages of chlorine. Sharp's sloppy plant operations and lack of maintenance have OKCESTED NS allowed dissolved solids to go out. Chances are these solids are treated with chlorine but the Plant is still releasing

AFFIDAVIT OF JAN DAVIS -3LYNN H. HEUSINKVELD
ATTORNEY AT LAW
A PROFESSIONAL CORPORATION
336 NORTH FRONT STREET
COOS BAY, OPERON 94449

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

solids. This is not proper operation. The chlorine only treats the outer layer. The inner portion of the solid has whatever contaminants and viruses it had when it entered the plant. This is why I refuse to eat shellfish from Coos Bay.

Coos Bay's flow was measured with a chain device. chain was changed two (2) times in five (5) years. City finally did order a new chain, they got the wrong one. Assertions by the City of Coos Bay that they changed the chain every six (6) months are false. The chain stretches and the City of Coos Bay's neglect of the chain has led to the creation of falsified information with respect to the quantity of their flows as compared to the Charleston flows. There is no calibration of the chain done. I am not sure whether calibration would be possible at that location. I understood from the D E Q representative that a straight nonturbulent area was necessary in order to determine flow. Had an effort been made to calibrate the measurements (and I have seen that done with a yardstick) at the point where measurements were being taken, a quarter of an inch, plus or minus, error might result in a two hundred fifty thousand (250,000) gallon discrepancy per day.

I took the measurements. I know they weren't accurate. I don't know what Mr. Sharp did with the measurements once I gave them to him. On the Charleston side the measurements are even more suspect. The Charleston pumps are probably operating at between forty per cent (40%) to sixty per cent (60%) efficiency. They're seventeen (17) feet down and have an

AFFIDAVIT OF JAN DAVIS -4-

EXHIBIT D-4

LYNN H. HEUSINKVELD ATTORNEY AT LAW A PROFESSIONAL CORPORATION 336 NORTH FRONT STREET 1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

awful lot of head to contend with. Charleston's flows were determined by examining the number of hours of pump time (or meter whichever was more) or an average between and then an assumption was made that the pump was working at one hundred per cent (100%) efficiency and not allowing for the number of pumps running. This simply was not true. This was a false assumption that increased the charge to Charleston by distorting in Coos Bay's favor the flow records.

As I have indicated above when I first tried to calibrate the chain, I did it with a yard stick. I found that Coos Bay was underestimating plant flow by one hund sand (100,000) gallons per day. This was added to Gharles-Cus BAUS The Charleston Sanitary District pumps were ton's flows. They were assumed to be working at one never calibrated. hundred per cent (100%) efficiency. I believe that they were working at forty per cent (40%) to sixty per cent (60%) ef-Another area in which the City of Coos Bay estaficiency. blished a practice in which the Charleston Sanitary District was overcharged was in the area of recording suspended solids The Charleston Sanitary District has a sampler installed at the following location:

manhole at pump station 1

That sampler is used in the process of determining the suspended solids in flows from Charleston. There was no sampler maintenance done on the Charleston sampler. This means that the tubes and other components of the sampler developed an algae or fungus collected solids on the equipment itself.

AFFIDAVIT OF JAN DAVIS -5-EXHIBIT D-5 LYNN H. HELSINKVELD ATTORNEY AT LAW A PROFESSIONAL CORPORATION 1

2

3

4

5

6

7

8

9

10

11

12

13

14

16

17

18

19

20

21

22

23

24

25

26

27

28

Then when a sample was taken the sample was polluted by the growths and collections on the sampler equipment and Charleston would receive a high reading. The sampler should have been maintained on a weekly basis. It wasn't maintained any more than once a year. If the sampler isn't maintained and changed it grows molds and has it's own solids and TSSes in it. Samples drawn from an unclean sampler have no validity. These readings were expressed as parts per million and further distorted because of the irregularities of flow measurements.

The flow involved was the combined flow from Charleston and Coos Bay after grit removal, therefore, the suspended solids and BODs for Coos Bay were less. No adjustment was made for this fact. Secondly, the City of Coos Bay established and maintained throughout the time that I worked for them a procedure for plant washdowns designed to deceive D E Q and Charleston. Washdowns were supposed to be held on Fri-The City would then not do any TSSes or BODs on Saturdays. This created distorted information. Since Charleston's day. sampling equipment was not being maintained and floated on greatly varying flows and Coos Bay's plant was being subject to unmonitored weekly wash downs, Charleston was receiving an unfairly high proportion of the suspended solids and BODs. Coos Bay was employing inaccurate techniques and it's readings favored Coos bay in much the same way the City had discovered Bunker Hills figures had been distorted. The supervisor, Stan Sharp, condoned many of these practices and many questionable

AFFIDAVIT OF JAN DAVIS -6-

19

20

21

22

23

24

25

26

27

28

1

2

3

4

5

6

7

8

9

practices in lab work. pHs and DOs were done only part of the time. Suspended solids weren't always done. nor were BODS. They did what we used to call in college "dry labs". WAY DOS GENED They filled them in. I saw Stan Sharp and Charles Gregory dry labbing it and I caught Steve Humbert doing it. I walked into the room where he was making up his figures and pressed the chlorine alarm test button. He nearly jumped out of his skin. I said "You got all those figures memorized, because he was filling out his report without any huh?" notes. This isn't the only time that he did that. The City's They're consistent with each other, but records are false. they are false. Charles Gregory knew about this and encou-Ron Gleaton, Steve Humbert, Larry Hiner, Ricky Green and I were aware of the falsity of Coos Bay's records. Most of the employees connected with Plant No. 2 were faking the data at one time or another. Employees weren't supervised, they weren't working. There was very low moral. were engaged in questionable practices. Judy, the Public Works secretary, was aware of a lot of things from below and above and complained about stress. She was fired. You shouldn't believe anything that anyone down at Plant No. 2 or at Plant No. 1 says. They practice telling you what you want to hear and avoiding the truth.

I believe that there was a willful effort to deceive and overcharge Charleston. My supervisor, Stan Sharp, made fun of Jackie Collatt and of the District's engineer and appeared to be quite hostile towards the Sanitary District. I

AFFIDAVIT OF JAN DAVIS -7-

EXHIBIT D-7

LYNN H. HELSINKVELD
ATTORNEY AT LAW
A PROFESSIONAL CORPORATION
336 NORTH FRONT STREET
COOS BAY, OREGON 97420

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

was instructed by my supervisor to charge an hour to Charleston ton each day whether I did anything with respect to Charleston or not. I was told to charge at least one of my eight hours each day to Charleston and I did so for the five (5) years that I worked for Coos Bay. AT Plant 1.

When I was told by Mr. Sharp to charge an hour each day to Charleston I was told "we want to get the most amount of money from Charleston we can". It appeared to me that a willful effort was being made by City of Coos Bay staff to deceive and overcharge Charleston. As mentioned above, I was told to charge an hour to Charleston each day whether I did anything Stan Sharp systematically recorded four (4) hours at Plant No. 2 and four (4) hours at Plant No. 1 each day. He stayed at Plant No. 1. For weeks at a time I would be all alone at Plant No. 2 with no contact or supervision from Stan I worked all alone out there when Gary Metzger died of Sharp. kidney failure. I didn't see Stan Sharp at Plant No. 2 more than three (3) or four (4) times in an eight (8) month period and that would be mainly when I was taking information to him at Plant No. 1.

During my tenure at Plant No. 2 there were no time schedules and little or no supervision. Employees would work less than their eight (8) hours and go fishing or on weekends get drunk when they were charging for work. They kept beer in the refrigerator at the plant or a bottle in their car.

Roy Harris was the person charged with Charleston pump station maintenance initially. He was followed by Mike

AFFIDAVIT OF JAN DAVIS -8-EXHIBIT D-8 LYNN H. HEUSINKVELD ATTORNEY AT LAW A PROFESSIONAL CORPORATION 336 NORTH FRONT STREET COOS BAY, OREGON 97420 McDaniel. As a general rule time was written down without any maintenance being done. They did virtually no maintenance at all for Charleston, but diligently wrote their time down.

This is why Charleston generators broke down - because work on them was logged in but not done. The Charleston batteries were not cleaned. That's why they didn't last. The injector systems were not maintained. I believe Charleston's No. 1 and No. 4 went out. Lack of maintenance was the problem. A little rubber "O" ring allowed the diesel fuel to get in and mix with the oil and required a complete rebuild. Nobody has been maintaining the pump stations or the plant except on a very sporadic basis. You should to obtain a copy of the master maintenance log for 1986-87, the daily log and calendars for these periods.

The wastewater department is way overstaffed and still is. Ricky Green and Stan Sharp read books at Plant No. 2 for days at a time. The books were novels, hunting guides, and other material having nothing to do with the performance of their work.

Drinking on the job was a problem which I shared. Stan Sharp several times went down to perform work drunk as did Ron Gleaton. Getting drunk on the weekends at the plant was condoned and the employees were allowed to keep their beer in the refrigerator.

Another way that the City staff abused Charleston's trust was to charge Charleston for equipment they didn't get. The practice was to charge Charleston for a piece of new

AFFIDAVIT OF JAN DAVIS -9-

EXHIBIT D-9

LYNN H. HELSINKVELD
ATTORNEY AT LAW
A PROFESSIONAL CORPORATION
336 NORTH FRONT STREET
COOS BAY, DREGON 97420
TELEPHONE (503) 269-751

equipment and then when delivered, place the equipment at Plant No. 1. The Charleston-Empire plant would then get a worn out piece of equipment from Plant No. 1 or do without.

There are many examples, a few of them are as follows:

A truck was purchased with the grant from D E Q in which Charleston participated. I believe that truck was a 1978 Ton Ford. The truck was never used at Plant No. 2. It was swapped and I believe Plant No. 2 got a Ford Courier. The only time that the truck purchased with the grant was parked at the plant was when D E Q did an inspection.

A grit truck from the plant was swapped with the Streets Department.

A drill press was purchased and placed at the Eastside who. It is not available to us. All that we have available is a \$19.95 Black and Decker drill.

The employees knew that things were being done unlawfully and we complained from time to time. Among the criticisms were several that Larry Hiner put in writing and gave to Floyd Tanner. Larry Hiner was of the opinion that Stan Sharp was being unfair to Charleston. Stan Sharp and Jackie Collatt were battling and anytime they had any kind of an opportunity to shift expenses or remove assets, charge costs, it was done to Charleston detriment. At 5:00 a.m. on the morning after Floyd Tanner died, Stan Sharp entered Floyd Tanner's office and removed documents from Floyd Tanner's file. The documents removed included the criticism made by Larry Hiner. I believe that this kind of treatment of Char-

AFFIDAVIT OF JAN DAVIS -10-

LYNN H. HEUSINKVELD ATTORNEY AT LAW A PROFESSIONAL CORPORATION 336 NORTH FRONT STREET COOS BAY, OREGON 97420 1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

leston has something to do with the reason why Ray Carlisle and Ron Gleaton quit.

Recently a Sigma Sampler was purchased at a cost of approximately Two Thousand Dollars (\$2,000.00) with Charleston's assistance. Stan Sharp was shipping that equipment to Plant No. 1, however, Larry Hiner said that unless the Sampler was left at Plant No. 2 he'd tell Jackie. The Sampler was left at Plant No. 2 at least temporarily. It is untrue that Coos Bay has kept three and one-half (3.5) men at Plant More often than not there is only one man to cover Plant No. 2. And at the most there are two (2) people working a total of eighty (80) hours a week. It just simply hasn't happened that Plant No. 2 has had three and one-half (3.5) man By in large there has been single man coverage forty (40) hours a week for Plant No. 2. Not only that, but often I would be called at Plant No. 2 and told that I had to haul sludge for Plant No. 1. Upon arrival I might find two (2) people standing around at Plant No. 1, but typically Plant No. 2 personnel would be called upon to haul for Plant No. 1.

Coos Bay's slip shod method of operation and featherbedding caused real problems in the area of health protection.

I had a liver spleen problem and was a prime candidate for infection. I was very concerned and so indicated to my supervisor. I was frequently ill and concerned about the exposures caused by the practices of the City in disposing of it's sewage waste.

AFFIDAVIT OF JAN DAVIS -11-EXHIBIT D-11

1

2

3

4

5

6

7

8

9

10

11

18

19

20

21

22

23

24

25

26

27

28

I was concerned about the City and it's methods in dumping sludge and disposing of sewage. The City overapplied as a rule and required me to do the same by directing me to dump at locations that I could already see were saturated and that there was ponding of the sludge materials. I was very concerned by the City directions to dispose of sludge with less than a thirty-eight per cent (38%) volatile reduction without any regard of the health problems being created. It was done that way because room was needed at the treatment The E P A manual for disposal of sludge indicates that there should not be disposal of sludge with less than thirtyeight per cent (38%) volatile reduction but the supervisor, Mr. Sharp, gave us a memo that said that if there were less than thirty-eight per cent (38%) sludge reduction then we were to take another four (4) loads do a composite sample and rerun the test. If we still failed, we might layoff hauling for a day but by that time we had the sludge hauled. This happened a lot.

Last year they had us empty the digester. This was raw sludge, not treated sludge as indicated by the City. spread on Coos County Forest Land just south of Belloni's Boys We got a complaint that there were tampons, rags and other items littered through the raw sludge. We were ordered by our supervisor, Stan Sharp, to go out, stand in the sludge, slip in it, pick out the tampons, etc, pick through the sludge until we pulled out all of the objectionable items. I didn't want to do it. I was told to do it or go home.

LYNN H. HEUSINKVELD
ATTORNEY AT LAW
A PROFESSIONAL CORPORATION
336 NORTH FRONT STREET
GOOS BAY, ORESON 97420

The City applied sludge to the fields where dairy cattle and beef cattle were allowed contact with the sludge and I witnessed dairy cattle licking the sludge. So did Ray Carlisle and Ron Gleaton. I understand that there is supposed to be a thirty (30) to forty-five (45) day waiting period before a land owner is allowed to put cattle on land where sludge is spread. The land owners weren't required to wait even a day. The locations where this occurred were Eastside Drive, Weyco disposal, and Gordon Ross's property. On Gordon Ross's property the sludge was grossly overspread to the point where it was ponding up.

The City also required that we grossly overapply on new roads including roads in which recreationalists have had an opportunity for contact. Those roads include the North Spit Road. Ray Carlisle and I complained about the overapplying on the North Spit Road. We were told to keep quiet.

Another area of concern was the disposal of grit and raw sludge on the Joe Ney dump site. A local land owner, Larry Ivy, was told that his septic system was causing severe pollution in the area. I just simply do not believe that that is true. His septic system could not have caused a problem of the magnitude with which he was charged. At least not in my opinion. More likely it was our hauling of sludge and grit. We hauled five (5) cubic yards a week or every other week to the Joe Ney Dump site over a period of five(5) years. The grit and raw sludge was initially untreated. I suggested that it be treated with a hydrated lime in order to

AFFIDAVIT OF JAN DAVIS -13-EXHIBIT D-13 LYNN H. HEUSINKVELD
ATTORNEY AT LAW
A PROFESSIONAL CORPORATION
336 NORTH FRONT STREET
COOS BAY, OREGON 97420

17

18

19

20

21

22

23

24

25

26

27

28

1

2

3

4

5

6

8

9

raise the pH factor to 11. The City did throw in a couple of bags of lime but then never tested the pH. There was no quality control in this or any other of the operations of the The sludge was dumped in a hole and it was supposed to be covered before the end of the day. But after a week or so I would return to the site and the previously dumped material would still be uncovered. Later we dug a trench and were supposed to throw a shovel of dirt on it, but this was inadequate. The trench would fill with water and overflow and the grit materials would escape. I complained but there was no way to get a handle on the problem. The supervisors were unsympathetic and on my performance evaluations the City stated that I should mind my own business. You should obtain a copy of my performance evaluations, operations logs, and weekly meetings logs.

There were many problems. The whole operation lacks adequate quality control or supervision.

One particular problem that a resident brought to our attention was that birds were apt to land in our grit truck and pick out pieces of grit and then drop them off the property. A chicken wire was put over the truck, but I don't think it is there now. Then this grit was hauled in a truck which originally had a tailgate sealed with tar. But the truck had not been maintained and the grit was allowed to drip on the public highways.

The City of Coos Bay hired employees under a program where the City was reimbursed one hundred twenty-five per cent

AFFIDAVIT OF JAN DAVIS -14-EXHIBIT D-14 LYNN H. HEUSINKVELD
ATTORNEY AT LAW
A PROFESSIONAL CORPORATION
336 NORTH FRONT STREET
CODS GAY, OREGON 97420

(125%) of the new hire's wages. At least this was my understanding. This was a vocational rehab program. Ron, Larry and some of the others were hired under this program. You should get a list of the new hires for the period in question and find out about any reimbursement to the Charleston Sanitary District or offset for benefits the City received under this program.

As a result of the City's policy the Wastewater Treatment Plant was run by a group of employees, almost seventy-five per cent (75%) of whom had suffered some serious disability. Every new hire for the last five (5) years by the City in the Wastewater Treatment division has in some manner been disabled:

Larry Hiner has diabetes and a back problem;
Ron Gleaton has a knee problem;
Ray Carlisle has a back problem;
Steve Humbert has a back problem.

The most recent hire was not able to finish his disability rehabilitation program but was hired by the City anyway.

I was concerned. I was troubled by what I was asked to do; required to do by the City. I saw problems in the way that my fellow employees were working. I saw problems in the way that our department was functioning. I saw no relief from anybody in the City and it weighed on me. I began to drink and drank too much.

AFFIDAVIT OF JAN DAVIS -15-EXHIBIT D-15

22

23

24

25

26

27

28

1

2

3

I filed a stress claim with the City of Coos Bay and Jeff Towery "wanted a full evaluation". He scheduled a doctor's appointment for me in Medford at 7:00 a.m. but refused to help me on the transportation or to pay for a motel. seriously impaired by my drinking and stress. I was ultimately fired for doing what I accused my co-workers and supervisors of doing - faking data. I was experiencing I had problems with sleeping on the job. problems with alcohol. I was lulled into these bad habits by the way the wastewater department and the City were being run and I was set up by the City's administrator. I was not helped by the City of Coos Bay even though I asked for help, help from stress generated by my concern regarding the City's own methodical falsification, neglect of public duty, and neglect of the trust given them by the Charleston Sanitary District, D E Q, and the public in general.

JAN DAVIS

Subscribed and sworn to before me this ///

79 day o

, 1988.

Nøtary Public for Oregon

My Commission expires:

AFFIDAVIT OF JAN DAVIS -16-

BOARD OF ARBITRATION

CHARLESTON SANITARY DISTRICT,

Petitioner,

vs.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

REQUEST FOR ARBITRATION

CITY OF COOS BAY,

Respondent.

Background Statement:

The Charleston Sanitary District and the City of Coos Bay entered into an agreement for improvement and operation of a regional treatment plant during 1974, a true and correct copy of which agreement is attached hereto as Exhibit A and by this reference incorporated herein. Pursuant to the regional agreement the City of Coos Bay performed certain improvements to the treatment plant with the agreement of the Charleston Sanitary District between 1974 and 1978 and the Charleston Sanitary District paid it's \$114,000.00 share of the cost of such improvements as agreed.

Thereafter the City of Coos Bay operated the treatment plant with it's own employees and provided maintenance ser-·vices to the Charleston Sanitary District for the Charleston pump stations. During Coos Bay's operations Charleston has repeatedly requested that true and accurate flows be kept, that suspended solids and BODs be accurately collected and analyzed to determine the proportionate share to be paid by Charleston and Coos Bay for plant 2 operation and the City of Coos Bay assured Charleston that it's techniques and figures Charleston has recently learned that Coos were accurate. -1-

REQUEST FOR ARBITRATION

EXHIBIT E-1

H. HELBINKVELD

HEUSINKVELD

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Bay's techniques and figures have been and are inaccurate and that material overcharges have been made by Coos Bay of the District.

Charleston has recently learned that the equipment purchased by Charleston was not maintained by Coos Bay although substantial sums for maintenance were built into the plant 2 budget and that much of the equipment purchased by the parties in accordance with the 1974 agreement has been disassembled and sold without Charleston's knowledge or consent.

The Charleston Sanitary District has recently learned that the employees charged to the District's share of the cost of operating plant 2 have not been performing work at plant number 2 as indicated by the City and further many of the employees are on rehabilitation programs where the City has been receiving a refund of a part of the salary cost charged for such employees without accounting to Charleston for such refunds.

Charleston has recently learned that the treatment plant has been operated by the City in violation of state and federal laws with respect to discharges into the bay and disposition of grit, screenings and sludge. Charleston has recently learned that the City's methods of operation has caused substantially increased expenditure in terms of fuel and electricity and manhours and that the cost of operation adopted by the City of Coos Bay have not only caused operational expenses to be excessive but to require the expenditure of large sums of capital for sludge disposition and plant

ATTORNEY AT LAW
A PROFESSIONAL CORPORATION
336 NORTH FRONT STREET
COOS BAY, OREGON 97420

improvements. Charleston Sanitary District has determined that the Coos Bay plant is not operated within the requirements of state and federal law or sound sewer treatment principles, that the plant does not provide a reliable source of sewer treatment for the people of the District, and that the District is being deprived by the City of Coos Bay of the treatment plant the City agreed to share by the regional agreement.

The City has refused to place funds furnished by the District with respect to the regional treatment plant in a separate fund and has refused to hold such funds in trust and has refused to dedicate property purchased with Charleston Sanitary District funds to the uses for which the District agreed to pay. The City has failed to render a true and accurate account of the treatment plant assets and funds as required by the regional agreement, has diverted funds and property from the regional plant to it's other purposes, has overcharged the District, has failed to maintain the District's pump station equipment and the District's investment in the regional treatment plant and has denied the District of the reasonable use of it's investment in plant and equipment all to the District's loss as set forth below.

Issues:

The Charleston Sanitary District requests arbitration in accordance with Section 15 of the Agreement between the parties for regional secondary wastewater treatment dated 1974 and in accordance with provisions of ORS 33.210 et seq.

Charleston Sanitary District requests to have issues arbitrated as follows:

- 1. Has the City breached the 1974 Regional Agreement by the City's refusal to be bound by the procedures in the Agreement for formation and operation of an Operations Committee.
- 2. Has the City breached Section 3B of the Regional Agreement by the City's refusal to operate the water treatment plant in accordance with the provisions of Section 3, Paragraph B of the Agreement
- 2.1 by failing to establish a budget and budget process for the treatment plant as required by Section 3B(2), (4), and (5) which includes input into the budget process by the District through the Operations Committee and recognizes the binding effect of the vote of the District's Operations Committee;
- 2.2 by failing to establish and maintain a consistent record system to show the operation and maintenance costs of the wastewater treatment plant which clearly shows budgeted and actual expenditures in terms of personal services, materials and supplies, and capital expenditures;
- 2.3 by failure of the City to keep all sums paid to it under Paragraph 3B in a separate "fund" as such term is used in ORS 294.450, 294.470 and Section 3B(5) of the Agreement;
- 2.4 by failing to keep sums paid to Coos Bay pursuant to Section 3B of the Regional Agreement in trust as required by Section 3B(5);

	2.5	bу	providing	records	that	contain	materially	false
repres	entat.	ions	3 <i>;</i>					

- 2.6 by failing to account to the Charleston Sanitary
 District;
- 2.7 by failing to disburse from the fund only such a-mounts as are necessary to, in order of priority
- 2.7.1 to operate and maintain the plant in accordance with state and federal guidelines, and
- 2.7.2 to pay deficits in the foregoing and cumulate from the balance, if any, such reserve fund as the participants may deem reasonable.
- 3. Has the city breached the Agreement by failing to operate the plant in accordance with state and federal guide-
- 3.1 by routinely submitting falsified data to DEQ and EPA;
- 3.2 by deliberately and repeatedly discharging suspended solids and partially treated or untreated sewage from the supernate valve into the shellfish growing waters and tidelands of Coos Bay and the Charleston Sanitary District;
- 3.3 by deliberately and repeatedly exposing employees, natural resources and the public to sludge wastes not meeting EPA and DEQ standards for disposal;
- 3.4 by deliberately and repeatedly exposing employees, natural resources and the public to the dangers of over application and improper application of sludge, grit and organic screenings.

4. Has the City of Coos Bay breached the Agreement by securing funds from the District upon false information and or false representations as follows:

- 4.1 Has the city of Coos Bay made material false representations to the Charleston Sanitary District concerning the necessity for purchase of equipment for Plant No. 2 and either purchased equipment over Charleston's objections or purchased equipment for purposes other than use at the treatment plant with Charleston's money?
- 4.2 Has Coos Bay secured funds from Charleston based on data which was inaccurate in terms of number of hours of work charged to Charleston?
- 4.3 Has the City of Coos Bay secured funds from Charleston based on data which was false in terms of the City's failure to account for secret profits or reimbursements secured in connection with the hiring of employees from vocational rehabilitation programs?
- 4.4 Has the City of Coos Bay secured funds from Charleston based on data which was false in terms of a failure to account for the proceeds from sales of Plant No. 2 equipment?
- 4.5 Has the City of Coos Bay secured funds from Charleston based on data which was false in terms of inaccurate flow records and thereby overcharged the Charleston Sanitary District? And if so, should the City be required to account for such over charges?
- 4.6 Has the City of Coos Bay secured funds from Charleston based on data which was false in terms of BOD records

and inaccurate suspended solids and thereby overcharged the Charleston Sanitary District? And if so, should the City be required to account for such over charges?

- 4.7 Has the City obscured the facts and hampered the District in exercising it's Contract rights to supervise, operate, budget and manage the Treatment Plant by instructing it's employees not to discuss issues with the District?
- 5. Has the City of Coos Bay diverted property purchased by Charleston or with Charleston's assistance from the Regional Treatment Plant without Charleston's knowledge or permission to other uses within the City or for purposes of sale without accounting to the Charleston Sanitary District for the proceeds? And if so, should the City be required to account for such diversions?
- 6. Should the City be required to secure the approval of the Operations Committee to any modifications which will entail either operational or capital expense or modify the functioning of the existing treatment plant?
- 7. Should the City be held solely responsible under Section 10 of the Agreement for any damages caused by the following:
- 7.1 Without Charleston's knowledge or consent the City of Coos Bay has disassembled and replumbed the regional treatment plant, disassembled and removed all the designed thickener equipment thereby causing health and environmental problems to become integral to the City's operations (The plant is unable to properly handle flows without the dewatering

-7-

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

equipment the City disassembled and sold or otherwise disposed The City has without Charleston's knowledge or consent:

- 7.1.1 voluntarily opened the supernate valve to take the hydraulic pressure off the system on a frequent basis during the rainy system;
- 7.1.2 been hauling six (6) trucks a day of liquified sludge when with proper dewatering equipment the number of daily loads could be reduced to one (1);
- 7.1.3 the detention time in the treatment plant is now inadequate; and
- 7.1.4 the City has exposed it's employees and citizens to sludge not meeting EPA limits for volatile reduction on a regular basis.
- Sludge and grit and organic screenings have been 7.2 disposed in a manner which is not conducive to public health and is in violation of EPA/DEQ guidelines. The City has not taken proper steps to protect humans, natural resources, and cattle from the adverse effects of contact with disposed material.
- 7.3 The City has not taken proper steps to protect it's own employees from bacterial, viral and the other pathogenic substances with which it has polluted coastland of the District, the area's dairylands and the oyster and clamming beds of Coos Bay and the District.
- 8. Has the City failed to maintain the District's pump stations has failed to maintain equipment purchased by the District and installed at the treatment plant?

	1	
	2	
	3	
	4	
	5	
	6	
	7	
	8	***************************************
	9	
	10	
	11	
-	12	
	13	
•	14	
- n/ .no* - 133 - Julius	13 14 15	
L	16	
	17	
	18	
	19	
	20	
	21	
	22	
	23	***************************************
	24	***************************************
	25	
	26	
	27	
	28	
		4

	9.	Has	the	District	been	damaged	by	the	City's	viola-
tion c	of th	e Re	giona	ıl Agreem	ent					

- 9.1 for overcharges (or such greater or lessor amount as proved at hearing) \$ 195,000.00
- 9.2 for loss of use of the treatment
 plant (or such greater or lesser amount as
 proved at hearing) \$1,200.00.00
- 9.3 for destruction of plant
 and pump station improvements and
 equipment (or such greater or lesser
 amount as proved at hearing) \$ 130,000.00

WHEREFORE, the Charleston Sanitary District prays that the City of Coos Bay be required to

- Adopt budget plant procedures and maintain funds and trust balances and records as required by the Regional Treatment Plant Agreement;
- 2. Submit governance of Plant 2 affairs to an Operations Committee created and functioning as set forth in the Agreement;
- 3. Render to Charleston a full and complete account of Plant No. 2 purchases and operations including flow, BOD, and suspended solids measurement.
- 4. Be enjoined from committing the violations described herein and be required to indemnify and hold the District harmless therefrom;
- 5. Pay the Charleston Sanitary District damages as follows:

1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	

	(A)	for	overcharges	(or	such	greater			
or	lesser	amount	as proved a	at hea	aring)	\$ 195,	000.	. 00

- for loss of use of the treatment (b) plant (or such greater or lesser amount as \$1,200.00.00 proved at hearing)
- for destruction of plant and pump station improvements and equipment (or such greater or lesser 130,000.00 amount as proved at hearing)
- for costs and disbursements incurred herein by the Charleston Sanitary District;
 - for one-half (1/2) the cost of arbitration;
- (f) for attorneys fees as provided in the Rules of the American Arbitration Association, Section 15B and ORS 20.096. LYNN H. HEUSINKVELD, P. C.

"" "SINICVELD Lynn H. Heusinkveld Oregon State Bar # 76392 336 North Front Street Coos Bay, Oregon 97420 269-7511

1.	IN THE MATTER OF THE ARBITRATION BETWEEN						
2		. `					
3	CHARLESTON SANITARY DISTRIC	CT,					
4	Petitioner,	ODICINIAI					
5	vs.	ORIGINAL					
6	CITY OF COOS BAY,						
7	Respondent.						
8		:					
9	EXCERPT O	F PROCEEDINGS					
10	Test	imony of					
11	BILL M. WILLIAMS						
12		· · · · · · · · · · · · · · · · · · ·					
13							
14	October 18, 1989, 8:30 A.M., at the North Bend Public Library, North Bend, Oregon.						
15	ruotic Biolary, No. 22 - 1						
16	ARBITRATOR:	William I. Peterson Engineering Consultants, Inc.					
17	1155 13th Street Salem, Oregon						
18	FOR THE PETITIONERS:	Lynn H. Heusinkveld					
19		Attorney at Law Coos Bay, Oregon					
20	FOR THE RESPONDENTS:	Bechtold & Laird					
21		Paula Bechtold Attorney at Law					
22		Coos Bay, Oregon					
23	Cochran and Cochran Court Reporters Coos Bay and Gold Beach, Oregon						
24	(503)	269-7115					
25							

į	1	October 18, 1989, 8:30 A.M.
V.	2	North Bend Public Library
	3	North Bend, Oregon
r.	4	-000-
i ^a .	5	THE ARBITRATOR: We are ready if you
$\ell_{j,i}$	6	are.
V **	7	MR. HEUSINKVELD: Mr. Peterson, we
3	8	call Mr. Bill Williams.
e e	9	BILL M. WILLIAMS
GI	10	Having been called as a witness and duly sworn,
f 1.	11	testified as follows:
21	12	DIRECT EXAMINATION
((13	BY MR. HEUSINKVELD:
10 L	14	Q Mr. Williams, what is your address?
<i>0.1</i>	15	A 1701 Old Mill Road, Sitka Dock.
. 1 1	16	Q Sitka Dock where you live, is that a fairly
<i>l.</i> .	17	large piece of property?
of.	18	A Yeah, it is, I don't know how many acres it is
4	19	but it's probably 75 to 100 acres, somewhere around in
05	20	there.
<i>:</i>	21	Q Could you go to Exhibit No. 36 and draw a red
1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 -	22	circle around the place where you live? The whole
5, 2	23	property, please.
1.77	24	A (Witness complies.)
0.5	25	Q That is good enough.

1	That property doesn't belong to you, does it?
2	A No, it belongs to Coos Head Timber Company.
3	Q To Mr. Wiley Smith?
4	A Yeah, uh-huh.
5	Q And your position there is the position of
6	caretaker?
7	A Yeah, caretaker and I partially rent it, we are
8	paying so much a month, we get the rest off as a
9	caretaker.
10	Q How long have you been there?
11	A Since January '87.
12	Q Now, I would like to ask you some questions
13	about something that you saw when you were working up on
14	a big building on the property. Do you know what I am
15	talking about?
16	A Uh-huh.
17	Q Can you tell us when that was?
18	A I'm not sure of the exact date, it was during
19	the winter of '87, when we first got there. Must have
20	been February or March, I suppose.
21.	Q How many times did you see this thing?
22	A Quite a number of times. When it was raining
23	real hard you can't see too well, I guess the rain beats
24	the pile of foam down but when it is not raining and the
25	wind is not blowing, you see it.
ľ	

) J

 $\Im \mathfrak{T}$

3.1

₽.

3.1

: ŧ

1.}

34

01

 $\mathfrak{Z}^{\mathfrak{C}}$

1.9

 \mathbb{S}^{5}

.:<u>!:</u>

 $p_{\mathcal{Q}}$

 $^{a}_{\cdot}S$

And shoreward was the treatment plant?

Q

25

r

,)
	1	A Pardon?
2	2	Q And shoreward from the spot where this
f:	3	brown
ļ þ	4	A Just off shore there, looked like two or 300
5	5	yards from the treatment plant.
	6	Q Then describe what you saw in terms of this
7	7	brown chocolate foam?
8 .	8	A Browm chocolate foam coming out of there like
α	9	it was brown chocolate foam.
Si F	10	Q How long a trail was left by the foam?
!!	11	A Way out past me out there, as far as I could
45.0	12	see on down the bay. I can see on down the bay but you
P.4	13	can't see the foam that far away. Evidently clear on
D.L	14	down out of sight.
ë l	15	Q What characteristics did this foam have?
<i>o</i> I	16	A Aside from not being very pretty, at high tide
Ü 1	17	you can't smell it so much but at low tide it stinks
81	18	like an open sewer.
s. 1	19	Q Then did you become concerned about the effect
08	20	of this brown tide upon your property?
18	21	A Well, yeah. I talked to Wiley Smith, and I
O.A.	22	asked him what it was up here, and he said, I don't
22	23	know, he said he had never seen it. So, I'm an
DØ.	24	ex-fisherman and so on and I have been around the ocean
ĒΩ	25	the bigger part of my life and I noticed there was no
	;	

 $\Omega\,\Omega$

[0,0]

đΩ

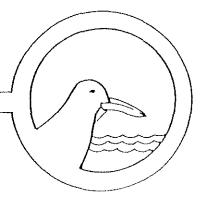
FACILITIES PLAN SUPPLEMENT

for

Wastewater Treatment Plant No. 2

presented to

CITY OF COOS BAY



submitted by

CENTURY WEST ME ENGINEERING

Table 7-D WWTP No. 2 Alternative No. 2 Annual O&M Costs

Annual 0&M
\$ 7,300
\$20,000
\$20,000
\$23,800
\$ 5,000
\$20,000
\$16,000(1)
\$ 3,000
\$25,000
\$68,000
\$208,100
\$ 88,050
\$296,150

Notes:

 Includes O&M costs of sludge hauling and allocation of operation facultative sludge lagoon at WWTP No. 2.

Table 7-C WWTP No. 2 Alternative No. 1 Annual 0&M Costs

Plant Component	Annual 0&M
Influent Pump Station	\$ 9,300
	\$23,000
Headworks	\$20,000
Primary Clarifier	\$40,000
Aeration Basin	\$ 8,000
Intermediate Lift Station	\$20,000
Sludge Thickening	·
Sludge Digestion	\$22,600
Sludge Disposal	\$35,000 ⁽¹⁾
Chlorination	\$ 4,600
General Maintenance	\$30,000
Administration	\$73,500
Total	\$286,000

Notes:

 Includes O&M costs of sludge hauling and allocation of operation of facultative sludge lagoon at WWTP No. 2.

HGE INC./ENGINEERS & PLANNERS

375 PARK AVENUE / COOS BAY, OREGON 97420 (503) 269-1166 / FAX (503) 269-1833

September 20, 1990

Lynn Heusinkveld Attorney At Law 336 North Front Street Coos Bay, Oregon 97420

Re: Plant #2 Improvements Capitol Cost Allocation Project #2355

Dear Lynn:

The Department of Environmental Quality has requested a fair and equitable cost allocation for plant #2 improvements based on each community's projected design flows both for wet weather and for dry weather.

At a minimum, three issues must be addressed in order to respond to this request. The three issues are as follows:

- 1. Why are the improvements being made?
- 2. Which of the improvements, if any, should the Charleston Sanitary District be partially responsible for?
- 3. If the Charleston Sanitary District is responsible for a portion of the improvements, what is the District's equitable cost allocation?

A brief summary of some of the engineering concerns relating to these issues follows. Note that maintenance of the plant is not specifically addressed in this letter. The Environmental Protection Agency does not provide grant money to pay for the maintenance of or the replacement of items which were not properly maintained. The Charleston Sanitary District has been billed monthly for their share of maintenance and the City of Coos Bay has been responsible for actually maintaining the plant. A wastewater treatment plant which has been properly maintained should not require a major upgrade after 15 years because of maintenance problems or worn out equipment. Therefore, it has been assumed that any capital improvements which Charleston might be asked to pay for a portion of are required to expand the capacity of the plant.

Why Are Improvements Being Made?

Initial problems with the plant, and violations of Coos Bay's Waste Discharge Permit, were due to hydraulic overloading at the plant during peak wet weather flows.

As a condition of receiving an EPA Grant, the plant upgrade had to be sized to meet the needs of the community for the next 20 years and the plant improvements had to be designed to provide partial Class I Reliability.

What Improvements If Any Should The District, Be Partially Responsible For?

Hydraulic overloading at Plant #2 is due to Coos Bay (Empire) flow not Charlestons. The following three paragraphs were copied directly from the Arbitration Decision.

Exhibit 122, Section IV, pp S4-21 states: "Based upon recorded observation and an evaluation of the plant's operations date, as discussed above, past violations in NPDES permit effluent discharge limitations for TSS and BOD can generally be attributed to one factor, periodic high influent flow levels that exceed the plant's existing hydraulic capabilities." (emphasis added).

pp S4-17 states: "Table 4-E shows that the Empire Collection System contributes significantly more peak I/I than the CSD system. For all three storm events, the Empire per capita contribution exceeds the CG-85 guideline of 275 pgcd. This condition is explainable because the Empire system is much older than the CSD system. (emphasis added).

"It is reported by the City's (Coos Bay) own retained Engineers that it is hydraulic overloading that is causing all the problems at Plant #2."

In Chapter 4 of the Facilities Plan Supplement for Wastewater Treatment Plant No. 2, prepared by Century West Engineering, it is stated in the appraisal of current operating procedures that "As discussed in the previous section, the primary cause of past effluent discharge permit violations has been hydraulic overloading which directly or indirectly affects all unit processes within the plan."

The Charleston Sanitary District has a relatively new collection system. The system was well designed and constructed and there is minimal I/I. The average, measured, sewage flow per connection was 164 gallons per day during FY 1988/89. The maximum sewage flow per connection (based on maximum month) was 190 gallons per day during FY 1988/89.

In FY 1988/89, the maximum average flow in Empire was 666 gallons per day per connection during the maximum monthly flow, 3.5 times higher than in Charleston.

The capacity of the plant is 1,600,000 gallons per day (maximum monthly flow, MMAWWF). Charleston contributed 20% of the maximum monthly flow in FY 1988/89. Charleston is at about 50% of the capacity reserved in the original 1974 contract while Coos Bay is at 100% or exceeding the capacity reserved in the original contract.

H.G.E., INC. performed an analysis to determine what the flows would be at Plant #2 if Empire had the same flow per connection as Charleston. The results are included as Attachment A and show that the plant would presently be operated at well below capacity if Empire did not have such a serious I/I problem.

It is more cost effective for Coos Bay to expand Plant #2 than it is to solve the I/I problem in Empire. However, it seems clear that Charleston should not have to financially subsidize Coos Bay's cost effective solution.

Apparently, the only portion of the improvements which Charleston might reasonably be asked to pay for part of is the upgrade to partial Class I Reliability. However, it should be stressed that partial Class I Reliability is a requirement of receiving EPA funds, and that partial Class I Reliability would not be necessary at this time if the Empire Collection System did not have a severe I/I problem.

The Charleston Sanitary District asked Coos Bay to provide a detailed breakdown on which capital costs were necessary for hydraulic expansion of the plant and which costs were required to provide partial Class I Reliability. To our knowledge this information has never been provided to Charleston.

Additional documentation of the I/I problem in Empire is included as Attachment B.

If the Charleston Sanitary District is Responsible for a Portion of the Improvements, What is the District's Equitable Cost Allocation?

Design flows for Plant #2 improvements are based on 5 years of flow records, from 1984 to 1988. These were some of the driest years (based on rainfall) in recent history as has been stated by the City of Coos Bay. Because of the extensive I/I problems in Empire it is very unusual that flows from previous, wetter years were not included in the analysis. In fact the average of annual sewage flows from Empire during the period of FY 1982 through FY 1984 (note FY is not same as calendar year) was 45% higher than the average during the period from FY 1985 to FY 1989. Yet the high flow years were not included in the design.

The proposed size of the new units for the planned improvement appear to be adequately sized. This is because the Engineers used design criteria which are much lower than traditional, proven design valves. For example, the secondary clarifier at Plant #2 was sized for a maximum average overflow rate of 400 gpd/square foot by Century West. However, the secondary clarifier designed by Brown and Cauldwell for Plant #1, which was recently constructed, was designed for a maximum overflow rate of 1100 gpd/square foot. This is entirely inconsistent for two similar units constructed in the same community.

The proposed improvements for Plant #2 are probably large enough, even though unusual design valves were used. Unfortunately, this approach has lead to Charleston being unfairly allocated its share of the cost.

Neglecting years when rainfall was high has artificially lowered the design per capita flows in Coos Bay by not accounting for all the I/I. This has lead to an artificially high proportion of flow being contributed to Charleston, since the District has a tight collection system and flows are not affected as much by rainfall.

A fair allocation of cost must include years with high rainfall and corresponding high I/I in the Empire system. It is also not fair to base the allocation on average dry weather flows since I/I is a function of peak flows, particularly since the design criteria for the plant improvements is based on wet weather flows.

It is suggested that the allocation of costs be based on peak wet weather flows to the plant. If the allocation was based on a peak flow basis and the 20-year projected population only, it appears that Charleston's share would be between 10 and 20 percent of the cost. Of course this would only apply to plant components which the District should share some responsibility in.

Very truly yours,

H.G.E., INC.

Richard D. Nored, P.E.

Vice President

RDN:kl Enclosures

ATTACHMENT A

ADDITIONAL ANALYSIS OF PLANT #2 RECORDS

- 1. The average annual rainfall (calendar year) was 63.4 inches during the 86 year period from 1902 to 1988. This information was collected by the Coos Bay-North Bend Water Board and is included as Attachment B.
- 2. The time period of concern during arbitration was from FY 1979/80 to FY 1988/89. The monthly rainfall for this time period is shown in Table 1. The annual rainfall, total flow to Plant #2, annual District flow, annual Empire flow, number of District users (connections), number of Empire users (connections), flow per user for the plant, flow per user for Empire, and flow per user for the Charleston District are listed in Table 2 for the 10-year time period.
- 3. The highest rainfall during the 10-year period occurred during FY 1981/1982 (see Table 2). The largest annual flow to Plant #2 occurred during FY 1983/84. Fiscal years 1981/82, 1982/83, and 1983/84 all had more annual rainfall than normal.
- 4. The last 5 fiscal years (1984/85 through 1988/89) were not all drought years, based on annual rainfall. The annual rainfall in all years, except 1987/88, exceeded the long term average.
- 5. The annual rainfall and annual wastewater flows at Plant #2 from Empire and the Charleston Sanitary District are plotted on Figure 1. The annual flows from the District have largely been independent of annual rainfall. This demonstrates that the Charleston collection system is relatively watertight. There does appear to be a definite relationship between annual Empire flows and annual rainfall. This demonstrates that there is a significant amount of infiltration and inflow entering the Empire collection system.
- 6. The data in Table 1 was normalized (divided) by the 10 year average (mean) and summarized in Table 4. The normalized annual rainfall and normalized Empire flows are plotted on Figure 2. This figure clearly shows there is a relationship between annual rainfall and Empire flow. The relationship is not exact; there are some years when annual rainfall has increased but flows have not. However the trend is apparent.

- 7. Table 2 shows the average daily flow per user (connection) for Empire and the Charleston Sanitary District. The average daily flow per user in Charleston has decreased significantly in the last 10 years. This is because most of the I/I in the Charleston collection system is through the mainlines, and the total I/I is not affected much by new connections. However, the average I/I per user is reduced. In fact, the information in Table 2 demonstrates that the overall plant average flow per user has been reduced by the addition of newly constructed sewer lines in Charleston. This is the same conclusion reached by the arbitrator.
- 8. The average daily flow per user in Empire and the annual rainfall are shown in Table 3 and plotted on Figure 4. This information shows that during years with high rainfall, the average daily flow per connection in Empire increases significantly. This demonstrates again that a significant portion of the Empire flows during wet periods are from I/I.
- 9. It should be noted that all flows discussed in this Attachment are annual flows. The instantaneous flows, and the difference between average flows per connection for the two parties, will be significantly higher during peak wet weather flows.

PRECIPITATION AT THE MORTH BENE GIRPOPT
MOTE: AVERAGE ANNUAL RAINFALL BASED ON 86 YEAR AVERAGE IS 63.4 INCHES

· FY ENDINS	JUL	āU6	369	OCT	V0V	DEC	JAH	FEB	MAR	H28	MAY	JUN	TOTAL
90	0.62	0.88	I,80	6.77	8.15	1.31	5.61	5.89	£.35	7.12	2,04	 2,16	49.41
81	0.41	0.14	0.79	2.89	5.71	12,95	5.18	5.60	7.08	2.53	4.70	2.79	51.75
82	0.15	0.32	3,57	9,04	12.10	20.25	15.89	8.04	9.37	9,50	0.38	1.94	88.65
63	0.58	0.19	- T3	5.55	9.56	15.34	12.5°	15.84	13.97	4.55	2.74	2.48	85.84
84	2.79	2.63	v.88	3.17	17.51	14.38	3,54	12.07	8.65	6.80	5.16	4.01	81.39
25	0.10	0.20	1.08	11.13	21.5a	6.17	0.99	6,90	7.44	1.25	1.85	4.80	64.07
Бá	0.17	0.19	1.34	7.30	7.60	5.04	10.83	16.26	7.38	4.53	5.79	0.75	69.2 6
87	0.95	0.09	4.60	3.35	13.22	5.49	12.89	8.91	10.97	3.02	1.54	0.12	65.25
88	0.40	0.45	0.08	0.36	6.51	20.26	2.29	4.76	3.60	4.51	2.43	0.45	46.10
27	G.45	0.02	1.76	0.47	18.51	9.05	9.89	3.74	12,91	3.43	3.79	1.61	66.76
10 YR MEAN	0.67	0.51	2.02	5.01	12.06	11.03	7.75	8.87	9.87	4.79	3.05	2.11	66.75

TABLE 2

ANNUAL RAINFALL AND ANNUAL WASTEWATER FLOW (1000 GALLONS)

					NUMBER	NUMBER	NUMBER	TOTAL	EMPIRE	DISTRICT
FY	PRECIP.	TOTAL	EMPIRE	DISTRICT	EMPIRE	DISTRICT	TOTAL	FLOW	FLOW	FLOR
ENDING	(INCHES)	FLOW	FLOH	FLOW	USERS	USERS	USERS	PER USER	PER USER	PER USER
80	49.41	313.580	282.440	31,140	1.682	270	1.972	436	460	294
81	51.75	287,340	257.670	29,670	1,703	- 295	1.994	394	415	277
82	88.55	391,050	353.063	37,987	1,712	346	2.058	521	565	301
23	85.84	402,118	355,232	45,896	1,721	338	2.059	535	557	372
25	81.36	433,680	388.800	45.080	1.730	406	2.138	556	615	304
충분	64.07	289,900	248.790	40,110	1.739	ψÔΦ	2.148	278	372	Jęò
55	B8.26	277,580	235.220	42,460	748	412	2.180	352	∃é⊆	252
\$ 7	65.25	294.700	250.510	44.990	1,752	429	1,199	370	392	261
88	46.10	281,640	217,480	c4,150	1.752	⁵ 51)	2.7:2	295	540	127
35	55.7ö	312,140	233,390	73,750	1.751	1,250	7.001	285	373	180
10 YE MEAN	66.75	328,283	281,850	45.433	1,729	513	2.243	410	445	273

PARLE I SAINFALL VS FER CAPITA USEAGE IN EMPIRE

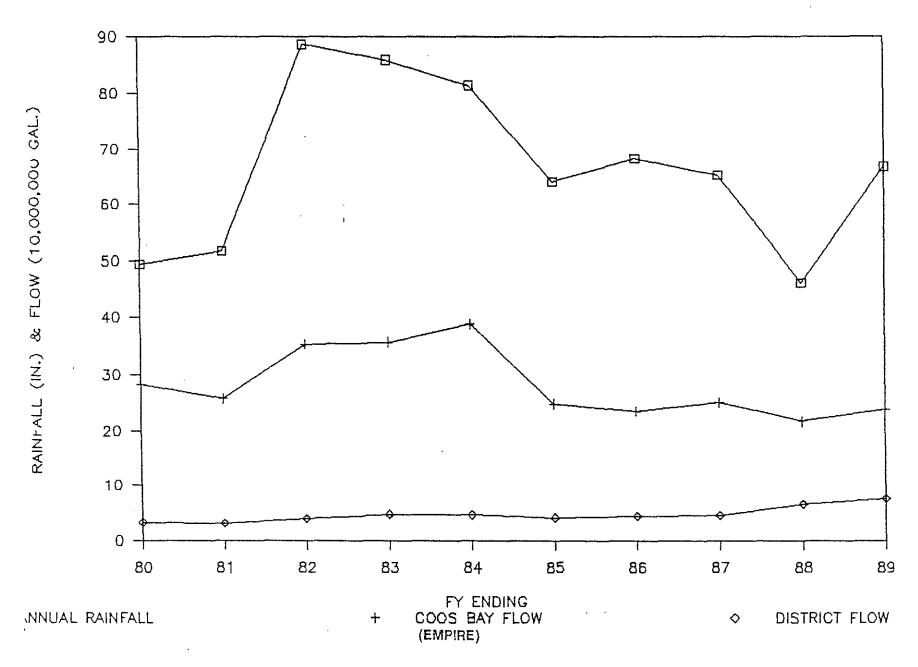
	EMPIRE
PRECIP.	FLOW
(INCHES)	PER USER
46.10	340
49,41	460
51.75	415
64.07	392
55.25	392
56.76	373
58.25	369
31,39	615
85.84	547
88.65	565

TABLE 4

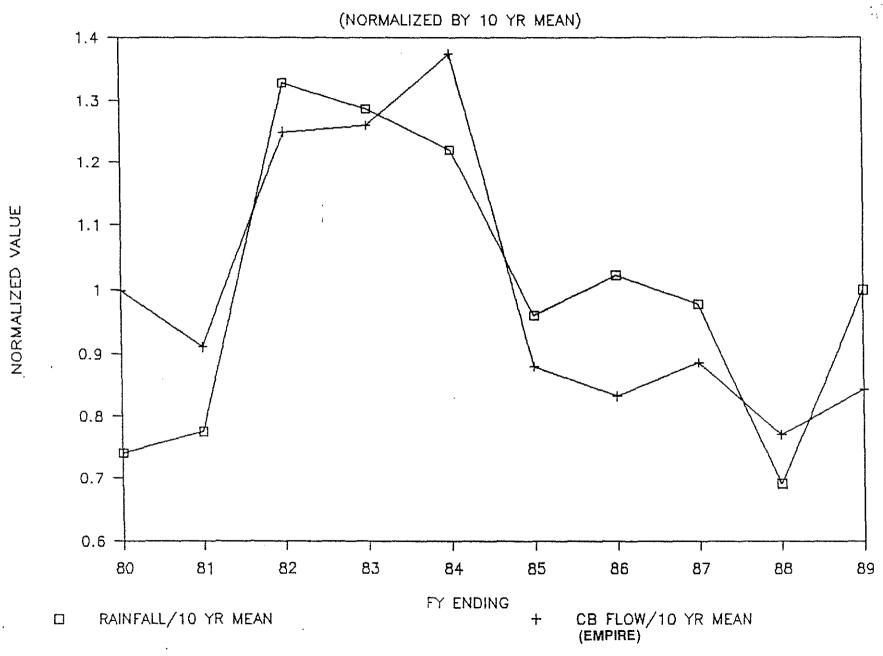
RAINFALL AND FLOWS NORMALIZED BY 10 YEAR MEAN

	PRECIP.	TOTAL FLOW	ENPIRE FLOW	DISTRICT FLOW	NUMBER EMPIRE USERS	NUMBER DISTRICT USERS	NUMBER TOTAL USERS	TOTAL FLON PER USER	EMPIRE FLOW PER USER	DISTRICT FLOW PER USER
30	0.74	0.95	1.00	v.69	0.97	0.57	0.88	1.06	1.03	1.08
81	0.78	0.88	0.71	0.45	0.98	0.57	0.89	0.96	0.92	1.02
82	1.33	1.19	1.25	0.84	0.99	0.67	0.92	1.27	1.2 <u>4</u>	1.10
83	1.29	1.22	1.26	1.01	1.00	0,66	0.92	1.30	1.26	1.36
54	1.22	1.32	1.37-	Ú.99	1.00	0.79	0.95	1.36	1.37	1.12
55	0.9e	0.85	0.88	6.88	1.01	0.80	0.98	0.90	0.87	0.99
۵÷	1.02	0.85	6.80	0.93	1.01	0.00	0.96	0.86	0.82	1.04
ē-	0.99	0,40	0.89	0.97	1.01	0.83	ŷ. 97	0.90	0.87	1.04
==	6.67	0.85	6.77	1.41	1,61	1.87	1.21	6,40	0.76	6.67
27	1.00	6,95	6.34	1.62	1.01	2,42	1,34	0.49	0.83	0.50
10 YR MEAN	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.09	1.00

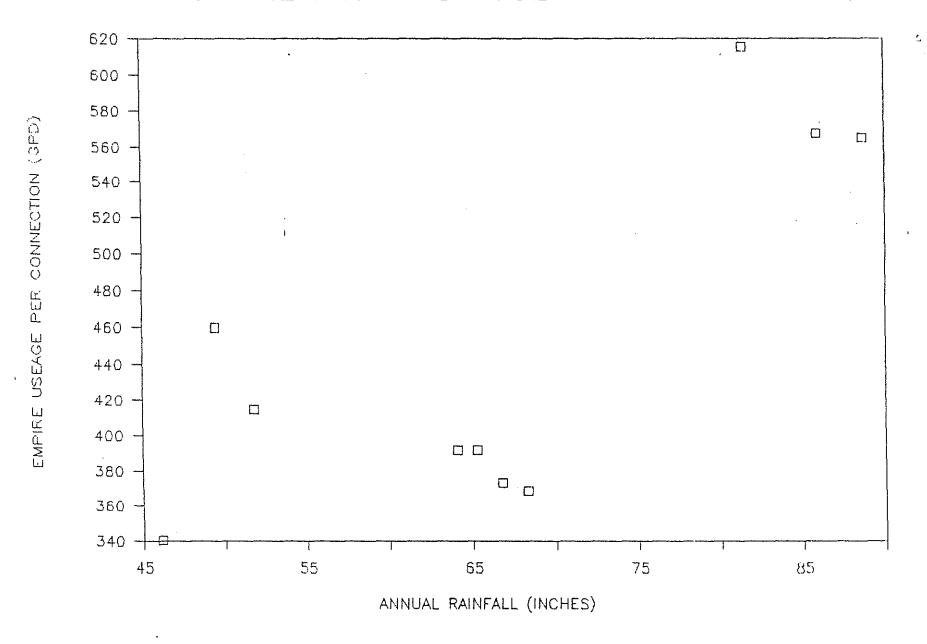
ANNUAL RAINFALL AND WASTEWATER FLOWS



NORMALIZED RAINFALL AND COOS BAY FLOW (EMPIRE)



EMPIRE FLOW PER USER VS RAINFALL



267-3128

ATTACHMENT B

PRECIPITATION AT THE WORTH BEND, CRESON AIRPORT

Courtesy King CB-NB Water Board

MONTHLY READINGS X 0.01 = INCIES													ثب التحوير		·
ኒምልጭ	JAH	FEB	Mar	afr	HAY	JUN	JUL	AUG	SEP	OCT	HOY	DEC	TOT	INCHES	YEAR
YEAR	512	1550	1195	641	417	114	146	0	85	267	1487	1653	a)57	80.57	2
1902	1556	227	768	373	213	110	56	49	74	194	1707	503	5830	58.30	3
1903	1043	1834	1976	373	110	86	129	6	38	572	703	1414	8284	82.84	4
1904	747	412	1017	188	275	126	9	0	148	591	600	794	4928	49.26	5
1905	747 791	1004	587	290	786	558	b	11	300	268	990	1019	6610	66.10	ઠ
1906	1345	1175	854	766	391	322	10	69	242	242	715	1741	7873	78.73	7
1907	677	69i	548	338	490	196	6	76	22	697	642	7 8 5	5179	51.78	8
1905	1759	1569	549	138	569	60	139	17	127	907	1746	896	8436	84.36	9 .
1909	1101	949	382	334	65	167	6	3	22	440	1591	62.5	5712	57. 12	10
1910	1555	555	250	401	536	121	0 .	23	- 301	276	711	951	5721	57.21	11
1711	1229	855	438	636	326	388	10	164	412	547	1207	844	7058	70.59	12
1912		237	764	597	235	257	122	15	380	429	795	807	5878	58.98	13
1913	1260	736	754	535	181	222	11	3	973	653	603	1111	7591	75.91	14
1914	1804		416	323 307	657	77	152	4	101	242	1767	1251	<i>६</i> ८९७	68.97	15
1915	1084	835	1411	412	498	252	233	17	126	84	916	937	7582	75,82	16
1915	1498	1178		760	349	83	7	1	172	2	1035	1162	5997	59.97	17
1917	686	684	1051		222	8	52	75	33	209	870	749	5122	51.22	18
1918	832	1194	657 600	215	233	44	20	16	276	278	720	1021	7175	71.76	19
1919	1299	1419	982	663	230 62	300	50	59	579	1014	940	1565	6536	68.36	20
1920	579	57	877	. 754		264	0	15	304	506	1548	385	6733	67.33	21
1921	1161	1075	578	606	289 295	14	Ó	17	187	713	521	1249	6833	63.83	22
1922	879	1015	1464	534		225	92	8	124	406	540	906	5417	54.17	23
1923	1312	309	582	476 201	434 89	76	2	155	380	1232	1762	814	6143	61.48	24
1924	808	455	374	201		76 221	2	115	2 <i>6</i> 9	20	618	822	5876	58.76	25
1925	1471	1112	381	691	163	49	2	183	229	721	1582	728	7247	72.47	25
1926	749	1769	191	453	58 6	94 94	19	39	270	356	1446	705	7463	74.63	27
1927	1553	1405	784	417	373	74 27	28	5	185	298	839	1041	6028	60,28	28
1928	830	561	1184	921	108	333	0	10	22	146	82	1554	4711	47,11	29
1929	1021	199	573	643	128	121	0	4	230	207	597	562	4474	44.74	30 •
1930	844	893	218	417	379	726 326	7	5	195	423	905	1602	5996	59,95	31
1931	681	426	922	413	96 250	320 39	91	18	27	247	920	1190	5709	57.07	32
1932	751	427	881	663	250	285	71 ()	53	332	357	22 <i>b</i>	1415	7154	71.54	\mathfrak{U}
1933	1733	835	959	236	721	255 25	23	32	100	921	1326	1334	5717	57,19	34
1934	849	257	455	230	163	70	35	2	165	573	408	103	4772	47,72	35
1935	747	495	1033	373	50 400	143	30	0	30	39	66	700	4504	43.04	₹0 •
1936	1351	725	45 33	247	423	557	11	62	283	504	3531	1041	9117	91.17	37 • •
1937	1269	1689	639	912	262	43	11	1	85	447	800	532	6381	63.81	39
1978	782	1475	1750	338	119	279	£5	ι. ε2	93	395	101	1351	4707	47,07	38
1939	835	783	483	100	149	14	18	15	224	637	676	1390	6893	68.96	40)
1940	776	1786	791 220	259	258 727	318	29	59	454	384	1102	1654	6703	67.03	41
1941	1065	419	28) 225	404	373	213	87	10	76	265	1509	1725	6911	69.11	42,
1942	745	899	375	455	532	168	48	124	3	i₹5 500	612	351	5216	52.13	43
1943	970	400	67.9	4(1)	316		15	9	109	375	801	441	4426	44.26	44
1944	555	709	471	603	244	93 44	<u>33</u>	<i>ा</i> छ	174	258	1811	1267	7600	78,00	45
1945	843	1005	1293	627 700	757 FO	44	30 30	13	39a	633	1541	796	6428	64.25	4 6 .
1946	667	788	676	302	52 ez	243	909 200	12	370 158	1383	504	720	5567	55.67	47
1947	537	421	854 304	277	67 447	572 79	141	167	190	1000 141	1339	970	6:12	65.12	49
ice3	759	652	701	983 ***	403 740	79 22	16	24	136	333	781	729	45:5	45.55	49
1949	263	1208	561	118	348	22	<u> </u>	24 84	167	1345	1202	778	70/:7	79.67	50
1950	2195	748	726 262	326	185	149		64 15	10: 121	1563 E17	954	1117	£754	63.94	51
1951	:185	667	753	176	351	5	16	נו	1-1	D1:	, ,	.,,,		•	

1952	1279	577	905	117	78	- 237	3	2	63	93	342	1146	4871	48.71	52
1953	1393	788	921	541	608	171	15	338	159	337	1517	1105	7891	7E.91	ររ
	1511	556	680	431	70	238	20	300	233	407	646	1207	6299	62.99	54
1954	541	625	730	749	134	87	88	4	171	807	878	2236	7047	70.47	ររ
1955		947	465	42	203	206	0	- 4	214	1184	148	661	5824	58.24	56
1556	1750		1131	283	301	118	61	44	181	689	266	1311	5693	56.93	57
1957	622	666			123	247	74	15	159	339	1090	764	7015	70.15	58
1958	1175	1498	707	824	385	67	42	34	379	304	165	507	5345	53.45	59
1959	1741	1086	563	72 745		10	0	46	21	405	1547	421	6311	63.11	60
1960	869	867	1125	3 4 5	ស្ស	52	17	6 3	76	572	1063	634	7231	72.31	61
1961	808	1570	1345	459	574	52 65	9	57	141	649	741	354	4447	44,47	62
1962	220	850	906	253	190	64 84	10	50	5	273	1348	1439	5709	57.09	63
1963	1339	325	165	494	177		68	70	81	154	1266	1777	6285	62,85	64
1964	1275	263	697	310	91	171	10	70 50	5	273	1348	1439	5709	57.09	65
1965	1339	325	165	494	177	84		30 15	206	273 255	1100	1033	5758	59.58	66
1765	1274	564	1114	167	72	47	109				577	1079	6009	60.09	67
1967	1347	550	969	608	164	46	0	1	134	512		1856	7447	74,47	£8
19 6 8	1177	622	573	206	267	178	13	549	244	713	1038		6292	62.92	69
1969	1687	706	266	343	166	II4	11	i	303	450	528	1437	8822 0717	66.53	70
1970	2023	834	261	578	305	73	2	4	143	422	810	1198			71
1971	1357	615	970	806	194	300	8	272	536	450	950	1500	7948	79,4S	
1972	990	692	1061	773	113	87	14	110	182	114	585	1191	5912	59.12	72
1973	792	384	772	191	165	143	0	38	332	312	2269	1610	7008	70.Œ	73
1774	1163	1033	1258	291	207	56	92	0	17	124	867	1176	6264	62.84	74
1975	822	975	812	616	252	47	7	189	0	922	1072	(83	6434	64.34	75
1976	673	739	584	268	76	29	7ዓ	212	76	151	255	180	3352	33.52	76
1977	185	465	826	128	451	69	4	213	338	355	1130	1260	5424	54.24	77
1978	1289	755	237	1047	396	149	37	197	353	40	527	440	5469	54.69	78
1979	392	1317	476	518	451	94	62	29	220	677	915	1310	<i>6</i> 470	<i>6</i> 4.70	79
1980	562	559	635	712	204	216	41	14	79	287	571	1295	5177	51.77	£0
1581	51 <i>6</i>	660	708	253	470	279	16	32	357	904	1210	2025	7430	74.30	81
1982	1389	804	937	959	38	194	68	19	232	555	550	1534	7627	76.87	82
1983	1259	1584	1397	456	274	248	279	263	53	317	1751	1438	9354	93.54	83
1964	334	1207	845	680	516	401	10	20	108	1113	2156	617	8027	80.27	84
1985	59	<i>6</i> 90	744	185	185	480	17	19	234	738 -	760	504	4655	46.55	. 85
1765	1083	1626	738	4 53	579	75	95	9	460	335	1322	549	7324	73,24	88
	1289	891	1097	302	164	12	40	45	8	35	651	2026	6561	65,61	6 7
1987		223	476	360	451	243	45	2	176	47	1861	908	6206	62.06	68
1768	1408	221	470	507	101							50.	14 0	0.00	ይን
1989										-			0	0.(٪)	90
1970		ì											Û	0.00	- 91
1991		1											0	0.00	92
1772				•											
	A 56	A 57	(15	A 49	0.38	0.08	0	0	Ú	0.02	0.56	1.8		33.52	HIN 1931
#IN	0.59	0.57	1.65	0.42		1.64	0.44	0.62	1.95	4.64	5.77	10.62		63,41	MEAN
KEAN	10.44	8.33	7.58	4.47	2.90 7.85	5.72	2.79	5.49	9.73	13.83	22.69	22.36		93.54	MX 198
HAX	21.95	18.34	19,76	10.49	7100	Ueli	2411		,,,,,						

.;

2.50 th 2.50 th 3.50 t	
五年一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个	
第一次 10 10 10 10 10 10 10 10 10 10 10 10 10	
18 - 19 10 1 = 10 10 10 10 10 10 10 10 10 10 10 10 10	
83/ 100 100 100 100 100 100 100 100 100 10	
Later Control of the	
Participation of the state of t	
21/25 = 8.3 H. Q.	
为是一个人的一个人的一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个	
The state of the s	
2000 1000 1000 1000 1000 1000 1000 1000	
The state of the s	
"自己人的可以以及一种的一种的一种。" "自己人的可以以及一种的一种的一种一种一种一种一种一种一种一种一种一种一种一种一种一种一种一种一	
Lever to the transport of the transport	



ASSOCIATION of OREGON SEWERAGE AGENCIES

PO Box 21042, Keizer, Oregon 97307-1042

September 20, 1990

Member Agencies

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

Fred Hansen, Director Department of Environmental Quality 811 SW Sixth Avenue Portland, OR 97204-1390

RE: Environmental Quality Commission Agenda Item F (Water Quality)

Dear Fred

The Association of Oregon Sewerage Agencies (AOSA) hereby requests that the above referenced item be pulled from the EQC Agenda of September 21, 1990. While there are substantial portions of the proposed rules that we can support, we believe the entire report should be returned to staff for further discussions.

This request is based upon our concern for the technical aspects of the proposed rules. On June 29, 1990 AOSA submitted substantial testimony to the Department relative to the draft position papers. On that date, and again August 8th, August 16, and September 8th, AOSA requested to meet with DEQ staff to discuss our concerns. DEQ staff declined our offers.

The enclosed material represents a summary of our concerns related to the technical components of the proposed rules. These issues continue to be of major importance to the AOSA membership and our objective is to work with the Department to develop reasonable rules which, when implemented, will have a positive impact on the water quality of the receiving streams.

It is our intent to appear before EQC on September 21, 1990 and request that this item be returned to staff for future review with interested parties. However, we believe that such action would be best served coming from the Department.

I would be pleased to arrange appropriate meetings to discuss these issues.

Sincerely.

Floyd Collins Chairman

Attachments

cc: Bill Hutchison, Chair, EQC

Vice Chair Michael Read 240-3215 Secretary/Treasurer
Keith Chapman
588-6380

Chair Floyd Collins 588-6380

Winston Woodburn

Association of Oregon Sewerage Agencies

Concerns With DEQ's Proposed WQS Revisions

--DEQ has proposed major revisions to the state's water quality standards (WQS) regulations.

--The DEQ's Statement of the Need for Rulemaking specifies the following bases for the proposed rule modifications:

- o ORS 183.545 requires review every three years to minimize economic impacts
- o public comment pursuant to ORS 183.550 identified issues to be addressed
- o the rules must be updated to incorporate the newest scientific information available.

--In June 1990, AOSA submitted extensive legal, regulatory and scientific comments to DEQ regarding the "White Papers" that were distributed. In addition to the fourteen issues identified by DEQ, AOSA identified a number of regulations and WQS that were not consistent with either the law or the best available science. Those issues include:

- o the basin standards and their application
- o WQS averaging periods/application methodologies
- o BOD/CBOD test issues
- o requirement for highest and best practicable treatment
- --Requests to meet with DEQ prior to this hearing to discuss these issues were not granted.
- --Contrary to statements included in the current rulemaking package, the public comments did not "narrow the water quality standard revisions. . ."; DEQ simply failed to respond to these new issues raised by AOSA.
- --The proposed changes will have a dramatic impact on municipal and industrial entities. The areas of greatest concern are:
 - o D.O. standards
 - o antidegradation rules
 - o WQS application methodologies
 - o mixing zone requirements and
 - o bacteria standards
- --In many respects, the proposed rules do not reflect new EPA requirements or the best available science. It does not reflect the public comments received or fulfill the DEQ's responsibilities under ORS 183.545 or ORS 183.550.
- --AOSA requests that this rulemaking not proceed until AOSA has an opportunity to discuss these issues and DEQ presents the scientific and legal basis for these major regulatory changes.

SPECIFIC ISSUES

Basin Standards

- --DEQ has proposed to update the WQS to reflect new scientific information; however, they have stated that they will not update the basin standards even if new scientific information proves the standards unnecessary.
- --The basin standards (actually they are facility design criteria) were approved in 1976 based upon the results of a water quality model developed by Battelle Pacific Northwest Laboratories. The scientific studies were based on admittedly inconclusive information and included very conservative assumptions. The study was never updated, and in 1986 EPA and Oregon were sued for not developing wasteload allocations throughout the state. The DEQ established a Willamette River group to develop revised modeling.
- --DEQ is mandating treatment for treatment's sake which is not authorized under either federal or state law.
- --The cost of implementing the basin standards is staggering and it is questionable that any net environmental benefit will be achieved (Attachment). For Tri-City Service District, the maximum D.O. improvement from achieving the basin standards is 0.03 mg/l at a cost of approximately \$6.5 million. This is a gross waste of municipal resources and is not in thee public interest.
- --The EQC should direct DEQ to allow reconsideration of the basin standards based on the results of a new Willamette River model.

Antidegradation Policy

- --The DEQ contends that the current rule must be amended to reflect the 1983 federal regulation.
- --DEQ has added a section for Outstanding Resource Waters, consistent with 40 CFR Section 131.12(a)(3).
- --For other waters defined as "high quality waters" the current rule is virtually identical to the federal rule (40 CFR Section 131.12(1)(2)); however, DEQ is proposing to amend the rule, far beyond federal requirements.
- --The proposed rules requires discharges to demonstrate that "no other reasonable alternative exists except to lower water quality." This requirement is completely absent from the federal rule and could easily result in billions of dollars for additional treatment simply because an industry or municipality can afford to implement available exotic treatment technologies.
- --The EQC should not permit the rule to be published because the basis for this rule modification, consistency with federal law, does not support this radical modification to the present rule.

Dissolved Oxygen

--In the "White Paper" DEQ indicated that revisions to the D.O. standard were necessary to reflect the latest EPA information on D.O. needs and to avoid

reaching a conclusion that a short term D.O. exceedance is a cause for concern. (See also, page 8 of the rulemaking package.)

- --The proposed D.O. standards are not consistent with EPA's recommended national criteria. To AOSA's knowledge, this is the only WQS that did not follow national criteria recommendations.
- --DEQ provided no rational scientific basis for establishing more stringent criteria despite AOSA's comments indicating the inconsistency of their actions.
- --In comparison to other state D.O. standards, the proposed D.O. standards are, by far, the most stringent in the nation.
- --DEQ's action will place virtually all discharges on the Willamette River in violation of the proposed WQS; although no impact to beneficial uses has been shown from the current discharges.
- --The proposed WQS differ from the current Willamette River D.O. standards as follows:

	MP0-50		ABOVE MP50		Proposed EPA WQS
	<u>Existing</u>	Proposed	Existing	Proposed	
30 day 7 day minimum	x x 5.0/6.0	8.0 6 5	x x 7.0	8.0 6 to 11 5.0 to 9.0	6.5 5.0 4.0

- --The compliance with the revised standard will cost hundreds of millions of dollars. Attainment of the proposed standards even in pristine areas of the Willamette River appears uncertain. (See enclosed Graph of Existing D.O. Quality in Willamette River).
- --There is no basis for DEQ's unsupported departure from EPA's recommendation; the EQC should direct DEQ to produce a detailed scientific basis for this proposal or utilize EPA's recommended approach which is highly protective of fishery resources.

Bacteria Standards

- --DEQ is proposing to utilize a new bacteria test. The new test and standard apply only to water contact recreation areas.
- --DEQ has historically applied fecal coliform requirements at the end of the pipe, prior to dilution.
- --Given the available dilution, this generally produces instream fecal coliform levels ranging from 1-4 MPN.
- --While the new test may be a better indicator of human health concerns, no basis was provided to conclude that the current fecal coliform limitations pose any threat whatsoever to public health; DEQ did not respond to this issue.

--The EQC should direct DEQ to review this issue to determine whether the current policy for pathogen control is sufficiently protective and not to establish end of pipe limitations based on the new test unless realistic concerns exist.

WQS Implementation Methodology

- --DEQ has essentially adopted EPA's criteria documents and referenced EQC's criteria implementation methodology as the basis for several actions.
- --Unfortunately, in adopting the criteria as standards, DEQ significantly modified the criteria by changing (1) how they apply and (2) allowable durations of exposure.
- --For example, EPA chronic criteria are 4-30 day average concentrations that may be safely exceeded in the water column on a one in three year frequency. DEQ, however, adopted the chronic criteria as "not to exceed" values that must be met on a one in ten year basis. Further safety factors are also incorporated in the analyses, producing effluent limitations far more stringent than necessary to ensure beneficial use protection.
- --EPA guidance specifies that modifying the criteria in this way is not proper and recommends that statistical modeling be used to assess WQS compliance and to avoid making multiple worst case assumptions.
- --Despite bringing this to DEQ's attention, they have refused to address this issue in the rulemaking package or to inform the EQC of this discrepancy.
- --As DEQ has relied solely on EPA documents to base the new WQS, DEQ must utilize EPA's preferred scientific methodologies for developing effluent limitations. The EQC should direct the DEQ to allow use of updated scientific technologies for establishing appropriate effluent limitations.
- --In addition, the existing and proposed WQS for ammonia fail to reflect the latest scientific information from EPA, stating that scientific errors were made in establishing freshwater criteria. DEQ should review this information and modify the ammonia WQS appropriately.

Mixing Zones

- --The proposed rule seeks to establish a statewide effluent prohibition on discharges exceeding a 96 hr LC50 results for a sensitive organism.
- --As specified in the reference documents, a mixing zone should not allow acute toxicity to organisms swimming or floating through the zone. There is no evidence in the record indicating that use of a 96 hr test would, in any way, reflect exposures that an organism would receive floating or passing through the zone.
- --DEQ has indicated that exceptions to the rule will be allowed; however, no procedures or consideration factors have been identified.
- --As a matter of sound public policy, it may be appropriate to set an upper limit on the toxicity of discharges; however, to ensure that excessive

discharges of toxic pollutants do not occur two points should be addressed by this rule:

- (1) The rule should not apply to conventional or nonconventional pollutants (such as ammonia or chlorine) and
- (2) DEQ should identify the factors they will consider in granting exceptions to the rule, in the rule.

PRECIMILARY DATA

MEMO

DATE: > September 14, 1990

TIME: > 8:30 A.M.

TO: > AOSA Members

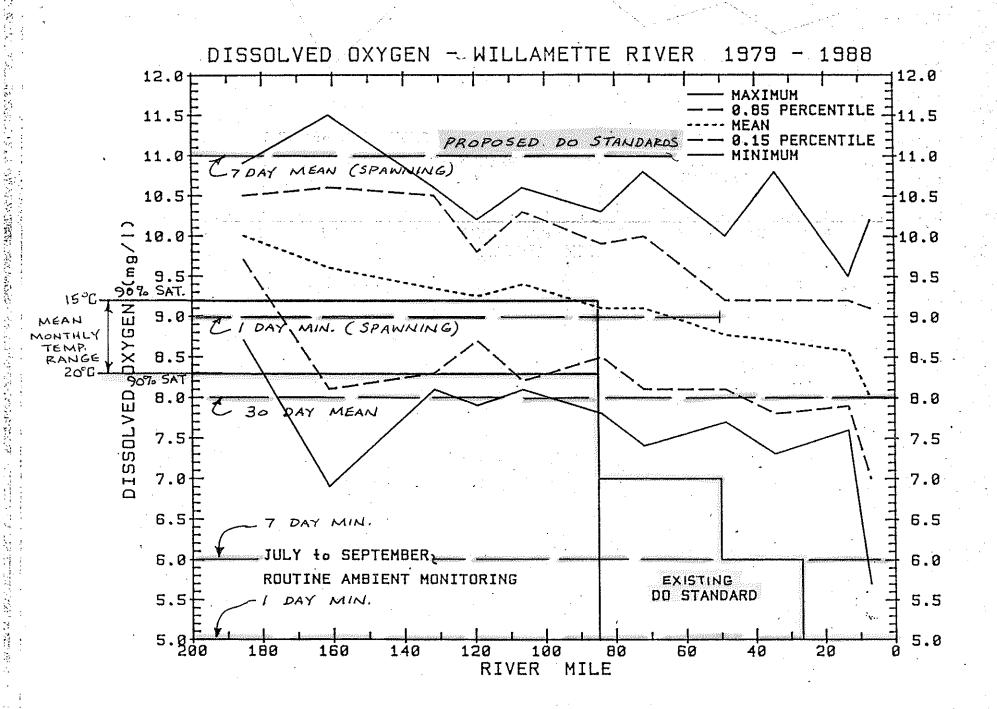
FROM: > Debra Gorman

RE: > Economic Impact from Water Quality Standards;

> The following table will illustrate the cost impacts:

COMMUNITY	Annual ERATING COSTS	CAPITAL COSTS	POPULATION
Roseburg Urban Canby Portland USA Medford Clackamas County	\$ 9,000 6,000,000. 1,500,000. 6,000. 1.100,000	\$ 24,000,000. 7,000,000. 35,000,000. 170,000,000. 10,000,000. 13.600,000.	20,000 7,750 440,000 260,000 80,000 100,000

Many of the small communities have not been faced with this question or have answered it yet. Most are getting ready to hire consultants and answer the question but it is too earlier to estimate the costs. They will notify AOSA as soon as they have any costs.



NORTHWEST PULP&PAPER

September 19, 1990

William Hutchison, Chair Environmental Quality Commission Tooze, Shenker 333 S.W. Taylor Street Portland, OR 97204

Dear Chairman Hutchison:

This letter requests that the Environmental Quality Commission <u>defer</u> action on the request for authorization for rulemaking on amendments to water quality standards, <u>Agenda Item F</u> at your September 21 meeting. Rather, we suggest that the EQC direct the Department to appoint a technical and scientific advisory committee to review all of the topics presented in the Departments earlier issue papers and to carefully consider which of the topics has sufficient merit on which to proceed with rulemaking.

Clearly, NWPPA does not "consent" in the authorization for rulemaking. NWPPA submitted detailed comments on all of the Department's fourteen issue papers, including a number of very specific questions. The request for authorization is totally nonresponsive to these comments; indeed, staff does not acknowledge the comments submitted by us and numerous other entities except to say that "the Department considered the public comments." Before rulemaking is authorized, the Department should be required to respond directly to these comments and questions.

The "Notice of Availability" for the fourteen issue papers is unequivocal in establishing the process by which the Department would proceed for the triennial review of water quality standards. That notice states: "The draft issue papers are now available for public comment. After comments are received, the Department will make needed revision and propose amendments to the standards for review . . ." (emphasis added). Revised issue papers are not included with this request for authorization. These issue papers would be the appropriate vehicle to respond to comments and they should be made available prior to the authorization for rulemaking. We again suggest a technical advisory committee to assist the Department in reviewing the public comments.

Upon initial review within the short time-frame provided, NWPPA has serious concerns about the merits of DEQ's proposed rule language. NWPPA would strenuously object to adoption of several of the proposals for the reasons stated in NWPPA's comments on the issue papers. I have enclosed copies of the relevant comments.

September 19, 1990 William Hutchison Page 2

In summary, these rules are not sufficiently developed to proceed to rulemaking. The EQC should require the Department to 1) appoint a technically qualified advisory committee to review the proposals, and 2) prepare a point by point response to all of the public comments received on the issue papers, before the EQC authorizes rulemaking. Thank you for your consideration. Please do not hesitate to call our office if you have any questions on this request.

Sincerely,

Douglas S. Morrison Environmental Counsel

Enclosures

 ∞

EQC members

Emory Castle
Henry Lorenzen
William Wessinger
Carol Whipple
Fred Hansen, Director

NORTHWEST PULP&PAPER

June 29, 1990

Lydia Taylor, Water Quality Administrator Department of Environmental Quality 811 S.W. Sixth Avenue Portland, OR 97204-1390

Re: Water Quality Standards Issue Papers

Dear Lydia:

Enclosed are the comments of the Northwest Pulp and Paper Association on the issue papers prepared by the Department for the 1990 Triennial Review of Water Quality Standards. NWPPA appreciates the opportunity to comment on the issue papers. We do hope that you and your staff will give serious attention to our comments and questions. NWPPA was established in 1950 to represent pulp, paper and pulping chemical manufacturers on environmental and energy issues. Our Oregon members include: James River, Boise Cascade, Georgia-Pacific, Weyerhaeuser, and Pope & Talbot.

The enclosed comments contain a number of common themes. Briefly, they are:

- 1. Several papers seem to propose major new management programs (e.g., water classification schemes, sediment standards, wetlands standards) in the guise of technical water quality standards review.
- 2. A number of new monitoring requirements are discussed without apparent consideration of the need for the data or how it would be acquired, its meaning, or its utility in fulfilling DEQ's obligations to protect water quality. Further, there is little attention given to the resources of DEQ available to administer these requirements and programs.
- 3. There appears to be blind faith in the recommendations of the EPA without consideration of the appropriateness of the criteria for Oregon waters. This is in direct contradiction to EPA guidance. More specifically, DEQ does not adequately consider its discretion when offered a range of reasonable (and protective) criteria; instead DEQ uniformly choses the most conservative of the values without sufficiently expressing a rationale.

The pulp and paper industry in Oregon has a long history of environmental accomplishments. We are also committed to further improvements in environmental performance. We believe that Oregon should uphold the highest of environmental

Lydia Taylor June 29, 1990 Page 2

standards based on good science and reasoned policy decisions. Please recognize that a high level of environmental performance is contingent upon maintaining a financially healthy and competitive industry.

Again, thank you for the opportunity to share our views on appropriate water quality standards.

Sincerely,

Douglas S. Morrison Environmental Counsel

Enclosures

bcc: Carol Whitaker, Steve Hudson, Jerry Bollen, Jerry Hendricks,

Roger Campbell, Tom Donaca

ISSUE PAPER #1 WATERS OF THE STATE

GENERAL ISSSUES

1. A statutory definition cannot be changed by regulation.

The current definition of "waters of the state" is contained in state statute and must be changed by legislative, not regulatory action.

2. How the proposed substitution of "wetlands" for "marshes" will work is not clear without a description of changes intended for legislation, regulation, or guidance.

The paper indicates wetlands would be defined using (a) the definition common to 40 CFR 230.3, 33 CFR 328.3 and Oregon's Wetland Protection Bill; and (b) a provision from a definition of the U.S. Fish and Wildlife Service.

It is not clear whether this additional language will be incorporated into law and/or regulation or whether it is just intended as descriptive policy.

3. Some of the programs designed for open flowing waters do not appear to be the best way to regulate wetlands: also these programs may conflict with programs designed specifically for wetlands.

The proposed substitution of "wetlands" for "marshes" is more than a technical change to a biological definition; rather it appears some fairly substantive changes in the way existing programs will apply are intended.

Programs designed for open flowing waters may be ill-suited for application to wetlands. Existing water quality criteria often may not work for standing wetlands. A wetland may be ecologically healthy and productive, but even in a pristine condition it cannot be described by conventional water quality parameters. Also, wetlands may be more varied and undergo more rapid changes than flowing waters. A wetland may be progressing from standing water to marsh, or bog, to more saturated soil. This natural life cycle is not reflected by the criteria commonly associated with flowing waters.

It is difficult to understand how the proposed changes, which seem inappropriate to wetlands, would work with programs already in place to protect wetlands.

SPECIFIC QUESTIONS

- 1. How is Oregon's Wetland Protection Act inadequate to allow DEQ to fulfill CWA 401 obligations, namely identifying and assessing wetlands?
- 2. How does the current definition preclude DEQ from satisfying CWA 305(b) report obligations pertaining to wetlands, given that wetlands are defined in Oregon's Wetland Protection Act?
- 3. How will beneficial uses be established in light of the inherent changing nature of wetlands?
- 4. How will site-specific water quality for wetlands be developed?

ISSUE PAPER #2 ANTIDEGRADATION POLICY (Or, DEQ No Growth Policy)

GENERAL ISSUES

1. The proposed revisions to the state's Antidegradation Policy introduce a sweeping broad-scale concept for the regulation of water quality which would be superimposed upon all existing programs; these far-reaching ramifications are not adequately described and tend to pre-empt other water quality planning processes.

The proposed revisions to the state's Antidegradation Policy constitute no less than a new comprehensive approach for regulating water quality which would be superimposed upon all existing regulatory programs. The basic thrust of this new comprehensive approach is to regulate activities affecting water quality based on water quality considerations rather than ad hoc satisfaction of technology-based limits or utilization of best management practices. NWPPA fully recognizes that a water-quality-based approach (as opposed to just technology-based approach) is consistent with the spirit and intent of the federal CWA; however, NWPPA takes issue with the proposed revisions to the Antidegradation Policy because the revisions constitute a back-door approach.

This back-door approach under-identifies the impacts of the elements contemplated within the proposed Antidegradation Policy (both to the participating public and regulated parties); under-identifies agency resources needed (for example, for baseline studies and a waterbody classification system); and pre-empts potential plans being developed by the Columbia River Bi-State Steering Committee and the Willamette River Study. Most of the impacts the DEQ is trying to address through revisions to the antidegradation policy are more likely to occur on the Willamette River and the Columbia River where most of Oregon's population exists and potential growth is likely to take place. In particular, the Columbia River Bi-State Steering Committee is focusing on the questions: "What is the health of the river; what is needed to attain or maintain water quality?" The proposed Antidegradation Policy introduces a potentially competing framework prior to the development of a plan by the Bi-State Steering Committee.

2. The paper describing the proposed revisions to the Antidegradation Policy does not adequately distinguish between the minimum revisions needed to bring Oregon's existing policy into conformance with federal requirements and other changes contemplated to address deficiencies in Oregon's programs.

A <u>Minimum federal requirements</u>

The existing federal directives for state antidegradation policies are contained in 40 CFR 131.12, adopted November 8, 1983, and are explained in EPA Water Quality Standards Handbook, December 1983. Oregon's 1979 Antidegradation Policy is no longer consistent and up-to-date.

The federal regulations in 40 CFR 131.12 contemplate a three-tiered approach:

131.12 (a)(1) applies a minimum level of protection for all waters, meaning that existing uses shall be maintained and protected.

131.12(a)(3) applies to waters which exceed (are better than) that which is necessary to protect fishable/swimmable goals. Limited lowering of water quality is allowed if necessary to accommodate "important" economic or social development; provided existing uses are protected, highest regulatory requirements are met; and public participation requirements are satisfied. In 1983 the wording was changed from "significant" to "important" to preserve flexibility, but to afford a greater degree of environmental control.

131.12(a)(3) pertains to waters constituting an outstanding resource and waters of exceptional recreational or ecological significance - the water quality of which shall be maintained and protected." In 1983 EPA clarified that its position was no longer absolute non-degradation for these waters and some short-term impacts would be allowed (for example, construction impacts due to installing an improved treatment system).

The DEQ issue paper identifies the three-tiered federal approach in general terms, but does not discuss the specific federal changes of 1983 which now make Oregon's policy out-of-date or inconsistent. Nor does the DEQ issue paper identify the changes needed to bring its 1979 policy in conformance with the federal three-tiered approach and the 1983 changes.

B. Additional program elements that go beyond federal directives

Instead, the DEQ issue paper proposes a "framework for an implementation plan," including:

- a waterbody classification system which recognizes different levels of water quality;
- a mechanism to determine if a proposed action will cause a significant and permanent (including cumulative impacts) lowering of water quality; and
- an elaborate evaluation process for judging whether a proposed project is economically or socially important enough to degrade water quality.

As to the first, Oregon may well need a waterbody classification system, but this should be the subject of a separate issue paper. It is not needed to implement EPA's antidegradation guidance.

As to the second, a mechanism to determine if a proposed action will cause a significant, permanent lowering of water quality based on the biological criteria described in the DEQ paper is not the question the EPA policy directs the state to consider. As proposed by the DEQ, the question of significance will be subject to constant ambiguity. EPA asks for a determination of whether existing uses will be impaired. In waters other than 131.12(a)(3)(outstanding), if water quality is better than needed to maintain existing

uses, but not high enough to justify a higher classification, then limited degradation is allowed to a level which will still protect existing uses. Oregon may well decide a significance/cumulative impacts analysis regulation is needed; however this is more stringent than the federal guidelines require at this time and has a pre-emptory effect on existing planning processes such as for the Columbia River and the Willamette River.

Thirdly, the description of how to conduct an analysis of whether the proposed project is economically or socially "important" is overly elaborate and, again, inconsistent with the fact that there are on-going planning processes for the Columbia River and Willamette River which provide a forum for addressing this question. Indeed the citizens along these rivers may want different approaches. It is helpful to revisit EPA's explanation (1983 Handbook) of "important economic or social development in the area":

"this phrase is simply intended to convey a general concept regarding what level of social and economic development could be used to justify a change in high quality waters. Any more exact meaning will evolve through case-by-case application under the state's continuous planning process. Although EPA has issued suggestions on what might be considered in determining economic impacts, the Agency has no pre-determined level of activity that is defined as "important.""

SPECIFIC QUESTIONS

- A Actions contemplated to be covered by the antidegradation policy include a series of permit actions; standards/load allocations; and non-point source actions (page 6 of DEQ paper).
 - 1. How would the Oregon policy apply to mixing zones? The 1983 EPA Handbook provides that mixing zones are an exception to the policy.
 - 2. What is the relationship between Oregon's antidegradation policy and the currently proposed rules to allow discharge of additional pollutants to a water quality limited stream?
 - 3. Generally, how will the policy work with TMDL's and WLA's?
- B. Several times the DEQ cites instances where baseline information would be needed.
 - 1. What baseline monitoring is the DEQ now performing and are changes needed?
 - 2. Who conducts baseline monitoring with respect to a specific new proposed project?

- C. The DEQ paper describes a waterbody classification system (page 10). Again, this should be the subject of a separate issue paper and more explicit explanation given, including answers to the following:
 - 1. If wetlands are eventually included within the definition of waters of the state, how would the applicable standards read?
 - 2. How did the DEQ establish the loading capacity for A2 waters (less than 50% capacity), B1 (between 50%-90% capacity) and B2 (within 10% of capacity)? Where did the percents come from?
 - 3. Since the DEQ is also proposing changes to the definition of waters of the state, is this the place to recognize that some waters should not be subject to the classification system such as drainage ditches?

ISSUE PAPER #7 TOXIC POLLUTANTS

1. The document contains numerous lapses in logic and grammatical errors making interpretation of the author's intent difficult.

For instance, on page 3 (unnumbered) the author appears to explicitly disregard the qualifier contained in the narrative standard (". . . in toxic amounts") by stating:

"Based on the narrative water quality standard toxicity in waters of the state are [sic] not permitted due to:

- 1. Anthropogenic sources;
- Single and complex mixtures of chemicals;
- 3. Chemicals which when entering the environment are changed to toxic forms:
- 4. Chemicals which may bioaccumulate in sediments, aquatic life, or wildlife:
- 5. And human health, aquatic life and other beneficial uses are to be protected from toxicity [sic]."

Because of the lapse in grammatical logic, it is impossible to determine what the author is saying at this very critical point in the discussion. Other portions of the paper have similar problems. For example, the sentence, "The adverse effects of using fish tissue concentrations is the movement of fish from one area to another" does not make any sense.

2. The discussion fails to make the distinction between presumed EPA "reference does" referred to on page 5 and the more familiar definition of reference dose used in conjunction with risk assessment.

The former, as described in the paper, is defined as the "concentration of a toxic chemical in fish tissue above which would cause an unacceptable risk to human health...". The latter definition describes the total amount of a substance which can be ingested on a daily basis from all sources for a lifetime with no adverse health effects and is equal to the level of risk divided by the cancer potency factor (expressed in terms of mass of the substance per kilogram of body weight per day).

DEQ appears to be confusing regulatory schemes to identify the risk from contaminants in fish tissue based on risk assessment, with some implied notion that fish tissue concentrations (an important concept in risk assessment) are to be used as water quality standards. No EPA or other state regulation adopts or recommends adoption of fish tissue concentration values as water quality standards. The Maine standard very clearly states

that acceptable fish tissue concentrations derived by their formula are used to assess risk to humans or to limit effluent concentrations. They do not act idependently as water quality standards. The Michigan standards do not incorporate fish tissue levels as standards.

3. Residue levels in fish tissue cannot reliably be used to determine whether water quality standards are being met.

Fish and other aquatic organisms accumulate toxic substances through different biochemical mechanisms depending on their trophic level, migratory and feeding behavior, physiological characteristics, and life expectancy. Moreover, receiving water characteristics will dictate the level to which contaminants are available for uptake. The statement on page 5 suggesting that numeric standards be developed through the analysis of fish tissues simply ignores the inherent complexity of aquatic ecosystems. No two species or even two individuals of the same species in different locations will respond identically to a contaminant at a given level of exposure. Strategies to determine compliance with water quality standards need to be integrated to include in-stream evaluations, whole effluent testing programs, and chemical-specific testing programs. Each of these techniques has its advantages and disadvantages, but when used together, a higher level of confidence can be achieved in ensuring adequate protection of all beneficial uses. No matter how attractive cookbook numeric standards might appear, the requisite testing required for particular dischargers, as well as the determination of significant impact, requires a sophisticated understanding of aquatic ecology, natural instream variability, effluent variability, and the beneficial uses intended for protection. A comprehensive program needs to be determined on a case-by-case basis and will require a close working relationship between the agency staff scientists and the permittee.

Site specific determinations have been provided for under Oregon statute for the protection of water quality. For instance, OAR 340-41 ... (C) provides for site specific water quality standards where appropriate. Toxicity determinations can be made under the existing NPDES permit process as a condition for a new permit application or for re-application for an existing permit. As a condition of approval, the permittee must be able to demonstrate compliance with water quality standards and/or the narrative standard by any method deemed appropriate by the permit writer and the permittee.

4. See NWPPA comments on Issue Paper #10 for Mixing Zones for additional comments on the use of Toxicity Units.

ISSUE PAPER #10 MIXING ZONES

1. We support the statement that mixing zones are "designated to reduce excessive waste water treatment and to limit areas of water quality degradation."

Clearly, if no mixing zones were allowed the treatment costs would be extreme in a number of cases. DEQ should keep this in mind when determining the size of the mixing zone under the requirement that they be "as small as feasible."

2. <u>DEQ must consider EPA's new draft 1990 Technical Support Document which replaced the 1985 draft Document that DEQ relies upon, particularly with regard to Zones of Initial Dilution.</u>

Significant changes have been made in the 1990 document. For example, the 1990 document drops the requirement that a discharge must have a high rate diffuser to allow the acute criteria to be applied at some distance from the pipe (i.e., a Zone of Initial Dilution or ZID). The criteria for high rate diffuser is not justificable because no state-of-the-art equipment can achieve the effluent velocity of 10 feet per second. Thus, EPA has dropped this condition for a ZID. We support the concept of allowing a ZID within which acute toxicity criteria may be exceeded.

- 3. Please identify the "appropriate mixing zone guidelines" referred to in (4)(c) to provide further clarification on what is "as small as feasible" and locational requirements.
- 4. Toxicity Units are not scientifically defensible and should not be adopted as a standard or as a trigger for a Toxicity Reduction Evaluation. Tu's could. however, be adopted as a screening tool to determine whether acute effects occur after initial dilution.

Toxicity Units (TU) for acute effects were developed to express the relationship between an LC50 and an LC1 wherein an LC1 represents a negligible (indeed, unmeasurable) level of acute toxicity. EPA's generation of the 0.3 TU factor comes from examination of the LC1/LC50 ratios in 496 bioassay tests, for which the species is not defined nor the tested effluents described (draft 1990 Technical Support Document at 57). EPA extrapolated LC1's for each of those tests. EPA has yet to respond to requests for the actual data which is presented as justification in the support document.

The 1990 TSD recommends the frequency with which the TU criteria may be exceeded. It is also reasonable to assure that an exceedance has actually occurred before requiring further action such as a Toxicity Reduction Evaluation (TRE). A series of dilutions and samples should be run to confirm or refute the presence of an exceedance. The permittee should also be allowed a reasonable time period (2-6 months) to correct the problem before a TRE is required.

The 0.3 TU value is not defensible or valid as an enforceable standard, nor should it trigger a toxicity reduction evaluation in and of itself. A discharger showing less than 50 % survivial in 100 % effluent should be able to test a series of dilutions to allow asite specific extrapolation of an LC1 and then determine whether that effluent concentration exists at the edge of the ZID. Further, we recommend that at that juncture exposure scenarios would be appropriate to consider whether, in fact, acute toxicity may occur.

Exposure is a much more complicated parameter than one related solely to time and should consider other factors such as turbulence of effluent discharges, hydrodynamics, impacted water volume, and behavior of local aquatic populations. Exposure assessment does provide a very real world test of whether the laboratory derived LC50 and the toxicity unit standard equate to adverse affects in stream. For example, very few if any aquatic organisms could possibly be exposed to high concentration effluents from the typical pulp mill outfall for an entire hour due to swift currents and rapid dilution.

The same analysis applies equally to the calculation of the 1.0 TU for chronic effects. Can DEQ document the existence of organisms subject to exposures over a four day period? For all waters and for all dischargers?

If toxicity standards are derived to be protective when exposure to such conditions does not exceed one hour or four days, then conditions where exposures are shown not to occur should be the basis for credits in the design of mixing zones. Where conditions prevent exposures near an outfall and provide large margins of safety, a larger ZID or mixing zone should be allowed.

5. The condition for design of a ZID requiring a distance of "five times the local water depth" could make standards to be end of pipe limits for some surface discharges such as stormwater discharges.

It would assist interpretation of this condition if DEQ defined "local water depth" in this regard. Otherwise, this condition could be read to prevent all surface water discharges and require prohibitively expensive modifications and construction, particularly whem stormwater permitting becomes more common.



Department of Environmental Quality

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

*****	*****************************
*****	WATER QUALITY STANDARDS ISSUE PAPERS
TO: FROM:	Persons Interested in Water Quality Standards Krystyna Wolniakowski, Water Quality Standards Coordinator (229-6018)
DATE:	May 4, 1990
standards Division 4 information Department standards comments w during tha of draft i revisions. comment. needed rev	After comments are received, the Department will make ision and propose amendments to the standards for review hearings to be held in summer 1990. The issue paper
#2) Antid #3) Disso #4) Tempe #5) Bacte	
#7) Toxic	Dissolved Solids Pollutants Equivalency Factors
#9) 2,3,7 #10) Mixing #11) Sedima	,8-Tetrachlorodibenzo-para-dioxin (TCDD) g Zones ent Quality Standards im Sediment Quality Guidelines
#13) Biolog	gical Criteria
papers, ple the issue p immediately period on t	Id like to receive a copy of one or several issue ease return this letter with your name and address and paper numbers circled, and they will be sent to you y, or call Vi Cinotto at 229-6962. The public comment the issue papers will be from May 11 to June 8,1990.
NAME:	

ADDRESS:

NORTHWEST PULP&PAPER

June 29, 1990

Lydia Taylor, Water Quality Administrator Department of Environmental Quality 811 S.W. Sixth Avenue Portland, OR 97204-1390

Re: Water Quality Standards Issue Papers

Dear Lydia:

Enclosed are the comments of the Northwest Pulp and Paper Association on the issue papers prepared by the Department for the 1990 Triennial Review of Water Quality Standards. NWPPA appreciates the opportunity to comment on the issue papers. We do hope that you and your staff will give serious attention to our comments and questions. NWPPA was established in 1950 to represent pulp, paper and pulping chemical manufacturers on environmental and energy issues. Our Oregon members include: James River, Boise Cascade, Georgia-Pacific, Weyerhaeuser, and Pope & Talbot.

The enclosed comments contain a number of common themes. Briefly, they are:

- 1. Several papers seem to propose major new management programs (e.g., water classification schemes, sediment standards, wetlands standards) in the guise of technical water quality standards review.
- 2. A number of new monitoring requirements are discussed without apparent consideration of the need for the data or how it would be acquired, its meaning, or its utility in fulfilling DEQ's obligations to protect water quality. Further, there is little attention given to the resources of DEQ available to administer these requirements and programs.
- 3. There appears to be blind faith in the recommendations of the EPA without consideration of the appropriateness of the criteria for Oregon waters. This is in direct contradiction to EPA guidance. More specifically, DEQ does not adequately consider its discretion when offered a range of reasonable (and protective) criteria; instead DEQ uniformly choses the most conservative of the values without sufficiently expressing a rationale.

The pulp and paper industry in Oregon has a long history of environmental accomplishments. We are also committed to further improvements in environmental performance. We believe that Oregon should uphold the highest of environmental

Lydia Taylor June 29, 1990 Page 2

standards based on good science and reasoned policy decisions. Please recognize that a high level of environmental performance is contingent upon maintaining a financially healthy and competitive industry.

Again, thank you for the opportunity to share our views on appropriate water quality standards.

Sincerely,

Douglas S. Morrison Environmental Counsel

Enclosures

Carol Whitaker, Steve Hudson, Jerry Bollen, Jerry Hendricks, Roger Campbell, Tom Donaca

ISSUE PAPER #1 WATERS OF THE STATE

GENERAL ISSSUES

1. A statutory definition cannot be changed by regulation.

The current definition of "waters of the state" is contained in state statute and must be changed by legislative, not regulatory action.

2. How the proposed substitution of "wetlands" for "marshes" will work is not clear without a description of changes intended for legislation, regulation, or guidance.

The paper indicates wetlands would be defined using (a) the definition common to 40 CFR 230.3, 33 CFR 328.3 and Oregon's Wetland Protection Bill; and (b) a provision from a definition of the U.S. Fish and Wildlife Service.

It is not clear whether this additional language will be incorporated into law and/or regulation or whether it is just intended as descriptive policy.

3. Some of the programs designed for open flowing waters do not appear to be the best way to regulate wetlands: also these programs may conflict with programs designed specifically for wetlands.

The proposed substitution of "wetlands" for "marshes" is more than a technical change to a biological definition; rather it appears some fairly substantive changes in the way existing programs will apply are intended.

Programs designed for open flowing waters may be ill-suited for application to wetlands. Existing water quality criteria often may not work for standing wetlands. A wetland may be ecologically healthy and productive, but even in a pristine condition it cannot be described by conventional water quality parameters. Also, wetlands may be more varied and undergo more rapid changes than flowing waters. A wetland may be progressing from standing water to marsh, or bog, to more saturated soil. This natural life cycle is not reflected by the criteria commonly associated with flowing waters.

It is difficult to understand how the proposed changes, which seem inappropriate to wetlands, would work with programs already in place to protect wetlands.

SPECIFIC QUESTIONS

- 1. How is Oregon's Wetland Protection Act inadequate to allow DEQ to fulfill CWA 401 obligations, namely identifying and assessing wetlands?
- 2. How does the current definition preclude DEQ from satisfying CWA 305(b) report obligations pertaining to wetlands, given that wetlands are defined in Oregon's Wetland Protection Act?
- 3. How will beneficial uses be established in light of the inherent changing nature of wetlands?
- 4. How will site-specific water quality for wetlands be developed?

ISSUE PAPER #2 ANTIDEGRADATION POLICY (Or, DEQ No Growth Policy)

GENERAL ISSUES

1. The proposed revisions to the state's Antidegradation Policy introduce a sweeping broad-scale concept for the regulation of water quality which would be superimposed upon all existing programs: these far-reaching ramifications are not adequately described and tend to pre-empt other water quality planning processes.

The proposed revisions to the state's Antidegradation Policy constitute no less than a new comprehensive approach for regulating water quality which would be superimposed upon all existing regulatory programs. The basic thrust of this new comprehensive approach is to regulate activities affecting water quality based on water quality considerations rather than ad hoc satisfaction of technology-based limits or utilization of best management practices. NWPPA fully recognizes that a water-quality-based approach (as opposed to just technology-based approach) is consistent with the spirit and intent of the federal CWA; however, NWPPA takes issue with the proposed revisions to the Antidegradation Policy because the revisions constitute a back-door approach.

This back-door approach under-identifies the impacts of the elements contemplated within the proposed Antidegradation Policy (both to the participating public and regulated parties); under-identifies agency resources needed (for example, for baseline studies and a waterbody classification system); and pre-empts potential plans being developed by the Columbia River Bi-State Steering Committee and the Willamette River Study. Most of the impacts the DEQ is trying to address through revisions to the antidegradation policy are more likely to occur on the Willamette River and the Columbia River where most of Oregon's population exists and potential growth is likely to take place. In particular, the Columbia River Bi-State Steering Committee is focusing on the questions: "What is the health of the river; what is needed to attain or maintain water quality?" The proposed Antidegradation Policy introduces a potentially competing framework prior to the development of a plan by the Bi-State Steering Committee.

2. The paper describing the proposed revisions to the Antidegradation Policy does not adequately distinguish between the minimum revisions needed to bring Oregon's existing policy into conformance with federal requirements and other changes contemplated to address deficiencies in Oregon's programs.

A. Minimum federal requirements

The existing federal directives for state antidegradation policies are contained in 40 CFR 131.12, adopted November 8, 1983, and are explained in EPA Water Quality Standards Handbook, December 1983. Oregon's 1979 Antidegradation Policy is no longer consistent and up-to-date.

The federal regulations in 40 CFR 131.12 contemplate a three-tiered approach:

131.12 (a)(1) applies a minimum level of protection for all waters, meaning that existing uses shall be maintained and protected.

131.12(a)(3) applies to waters which exceed (are better than) that which is necessary to protect fishable/swimmable goals. Limited lowering of water quality is allowed if necessary to accommodate "important" economic or social development; provided existing uses are protected, highest regulatory requirements are met; and public participation requirements are satisfied. In 1983 the wording was changed from "significant" to "important" to preserve flexibility, but to afford a greater degree of environmental control.

131.12(a)(3) pertains to waters constituting an outstanding resource and waters of exceptional recreational or ecological significance - the water quality of which shall be maintained and protected." In 1983 EPA clarified that its position was no longer absolute non-degradation for these waters and some short-term impacts would be allowed (for example, construction impacts due to installing an improved treatment system).

The DEQ issue paper identifies the three-tiered federal approach in general terms, but does not discuss the specific federal changes of 1983 which now make Oregon's policy out-of-date or inconsistent. Nor does the DEQ issue paper identify the changes needed to bring its 1979 policy in conformance with the federal three-tiered approach and the 1983 changes.

B. Additional program elements that go beyond federal directives

instead, the DEQ issue paper proposes a "framework for an implementation plan," including:

- a waterbody classification system which recognizes different levels of water quality;
- a mechanism to determine if a proposed action will cause a significant and permanent (including cumulative impacts) lowering of water quality; and
- an elaborate evaluation process for judging whether a proposed project is economically or socially important enough to degrade water quality.

As to the first, Oregon may well need a waterbody classification system, but this should be the subject of a separate issue paper. It is not needed to implement EPA's antidegradation guidance.

As to the second, a mechanism to determine if a proposed action will cause a significant, permanent lowering of water quality based on the biological criteria described in the DEQ paper is not the question the EPA policy directs the state to consider. As proposed by the DEQ, the question of significance will be subject to constant ambiguity. EPA asks for a determination of whether existing uses will be impaired. In waters other than 131.12(a)(3)(outstanding), if water quality is better than needed to maintain existing

uses, but not high enough to justify a higher classification, then limited degradation is allowed to a level which will still protect existing uses. Oregon may well decide a significance/cumulative impacts analysis regulation is needed; however this is more stringent than the federal guidelines require at this time and has a pre-emptory effect on existing planning processes such as for the Columbia River and the Willamette River.

Thirdly, the description of how to conduct an analysis of whether the proposed project is economically or socially "important" is overly elaborate and, again, inconsistent with the fact that there are on-going planning processes for the Columbia River and Willamette River which provide a forum for addressing this question. Indeed the citizens along these rivers may want different approaches. It is helpful to revisit EPA's explanation (1983 Handbook) of "important economic or social development in the area":

"this phrase is simply intended to convey a general concept regarding what level of social and economic development could be used to justify a change in high quality waters. Any more exact meaning will evolve through case-by-case application under the state's continuous planning process. Although EPA has issued suggestions on what might be considered in determining economic impacts, the Agency has no pre-determined level of activity that is defined as "important.""

SPECIFIC QUESTIONS

- A. Actions contemplated to be covered by the antidegradation policy include a series of permit actions; standards/load allocations; and non-point source actions (page 6 of DEQ paper).
 - 1. How would the Oregon policy apply to mixing zones? The 1983 EPA Handbook provides that mixing zones are an exception to the policy.
 - 2. What is the relationship between Oregon's antidegradation policy and the currently proposed rules to allow discharge of additional pollutants to a water quality limited stream?
 - 3. Generally, how will the policy work with TMDL's and WLA's?
- B. Several times the DEQ cites instances where baseline information would be needed.
 - 1. What baseline monitoring is the DEQ now performing and are changes needed?
 - 2. Who conducts baseline monitoring with respect to a specific new proposed project?

- C. The DEQ paper describes a waterbody classification system (page 10). Again, this should be the subject of a separate issue paper and more explicit explanation given, including answers to the following:
 - 1. If wetlands are eventually included within the definition of waters of the state, how would the applicable standards read?
 - 2. How did the DEQ establish the loading capacity for A2 waters (less than 50% capacity), B1 (between 50%-90% capacity) and B2 (within 10% of capacity)? Where did the percents come from?
 - 3. Since the DEQ is also proposing changes to the definition of waters of the state, is this the place to recognize that some waters should not be subject to the classification system such as drainage ditches?

ISSUE PAPER #7 TOXIC POLLUTANTS

1. The document contains numerous lapses in logic and grammatical errors making interpretation of the author's intent difficult.

For instance, on page 3 (unnumbered) the author appears to explicitly disregard the qualifier contained in the narrative standard (". . .in toxic amounts") by stating:

"Based on the narrative water quality standard toxicity in waters of the state are [sic] not permitted due to:

- 1. Anthropogenic sources;
- 2. Single and complex mixtures of chemicals;
- 3. Chemicals which when entering the environment are changed to toxic forms:
- Chemicals which may bioaccumulate in sediments, aquatic life, or wildlife;
- 5. And human health, aquatic life and other beneficial uses are to be protected from toxicity [sic]."

Because of the lapse in grammatical logic, it is impossible to determine what the author is saying at this very critical point in the discussion. Other portions of the paper have similar problems. For example, the sentence, "The adverse effects of using fish tissue concentrations is the movement of fish from one area to another" does not make any sense.

2. The discussion fails to make the distinction between presumed EPA "reference does" referred to on page 5 and the more familiar definition of reference dose used in conjunction with risk assessment.

The former, as described in the paper, is defined as the "concentration of a toxic chemical in fish tissue above which would cause an unacceptable risk to human health...". The latter definition describes the total amount of a substance which can be ingested on a daily basis <u>from all sources</u> for a lifetime with no adverse health effects and is equal to the level of risk divided by the cancer potency factor (expressed in terms of mass of the substance per kilogram of body weight per day).

DEQ appears to be confusing regulatory schemes to identify the risk from contaminants in fish tissue based on risk assessment, with some implied notion that fish tissue concentrations (an important concept in risk assessment) are to be used as water quality standards. No EPA or other state regulation adopts or recommends adoption of fish tissue concentration values as water quality standards. The Maine standard very clearly states

that acceptable fish tissue concentrations derived by their formula are used to assess risk to humans or to limit effluent concentrations. They do not act idependently as water quality standards. The Michigan standards do not incorporate fish tissue levels as standards.

3. Residue levels in fish tissue cannot reliably be used to determine whether water quality standards are being met.

Fish and other aquatic organisms accumulate toxic substances through different biochemical mechanisms depending on their trophic level, migratory and feeding behavior, physiological characteristics, and life expectancy. Moreover, receiving water characteristics will dictate the level to which contaminants are available for uptake. The statement on page 5 suggesting that numeric standards be developed through the analysis of fish tissues simply ignores the inherent complexity of aquatic ecosystems. No two species or even two individuals of the same species in different locations will respond identically to a contaminant at a given level of exposure. Strategies to determine compliance with water quality standards need to be integrated to include in-stream evaluations, whole effluent testing programs, and chemical-specific testing programs. Each of these techniques has its advantages and disadvantages, but when used together, a higher level of confidence can be achieved in ensuring adequate protection of all beneficial uses. No matter how attractive cookbook numeric standards might appear, the requisite testing required for particular dischargers, as well as the determination of significant impact, requires a sophisticated understanding of aquatic ecology, natural instream variability, effluent variability, and the beneficial uses intended for protection. A comprehensive program needs to be determined on a case-by-case basis and will require a close working relationship between the agency staff scientists and the permittee.

Site specific determinations have been provided for under Oregon statute for the protection of water quality. For instance, OAR 340-41 ... (C) provides for site specific water quality standards where appropriate. Toxicity determinations can be made under the existing NPDES permit process as a condition for a new permit application or for re-application for an existing permit. As a condition of approval, the permittee must be able to demonstrate compliance with water quality standards and/or the narrative standard by any method deemed appropriate by the permit writer and the permittee.

4. See NWPPA comments on Issue Paper #10 for Mixing Zones for additional comments on the use of Toxicity Units.

ISSUE PAPER #10 MIXING ZONES

1. We support the statement that mixing zones are "designated to reduce excessive waste water treatment and to limit areas of water quality degradation."

Clearly, if no mixing zones were allowed the treatment costs would be extreme in a number of cases. DEQ should keep this in mind when determining the size of the mixing zone under the requirement that they be "as small as feasible."

2. DEQ must consider EPA's new draft 1990 Technical Support Document which replaced the 1985 draft Document that DEQ relies upon, particularly with regard to Zones of Initial Dilution.

Significant changes have been made in the 1990 document. For example, the 1990 document drops the requirement that a discharge must have a high rate diffuser to allow the acute criteria to be applied at some distance from the pipe (i.e., a Zone of Initial Dilution or ZID). The criteria for high rate diffuser is not justificable because no state-of-the-art equipment can achieve the effluent velocity of 10 feet per second. Thus, EPA has dropped this condition for a ZID. We support the concept of allowing a ZID within which acute toxicity criteria may be exceeded.

- 3. Please identify the "appropriate mixing zone guidelines" referred to in (4)(c) to provide further clarification on what is "as small as feasible" and locational requirements.
- 4. Toxicity Units are not scientifically defensible and should not be adopted as a standard or as a trigger for a Toxicity Reduction Evaluation. Tu's could, however, be adopted as a screening tool to determine whether acute effects occur after initial dilution.

Toxicity Units (TU) for acute effects were developed to express the relationship between an LC50 and an LC1 wherein an LC1 represents a negligible (indeed, unmeasurable) level of acute toxicity. EPA's generation of the 0.3 TU factor comes from examination of the LC1/LC50 ratios in 496 bioassay tests, for which the species is not defined nor the tested effluents described (draft 1990 Technical Support Document at 57). EPA extrapolated LC1's for each of those tests. EPA has yet to respond to requests for the actual data which is presented as justification in the support document.

The 1990 TSD recommends the frequency with which the TU criteria may be exceeded. It is also reasonable to assure that an exceedance has actually occurred before requiring further action such as a Toxicity Reduction Evaluation (TRE). A series of dilutions and samples should be run to confirm or refute the presence of an exceedance. The permittee should also be allowed a reasonable time period (2-6 months) to correct the problem before a TRE is required.

The 0.3 TU value is not defensible or valid as an enforceable standard, nor should it trigger a toxicity reduction evaluation in and of itself. A discharger showing less than 50 % survivial in 100 % effluent should be able to test a series of dilutions to allow asite specific extrapolation of an LC1 and then determine whether that effluent concentration exists at the edge of the ZID. Further, we recommend that at that juncture exposure scenarios would be appropriate to consider whether, in fact, acute toxicity may occur.

Exposure is a much more complicated parameter than one related solely to time and should consider other factors such as turbulence of effluent discharges, hydrodynamics, impacted water volume, and behavior of local aquatic populations. Exposure assessment does provide a very real world test of whether the laboratory derived LC50 and the toxicity unit standard equate to adverse affects in stream. For example, very few if any aquatic organisms could possibly be exposed to high concentration effluents from the typical pulp mill outfall for an entire hour due to swift currents and rapid dilution.

The same analysis applies equally to the calculation of the 1.0 TU for chronic effects. Can DEQ document the existence of organisms subject to exposures over a four day period? For all waters and for all dischargers?

If toxicity standards are derived to be protective when exposure to such conditions does not exceed one hour or four days, then conditions where exposures are shown not to occur should be the basis for credits in the design of mixing zones. Where conditions prevent exposures near an outfall and provide large margins of safety, a larger ZID or mixing zone should be allowed.

5. The condition for design of a ZID requiring a distance of "five times the local water depth" could make standards to be end of pipe limits for some surface discharges such as stormwater discharges.

It would assist interpretation of this condition if DEQ defined "local water depth" in this regard. Otherwise, this condition could be read to prevent all surface water discharges and require prohibitively expensive modifications and construction, particularly whem stormwater permitting becomes more common.

OREGON ENVIRONMENTAL COUNCIL

2637 S.W. Water Avenue, Portland, Oregon 97201 Phone: 503/222-1963

September 19, 1990

Mr. Bill Hutchison Chair, Environmental Quality Commission 811 SW Sixth Portland, OR 97201

Re: Sept. 20 Work Session: Tax Credits for Farm Equipment, Stage II Vapor Recovery

Dear Chairman Hutchison,

We have reviewed the staff reports for agenda items #4 and 5 of the September 20 work session, and would like to offer the following comments for your discussion.

I. Pollution Control Tax Credits for Farm Equipment

This issue raises a number of concerns, some of which are specific to the analysis of farm equipment, and some of which apply to the entire tax credit program. We would like to address the most specific issues first, then move to the broader ones.

A. Tractors

1. Tractors should only be eligible for tax credits to the extent to which they are used to reduce air contaminants. The Department's current program does not necessarily lead to this end. Farmers are given tax credits, and no follow-up is ever done to ensure that air pollution is reduced.

It would appear that ORS 468.155(1)(b)(B) requires grass seed farmers to <u>actually reduce</u> their emissions in exchange for taxpayer subsidies. Rather than merely claiming to pull "x" acres out of open burning, this provision says that ... "such reduction...shall be accomplished by (B) ... elimination of or redesign to eliminate air contaminants...."

It seems that DEQ should, during the process of registering acres for burning, tie the registration back to the tax credit applications, so that only those acres not withdrawn from open burning in the applications are registered for burning. This would seem like a fairly straightforward way of ensuring that the public receives the air quality benefits they pay for.

The Department recommends that a standard eligibility percentage for tractors be developed for future use, but that in the meantime the 8 applications pulled from the last meeting's agenda be approved. OEC does not object to the development of a standard eligibility percentage, but we find no basis for the recommendation that the EQC should just gloss over the 8 pending applications. All applicants know that any recommendation by the Department is subject to modification or rejection by the Commission. There are no surprises here. The Commission raised the appropriate issues at the last meeting, and did the correct thing in refusing to approve the applications. Obviously those tractors will not be used for pollution control 100% of the time. That was true last month, and it's still true. The Commission has a legal obligation to apply the statutory criteria for eligibility to every application. Until the Department comes back with a better analysis of those 8 applications, you should continue to defer making any decision.

B. Propane Flamers

The Commission has, in the distant past, approved propane flamers as "pollution control facilities" eligible for tax credits. Yet, recent staff reports to the Commission have acknowledged that propane flaming frequently causes greater ground-level air quality impacts than does open burning. This raises the question of why propane flaming is considered a pollution control facility in the first place.

We believe that OAR 340-16-025 (2)(f)(B), which states that propane flamers are "alternatives to open field burning and reduce air quality impacts", is not supported by the evidence and should be reviewed. This is especially important given the list of non-burning options presented on page 2 of the staff report. These options would be utilized to a greater degree if the Commission did not subsidize propane flamers at a 100% rate.

C. Tax Credit Enforcement

Once tax credits are issued, no agency monitors the use of the facilities or equipment to ensure that public subsidies are spent in accordance with the stated purposes. This needs to change. In many cases auditing can be incorporated into existing programs such as permit renewals or acreage sign-ups. In other cases it would require some random, on-site inspection.

We recognize that this requires personnel. But first it requires an acknowledgement that a problem exists. So far, the Department has not been willing to go even that far.

II. Stage II Vapor Recovery

This issue relates, in part, to the previous discussion. This meeting's list of tax credit applications is filled with gasoline dealers seeking public subsidies for UST work. This is a very expensive process because it is a remedial program, attempting to correct existing problems.

As the Commission is approving these public subsidies, it could very easily add-on a cost-effective <u>preventive</u> program by mandating a **state-wide stage II** program. If you don't do it now, as UST work is just getting underway, you'll never be able to justify it down the road after all the tanks are back in the ground. This is the window of opportunity!

The phrase "pollution prevention" is a part of many Department discussions these days. Virtually everyone supports it conceptually, but real implementation is hard to find. In the context of Stage II, we see the same basic "crisis management" that has dominated DEQ thinking for years. Portland is non-attainment, so we develop a Stage II program. Lane and Jackson counties are near non-attainment, but we won't act until we have a crisis. By then, of course, remediation will be much more expensive then a preventive program would have been.

A Portland-only program is not pollution prevention. It is business as usual. The Commission should send the message <u>now</u> that it is committed to preventive approaches by adopting rules for a phased, statewide Stage II program.

Sincerely,

John A. Charles Executive Director Statement by Walter H. Drew, 06103 View Road, P.O. Box 217, Florence, OR 97439, Tel. 997-6186

to The Environmental Quality Commission, meeting in Portland, Oregon, on September 21, 1990

Mr. Chairman, Commissioners:

I would like to mention for the record that the Department of Environmental Quality has failed to present today the final proposed rule changes for Clear Lake near Florence as promised in the Department's August 1, 1990, Public Notice.

At the August 22 public hearing in Florence, the Commission's hearings officer announced that the presentation to the Commission had been postponed until November 2 because of "administrative reasons."

There is considerable evidence that the Department postponed its submission to the Commission not for administrative reasons but to gain time to elicit and cite certain favorable testimony after the (revised) deadline for public comment on August 31.

This testimony which the Department evidently seeks is a supportive resolution by a private body called the Clear Lake Watershed Coordinated Resource Management and Planning (CRMP) Committee. The Department has a full voting member on this committee and actively helps guide it.

The failure of the Department to produce the final proposed rule changes today and the excuse of "administrative reasons" fit a continuing pattern of devious efforts by the Department to enable a few individuals to install on-site septic systems on land bordering Clear Lake to the detriment of the interests and welfare of the 9,000 persons who depend on the lake as a pristine source of drinking water.

Wellalt rew

HAGEN, DYE, VIAL & HIRSCHY, P.C.

ATTORNEYS AT LAW

JOSEPH T. HAGEN JEFFREY L. DYE A. RICHARD VIAL JOHN A. HIRSCHY DANA R, TAYLOR MARK A. GOLDING

NINETEENTH FLOOR BENJ. FRANKLIN PLAZA ONE S.W. COLUMBIA STREET PORTLAND, OREGON 97258-2087 (503) 222-1812

FAX (503) 274-7979

September 17, 1990

JOHN C. BARINGER
ANNIE T. BUELL
DEBBIE STEINER LOHMAN
JOHN E. MCCORMICK
BLANCHE I. SOMMERS
TIMOTHY J. WACHTER
KENNETH A. WILLIAMS

IN REPLY PLEASE REFER TO 2597-001 FILE NO.:

Ms. Roberta Young Tax Credit Coordinator Department of Environmental Quality 811 SW Sixth Avenue Portland, Oregon 97204

Re: Tax Relief Application No. T-3195

Dear Ms. Young:

Our firm represents Langmack Seed Co., Inc. ("Langmack"). We are writing on behalf of Langmack to protest your Department's proposed action on their application for certification of their pollution control facility. Langmack's application included both a straw chopper and a tractor to operate the chopper. As we understand, Langmack have been informed that you will not be considering the certification of the tractor until you have had an opportunity to review your criteria for determining the percentage of use allocated to a tractor used in this manner. Reconsideration in this situation is unwarranted and certification should be granted at this time.

In light of Oregon statutory guidelines and administrative rules promulgated by your Department, there is no basis to deny the certification of Langmack's tractor. Langmack purchased the chopper and tractor solely to meet the guidelines of the pollution control credit program. To review the controlling statute, a "pollution control facility...means any...machinery, equipment or device...reasonably used...if the sole purpose of such use...is to prevent, control or reduce a substantial quantity of air, water or noise pollution...". ORS 468.155(1)(a). "Sole purpose" means the exclusive purpose. OAR 340-16-010(10).

Although other applicants may use their tractors for other purposes, Langmack bought and uses its tractor solely for pulling and powering the chopper. As documented and explained at length in its certification application, Langmack clearly meets the sole purpose requirement. Among other things, Langmack purchased a tractor that's size and age limits its use to pulling and powering the chopper. The tractor is too small to be used for other operations and was bought "used" to specifically make the purchase and use of the chopper affordable.

Further, besides the physical limitations on using the tractor, the nature of the seed business in the Willamette valley also prevents the

HARRY DEMARAY: Now, I want to tell you what the facts are in this case. This is a Class I violation by law, falls into the \$10,000 matrix and the \$2,500 moderate category, or at least you could put it. With the aggravating factors, it would be at least a \$4,500 penalty just by the formulation of the rules. And this is the way the Department is handling these kinds of violations, and this is the reason I'm sitting here on retirement rather than working.

COMMISSIONER HUTCHISON: Okay, uh, Mr. Demaray, you really have chosen the forum in which to resolve the issue to which you just referred, and we're - we're not a court of law. We're going to defer to that court of law, and I don't think this Commission wants to do anything along the way that would prejudice either its rights or yours. I'm sensitive to your concerns; I think the whole agency is. I don't see that we can take any action at this time.

HARRY DEMARAY: I'm not asking you to do anything for me; I'm asking you to enforce the law the way you adopted it.

COMMISSIONER HUTCHISON: I understand what you're asking. Thank you.

HARRY DEMARAY: Thank you.

Proposed

Total Petroleum Hydrocarbons Analytical Methods

Soil matrix rules for underground storage tank cleanup 0 AR 340--122--350

TOTAL PETROLEUM HYDROCARBONS ANALYTICAL METHODS

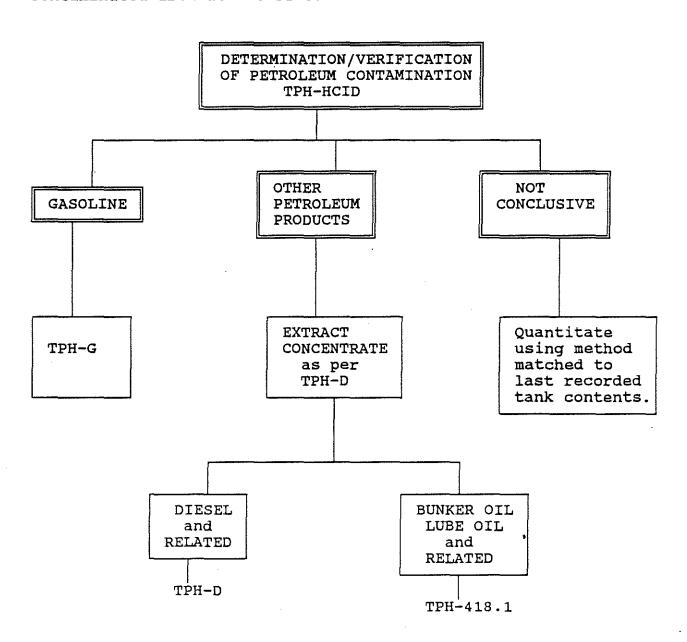
The following compilation of analytical methods is to be used in satisfying Oregon's Soil Matrix Rules for Underground Storage Tank Cleanups (OAR 340-122-350). Each of these Total Petroleum Hydrocarbon (TPH) Methods has its own niche in the overall analytical scheme. The methods are:

TPH-HCID ---- Hydrocarbon Identification
TPH-G ----- Gasoline
TPH-D ----- Diesel
TPH-418.1 --- IR Method for Bunker C and Lube Oils

- TPH-HCID is a qualitative screen to determine what petroleum products, if any, exist at the excavation site. It is intended to be a screen to be performed on a highly contaminated soil sample that is representative of the contamination at the site. The results of this method will determine what quantitative method/methods are to be used in determining compliance with the matrix criteria.
- TPH-G is the quantitative method for soils containing gasoline.
- TPH-D is the quantitative method for soils containing petroleum products ranging from kerosene through fuel oil #4. This method calculates all these products as diesel equivalents for use in the soil matrix.
- TPH-418.1 is the quantitative method for soils containing bunker C, lube oils or combinations of TPH-D products and lube oils/Bunker C.

LUST ANALYTICAL DECISION TREE

The following flow chart depicts the laboratory analytical scheme to be used in analyzing LUST samples. The first step is the qualitative determination of the existence and nature of petroleum contamination. The results of this step will determine the appropriate quantitative procedure to be used for compliance with LUST closure samples. It is expected that this first step will be performed on a representative sample from the most contaminated area at the site.



Approval	

State of Oregon Department of Environmental Quality Laboratories and Applied Research Organic Section

TPH-HCID HYDROCARBON IDENTIFICATION IN SOILS LUST MATRIX

Summary:

This method is only a qualitative procedure which identifies petroleum products containing components in the C_5 - C_{40} range by Gas Chromatography using a capillary column and a Flame Ionization Detector (FID).

Equipment:

Gas Chromatograph
Chromatography Data System
Capillary Split/Splitless Injector
Flame Ionization Detector (FID)
J&W Bonded phase, fused silica capillary column, DB-1, 30M X 0.25mm
Gastight syringe, 10 ul
Glass Vial with Teflon Coated Septum
Pyrex Glass Wool (Methylene Chloride washed)

Extraction Procedure:

Soil Samples:

Place approximately 10 grams of the soil sample and 10 ml of methylene chloride into a 40 ml glass vial and seal with teflon lined cap. Sonicate for 10 minutes. Elute 5 ml of the solvent phase through an Anhydrous Sodium Sulfate micro-column. Collect the extract in a glass vial, seal with a teflon lined cap and store in the freezer until analyzed.

NOTE: Micro-column of Anhydrous Sodium Sulfate is prepared by plugging a one ml disposable Pasteur pipette with Pyrex glass wool and adding approximately 3 cm of Anhydrous Sodium Sulfate.

Analysis Procedure:

Inject the extract onto the DB-1 capillary column utilizing a split/splitless or direct injector. Plot the chromatogram from Pentane (C_5) to Tetracontane (C_{40}) .

GC parameters:

Starting Column Temperature = 40 °C Isothermal for 5 min.

Ramp Rate = 8 °C/min. for 37.5 min.

Final Temperature = 280 °C Isothermal for 32.5 min

Injector Temperature = 300 °C

Detector Temperature = 320 °C

Total Run Time = 60 min.

Injected Sample Volume = 1-2 ul

Make-up Flow for FID = 30 ml/min

Hydrogen Flow = 25 ml/min

Air Flow = 300 ml/min

Standards:

Retention Time Standard:

Prepare a composite standard composite of n-alkane hydrocarbons from Pentane (C_5) through Triacontane (C_{30}) plus Tetracontane (C_{40}) at 25 ug/ml per component.

Comparison Reference Standards:

Individual petroleum products (ie. gasoline, kerosene, fuel #1, fuel #2, etc.) at approximately 250 ug/ml.

Sample Calculations:

This method is strictly qualitative. Petroleum products are to be identified as follows:

If the petroleum product can be matched to reference chromatograms, by pattern recognition, then the sample can be identified as such.

Otherwise, identify as follows:

Gasoline is indicated if compounds are detected between Hexane (C_6) and Decane (C_{10}).

Diesel and related products are indicated if compounds are detected between Decane (C_{10}) and Octacosane (C_{28}).

Bunker C and related products are indicated by the presence of a chromatographic envelope extending beyond Octacosane (C_{28}).

Quality Assurance:

Appropriate surrogate extraction spike will be required. (The specific surrogate compound has not yet been selected.)

<u>Bibliography</u>

Current method developed by researchers at this facility.

Approval	

State of Oregon Department of Environmental Quality Laboratories and Applied Research Organic Section

TPH-G GASOLINE IN SOILS LUST MATRIX

Summary:

The TPH-G Method adapts EPA SW-846 Methods 5030 and 8020 to perform the analysis for Gasoline in soils as required by Oregon's "CLEANUP RULES FOR LEAKING PETROLEUM UST SYSTEMS". The method involves extracting/sonicating the soil samples with methanol, combining a portion of the extract with reagent water, purging the aqueous mixture on a purge & trap instrument and performing the analysis on the gas chromatograph using a Photo Ionization Detector (PID). The reporting limit is 10 mg/Kg.

Equipment:

Gas Chromatograph
Integrating Data System
Photo Ionization Detector (PID)
Supelco 5% SP-1200, 1.75% Bentone on 100/200 Supelcoport; 6' X 1/8" SS column or J&W DB-Wax Megabore 0.53 X 30 M capillary column
Liquid Sample Concentrator, Tenax/Silica Gel/Charcoal Trap
Flowmeter
Adjustable Plunger Syringe, 5 ml
Gastight Syringe, 10 ul and 100 ul
Glass 40 ml Purge Vial with a Teflon-lined Screw cap
Sonicator

Sample Extraction;

Soil Samples:

Weigh 20 grams into a 40 ml purge vial and add 10 ml of Methanol. Sonicate extraction mixture for 15 minutes and allow Methanol to separate. Centrifuge, if necessary, to clarify Methanol extract. For storage transfer a portion of the extract to a 2 ml glass vial with a teflon-lined cap and store in freezer until analyzed.

Analysis Procedure:

A 100 ul aliquot of the Methanol extract is transferred to 5 ml of reagent water in the adjustable 5 ml syringe. The sample is injected into the purging chamber of the purge & trap device. If samples have elevated concentrations of volatiles, a smaller aliquot of the Methanol extract maybe selected. The volatile hydrocarbons (gasoline) in the sample are concentrated by the Purge & Trap unit onto the Tenax/Silica gel/Charcoal trap. At completion of the purge cycle the Purge & Trap unit is cycled to the desorb mode and the volatile hydrocarbons are swept onto the GC column. At the end of the desorb mode the GC run is started and the analysis completed. The chromatography time is 25 minutes but the entire purge & trap/GC cycle time is approximately 45 minutes per sample.

Purge & Trap Operating Parameters:

Purge Ready Temperature = 30 °C

Purge Temperature = 30 °C for 11 minutes

Desorb Preheat Temperature = 125 °C

Desorb Temperature = 200 °C for 4 minutes

Bake Temperature = 225 °C for 12 minutes

Purge Gas Pressure = 20 psi

Purge Gas Flow = 40 ml/minute

Desorb Gas Flow = 20 ml/minute

GC parameters:

J&W DB-Wax Megabore 0.53 mm ID X 30 M Capillary column.

Starting Column Temperature = 35 °C Isothermal for 5 min.

Ramp Rate = 8 °C/min. for 2.5 min.

Final Temperature = 140 °C Isothermal for 6.88 min

Injector Temperature = 240 °C

Detector Temperature = 245 °C

Total Run Time = 25 min.

Injected Sample Volume = Direct from P & T

Carrier Flow = 20 ml/min

Standards:

Gasoline Stock Standard:

Equal portions of three grades of gasoline (regular, unleaded regular and unleaded supreme) from three different oil companies are mixed together to form a composite gasoline. From this composite gasoline a stock standard is prepared accordingly. Place approximately 9 ml of methanol in a 10 ml ground-glass stoppered volumetric flask. Allow the flask to stand, unstoppered, until all alcohol wetted surfaces have dried (about 10 minutes). Tare flask and contents unstoppered.

Add about 10 drops of the composite gasoline standard to the flask. The liquid must fall directly into the alcohol without contacting the neck of the flask. Reweigh, dilute to volume with methanol, stopper, and mix by inverting the flask several times.

Calculate the concentration as follows:

$$C = A - B$$
 (1000 ug)
10 ml mg

A = Final Weight (mg)

B - Tared Weight (mg)

C = Stock Concentration (ug/ml)

Secondary Dilution Standard:

Prepare a 10 ml, 2500 ug/ml gasoline standard as follows:

$$V = 2500 \text{ ug/m1} \times 10 \text{ m1}$$

V = ul to be brought to 10 ml

C = Stock Standard Concentration (ug/ml)

Calibration Standard:

The aqueous, purge gasoline standards are each prepared by adding 1 ul, 2 ul, 5 ul, 10 ul of 2500 ug/ml of the dilution standard to 5 ml of organic free water by injecting each aliquot into the end of the 5 ml syringe containing 5 ml of organic free water. The calibration standard concentrations in the purged water are calculated:

Calibration Standard - (ul of stock)(0.001 ml/ul)(2500 ug/ml)/5 ml (ug/ml)

Analysis Results/Calculations:

The area of the components from Benzene to Naphthalene is integrated as a group (valley to valley) and compared to concentrations of the gasoline standards which are also integrated as a group.

Sample Concentration =
$$(A \times R)(5 \text{ ml})(D)$$

(ug/g or mg/Kg) (E) (F)

A - Group Area of Sample

D = 10 ml of methanol

E - Volume methanol used (0.1 ml)

F - Weight of Sample (g)

If a single point calibration method is being used, linearity must be demonstrated in the working range.

Quality Assurance:

Sample duplicate must be performed with each analytical batch or 15% (1 in 7).

Appropriate surrogate extraction spike will be required and must be reported with the results. (The specific surrogate compound has not yet been selected.)

Bibliography:

EPA Method 602 NPDES

EPA RCRA SW 846 8020.

Current method was developed by researchers at this facility

Revis	sion	Date	19	Sep	90

State of Oregon Department of Environmental Quality Laboratories and Applied Research Organic Section

TPH-D DIESEL IN SOILS LUST MATRIX

Summary:

The TPH-D Method covers the analysis for Diesel in soils as required by Oregon's "CLEANUP RULES FOR LEAKING PETROLEUM UST SYSTEMS". The method involves extracting/sonicating the soil samples with methylene chloride, filtering through sodium sulfate and injecting on a gas chromatograph equipped with a flame ionization detector. The lower reporting limit is 20 mg/Kg.

Equipment:

Gas Chromatograph
Chromatography Data System
Flame Ionization Detector (FID)
J&W Bonded phase, fused silica capillary column, DB-1, 30M X 0.25mm
Gastight Syringe, 10 ul

Sample Extraction:

Soil Samples:

Weigh 20 grams of soil and 20 grams of anhydrous sodium sulfate into a 125 ml erlenmeyer flask and mix completely with a spatula. The mixture should have a grainy texture. If it forms a large clump, add more anhydrous sodium sulfate and note in the extraction log. Add 40 ml of Methylene Chloride and sonicate for 10 minutes if using an ultra-sonic bath or for 3 minutes if using a horn sonicator. Allow mixture to stand and decant the Methylene Chloride extract through a drying column containing about 10 cm of anhydrous sodium sulfate. Collect the dried extract in a 500 ml Kuderna-Danish concentrator. Repeat the extraction twice more using 40 ml of methylene chloride each time and combine the extracts. Attach Snyder columns and concentrate to 10.0 ml final volume. If the extract is highly colored or

forms a precipitate, a dilution may be necessary. Transfer the extract to a glass vial with a teflon lined cap and store extract in the freezer until analyzed.

Analysis Procedure:

The soil (methylene chloride) extract is analyzed on the gas chromatograph directly. One micro-liter of the extract (1 ul) is injected onto the DB-1 capillary column. The chromatography time is approximately 35 minutes per sample.

GC parameters:

Column is a J&W DB-1, 30 M x 0.25 um fused silica capillary column.

Starting Column Temperature = 50 °C Isothermal for 5 min

Ramp Rate = 10 °C/min. for 25 min

Final Temperature = 300 °C Hold for 5 min

Injector Temperature = 300 °C

Detector Temperature = 320 °C

Total Run Time = 35 min

Injected Sample Volume = 1 ul

Carrier Linear Velocity @ 50 °C = 20 cm/sec

Air Flow = 300 ml/min

Hydrogen Flow = 25 ml/min

Standards:

Equal portions of diesel fuel from three different oil companies are mixed together to form a composite diesel fuel. From this composite fuel a stock standard of approximately 5000 ug/ml is prepared by adding 4 drops of the diesel stock to an empty, tared 10 ml vol flask. The flask is reweighed and then brought to volume with methylene chloride.

$$C = A - B$$
 (1000 ug)
10 ml mg

A = Final Weight (mg)

B - Tared Weight (mg)

C = Stock Concentration (ug/ml)

Calibration Standard:

Prepare calibration standards from the stock at concentrations of 100 ug/ml, 200 ug/ml, 500 ug/ml and 1000 ug/ml.

Sample Calculations

The area of the components from Decane (C_{10}) through Octacosane (C_{28}) is integrated to the baseline as a group. The response factor is developed from the calibration standards.

Sample Concentration <u>(A x R) V D</u> (mg/Kg or ug/g) W

A - Area Count from Sample

R - Response factor (ug/ml)/area count

V = Extract Volume (ml)

D = Dilution Factor

W - Weight of Sample (g)

If a single point calibration method is being used, linearity in the working range must demonstrated.

Quality Assurance:

Sample duplicates must be performed with each analytical batch or 15% (1 in 7).

Appropriate surrogate extraction spike will be required and must be reported with the results. (The specific surrogate compound has not yet been selected.)

<u>Bibliography:</u>

EPA SW 846, Methods 3550, 8000

American Petroleum Institute, "Method for Determination of Diesel Range Organics" (Draft, 9 Sep 90)

Current method developed by researchers at this facility

Revision	Date	<u> 19</u>	Sep	90
	•			

Approval

State of Oregon Department of Environmental Quality Laboratories and Applied Research Organic Section

TPH-418.1 LUBE OILS AND BUNKER C IN SOILS LUST MATRIX

Summary:

The TPH-418.1 method covers the analysis of soil samples containing lubricating oils and Bunker C as required by Oregon's "CLEANUP RULES FOR LEAKING PETROLEUM UST SYSTEMS". The method utilizes the TPH-D soil extraction but takes the methylene chloride to "dryness" and redissolves with Freon to facilitate Infra-red Analysis. The Freon extract is combined with a silica gel adsorbent to remove non-petroleum interferences and subjected to infrared analysis at 2930 cm⁻¹. TPH is determined by the direct comparison with standards defined in this method.

Apparatus and Materials:

Infrared spectrophotometer, scanning or fixed wavelength, for measurement around 2930 cm⁻¹.

IR cells, 10mm, 50mm and 100mm, infrared grade glass.

Magnetic stirrer with teflon coated stir bars.

Silica gel, 60-200 mesh, Davidson Grade 950 or equivalent containing 1-2% water.

Freon 113 (1,1,2-Trichloro-1,2,2-trifluroethane)

Sample Extraction:

Soil Samples:

Weigh 20 grams of soil and 20 grams of anhydrous sodium sulfate into a 125 ml erlenmeyer flask and stir well with a spatula. The mixture should have a grainy texture. If it forms a large clump, add more anhydrous sodium sulfate and note in the extractions log. Add 40 ml of methylene chloride and sonicate for 10 minutes if using an ultra-sonic bath or for 3 minutes if using a horn sonicator. Allow the mixture to stand and decant the methylene chloride extract through a drying column containing 10 cm of anhydrous sodium sulfate. Collect the dried extract in a 500 ml Kuderna-Danish

concentrator. Repeat the extraction twice more using 40 ml of methylene chloride each time and combined the extracts. Concentrate to 5 ml. Using an N-evap apparatus remove all the methylene chloride. Redissolve the residue with freon 113 to 20 ml in a volumetric flask.

Calibration Mixture

Reference oil: Pipet 15.0 ml n-hexadecane, 15.0 ml isooctane, and 10.0 ml chlorobenzene into a 50 ml teflon sealed bottle. Keep container sealed except when withdrawing aliquots.

Stock Standard: Pipet 1.0 ml reference oil into a tared volumetric flask (100 or 200 ml), stopper and reweigh to obtain mass per volume concentration. Dilute to volume with freon 113.

Working Standard: Pipet appropriate volumes of stock standard into 20 ml volumetric flasks according to the cell path length being used and dilute to volume with freon 113.

Analysis Procedure:

Add 3 gm silica gel and a stirring bar; stopper the flask and stir the solution for a minimum of 5 minutes on the magnetic stirrer.

Select appropriate working standards and cell pathlengths accordingly:

<u>Pathlength</u>	Range
10 mm	2 - 40 mg
50 mm	0.5 - 8 mg
100 mm	0.1 - 4 mg

Calibrate the IR using the appropriate working standards for the cells. It is not necessary to add silica gel to the standards. Determine absorbance directly for each solution at the absorbance maximum at about 2930 $^{\rm c}{\rm m}^{-1}$, and prepare a calibration plot of absorbance vs. mg TPH per 20 ml standard extract solution.

After the silica gel has settled in the sample extract, fill the cleaned sample cell with solution and determine the absorbance of the solution. If the absorbance exceeds 0.8 prepare an appropriate dilution. (The possibility that the absorptive capacity of the silica gel has been exceeded can be tested at this point by adding another 3.0 g silica gel to the 'extract and repeating the determination.

Determine the concentration of TPH in the extract by comparing the response against the calibration plot.

Calculation

Calculate TPH in the sample as follows:

$$Mg/KG$$
 TPH = $R \times D$

where:

R - mg of TPH as determined from the calibration plot.

D = extract dilution factor, if used.

W = weight of sample, in KG.

Bibliography:

EPA Method 418.1 .

TPH-D Method



Department of Geology and Mineral Industries ADMINISTRATIVE OFFICE

910 STATE OFFICE BLDG., 1400 SW 5th AVE., PORTLAND, OR 97201-5528 PHONE (503) 229-5580 FAX (503) 229-5639

FAX (503) 229-5630 OFFICE OF THE DIRECTOR

State of Oregon DEPARTMENT OF ENVIRONMENTAL QUALITY

MEMORANDUM

TO:

RANDY FISHER, FRED HANSEN, MARTHA PAGEL AND BILL YOUNG

SEPT. 18, 1990

FROM:

DON HULL

SUBJECT: POLICY ISSUES - GOLD MINING IN OREGON

Enclosed is a final draft of the paper which summarizes issues related to both placer and lode gold mining. We have tried to incorporate the ideas that were developed at our meeting on August 23, 1990 and the Mining Issues Forum on September 8, 1990. Please share this draft with interested Board and Commission members and key staff.

We anticipate continuing interagency review of these issues as per the discussion at the meeting of natural resource agency heads on September 12, 1990. We have selected Wednesday, October 24 as the date of the next discussion on gold mining issues. We plan to meet at ODFW following Gail's regular Wednesday meeting.

DAH: ch

cc: Gail Achterman

Dave Reilly

Enclosure

Hgoldmin.doc

GOLD MINING IN OREGON

POLICY ISSUES

FINAL DRAFT SEPTEMBER 14, 1990 environmental baseline studies for two years on a gold prospect in Malheur County.

A Mining Issues Forum was held on September 8 in Bend, with sponsorship by Departments of Geology and Mineral Industries, Environmental Quality, and Fish and Wildlife. Agenda items for that conference included:

- 1. Anatomy of a mine.
- 2. Economic and social aspects of the advent of gold mining in Oregon.
- 3. Environmental issues.
- 4. The mining regulatory framework.

Future Activities

We foresee 2-4 large-scale open-pit gold mining development proposals in the next few years. The specific proposals will begin the process of permitting. Operations would come later, if permits are issued. All such operations would foresee use of chemicals in processing of the ores to recover gold. (A diagram of a typical mining and recovery process is attached.) It is possible that one large-scale open-pit mine could be in operation in the next three years.

PUBLIC COSTS AND BENEFITS

Economic

Between 1852 and 1983 gold and metal mine production in Oregon totalled over \$6 billion in 1980 prices.

Atlas Corporation anticipates peak employment at the Grassy Mountain site during operations of 190 persons. The average wage in such facilities is about \$30,000 per year. The capital investment would be \$80,000,000 with 110 construction jobs.

The most controversial environmental issues regarding mining are:

- 1. Protection of water quality; both surface runoff and ground water must be protected from any degradation through the use of chemicals, such as cyanide reagents, or the release of heavy metals in acid mine drainage.
- Aesthetic impacts from staking; there has been criticism of the unsightliness of present staking practice.
- 3. Partial or total backfilling of mines; there is concern about the effect on the landscape of open-pit mine practice.
- 4. Short and long term protection of wildlife; wildlife kills that have occurred at some cyanide-based operations in other state are not acceptable.
- 5. Conservation of water; water used in mining must not adversely affect senior allocations or result in overall declines below unacceptable levels.

For all of these concerns except landscape impacts, general statutory authority is adequate for appropriate environmental protection. Presently, the state and federal governments do not require the backfilling of open pit metal mines.

Special concerns about placer mining in active streams include impacts on streambeds and riparian areas, water quality and aquatic habitat destruction.

Key Contacts:

Geology and Mineral Industries

Don Hull State Geologist 1400 SW Fifth Ave., Rm. 910 telephone (503) 229-5580 Portland, OR 97201-5528

fax (503) 229-5639

Gary Lynch Supervisor Mined Land Reclamation telephone (503) 967-2039 1534 Queen Ave., SE fax (503) 928-4709 Albany, OR 97321

Environmental Quality

Fred Hansen Director 811 S.W. Sixth Avenue telephone (503) 229-5300 Portland, OR 97204 fax (503) 229-6124

Water Resources

Bill Young Director 3850 Portland Rd., NE telephone (503) 378-2982 Salem, OR 97310 fax (503) 378-8130

Fish & Wildlife

Randy Fisher Director 2501 SW First Ave.. telephone (503) 229-5406 Portland, OR 97201 fax (503) 229-5602

Team Coordination

The current state regulatory process for each area of serious exploration or development involves the formation of an interdisciplinary and interagency team to define environmental baseline data requirements, review environmental analyses, define permitting requirements, and judge post-operational activities, including reclamation and monitoring. DOGAMI currently coordinates the "team permitting" approach to regulation of mining operations, so that all state agencies work together on permit review. The team permit process involves experts from

Interagency discussions and the recent Mining Issues Forum have identified the following issues that require additional evaluation.

Regulatory Issues

- The hierarchy of environmental protection needs to be addressed, including prevention, mitigation, reclamation and long term monitoring.
- · The definition of reclamation needs to be reviewed.
- The mitigation of the environmental impacts of mining through off-site and on-site activities should be evaluated.
- The team coordination approach to review of permit applications should be "institutionalized" through administrative rule or law.
- The public liability of state and federal governments to long term environmental problems needs to be evaluated in the context of bonding practices and current liability laws.
- Alternatives to bonding for mining sites should be considered. Possible approaches for added security include reclamation funds and taxes on production.
- The statutory authority to deny permits for mines needs to be reaffirmed through legal analysis.
- The funding of the cost of interagency actions on permits and remedial problems should be assured so as to provide for timely and complete reviews.
- The regulatory approach to placer mining should be reviewed to assure environmental protection during mining operations and effective reclamation.
- Current memoranda of understanding with federal agencies should be reviewed in the context of court decisions.

Hgoldmin.doc/1

e Oregonian

Founded Dec. 4, 1850. Established as a daily Feb. 4, 1861. The Sunday Oregonian established Dec. 4, 1881. Published daily and Sunday by the Oregonian Publishing Co., 1320 S.W. Broadway, Portland, Oregon 97201

FRED A. STICKEL, President and Publisher

WILLIAM A. HILLIARD, Editor

PATRICK F. STICKEL, General Manager

PETER THOMPSON, Managing Editor ROBERT M. LANDAUER, Editorial Page Editor DONALD J. STERLING JR., Assistant to the Publisher.

BRIAN E. BOUNOUS, Advertising Director PATRICK L. MARLTON, Circulation Director

THURSDAY, SEPTEMBER 13, 1990

Gold! Historic cry stirs new concerns

By DONALD J. STERLING JR.

Assistant to the Publisher of The Oregonian

The rumble of a mining boom was almost audible last Saturday at a conference in Bend on the issues raised by a prospective gold rush in southeastern Oregon.

Organized under the leadership of the Oregon Department of Geology and Mineral Industries, the sellout gathering at Central Oregon Community College brought

together 200 mining company executives, state and federal regulators, environmentalists and other interested citizens.

Mining claims for precious metals filed in Oregon and Washington have increased dramatically in the past 18 months, from 40,000 to 70,000, said Patrick H. Geehan, deputy state director for mineral



STERLING

resources in the Oregon office of the federal Bureau of Land Management. Most of those claims are in Malheur and Harney counties in southeastern Oregon.

Only one mine has been announced so far in Oregon. Atlas Precious Metals Inc. of Denver, Colo., proposes to start building a gold and silver mine in 1992 on federal land managed by the BLM on Grassy Mountain, 40 miles southwest of Ontario. The bureau is developing an environmental impact statement for it now.

But south of the state line, 77 mines are operating in Nevada. Two-thirds of them use the heap-leaching technique proposed for Grassy Mountain. In it, volcanic rock is scooped from an open pit, piled on the ground and sprinkled with a dilute solution of cyanide to extract microscopic particles of gold.

Muscote of information and advice that

came from the conference included these:

 Leaching with poisonous cyanide is not as dangerous as it sounds, but it still has to be done with care. The process has been used in mining operations for 100 years. Miners say it has never caused a human death.

Birds and animals have died from drinking cyanide-tainted water. But Rory Lamp, a biologist assigned by the Nevada Wildlife Department to monitor gold mining, said he believed migratory birds and larger animals such as livestock and deer will be adequately protected by requirements such as those that took effect in Nevada last April. Lamp said he did not know yet how well these measures would safeguard smaller birds and animals.

The new Nevada law requires building wire fences around leaching sites, and either covering cyanide-bearing ponds with netting or chemically neutralizing the water to a non-lethal level. The BLM recently announced similar requirements. In Oregon, the state Department of Environmental Quality claims authority to impose them also.

 Plans for monitoring and eventually closing a mine in a safe manner should be made even before it opens, but they have to remain flexible.

Mining industry executives pointed out that every mine is different and ever-changing. The more they dig, the more they learn about what is underground. External factors such as changes in the international price of gold or improvements in processing may affect how much ore they decide to take out.

That means federal and state regulators. as well as concerned citizens, have to stay on the job as long as the mine is active and sometimes for years afterward. Some of the outflows of acid water that are among the most damaging relics of old mine operations are caused by weathering of the rocks in mine dumps that may not show up for 15 or 20 years.

In turn, that requires making the mining

company post a bond adequate to cover closing, monitoring and cleanup costs. Oregon law caps a heap-leach mine's bond at \$500,000, but in Montana bonds have run ashigh as \$34 million, said Philip M. Hocker, president of the environmentalist Mineral Policy Center in Washington, D.C.

 Local citizens must stay involved if they want to be protected from the adverse effects of a mine in their neighborhood. That was the advice of Jack Heyneman, a rancher at Fishtail, Mont., and past chairman of the North Plains Resource Council.

Heyneman mentioned three Montana laws passed in the 1980s to cushion those impacts. One allows for a negotiated agreement under which a mining company prepays its local property taxes for four years to pay for new public facilities and services that its arrival requires.

Another Montana law provides for sharing the tax base of a mine with counties or school districts that are affected by it but are outside the political jurisdiction where the mine is located.

A third taxes mineral production to create a reserve to cushion the tax loss to local governments if a mine slows down its activity by 50 percent or closes entirely.

 Not all of a mine's impacts arè adverse. Mines bring jobs and business: "Mining is one of the few industries that is interested in rural America," said John Fitz-patrick, director of community and governmental affairs for the Pegasus Gold Corp.

When a conferee asked Fitzpatrick whether mining would lure workers away from farming, he replied, "If you are asking whether a man would prefer a steady mining job at \$30,000 a year to part-time work at \$10 a day bucking hay, I think that's democracy and that's exactly what I mean."

The remark drew one of the loudest rounds of applause of the day. The conference foreshadowed debate that should be heard across the state and in the 1991 Legislature.

Cyanide leach mining in Oregon

Issue warrants study

Oregon's environmentalists are preparing to fight off the adverse effects of a modern-day gold rush in Eastern Oregon.

About 40,000 gold claims so far have been filed on federal lands, primarily in Malheur County in the southeast corner of the state. Other claims have been filed in Lake and Lane counties, as well as in other parts of the West.

The potential number of working mines, however, is a tiny fraction of the 40,000 sites claimed. Many of the claims may be overlapping or otherwise invalid. And any one of the proposed mines would need thousands of acres to operate, not the 20 acres protected by a claim.

The new mines will be massive, open-pit operations. And that is part of the objection.

The mine most likely to open first is being developed by a Denver company, Atlas Corp., at Grassy Mountain, near Vale. It is in the final stages of receiving approval for its environmental impact statement.

The Grassy Mountain Mine, which is typical of the new kind of gold operation, will be an 800-foot-deep pit large enough to fly an airplane around inside.

Apart from the scenic effects on the environment, many people fear the process that will be used to extract the gold because it uses cyanide.

A dilute solution of sodium cyanide is used to dissolve microscopic gold particles held in the crushed rock. The gold then is chemically precipitated out of the solution, and much of the cyanide is recovered and reused. This is called the cyanide leach mining process.

The process would have been unprofitable only a few decades ago. However, a tenfold increase in the price of gold from the old, official \$32 an ounce has raised interest in formerly marginal mines.

There also have been breakthroughs in the past few decades in the technology of open-pit mining, making it possible to economically move mountains of rock.

The use of sodium cyanide itself to dissolve gold from crushed rock has been common for a century or more. And mining interests contend that the cyanide has not been a health problem.

What has changed is the scale on which cyanide leach mining is carried out.

The large ponds of toxic material now associated with such operations have been

The Grassy Mountain Mine in Eastern Oregon promises a \$6 million payroll to what is an economically depressed region of the state. The lure is obvious to local government officials.

h

t!

n

ť

responsible for the deaths of thousands of migratory birds at other such mining sites.

However, this problem has been solved at some mines. One solution has been to cover the ponds with netting. Another is the use of floating plastic covers. And another solution has been to chemically convert the cyanide into a harmless solution by mixing it with ferrous sulfate.

A larger problem at the remote, arid Eastern Oregon site will be finding an adequate supply of water. A mine such as the one at Grassy Mountain will need as much water as a small town.

Oregon is late in joining the cyanide leach gold rush. Such mines have been operating profitably for a decade or more in Nevada, California, Washington and Idaho.

The Grassy Mountain Mine promises a \$6 million payroll to what is an economically depressed region of the state. The lure is obvious to local government officials.

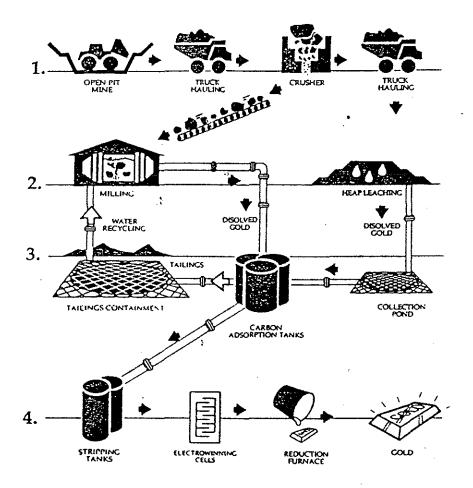
Environmentalists worry that Oregon's inexperience with such mines will make it vulnerable to exploitation by out-of-state corporations. They have filed a suit contesting the authority of the Bureau of Land Management to allow such mining. And they have appealed to state agencies to hold up approval of such mines until we know more about the consequences.

In fact, Oregon agencies have moved meticulously slowly in the processing of applications.

Important as it is that we show caution, we must also acknowledge that in a society where we need the jobs and want the gold, it would be hard to justify telling the miners to go someplace else.

All the same, the open-pit gold mines represent some potential unknown threats to the health and beauty of our environment. The issue needs to be placed before the Legislature, where reasonable limits and restrictions can be written into our law.

TYPICAL MILLING & HEAP LEACH METHODS FOR MINING GOLD ORE.



- 1. Gold bearing ore from an open pit is crushed; high grade ore goes to the mill, lower grade ore is heaped on lined pads.
- 2. A weak cyanide solution that dissolves gold is mixed with finely ground ore in the mill; the solution is sprinkled on the top of the heap leach pile and collected at the bottom.
- 3. The dissolved gold adheres to carbon particles, which are filtered out. Tailings (leftover rock particles) are collected and leaching solution is recycled.
- 4. Gold is stripped from the carbon by additional leaching solutions. The gold is then electroplated onto steel wool, which is melted to separate the marketable gold or silver.



Department of Geology and Mineral Industries ADMINISTRATIVE OFFICE

910 STATE OFFICE BLDG., 1400 SW 5th AVE., PORTLAND, OR 97201-5528 FAX (503) 229-5639 PHONE (503) 229-5580

MEMORANDUM

TO:

GOVERNOR NEIL GOLDSCHMIDT

SEPTEMBER 18, 1990

THROUGH:

GAIL ACHTERMAN

FROM:

DON HULL

SUBJECT: GOLD MINING DEVELOPMENTS

Since we briefed you in May, 1989 on gold mining activities, the exploration for these recources has accelerated and we anticipate permit applications for one or more large mines in the months ahead.

On September 6, 1990, a coalition of public interest groups issued a petition which requests (1) you and various boards, commissions, and state agencies "to declare a moratorium on issuing all permits for cyanide heap-leach mining until a cumulative impact analysis has been proposed and (2) "to promulgate rules related to the cumulative and comprehensive effects and mitigation of adverse impacts of cyanide heap-leach mining."

In order to provide improved public understanding of these activities, a Mining Issues Forum was held on September 8, 1990 under the sponsorship of the Departments of Environmental Quality, Fish and Wildlife and Geology and Mineral Industries (see attached Oregonian editorial of September 13, 1990). public discussion at the Forum and ongoing interagency meetings have clearly identified various economic and environmental issues that require further review by state natural resource agencies and key interest groups.

We recommend that you appoint a working group of agencies and interest groups to address these mining issues in a continuing effort to ensure that 1991 legislation and rulemaking will accomplish your stated policy of encouraging responsible gold mining development in order to stimulate economic opportunity in rural Oregon in a manner consistent with environmental standards. We suggest David Reilly as a convenor/facilitator of such a Alternatively one of the natural resource agency directors or a knowledgeable board or commission member might be an appropritate facilitator. A suggested membership of a working group is attached. In addition, it may be appropriate to invite D. Dean Bibles, State Director of the Bureau of Land Management, to participate.

MINING ISSUES WORKING GROUP

Suggested membership -

Fred Hansen, Director, Department of Environmental Quality
Bill Young, Director, Water Resources Department
Randy Fisher, Director, Department of Fish & Wildlife
Don Hull, State Geologist
Martha Pagel, Director, Division of State Lands

Jean Cameron, Associate Director, Oregon Environmental
Council

Dave Barrows, Executive Director, Oregon Mining Council

pe Oregonian

Founded Dec. 4, 1850. Established as a daily Feb. 4, 1861. The Sunday Oregonian established Dec. 4, 1881. Published daily and Sunday by the Oregonian Publishing Co., 1320 S.W. Broadway, Portland, Oregon 97201

FRED A. STICKEL, President and Publisher

WILLIAM A. HILLIARD, Editor

PATRICK F. STICKEL, General Manager

PETER THOMPSON, Managing Editor ROBERT M. LANDAUER, Editorial Page Editor DONALD J. STERLING JR., Assistant to the Publisher

BRIAN E. BOUNOUS, Advertising Director PATRICK L. MARLTON, Circulation Director

THURSDAY, SEPTEMBER 13, 1990

Gold! Historic cry stirs new concerns

By DONALD J. STERLING JR.

Assistant to the Publisher of The Oregonian

The rumble of a mining boom was almost audible last Saturday at a conference in Bend on the issues raised by a prospective gold rush in southeastern Oregon.

Organized under the leadership of the Oregon Department of Geology and Mineral Industries, the sellout gathering at Central Oregon Community College brought

together 200 mining company executives, state and federal regulators, environmentalists and other interested citizens.

Mining claims for precious metals filed in Oregon and Washington have increased dramatically in the past 18 months, from 40,000 to 70,000, said Patrick H. Geehan, deputy state director for mineral



STERLING

resources in the Oregon office of the federal Bureau of Land Management. Most of those claims are in Malheur and Harney counties in southeastern Oregon.

Only one mine has been announced so far in Oregon. Atlas Precious Metals Inc. of Denver, Colo., proposes to start building a gold and silver mine in 1992 on federal land managed by the BLM on Grassy Mountain, 40 miles southwest of Ontario. The bureau is developing an environmental impact statement for it now.

But south of the state line, 77 mines are operating in Nevada. Two-thirds of them use the heap-leaching technique proposed for Grassy Mountain. In it, volcanic rock is scooped from an open pit, piled on the ground and sprinkled with a dilute solution of cyanide to extract microscopic particles of gold,

Nuggets of information and advice that

came from the conference included these:

 Leaching with poisonous cyanide is not as dangerous as it sounds, but it still has to be done with care. The process has been used in mining operations for 100 years. Miners say it has never caused a human death.

Birds and animals have died from drinking cyanide-tainted water. But Rory Lamp, a biologist assigned by the Nevada Wildlife Department to monitor gold mining, said he believed migratory birds and larger animals such as livestock and deer will be adequately protected by requirements such as those that took effect in Nevada last April. Lamp said he did not know yet how well these measures would safeguard smaller birds and animals.

The new Nevada law requires building wire fences around leaching sites, and either covering cyanide-bearing ponds with netting or chemically neutralizing the water to a non-lethal level. The BLM recently announced similar requirements. In Oregon. the state Department of Environmental Quality claims authority to impose them also.

Plans for monitoring and eventually closing a mine in a safe manner should be made even before it opens, but they have to remain flexible.

Mining industry executives pointed out that every mine is different and ever-changing. The more they dig, the more they learn about what is underground. External factors such as changes in the international price of gold or improvements in processing may affect how much ore they decide to take out.

That means federal and state regulators, as well as concerned citizens, have to stay on the job as long as the mine is active and sometimes for years afterward. Some of the outflows of acid water that are among the most damaging relics of old mine operations are caused by weathering of the rocks in mine dumps that may not show up for 15 or 20 years.

In turn, that requires making the mining

company post a bond adequate to cover closing, monitoring and cleanup costs. Oregon law caps a heap-leach mine's bond at \$500,000, but in Montana bonds have run ashigh as \$34 million, said Philip M. Hocker, president of the environmentalist Mineral Policy Center in Washington, D.C.

 Local citizens must stay involved if they want to be protected from the adverse effects of a mine in their neighborhood. That was the advice of Jack Heyneman, a rancher at Fishtail, Mont., and past chairman of the North Plains Resource Council.

Heyneman mentioned three Montana laws passed in the 1980s to cushion those impacts. One allows for a negotiated agreement under which a mining company prepays its local property taxes for four years to pay for new public facilities and services that its arrival requires.

Another Montana law provides for sharing the tax base of a mine with counties or school districts that are affected by it but are outside the political jurisdiction where the mine is located.

A third taxes mineral production to create a reserve to cushion the tax loss to local governments if a mine slows down its activity by 50 percent or closes entirely.

 Not all of a mine's impacts are adverse. Mines bring jobs and business: "Mining is one of the few industries that is interested in rural America," said John Fitzpatrick, director of community and governmental affairs for the Pegasus Gold Corp.

When a conferee asked Fitzpatrick whether mining would lure workers away from farming, he replied, "If you are asking" whether a man would prefer a steady mining job at \$30,000 a year to part-time work at \$10 a day bucking hay, I think that's democracy and that's exactly what I mean.'

The remark drew one of the loudest rounds of applause of the day. The conference foreshadowed debate that should be heard across the state and in the 1991 Legislature.